

MINUTES OF THE REGULAR MEETING
of the
ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of Meeting: Tuesday, February 8, 1977, 7:40 a.m.

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

Members Present: Senator Berl E. Priebe, Chairman, Representative W. R. Monroe, Jr., Vice Chairman, Senators E. Kevin Kelly and Minnette Doderer, Representatives Donald V. Doyle and Laverne Schroeder.
Also present: Joseph Royce, Administrative Co-ordinator.

Minutes: Moved by Schroeder to dispense with reading of minutes of the January meeting and that they stand approved.
Motion carried viva voce.

REGENTS BOARD
Petition for
Traffic
Violations
Schroeder moved that pursuant to §17A.7 of the Code, the Board of Regents be petitioned to adopt a uniform system of parking regulations and vehicle registration for all universities and institutions under its authority.
Carried viva voce.

HEALTH
Psychology
Examiners
470--140
John Menne, Chairman of the Board of Psychology Examiners, appeared before the Committee to explain filed rules [Ch 140] published in IAC 1/26/77.

Menne indicated that changes suggested by this Committee had been incorporated into the filed rules.
Discussion of reference to their Code of Ethics in 140.1(6). Doderer recommended that the Code be filed with the Secretary of State although it would not be necessary to publish it in the IAC. She further requested that Committee members and Royce be furnished copies for their perusal.

PUBLIC DEFENSE
Chs 2 and 3
1/12/77 IAC
Supplement
Donald C. Hinman, Director of Office of Disaster Services; explained proposed rules of the Department intended to implement H.F. 1346 [66GA, Ch 1074].

In answer to Schroeder, Hinman said they had not received written comments concerning the rules up to this time.

Priebe and Schroeder raised question as to how stringent the continuing education requirements would be, in particular 3.4(3) and 3.4(4).

Hinman responded that the requirements represent eight weeks training over a period of four years.
In the past Phase I and II has been taught in Iowa and Phase III and IV in Battle Creek.

2-8-77

PUBLIC DEFENSE
Cont'd

Schroeder wondered if the programs could be developed in Iowa. Hinman pointed out that the federal government sponsors and pays for the courses. They also pay 50% of travel, lodging and meal expenses. The seminars provided in 3.4(5) are federally funded.

Monroe raised question concerning the following:
The rules lacked evacuation procedures for a nuclear disaster. Where is authority for requiring two meetings of joint administration each year [3.1(1)?

Monroe doubted there was authority to set standards for the joint county administration board.

In re 3.1(4) listing required administrative forms and records, Monroe recommended that these be referenced as to where they can be found. Also, he noted that the date of 10-1-77 was in conflict with the statute [H.F. 1346, §10(4)].

Hinman commented that the October date corresponded with the federal fiscal year.

Monroe took the position that 3.2(29C) exceeds the statute in that it would preclude elected officials from being appointed as municipal co-ordinators.

Monroe suggested that a date certain be inserted for the correspondence course referred to in 3.4(1).

Further discussion of 3.1(4) and 3.5. Monroe indicated he would object to the filed rules if they still contain federal requirements which exceed Iowa law. He suggested that the federal requirements be supplied to those concerned in separate documents--not in the administrative rules.

CAMPAIGN FINANCE Richard Connley and Steve Johnson represented the Commission. The Committee made no recommendations concerning
DISCLOSURE
4.1--4.6
filed rules 4.1 to 4.6 which were published 1/26/77.

AGRICULTURE

Betty Duncan, Legal Counsel, was present for review of the following rules of the Agriculture Department:

Pesticides, Ch 10, termination of notice	1/12/77
Pesticides, 10.22, 10.26, amendments	1/12/77
Pests, 10.25, without notice	1/12/77
Dairies, Ch 30, amendments	1/26/77
Livestock diseases, 16.1	1/12/77
Livestock diseases, Ch 16	1/12/77
Brucellosis-free herd, 16.39(1)	1/12/77
Identification of exposed cattle, 18.4(10)	1/12/77

AGRICULTURE
Cont'd

Duncan told the Committee that two notices were published in re amendments to Chapter 10 concerning pesticides. In an attempt to have the rules acceptable to industry as well as federal authorities, still further changes would be made when the rules are drafted for filing.

Discussion of amendments to Chapter 30. Schroeder questioned 30.20, paragraph 2., second sentence as to whether it was too restrictive. The rule provided that "Other products shall not be handled in the milkroom which would be likely to contaminate milk, or otherwise create a public health hazard." Some members took the position that the use of any sprays would be a violation of the rule.

Schroeder recommended that the word "stored" be substituted for "handled."

Richard Dennler, Milk Sanitarian for the Department, could see no problem with the recommendation.

In re amendment to 16.1 to strike the reference to 163.2 of the Code. Schroeder thought said reference should remain in the rule and that all diseases enumerated in the statute should be listed in the rule. It was noted that use of "and/or" was rather meaningless.

Additional amendments to Chapter 16 rescinded rules pertaining to the fair which were no longer applicable and provided a revised rule 16.39(1)-certified brucellosis-free herd.

Discussion of 18.4(10). Priebe and Schroeder expressed concern that the provision needed clarification whereby exposed animals could be moved to the farm of origin or other premise without being permanently branded.

It was noted that line 1 of the second paragraph should be amended to substitute "of" for "or."

CONSERVATION
COMMISSION
Ch 65

Stanley Kuhn, Chief of Administration Division, represented the Commission for review of Chapter 65 of their rules in re relocation assistance. Said rules would implement §316.9 of the Code.

Schroeder recommended that 65.2(4) be clarified.

2-8-77

PUBLIC SAFETY Wilbur Johnston, Fire Marshal, explained the following:
Fire Marshal Fire escapes and fire doors, 5.200, amendments 1/26/77
 Condemnation procedure, 5.11 1/12/77
 Economic impact, 5.601(2)"h" 1/26/77

Schroeder raised question as to 5.200(1) in re occupancy load table.

Priebe noted that said rule provided that doors open outward when occupancy exceeds fifty persons. He took the position the doors should always open outward regardless of number of occupants.

Johnston pointed out the rules were copied from nationally recognized standards and conform to the state building code.

Schroeder found 5.200(3) confusing with respect to the provision that certain areas be identified by signs reading, "NOT AN EXIT."

Johnston responded the rule was drafted in an attempt to comply with OSHA requirements.

Monroe challenged 5.200(3) as being unrealistic in the requirement for arrows pointing out exits.

No formal objections were offered.

In re information requested before inspection of a building 5.11, Doyle questioned whether 5.11(4) was legal.

Royce quoted from §100.20 of the Code. It was the consensus of some that the law was unworkable. Johnston said that it was his understanding that corrective legislation was being drafted.

ECONOMIC IMPACT There was brief review of the economic impact statement for
STATEMENT proposed 5.601(2)"h" [Item 31], 9/22/76 IAC Supplement.
 Said statement concerned doors in care facilities and was
 published in IAC Supplement 1/26/77.

DENTISTRY Dr. James McCleran, Dean of Dentistry, University of Iowa,
 represented the Dentistry Board for review of 8.2 pertaining
8.2 to dental college faculty permits--IAC Supplement 1/12/77.

Objection Monroe moved to object to 8.2 on the grounds that it was
 beyond the statutory authority granted to the board pursuant
 to chapters 147 and 153 of the Iowa Code. Motion carried
 by voice vote. Doderer voted "no."

The Committee noted that neither chapter of the Code provide for a faculty permit as allowed in the rule.

DENTISTRY
Cont'd

In answer to question by Doderer, McCleran indicated the college of dentistry would lose six to ten faculty members July 1, 1977 who have been acting on permits. Doderer took the position that legislation should be initiated to provide faculty permits in lieu of regular licenses. She requested that a written statement be forwarded to her and Monroe wherein the problem would be set out in detail.

HEALTH

The following persons were present for review of rules of the Health Department: Richard Middleton, Dana Petrowsky, William Schaudt, Department officials, Francis Lackner, Care Facility operator.

HEALTH[470]

Care facilities and standards, Chs 57-61, filed emergency

1/12/77

Physical standards, Ch 60, summary

1/26/77

Board of psychology examiners, Ch 140

1/26/77

Monroe took the Chair.

Discussion of Chapters 57 to 61. Middleton said the amendments were basically to further clarify existing rules.

In re 60.18(3) "j", Schroeder questioned the requirement that all resident rooms be equipped with central air systems.

Economic
Impact

Schroeder and Monroe requested the Department to prepare an economic impact statement on the paragraph.

Doderer questioned 60.6(2)"b" which provided "There shall be no more than four residents per room."

Monroe recommended possible amendment to provide that the rule be applicable to "newly constructed" or "newly licensed" residential care facilities.

Schaudt indicated that only county care facilities have more than four residents per room. He agreed to consider the Monroe proposal.

Schroeder recommended clarification of 60.11(11) concerning cleaning of garbage cans.

Doyle wondered if requiring a minimum temperature of 78° F was necessary [60.18(3)"a". Schaudt conceded the rule had been poorly drafted that it was their intent for the heating system to be capable of attaining that temperature.

Doderer suggested that all of Chapter 60 be reviewed by the Department for the purpose of correcting grammatical errors.

It was noted that Roman numerals indicating Class violations appeared throughout the original draft but would not be printed in the filed rules.

HEALTH Cont'd Doderer took the position that 60.9 was unclear as to what was an "isolation room." She recommended that other terminology be substituted.

VOTER REGISTRATION COMMISSION- Dale Nelson, State Registrar of Voters and Terry Swanson, Assistant, explained rules 4.3 and 4.4 filed without notice and published 1/26/77. Said rules outline specifications for voter registration data processing services.

Monroe questioned whether the department could meet the schedule outlined in 4.3(1)a (5) especially during a general election. However, the department did not anticipate problems.

Monroe asked if there were problems with 4.3(1)c (5) with respect to advance payment of postage costs by counties.

Schroeder was concerned as to financial ramifications of the rules and requested that an economic impact statement be prepared on the changes being implemented by 4.3 and 4.4.

It was pointed out that costs could vary depending on the type of system used by the vendor.

Priebe took the Chair.

Marcia Hellum, Attorney, representing Iowa Data, voiced objection to use of the emergency basis in implementing the rules.

It was noted that the rules would be published under Notice of intended action in the 2/9/77 IAC Supplement.

Department officials said that effort had been made to ensure there would not be unreasonable costs incurred by counties.

Economic Impact

There was unanimous consent of the Committee to request an economic impact statement under §17A.4(1)"c" of the Code.

Objection

Kelly moved to object to the rules as follows:

The committee objects to Voter Registration rules 4.3 and 4.4 filing these rules under the emergency provisions of chapter 17A of the Code goes beyond the statutory authority granted by §17A.5(2)"b" and §17A.4(2). The committee feels that in fact no emergency exists and that the commission is attempting to avoid the notice, public participation, and waiting periods required by Ch. 17A of the Code.

Motion carried. Monroe voted "no."

EMPLOYMENT SECURITY (JOB SERVICE)

Harold Keenan, Legal Counsel for Job Service of Iowa, explained 3.6(1)"h" relating to advance payment for unemployment benefits fund which was filed under emergency provisions of Chapter 17A and published in IAC Supplement 1/12/77.

EMPLOYMENT

SECURITY Cont'd

Keenan said the paragraph would go into effect 2/2/77 under normal rulemaking procedures. However, the department needed it 1/15/77 and it was put into effect under the emergency provisions of Chapter 17A when it became apparent the Department had miscalculated time.

Keenan quoted from H.F. 1593 [Ch 1068], 66GA as to procedures to be followed. He said employers were apprised by letter that the change was pending.

Objection

Kelly moved the following objection:

The committee objects to 3.6(1) on the grounds that it is beyond the statutory authority delegated by §17A.5(2) "b" in that the departments use of the emergency provisions of chapter 17A constitutes an abuse of the above mentioned section. The committee notes that the department unduly delayed promulgating administrative rules to implement section 44 of house file 1593, and thereby created its own emergency.

Motion carried viva voce.

ENVIRONMENTAL
QUALITY

Rules of the Department of Environmental Quality were before the Committee as follows:

Air Quality Commission	
Definition of city, 1.2(59)	1/12/77
Emission standards, 4.2(4)	1/12/77
Certificate of acceptance, 9.3(3)	1/12/77
Water Quality Commission	
Operator certification, Ch 21, amendments	1/12/77
Chemical Technology Commission	
Spraying, Ch 37	1/12/77
Water Quality, operator certification, 21.6, notice amended	1/12/77

Department officials present included David Bach, Hearing Officer, Edward Stanek, Division Director, and Larry Crane, Director. The following persons represented the City of Des Moines: Roger Grunow, Public Health Engineer; Michael Treinen, Assistant City Attorney; Gerald Pecinovshy, Assistant City Manager; Dennis J. VanLieu, Advisory Committee member; Bob Moss, Air Pollution Engineer; John Bellizzi, Assistant Public Works Director.

Bach explained that the amended notice to 21.6 contained a date change.

In re Air Quality Commission rules 1.2(59), 4.2(4) and 9.3(3), Bach indicated that all related to the burning of residential waste--primarily, leaves. "Urban areas" were defined; also, what is required of a certified local program that conducts a control program on air pollution in lieu of state program.

Treinen expressed the opinion that the rules as to procedures,

ENVIRONMENTAL
QUALITY Cont'd

in particular 4.2(4), were arbitrary and capricious. He continued that no data was collected last year in re leaf burn. He thought the computer model of DEQ to measure air quality did not accurately take into consideration all alternatives available to a city such as Des Moines. He suggested the Committee refer the matter back to the legislature under §17A.8(7) of the Code or delay the rule for seventy days. He asked that the city be allowed to prepare a plan.

Stanek responded that points brought up by the city were incorrect. He added that the Model in question was actual information collected. Des Moines was given time to prepare their own plan during the past two years.

Priebe asked if Iowa rules were more stringent than federal rules.

Stanek responded by saying there is no analogy. The DEQ devised a plan in an attempt to meet federal requirements but not exceed them. He explained that federal guidelines dictate that human health and welfare be protected and it is the responsibility of the department to achieve those standards. He concluded this would not be possible without the elimination of leaf burning.

Bach added that the clean air Act is set up by the federal government and establishes an ambient air quality standard. States are asked to develop a strategy, including rules, to establish said standard. The EPA approves the state plan provided it is sufficient.

Monroe asked if the City presented an alternative at the hearing held on the rules.

Bellizzi commented that at the hearing he spoke to the question of cost to Des Moines and pointed out problems of sewers becoming clogged by leaves--a definite negative impact. He reminded the group that the problem is not one to be solved "overnight." He added that the city is actively engaged in research on the matter.

Stanek noted that there was great concern for the 12,000 + persons in the area with respiratory ailments. An alternative to burning the leaves would be to promote mulching.

Priebe wondered how much more pollution was created by leaf burning than by coal burning.

Stanek was of the opinion the federal was incorrect in the guidelines for sulphur content in coal but correct on the leaf burning standards. The department had done research in both areas.

ENVIRONMENTAL
QUALITY Cont'd

VanLieu wanted to promote voluntary alternatives for disposal of leaves by methods other than burning. He took the position DEQ should take another test.

Bach pointed out that EPA had notified them that particulate and carbon monoxide emission standards are being exceeded in this area. Monitoring data confirms this.

Objection

Schroeder moved the following objection:

The committee objects to DEQ proposed rule 4.2(4), prohibiting open burning of waste, landscape waste and leaves in Des Moines, Cedar Rapids and Council Bluffs on the grounds that it is arbitrary and capricious. The committee notes that the rule provides no specific guarantee for the removal of the prohibition when the ambient air quality standards have been attained and that it may be applied only against the three above mentioned cities.

Bach quoted from §455B.12(1) of the Code as their authority for the rules.

Schroeder motion carried unanimously.

Discussion of amendment to 21.6 to provide for upgrading of operators of water systems. It was noted the rules contained grandfather provisions so there would not be a hardship placed on any city.

In response to question by Schroeder, Crane said that grades III and IV plants have very sophisticated equipment and a college degree is required for the operators.

In re ban of leaf burning, Schroeder moved to object to 9.3(3)c(2).

Bach reminded the Committee this provision had been in the rules since 1971 and was not before the Committee today. Schroeder withdrew the motion.

Discussion of Chapter 37. Schroeder raised question concerning 37.2--roadside spraying. He suggested that the following sentence be deleted for lack of authority to promulgate it: "The county conservation board shall be consulted before the spraying." After discussion, Monroe and Schroeder recommended substituting the word "advised" for "consulted." Priebe suggested changing "shall" to "may."

Bach indicated he would relay the recommendations to the Commission.

Monroe took the Chair.

ENVIRONMENTAL QUALITY Cont'd
4.3(3) Schroeder brought up the matter of the Committee objection filed to 4.3(3) on July 14, 1976. Said subrule related to sulfur dioxide emission standards.

Schroeder moved that the Committee remove its objection to 4.3(3) a and b.

Priebe commented that it was difficult for him to comprehend that Iowa rules governing livestock feeding operations were more restrictive than federal requirements and the standards for sulfur dioxide emissions would be less stringent than federal.

Objection Removed The Schroeder motion carried with 4 ayes. Doderer and Monroe voted "no."

COMMERCE The following rules of Commerce Commission and Insurance Department were acceptable as published:

INSURANCE

COMMERCE - electric utility 20.3(10), (12) 1/26/77

INSURANCE

Unfair trade practices 15.80 1/26/77

Solicitation of life insurance 15.72 1/26/77

HIGHER EDUCATION Willis Wolf, Executive Director, Higher Education Facilities Commission, was present for review of filed rules pertaining to their assistance programs, being Chapters 1 to 8 published 1/26/77.

Discussion of rules dealing with application requirements--2.1(1) and criteria for scholarship awards--2.1(4)a.

Motion Schroeder moved the following objection:

The committee objects to proposed rule 2.1(1) on the grounds that it is arbitrary by allowing only the top fifteen per-cent of a graduating class to apply for the scholarship awards.

The committee objects to proposed rule 2.1(4)"a" on the grounds that it is unreasonable in that the rule puts a greater value on class ranking than it does on performance in the designated national test in determining an academic index score. The objection to this rule may be overcome by amending the rule to equally weigh both of these criteria.

Motion carried. Kelly voted "no."

TRANSPORTATION The following rules of the Department of Transportation were acceptable as submitted. Nonoperator identification, [07,C], Ch 12 and Drivers licenses, [07,C], Ch 13 1/12/77.

Recess Chair recessed the meeting at 12:10 p.m.
Reconvened Meeting was reconvened by Chairman Priebe at 1:35 p.m.

**SOCIAL
SERVICES**

The following rules of Social Services were before the Committee:

Department organization, 1.3, amendments	1/12/77
Iowa penitentiary, 17.4(4), amendments	1/12/77
Iowa men's reformatory, 18.4(6), amendments	1/12/77
Work and training programs, 55.2, 55.9, amendments	1/12/77
Burial benefits, 56.2(3), 56.3(4)	1/12/77
Medical assistance, 78.9, 81.4(2)	1/12/77
Needy Indians, Ch 64, without notice	1/12/77
Home health agencies, 78.9, filed emergency	1/12/77
Children in need of assistance, Ch 141, filed emergency	1/12/77
In-home health care, 148.4, 148.7, filed emergency	1/12/77
Records, Ch 9	1/12/77
Supplemental assistance, 50.1, Ch 51, 52.1(1)(3), 54.1	1/12/77

Judith Welp, Bob Lipmann, Steve O'Mera and Sue Tipton represented the Department. Also present were Marilyn Lantz and Roger Foreman, Legal Aid Society.

Discussion centered on Chapter 9 regarding records of the department for individuals applying for or receiving assistance. Lantz stated that they basically favored the rules. However, she expressed concern as to information from other sources-- 9.2(1). She concluded, "The door is still open to anonymous informat leaving the recipient helpless to respond." [9.3(2)]

Kelly took the position the rules were "blatant disregard of due process."

Doderer raised question in 9.5(4) as to use of "applicant or recipient." She noted they were not defined and suggested uniformity by use of terms which were defined.

Objection Schroeder moved to object to 9.3(217) as follows:

The committee objects to 9.3(2) and (3), both dealing with information provided by third parties, on the grounds that the rules are unreasonable in that they fail to provide adequate safeguards against the use of information in a contested case proceeding which has been provided by an unidentified third party.

Motion carried. Doderer suggested that the Department work with the Legal Aid Society to correct the problem.

Discussion of amendments to Chapter 55 in re work and training programs.

Kelly and Doyle took the position that 55.2(11) was arbitrary. It provided: "No plan shall be approved by the department when tuition rates exceed those of a state university in Iowa."

SOCIAL
SERVICES
Cont'd

Lipmann pointed out that 55.2(16) provides for exceptions. Kelly recommended that the provision be reworded for clarity. Several suggestions were offered such as:
"Plans shall not be approved by the department when tuition rates exceed those of a state university unless programs are available to compensate for the difference in the tuition rates."
"In considering a plan, the department shall consider tuition rates."
"However, payment may be approved for a plan where the department determines the client would be adversely affected by circumstances beyond the clients control."
Substitute "A" for "No" in line 1 of 55.2(11).

No formal action was taken by the Committee.

Discussion of 78.9 which stated: "Payment will be approved for all medically necessary services and supplies as prescribed by a physician in a plan of home health care provided by a certified home health agency."

Objection Schroeder moved to object to 78.9 as follows:

The committee objects to 78.9 on the grounds that it goes beyond the statutory authority granted to the department by the emergency rule provisions of Chapter 17A of the Code.. The committee feels that it fact no real emergency exists and that the departments use of §17A.4(2) and §17A.5(2)"b" of the Code is an attempt to avoid the notice, public participation and waiting periods of chapter 17A.

Motion carried viva voce. Doderer voted "no."

Committee members were furnished copies of a letter from Senator Alvin Miller wherein he requested careful review of proposed amendment to 81.4(2) concerning medical assistance payments.

Objection There was brief discussion of Chapter 141 and Doderer moved the following objection:

The committee objects to 141.3(2) on the grounds that it is beyond the statutory authority granted to the department in that it may allow a child in need of assistance, who is in violation of the youth placement contract to be placed in Mitchellville or Eldora. The objection may be overcome by amending the rule to preclude placement of children in need of assistance in either Mitchellville or Eldora.

Motion carried.

SOCIAL
SERVICES
Cont'd

Discussion of Chapter 139 of rules of Social Services relating to adoption services, published in IAC Supplement under Notice 11/3/76,

Motion Schroeder moved to withdraw request for the economic impact statement and recommended that the department file Chapter 139 under the emergency provisions of Chapter 17A of the Code.

Out of Order Monroe noted that the economic impact statement in question did not involve the entire committee and the Schroeder motion was out of order.

Motion Monroe moved that the Department promulgate Chapter 139 under the emergency provisions of Chapter 17A.
Carried.

REGENTS The following filed rules of the Board of Regents were acceptable:

REGENTS[720]

Iowa State University, 13.1-13.5
Smoking prohibited, 13.7(7)

1/12/77
1/12/77

The Committee requested that proposed rules of the Merit Employment Department be placed on the agenda for review at the March 8 meeting.
Reduction in force-layoff, 11.1(3)
Appeals, 12.9

1/12/77
1/12/77

ADJOURNMENT

Chairman Priebe adjourned the meeting at 3:30 p.m. Next regular meeting to be held Tuesday, March 8, 1977 at 7:30 a.m.

Respectfully submitted,

Phyllis Barry

(Mrs.) Phyllis Barry, Secretary

APPROVED

Bert E. Priebe

B. E. Chairman

DATE

March 8, 1977