

MINUTES OF THE REGULAR MEETING
of the
ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of Meeting: Tuesday, July 11, 1978, 9:30 a.m.
Wednesday, July 12, 1978, 9:15 a.m.

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

Members Present: Senator Berl E. Priebe, Chairman, Senator E. Kevin Kelly, Representatives Donald V. Doyle and Laverne W. Schroeder. Not present: Senator Minnette Doderer and Representative W. R. Monroe, Jr., on vacation, having notified the Committee prior to the meeting. Also present: Joseph Royce, Administrative Coordinator.

MINUTES

Doyle moved the minutes be adopted after correcting the motion for Royce's attendance to the National Conference on State Legislatures' seminar to read "beginning July 4, 1978". Schroeder seconded and motion carried.

CONSERVATION
COMMISSION
chapter 14

CONSERVATION[290] F
Wildlife refuges, Ch 3
Waterfowl hunting on Forney Lake and Riverton area, Ch 14
Waterfowl hunting on Lake Odessa, Ch 15
Deer hunting, Ch 106

6/28/78
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Kenneth Kakac said that the rule concerning wildlife refuges had been amended as requested and permission for law enforcement personnel to enter the closed hunting area has been added to chapter 14. He advised that the requested change regarding waterfowl hunting on Lake Odessa had been made.

Schroeder questioned Kakac about combination licenses and the discussion centered around the fact that some members of the committee thought the Commission would make the change as passed by the Legislature immediately. Kakac noted the procedure was complicated and advised that only two areas of the passed law went into effect July 1; the non-resident license fees and the deer license fees.

Priebe suggested Kakac tell the Conservation Commission that the Rules Review Committee feels the change for combination licensing should be made. Kakac noted this is an administrative matter.

Free licensing procedure was discussed and Kakac advised that a note will be sent to every person who received a free license last year, asking the individual to apply during the application period. The information will be fed into the computer, thus expediting the process.

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AGRICULTURE

16.150(2)

Present for the discussion of Aujeszky's disease were Dr. Merle Lang, State Veterinarian and Robert Lounsberry, Secretary of Agriculture. Action on rule 16.150(2) had been delayed from the last meeting. Dr. Lang informed the committee that the Department of Agriculture was proposing not to have testing of animals moving through the auction markets, thus not allowing the drawing of blood at the auction market. He stated that this method of testing tended to spread a disease, if present, to other herds and complicated the quarantine of animals going through market.

In response to a question by Priebe, Lang stated they are allowing killed vaccine to be used. General discussion of the federal regulations as compared to the rules as proposed by the state Department of Agriculture followed by a comment from Lounsberry that the federal government did not have regulations, but have been going through the hearing process. In response to a question by Schroeder as to the date of the federal register containing the information, Lang replied that the information was in the register of May 17, 1978. Lounsberry spoke disparagingly about the process used by the federal government.

MOTION TO
DELAY

Schroeder moved to delay action until the next meeting. Lounsberry asked for the matter to be delayed until the afternoon.

The motion to delay until the August meeting was adopted unanimously.

BOARD OF REGENTS

Wayne Richey, Board of Regents, appeared before the committee to discuss the request of the UNI student government to obtain a docket of the proposed Board Meeting prior to the meeting. He explained the problems facing his office if he is required to meet the request of the student government. After general discussion, no action was taken by the committee. Royce reminded that the motion to delay this matter was still in effect.

LAND PRESERVA-
TION POLICY
COMMISSION
Ch 1

Mr. Al Russie commented that the proposed rules were presented in response to a request by the Rules Review Committee. The Committee was told that the commission is temporary, therefore, the rules are also.

DENTAL EXAMINERS

DENTAL EXAMINERS(320) N
General provisions, administration, licensing, professional standards,
Chs 1, 5-7, 10-15, 25

6/28/78

Priebe out of the meeting. Schroeder assumed chair.

Dr. Wayne J. Barnes, Chairman, represented the Board of Dental Examiners. He said that part of the proposed rule changes were to rules which had been on their books since 1973 and the continuing education rules have some proposed changes.

DENTAL EXAMINERS Barnes informed the committee that the fees generate around \$30,000 per year.
(cont'd)

Continuing education for dentists was discussed and Barnes stated that the Board of Dental Examiners feels that dentists must go back to school and maintain their education on a yearly basis. Schroeder took issue with the Board's practice of allowing six hours of credit when a dentist attends a dental meeting or seminar. Barnes told the committee that before a course is given, a sponsor has to be approved and he stated it is possible to receive more course credit at a District Dental or State Dental meeting, with the Board's approval.

Kelly suggested the Board should consider banking of course credit hours for continuing education. Barnes said the Board had considerable discussion of this subject. The committee generally agreed that credit should be given for a dentist who teaches a course or conducts a seminar.

The rule requiring two year's experience before accreditation for the purposes of continuing education was questioned by Doyle and Barnes agreed to make the necessary wording changes.

Royce suggested since the rule has been changed as a result of the enactment of H.F. 2099 pertaining to hearings, the Dental Board might want to consider setting the time of the public hearing at the same time the rule change is being considered. Schroeder suggested the same could be accomplished by striking the words "20 days notice".

14.3(2)

In 14.3(2), Royce requested the rule be written more specifically to define "unprofessional". Barnes replied there are 9 rules pertaining to this area.

SOCIAL SERVICES

SOCIAL SERVICES[770]	N	
Application for aid, 40.2, 40.7(3)		6/28/78
Granting assistance, 41.1(5)"c"(1,2), 41.6(2), 41.7(6), 41.8(1)"c", 41.10		6/28/78
Need standards, 41.8(1)"b"		6/28/78
Acceptance of other financial benefits, 75.3		6/28/78
Abortions, 78.1(17)		6/28/78
Hearing aids, 78.14, filed emergency		6/28/78
Probation against reassignment of claims, 79.1(1)		6/28/78
Facilities for mentally retarded, 82.1, 82.6(3), 82.7(2), 82.8(1), 82.8(2),		
82.11(2)"b"(1,2), 82.12(5)"c"(1,3)		6/28/78
Sheltered work, work activity services, Ch 155		6/28/78

Judy Welp pointed out that the rule changes in chapter 41 address the general applicability of the law as it relates to stepparents. The change in 75.3 clarifies federal requirements for receiving assistance and applying for same. 78.1(17) lists procedures for payments for abortions and in response to a question by Schroeder, Welp said the law is more limiting than it has been in the past.

SOCIAL SERVICES
(cont'd)

78.14

Welp told the Committee that 78.14, Hearing aids, had been reviewed in its proposed form, it was filed emergency in order to implement the rule, but a judicial order was received to prevent implementation of the emergency rule.

Edwin McIntosh, Iowa Speech and Hearing Association, advised they had filed a petition for review of the action taken by the Department of Social Services. As a result of the petition, there is a temporary stay until a full hearing is held. He requested the Rules Review Committee to file an objection to the rule on the basis that the rule is not an emergency. He noted that the proposed rule sets up the procedure whereby a medicaid applicant can receive a hearing aid. McIntosh commented that the proposed rule eliminates the necessity for a person to consult a licensed audiologist.

In response to an inquiry by Schroeder, McIntosh stated that the proposed rule had not been agreed to and noted that a public hearing was meeting at the very moment the Rules Review meeting was being held. Welp said that she did not think the Department of Social Services had agreed to anything relative to the hearing aid rule. A gentlemen from the Iowa Hearing Aid Society commented attempts had been made to work out a solution, but to no avail. McIntosh reiterated that the licensed audiologists had never agreed to the proposed rule.

OBJECTION
78.14

Senator Kelly moved the following objection:

The Committee feels the department of social services exceeded its authority in promulgating rule 78.14 under the emergency procedures of Chapter 17A, The Code for the following reasons:

1. Normal rule-making procedures were begun by proposing the rule under notice in the 4-19-78 supplement to the IAC, strongly implying that no emergency existed at all. A hearing on the proposed rule is scheduled for July 11th, the same day that the Committee meets to examine the emergency rule and six days after the emergency rule goes into effect. Under these circumstances the hearing, designed to allow public input and participation, is reduced to a mere sham, since the department's decision has already been made and implemented.

2. The emergency rule claims that notice and public participation would be contrary to the public interest, on the grounds that it confers a benefit upon the public. Professor Bonfield states: "...the 'contrary to the public interest' standard...permit[s] exemptions for other extraordinary situations. Where the delay and costs involved are in fact so very large, due to special facts of the case, that they outweigh the strong public interest favoring adherence to usual rulemaking procedures, an exception could be allowed.

The exemption should not be allowed on the grounds that the rule confers a benefit upon the public, since presumably all rules benefit the public and therefore all rules would be exempt from notice and public participation. In addition, it is not certain that the rule does confer a benefit upon the public, since at least one group of interested person actively oppose the rule; nor has there been a showing of difficulty obtaining a hearing aid under the old rule.

In Black v the Conservation Commission, the Polk County district court noted that:

...[T]he Legislature clearly intended by Chapter 17A that government agency rules...be passed by the ordinary procedure with the right of public participation and that the extraordinary or emergency method of passing an agency rule...be utilized only in extreme circumstances.

It is the feeling of the Committee these 'extreme circumstances' did not exist and therefore formally objects to the use of the emergency provisions of Chapter 17A, The Code.

SOCIAL SERVICES
(cont'd)

Priebe returned to assume the chair. Discussion of requirements for licensed audiologists and hearing aid dealers and Welp stated that the Department feels the proposed rule would be in the best interests of the public.

VOTE 78.14

The motion to object to rule 78.14 was adopted.

79.1

Welp told the committee this rule was changed to meet federal requirements.

82.1-82.12

The following filed rules were reviewed:

SOCIAL SERVICES(770) F	
Organization, 1.3(4)	6/28/78
Half-way houses, Ch 24	6/14/78
Granting assistance, 41.4, 41.5(2), 41.7, 41.7(4), 41.7(4)"a,f,j,k"	6/28/78
Self employment, 42.6	6/28/78
Facility participation, 54.1, 54.4-54.7	6/28/78
Geographic area for Title XX, 131.4	6/28/78
Payments for foster care, 137.1, 137.1(1)"c,g", 137.1(4), 137.8(1), 137.17	6/14/78
Purchase of services, 145.1(8)	6/14/78
Rural rehabilitation loan programs, 146.1(1), 146.2(2), 146.11(1)	6/28/78
In-home health related care, 148.4(3,6), 148.5(4), 148.7(1,2)	6/14/78

In the area of certification of need for admittance to health care facilities, Welp informed the committee that the Department had misinterpreted the federal regulations and the government requires certification by a physician. In response to a question by Doyle, it was noted that Iowa is one of the states which allows certification by chiropractors.

Gary Gesamann, Long Term Care Manager, reviewed the definition of licensed practitioner and noted that chiropractors would not be included. Kelly inquired what would happen if the Department did not follow federal law and Gesamann replied the certification would not be reimbursable. Dr. Herbert Roth, clinical psychologist, spoke against the proposed rule, stating that it is capricious.

Schroeder reminded that the rules are under notice, thus giving ample time for the two sides to reach an agreement. Gesamann quoted from a letter from the federal office on the subject. Kelly said the committee should ask for a one-month delay because the federal law is in direct opposition to the state law. Priebe suggested letting the federal government find the state in non-compliance.

ECONOMIC IMPACT
MOTION - 82

Kelly moved to request the agency to supply an economic impact statement and asked Royce to research the matter. The motion was adopted unanimously.

Kelly also asked Royce to check if the federal government has authority to grant waivers. Gesamann noted he could not imagine a waiver being granted. The committee was informed of a pending public hearing, July 21, 1978.

SOCIAL SERVICES
(cont'd)

155

Welp commented that chapter 155 contained standards the Department would like the sheltered work and work activity services to meet. The department will require any facility from which the state purchases services to meet the accreditation standards as set out by CARF.

Schroeder questioned whether or not these rules would make it more difficult for people to enter into the sheltered workshop business. He also expressed concern that some persons would have to go out of business as a result of these rules.

Schroeder asked Harold Poore and Judy Welp if they could write some other standards which would not cause all of the problems being caused by these proposed rules. Since the rules are on notice, Schroeder reserved the right to file an objection.

ECONOMIC IMPACT
MOTION
155

Schroeder moved to ask for an economic impact statement showing the cost to providers as well as the total cost to the state for meeting these rules. The motion was adopted unanimously.

Organization
1.3(4)

In the discussion of the matter of work release, Royce stated he had researched 7 or 8 sections of the Code, even to the point of going to an appropriations bill in the session laws, in order to check the statutory authority for these rules. Welp noted Code Chapter 217 contains the statutory authority. Royce called attention to an "and" which was missing in Item 1. No further discussion.

Welp told the committee that the chapter on half-way houses had been rewritten, after the Department held public meetings. She noted that the language in 24.1(3) had been changed at the request of the Rules Review Committee. The committee discussed the point system and expressed dissatisfaction with some of the items. John Walton, Bureau of Corrections, spoke in support of the point system. Doyle said the language should be clarified in 24.3(14) and feels the language in 24.1(1) is tougher than the department really intended.

24.1

41

These rules are a clean-up of rules already passed and in effect.

42.6

Welp discussed the rule dealing with Aid to Dependent children unemployed fathers segment of the program. The regulations require, in order to be eligible as an unemployed father, the person has to be working less than 100 hours per month. Previously, the Department did not have a system for computing the number of hours for a person who is self-employed. As a result of a public hearing, the Department was informed by the public that the basic need of the self-employed was not considered in the rule. The regulations are very

SOCIAL SERVICES
(cont'd)

specific in stating that need is a separate consideration. A person could be working 90 hours and making a great deal of money, but still would be considered unemployed by the use of the 100 hours theory. Welp stated that the Department was not able to come up with anything else more satisfactory.

54.1

Rules for the residential care facilities are addressed in 54.1 and Welp noted that the Department has to complete a new agreement with each facility each year. Also, the goods and services each facility is expected to provide in order for the facility to receive the state supplementary assistance payment, are enumerated in this rule.

Personal needs accounts for residents of care facilities was discussed and Doyle asked if the money was placed in a savings account. Welp replied that these particular rules did not specify this had to be done. Doyle expressed that 54.5 should clarify where the money is located and Welp agreed. He also commented that the money should be in an account, earning interest for the resident.

131.4

This rule addresses Title XX planning and Priebe requested striking "sixteen" before the word "districts" thus avoiding amending the rule every time there is a number change. Discussion of rule changes regarding payments for foster care.

137

RECESS

Priebe recessed the meeting at 12:05 p.m. to be reconvened at 1:30 p.m. and requested Welp to return.

CONVENED

The meeting reconvened at 1:50 p.m. with quorum being present.

Day Care Selec-
tive Review

The committee requested that rules relating to day care be brought up for selective review in the near future.

145, 146

The rule allows the submitting of a declaration of rate by child care centers serving 6 or fewer children under Title XX. Welp noted that changes in 146 were at the request of the Committee.

148

The maximum amount of supplemental income for in-home health care is specified in this rule and the department can pay a relative, as long as they are not a dependent child or spouse, to provide the care. Priebe commented that the program is a good one and tends to reduce state costs. Schroeder expressed dissatisfaction with the proposed rule change. The committee discussed whether or not the law had changed in this area. Schroeder stated there should be a waiver provision in the rule. No further action on this rule and Priebe suggested that the law should be changed next year.

Doyle requested staff to send a copy of the rule, along

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SOCIAL SERVICES
(cont'd)
17.2-21.2

with notes, to Tim Faller, Legislative Fiscal Bureau, requesting his review of the matter. These rules were on a 70-day delay and John Thalacker, Bureau of Corrections, discussed the process of photographing certain visitors to penal institutions. The committee again expressed opposition to this practice. Schroeder moved to lift the 70-day delay on the rules. Motion adopted.

MOTION

WITHDRAWAL

In considering the matter, the committee decided the better course would be to let the delay run its course, therefore, unanimous consent was granted to withdraw the Schroeder motion.

SELECTION OF
CHAIRMAN

The committee, by unanimous consent, selected Priebe to be chairman of Administrative Rules Review Committee until reorganization next year.

REVENUE

REVENUE(730)
Motor fuel and special fuel, Ch 63

N

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REVENUE(730)
Sales and use tax, 17.3 "c"

F

6/14/78

Elliott Hibbs discussed the motor fuel and special fuel rules and noted they were to inform the public of the fact that there is a tax on the fuel inventories. He advised the rules were put into effect on an emergency basis.

Hibbs said that the legislature, in 1969, enacted a provision which provided for an exemption in propane use for drying grain and the Revenue Department did not adopt rules at that time. Therefore, the Department did not administer equitably the exemptions. The position of the Department was established in 1975, and instruction was given to implement rule making, but this was not done. The Department is now trying to promulgate rules. Schroeder inquired if this had been pointed out to the legislative committee and Hibbs said he did not think so.

MOTION

Schroeder moved the implementation of the appropriate paragraph of Senate File 244 because of the reassessed determination and interpretation of exemptions for grain drying and lack of a fiscal effect. Hibbs noted he is aware of the language.(S.F. 244, section 19). The motion was adopted. Priebe stated that the various legislative committees will have to be notified.

BEER AND LIQUOR

Rolland Gallagher, Director, was present to discuss the following:

BEER AND LIQUOR(150)
Checks accepted, identification cards, 2.16, 2.17
Sunday sales, 4.5

6/14/78
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Schroeder disagreed with the rule for acceptance of checks and said if the word "licensees" was changed to "adults", he might be able to agree with the rule. Gallagher reminded that the attorney general's opinion covers this rule. Schroeder stated it is discrimination to allow licensees to use cashier's checks, but not

BEER AND LIQUOR
(cont'd)

allow the public to do so. Chairman Priebe reminded that the law is plain on this practice. Kelly agreed that the rules are made according to the law and that the Committee can do nothing about this.

No action taken.

Schroeder asked about Sunday sales and the requirement that an establishment must sell 50% in food in order to sell beer and liquor on Sunday. Gallagher conceded the Department is deficient in having rules to cover the Sunday sales. Schroeder commented he had had complaints and feels there should be rules for this area. Gallagher pointed out they could use 123.39 for suspension of liquor license for violators of the 50% requirement of food sales. No action taken.

EMPLOYMENT
SECURITY

Harold Keenan was present to discuss the following:

EMPLOYMENT SECURITY[370] N	
Employer account, 2.11(1), 2.11(4), 2.12(3), 2.12(4)	6/28/78
Employers contributions, 3.40(3), 3.40(4), 3.43(5), 3.44(3), 3.82(3), 3.86, 3.87	6/28/78
Claims and benefits, 4.24(9), 4.25(9), 4.25(37), 4.57(8)	6/28/78
Forms, 10.7(2)	6/28/78
EMPLOYMENT SECURITY[370] F	
Records and reports, 2.3(4), 2.3(6)"b", 2.9(1)	6/14/78
Contribution and charges, 3.1(19), 3.3(2)"f,g", 3.3(3)"a", 3.6(1)"a,b,d,g", 3.6(2)"a,b", 3.7(2), 3.17, 3.40(2)"a,e", 3.43(10)"a,b,d", 3.43(14), 3.44, 3.44(1-4), 3.65(3), 3.70(1,2), 3.70(2)"b", 3.70(3), 3.70(6), 3.71(3), 3.72, 3.73, 3.83(4)	6/14/78
Claims and benefits, 4.13(1), 4.22(1)"f,p,r", 4.22(2,3), 4.23(39), 4.24(14)"a", 4.25(41), 4.31(6), 4.34(1), 4.39, 4.39(7,9-12), 4.54(1), 4.57, 4.58	6/14/78
Hearing officer, 6.2(5)"a"	6/14/78
Appeal procedure, 6.2(6)"c", 6.2(7), 6.4(1)"j,m"	6/14/78
Forms, 10.2-10.4, 10.6, 10.7(1,3,4,8-11)	6/14/

2.11-2.12
3.40

The rules were made primarily at the request of the Department of Labor. The changes are being made for the purposes of clarification and Keenan commented there will be more changes forthcoming. Schroeder and Keenan discussed employer contributions and Schroeder asked Keenan to write a letter about the matter. Keenan commented that much of the rule is written to meet federal guidelines and there was little his department could do. Schroeder discussed a problem his school district had in this area and further discussion was delayed to allow him time to locate a letter pertaining to the subject matter.

Schroeder out of the room.

4.24-4.57

Some of these rules were being deleted as they are no longer needed. Keenan cautioned that item 4.57 could possibly create problems since there are no case histories to use as guidelines in the matter.

3.17

Royce questioned Keenan as to the method of forming group accounts and the statement that all members of a group are liable for all charges while the group is in existence. (3.17).

The filed rules were acceptable and Keenan reminded the committee he had appeared before on those.

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VOTER
REGISTRATION
2.1(47)

Dale Nelson, State Registrar of Voters, appeared to explain the following rules:

VOTER REGISTRATION[845] N
Registration form, 2.1-2.3
VOTER REGISTRATION[845] F
Edit functions, county duties, 7.3

6/14/78

6/14/78

In regard to 2.1(47), Nelson pointed out on the voter registration form, a place for telephone number had been added and the information will be optional. Priebe expressed dissatisfaction with this practice and said he could not see the sense of changing forms when the auditor already has printed forms available. Nelson assured the Committee that the present forms would be used before using those requesting the telephone number.

Priebe interpreted the request as being mandatory although the Code provides that the information be optional. Nelson responded that they are neutral on the subject.

Schroeder returned.

OBJECTION
2.1(2)

Priebe reiterated that the county should have the option of whether or not to submit the telephone numbers to the state. Schroeder said the practice could cost his county a great deal of money.

Schroeder moved to object to 2.1(2) on the basis that the rule exceeds the authority of the Code.

SUBSTITUTE
MOTION

Priebe suggested delaying the objection, and Schroeder made a substitute motion to delay until the August meeting. The motion was adopted.

Nelson said chapter 7 contains a restatement of the information which is to be submitted to the state by the auditors.

SUBSTANCE ABUSE

Gary Reidman of the Department was present for consideration of the following:

SUBSTANCE ABUSE[805]
Licensure standards for treatment programs, Ch 3

6/28/78

Reidman discussed the chronology of events taking place since the inception of the Department of Substance Abuse. Public meetings have been held at least once a month. Priebe noted he has a problem with the fact that most meetings have been held in Des Moines and said they should be held in different areas of the state. Reidman responded that he has gone to Carroll, Cedar Rapids, etc. to address problems those areas have had.

SUBSTANCE ABUSE
(cont'd)

Reidman advised that Polk County receives \$500,000 out of the \$3.5 million available. Reidman informed the committee he had addressed the three specific changes requested by the Rules Review Committee.

3.15(6)

Doyle pointed out a typographical error on page 176, section 3.15(6), the word "parties" should be inserted. The committee indicated other word changes needing to be made as follows: page 175, 3.15, change programs to read "persons"; page 177, change "programs" to "persons"; 3.16, change "will" to "may" and in the last line, strike "legal" and "to be taken". Since the rules are filed, Reidman was requested to bring the changes back to the committee.

H.H. (Bud) Wall, Executive Director of the alcoholism program in Jefferson, Iowa, spoke against the rule stating that a medical director is required for certification of an individual being scheduled to enter an outpatient facility. Dr. S.M. Haugland, Director, Powell #3, Des Moines, thought the requirement was a good idea which will not work. He feels it will be a difficult task to find physicians to review all histories.

Priebe suggested the possibility of asking for an economic impact statement and Royce reminded that it was too late for such request.

Reidman stated the intent is to protect the people who may have the severe drug and alcohol problems and thus, will need a medical review of their history in order to receive proper medical treatment. Schroeder suggested placing a proviso which would allow the program director to ask for a doctor's review of the medical history.

Connie Burton, Powell #3 and Secretary of the Substance Abuse Association, cautioned against the rule being implemented.

MOTION
3.22(6)

Schroeder moved the following objection:

The Committee objects to subrule 3.22(6), medical services, on the grounds it is unreasonable. The Committee notes that the subrule would mandate that all treatment programs within the state provide a medical doctor responsible for all medical matters and care provided by the program. It is clear that the cost to the local programs in providing this service would probably absorb the greater part of the budgets for most local programs; while the actual need for such extensive services is unproven. It is the feeling of the Committee that the department should attempt to find a less costly system to provide medical services as necessary.

The motion was adopted unanimously.

Art Egnes, Franklin County Alcoholism Center, discussed the program and spoke in support of the program and was apprehensive about the licensure standards being implemented.

Bill Bartley, former Executive Director of Lakeside Alcohol Treatment Center at Cedar Rapids discussed his

SUBSTANCE ABUSE
(cont'd)

3.1(9), (12)

concerns for 3.1(9), definitions, and 3.1(12), counselors. He feels this is an attempt to create a new level of staff designed primarily for psychological and sociological study. Burton stated she has the same problem with this clinical professional concept.

Sue Follett, Siouxland Council on Alcoholism, Sioux City, commented that the definition of clinical professional is incorrect.

MOTION TO DELAY
3

Schroeder moved to delay Chapter 3 for 70 days to allow further time to study.

Motion adopted unanimously. Priebe reminded that if the rules are worked out to the satisfaction of everybody, the Department can file them emergency.

ENGINEERING
EXAMINERS

Shirley Hoovenagle, Engineering Examiners, explained the revisions they had made as requested by the Rules Review Committee. Doyle said that the numbers of hours accumulate to what appears to be arbitrary figures, and Hoovenagle advised the changes were made because of new opportunities that are present.

Schroeder felt some of the terms required too many hours of study and are too restrictive. Schroeder said if a person has the know-how to pass the test, he does not see the reason for the required hours of study.

The committee recessed at 4:10 p.m.

WEDNESDAY
July 12, 1978

The Rules Review Committee reconvened Wednesday, July 12, 1978, 9:15 a.m. with the following members present: Chairman Berl E. Priebe, Senator, Senator E. Kevin Kelly, Representatives Donald V. Doyle and Laverne W. Schroeder. Also present: Joseph Royce, Administrative Coordinator. Not present: Senator Minnette Doderer (arrived 10:00 a.m.) and Representative W. R. Monroe, Jr. (on vacation).

VETERINARY
MEDICAL EXAMINERS
8.2, 8.3

Dr. Lang informed members that under continuing education for veterinarians, 8.2, 8.3, a person who has been away from practice would be required to take a refresher course and veterinarians are expected to keep current on their education. The rule is made to protect the public. Dr. Lang said that the states surrounding Iowa do have continuing education requirements.

Schroeder stated an objection should be filed to 8.3(2) "a" and "b" should be deleted. The committee discussed the problems facing veterinarians who might be away from the business for years being required to take courses for education. Royce checked the Code and Session Laws of the 67th GA for information in this area. Chairman Priebe suggested since the rules were under notice, it would be advisable for Dr. Lang, Joseph Royce and someone from the office of the attorney general to review the matter.

LAW ENFORCEMENT
ACADEMY

John Callaghan, Director of the academy, and Major Frank Metzger, Chairman, Academy Council, were present to discuss the following:

LAW ENFORCEMENT ACADEMY[550]
Council, organization, Chs 5, 6

6/14/78

He stated the three suggested changes had been made.

Priebe requested Royce, when sending his memorandum, to notify the committee when an agency has complied with requests made by the Rules Review Committee. Royce agreed to do so.

REAL ESTATE

John Adams, Assistant Attorney General, Cecil Galvin, Director, Real Estate Commission and Mr. Ken Smith appeared to discuss the following:

REAL ESTATE[700]

Brokers and salespersons, accreditation of schools, 1.3, 1.4, 1.6(1), 1.7(1), 1.8, 1.9, 1.23, 1.24, 1.30, 2.2(2,3), 2.3(1), 3.1(1), 3.6(3)"c", 3.6(5,6), 3.7(3)"a", 3.7(5)

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Galvin advised that the Board had complied with the requests of the committee and had filed rules accordingly.

Doyle asked if they were going to require continuing education courses to be taken in Iowa but Galvin said any school which applies to offer the course can be approved.

3.7 (5)

In the area of self-study (3.7(5)), Schroeder stated if all of the things listed are outlawed, a person will be unable to receive credit for any self-study. Galvin said there were too many problems in monitoring self-study.

Kelly quoted from chapter 95 of Session laws of the 67th GA and Priebe commented that the rule seemed to go beyond the scope of the law. Galvin informed the committee that 17,000 people take the test and about two-thirds pass.

Schroeder said that the rule would not stand up in a court of law and Galvin commented they want to go along and have everybody on the same level. The proposed rule was mailed out in November 1977, again in March and in 4 other publications which have been sent. He suggested the committee go along with the rule and Priebe responded, the committee could not as it is contrary to the law.

OBJECTION
3.7 (5)

Schroeder moved the following objection:

The Committee objects to subrule 3.7(5) on the grounds that the subrule is beyond the authority granted to the commission. The subrule provides in part: "No activity will be accredited which involves solely self-study, including TV viewing, video or sound recording programs, correspondence courses, office skills, speed reading or personal motivation." Chapter 95, 67th GA 1st session (1977) specifically provides in section 1 that: "...education may be obtained through formal or informal education practices, self-study, research and participation in professional, technical and occupational societies, and by other means as authorized by the board." The statute plainly authorizes self-study or informal courses; therefore, the commission may not restrict such courses by administrative rule.

REAL ESTATE
(cont'd)

Discussion of policing self-study and Royce noted he did not think this would be a problem. Galvin commented he was not afraid to go to court with the rule.

3.7(5)

Priebe commented that if the amendment to subrule 3.7(5) (item 17) is rewritten, the objections of the committee would be met. Doyle called attention to a "his" in 3.65"c" and asked it be changed.

VOTE

The Schroeder motion was adopted.

HEALTH

Sarah Johnson, Health Care Facilities representative, was present for perusal of the following:

HEALTH[470] *N*

Care facilities, 57.3(1), 57.3(2), 57.11(1), 57.23(2)"b", 57.24(3)"b", 58.3(1), 58.3(2), 58.10(1), 58.11(1)"f", 58.14(8), 58.26(2)"b", 58.27(3)"b", 59.3(1), 59.3(2), 59.12(1), 59.13(1)"f", 59.31(2)"b", 59.32(3)"b", 60.18(4)"d", 61.4(4)"d", 61.9(16), 61.16(6)"b"(8), 63.3(1), 63.3(2), 63.9(1), 63.21(3)"b", 63.22(3)"b", 63.28(7)"f", 64.3(1), 64.3(2), 64.35(3)"b"

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Mortuary science, 160.5, filed emergency

HEALTH[470] *F*

Care facilities, 57.3(1)"a", 58.4(5), 58.12(1)"k", 58.24(8)"d", 58.26(1)"f", 59.4(5), 59.14(1)"k", 60.13(4), 64.27(13)
Renal disease assistance, 111.1(3)
Physical therapy continuing education, Ch 138
Psychology examiners, licensing, 140.5(8,9) without notice
Psychology examiners, fee, 140.8(3)
Funeral directors continuing education, 147.100—147.108

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57

Johnson informed the committee that an amendment adding "and licensing" is being inserted in all of chapter 57 which will clean up the language for licensing. An amendment to the activity program was suggested by the people managing that program.

57.3(1)

Priebe stated he has problems with 57.3(1) which requires a person to make application at least 30 days prior to date of ownership--feels compliance will be impossible.

Some members of the committee commented that this rule could hold up real estate sales.

Since the rule is on notice, Johnson agreed to rework the rule and return with the correction.

Doyle questioned the use of the language in 57.3(2) dealing with taking pictures of facilities from front and side elevations. General discussion after which Johnson agreed to discuss with architects and possibly remove the word "elevation". She noted this is probably written because people are not to be housed underground.

58

Doyle pointed out that the 30-day requirement for application is in 58.3, also and Johnson commented that it will be corrected.

Royce inquired as to why the nursing department is exempted in the amendment to subrule 58.11(1)"f" dealing with training and Johnson replied that this is addressed in "g".

Johnson commented a substantive change had been made

HEALTH
(cont'd)
61.4

in subrule 61.4(4)"d" concerning square footage and it was the consensus of the providers and the Department of Health there was a lot of wasted space in the examination and treatment rooms. Priebe questioned the need for a full length mirror as a requirement in this room.

Doderer arrived.

Schroeder queried as to who would make the determination for adequate space for equipment in a physical therapy room. He said this statement could open a facility for criticism from inspectors, etc. Johnson was uncertain as to the requirements but indicated the inspectors are aware of them.

64.3(2)

Under 64.3(2)"g", Schroeder commented he could not see why all of the language was needed and thought it was already part of the law. Schroeder asked Royce's opinion and Royce counseled that Schroeder was right technically, but opined it is convenient to have the language in the rules, because people are not being forced to look back and forth between the statute and the rules.

64.27(13)

Concerning 64.27(13), Schroeder noted that the rule is contrary to the law and Johnson was willing to delete the objectionable area.

Peter Fox, Department of Health, was also present for consideration of the filed rules.

Schroeder also asked Johnson if they had some rules implemented for a training program for controlled substances and suggested this should be done quickly.

The committee heard Peter Fox explain the filed emergency rule for the Board of mortuary science examiners and he advised the rule came as a result of Senate File 2131 going into effect July 1, 1978. The licenses for embalmers and funeral directors are combined into just the funeral directors' license.

111.1(3)

Fox explained that this rule is filed to coordinate the state with the Medicare program, which takes over after the third month. Royce suggested Fox put the date of the federal law in as a matter of reference. Fox agreed to change dates if necessary.

138

The physical therapy rules for continuing education are the same as those of the other boards.

Doyle called attention to an error in 138.2(4), the second line, suggesting the words should be "twenty hours" instead of "twenty years". Fox agreed to make the correction.

140.8

Fox commented that the examination fee for psychology examiners will be sixty dollars and the committee discussed the requirement in the rule that the fee is to be paid by check or money order. Royce reminded that payment of fees with cash is legal.

147.101

Fox noted that the rule for continuing education is similar to those of the other agencies. Doyle called attention to the same problem with the requirements as was faced with the real estate people relative to self-study.

OBJECTION
147.102

Doyle moved the following objection:

The Committee objects to rule 147.102, providing approval standards for continuing education classes, on the grounds that it exceeds the authority of the board, in that it does not allow credit for self-study or informal classes as specifically authorized by section 1.2 of Chapter 95 67th GA 1st session (1977).

The motion carried.

147.109(2)

Doyle questioned Fox about reinstatement requirements for inactive practitioners in mortuary science. Doyle would prefer some type of discretion by the board in reinstating these people. Fox stated that in the field of mortuary science, people tend to lose their technique when they have been away from the profession. Fox agreed to report this concern to the Board.

DEPARTMENT OF
ENVIRONMENTAL
QUALITY

ENVIRONMENTAL QUALITY[400]	
Public drinking water supplies, 22.12(2)"c"	6/14/78
Permits, sanitary disposal projects, 27.6(1), 27.12(5,9-11), 27.13(2-14), 27.14(3)"a,c"	6/14/78
Sanitary landfills, 28.2(1)"c-k", 28.3(2), 28.6	6/14/78
Sanitary disposal-processing, 29.1(1), 29.9(1)"b,c", 29.10	6/14/78
Composting facilities, 30.1(1), 30.2(5-11)	6/14/78
Recycling operations, 31.1, 31.2	6/14/78
Municipal sewage sludge, disposal, Ch 33	6/14/78

22.12(2)

David Bach was present for the Department of Environmental Quality. Bach advised that subrule 22.12(2) has been amended as a result of some disagreement about compliance in the matter of polyvinyl chloride (PVC) pressure pipe. This rule is being used until the DEQ can adopt a more detailed set of standards. Schroeder asked if they were adhering to legislative standards and Bach said they thought so.

Brief discussion concerning sanitary landfills. Priebe asked about composting of garbage and sludge for the purpose of making fertilizer and made mention of a matter when the Rules Review Committee had given approval for a 4 year trial of this process. However, Crane, DEQ, forgot about the approval, denying the party the opportunity to try the compost process. Priebe thought there should be some rules dealing with the compost category and Bach replied they do not

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MENTAL QUALITY

pursue something that is not actively going on.

Schroeder wanted to know if a waiver could be obtained if someone did want to set up such a compost project. Bach agreed to check into this matter and provide an answer at the next meeting. Priebe agreed there should be a provision for experimental purposes. Bach noted that the DEQ does not have a consistent way of treating variances.

Bach further explained the rule dealing with disposition of sludge. The committee listened to an explanation of the difference between treated and untreated sludge.

MERIT EMPLOYMENT

Larry Keating, Merit Employment, was present to discuss the following rules:

MERIT EMPLOYMENT[570] V	
Definitions, 1.1(13), 1.1(31), 1.1(35)—1.1(50)	6/28/78
Nonstate employment, 2.3	6/28/78
Classification, 3.1(2), 3.1(4)—3.1(6), 3.3, 3.4, 3.5(5), 3.6, 3.7	6/28/78
Pay plan, 4.5(8), 4.6, 4.8, 4.11—4.14	6/28/78
Appointments, 8.3	6/28/78
Vacation and leave, 14.4, 14.9, 14.10, 14.14, 14.16	6/28/78

He commented that the rules are perused about every two or three years and as a result of the collective bargaining legislation, suggestions were sought from agencies in the state government. The suggestions were incorporated into the rules, distributed for review by agencies. A public hearing was held in May and what is before the committee is a composite.

1.1(43)

Schroeder inquired if the language is correct in 1.1(43) and Keating said it is a definition and in line with contract provisions. Keating advised the rule is 4.12.

Royce questioned Keating about the Iowa Wage Payment Collection Law and the definition of wages was discussed. Royce expressed a concern as to what wages means under the law and whether or not the granting of compensatory time is forbidden.

CHANGE OF
MEETING DATE

The committee discussed the possibility of changing the meeting time for August, and Doderer moved to meet on Tuesday, August 15. Motion was adopted.

RECESS

The committee recessed for lunch at 11:30 a.m. to return at 1:48 p.m. with quorum present.

REGENTS

The following filed rules were discussed with Bill Whitman, Iowa State:

REGENTS[720] F
Parking at universities, 4.25—4.27, 4.28(3,4), 4.29(3,4)"a", 4.29(5)"a,d,e", 4.29(9), 4.30(2,4—6,11), 4.31(1,2,5,6), 4.32(2,5,8), 4.33(8,9,14), 4.34(4,5), 4.35(1,3,4), 4.36(5), 4.37(1)"c"(6), 4.40(3), 4.41(1,3,4,6), 4.42(2), 4.48(7), 4.49(1), 4.50(2)"m,n,r", 4.50(8,9)

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REGENTS
Cont'd

Whitman talked about the general policy for towing away vehicles, reserve parking and habitual violators. Priebe suggested the meaning of habitual should be spelled out. Whitman informed the committee that the general rule is that 5 times overparking constitutes an habitual violator.

4.32, 4.33

Doyle noted that an overtime parker should pay a penalty rather than being towed away. Whitman stated the fine is one dollar for overtime parking. Doyle called attention to item 7, 4.32, 4.33, wherein the dollar amounts are not written in words.

General discussion of moving bicycle violations and mo-peds. Schroeder requested a definition of mo-peds and was advised they are covered by the Code. Schroeder suggested Whitman check the rules with the Acts of the 67th GA and Whitman agreed to do so. Doyle noted that chapter 103 of the 1977 Session Laws contains material pertaining to mo-peds.

Schroeder also requested Whitman to review the rules dealing with defining of "motor vehicle".

ARTS COUNCIL
2.1(5)

Dwight Keller and Jack Olds appeared on behalf of the Arts Council and Keller informed committee members the rules being presented were in response to action taken by Congress one year ago. They stipulated part of the money must go to small groups, and the rules were filed emergency because of a time factor problem.

Priebe commented the council has not allowed much time for people to investigate the rule.

SOIL CONSERVATION
Ch 4

Larry Vance, newly appointed Director of Soil Conservation, called on Jim Ellerhoff of the Department to explain proposed Chapter 4 relating to mines. Ellerhoff told the Committee they proposed to rescind existing rules and adopt federal regulatory provisions with some modification. He continued that the initial regulatory program will blend into the state program as well as the abandoned mine program. The rules will also allow the state to issue mine permits and be able to apply standards to surface effects of underground coal mines. In addition, certain aspects of explosives will be regulated by the rules. Bonding provisions have been changed somewhat.

The rules contain provisions which allow the Department to issue cessation orders for mining or reclamation activities in the event there would be environmental damage.

In response to question by Schroeder, Ellerhoff said the authority for cessation orders was not in Iowa statute.

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SOIL CONSERVATION
(cont'd)

According to the federal regulations, the rules had to be presented to the office of attorney general, which has been done. Jim Huyser, President of Iowa Coal Producers Association, represented the coal miners of Iowa and spoke briefly in support of the rules.

It was noted that the federal government requires sixteen inspections yearly--once monthly and four unscheduled. The rule is under notice and a hearing will be held on July 21, 1978.

CITY FINANCE
Chs 4, 5

Phyllis Barry announced that the people from City Finance are involved in a public hearing and questions could be relayed in writing to them for consideration before filing of rules.

No representative was called for the following agencies:

BANKING[140] Interest on time deposits, 8.2(2), see also filed emergency	6/14/78
COMPTROLLER[270] Declaratory rulings, 5.1	6/28/78
PUBLIC SAFETY[680] Alcohol and drug content, testing devices, 3.13(1)"a", 3.13(2)"c"(5)	6/28/78

The above rules were acceptable as published.

ADJOURNMENT

Schroeder moved the committee adjourn and meeting adjourned at 2:35 p.m. Next meeting to be held August 15, 1978 at 9:00 a.m.

Respectfully submitted,

(Mrs.) Phyllis Barry

Phyllis Barry, Secretary
Assistance of Vivian R. Haag

APPROVED _____

Chairman