MINUTES OF THE REGULAR MEETING
of the
ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of Meeting: Tuesday, March 13, 1979, 7:05 a.m.

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

Members Present: Senator Berl E. Priebe, Chairman, Senators Edgar Holden, Dale Tieden, Representatives Donald Doyle, Betty J. Clark, and Laverne Schroeder.
Also present: Joseph Royce, Committee Staff and Brice Oakley, Administrative Co-ordinator.

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

FLORIDA MEETING NCSL: Regarding the meeting of NCSL's Assembly to be held in Tallahassee, Florida on March 30 and 31, 1979, Doyle moved that any Committee member, as well as Joe Royce and Phyllis Barry, be authorized to attend. Motion carried.

April & May Meetings: Discussion of the possibility of holding a special meeting of this Committee in late April to help alleviate the workload at the regular May meeting when the General Assembly will be nearing adjournment. It was noted that there would be reorganization also at the May meeting.

Motion: Schroeder moved that a late April meeting be held for the purpose of reviewing the April 4 IAB and that the Regular May meeting be concluded on May 22. Carried.

CONSERVATION Trotlines: Marion Conover, Fisheries Supervisor, and Roy Downing, Waters Supervisor, appeared for review of filed rules which were published in IAB 2/7/79 as follows: Trotlines, 20.1; Dock management areas, Ch 34; Fishing season, Ch 108.

Conover told the Committee that the major change in 20.1 was that trotlines will be allowed in all rivers and streams in Iowa with exception of a few Northeast counties where some restrictions are placed in cold water trout streams.

Docks: Downing reported that the dock management rules were basically acceptable to persons in lake areas affected by them.

Responding to question by Doyle, Downing indicated that a rule would be proposed re T docks by private owners in public areas.

Priebe asked what progress had been made in establishing

CONSERVATION Cont'd

the difference between "public owned" and "private owned." Downing replied that surveys had been completed in the two major lake areas and one hearing had been held. If persons are found to be on state property in areas traditionally used for docking of private vessels, the Department will attempt to concentrate them--utilizing less of the area where the state can accommodate those without private docking. Persons on state property will be required to pay a fee for the privilege, depending on the area (34.2). A maximum fee for an area such as Pillsbury Point would be $200 annually but an average would be $20 to $50 each year, according to Downing.

Downing continued that in an area such as Tribune Beach which has been dedicated to the public for docking, the Department will enter into an agreement with those people to maintain the area--cut weeds, dispose of garbage. In addition, these persons will pay a fee to cover liability insurance for the area and, at the same time, a majority of the area will be kept open to the general public. Downing readily admitted that "encroachment" was a problem, particularly, along major rivers such as the Mississippi or Missouri. It was Downing's opinion that encroachment laws are adequate--the problem was one of enforcement.

Fishing

Discussion of 1979 fishing regulations which would include an addition from previous years, being ocean striped bass. Both rules and licensing requirements will be effective on a calendar year basis. Beginning in 1980, dates will cover January 1 to December 31, Conover stated.

Priebe wondered why length restrictions had not been placed on Northern. Conover pointed out that there was a limit on Muskie which is a similar fish. However, Muskie is stock and is less abundant. The program is operated purely for trophy purposes. The Department anticipates that Northern pike will be in abundance this year.

Tieden noted that Iowa was apparently the only state with no limit on "pan" fish. He had observed useless waste and slaughter of this natural resource and found it very objectionable. Conover pointed out that Illinois does not regulate "pan fishing."
No formal action by the Committee.

AGRICULTURE
6.9-6.11
10.31

The following rules of Agriculture were before the Committee: Commercial feed, 6.9 to 6.11 and Penncap-M and Sevin, use prohibited, 10.31, published under Notice, IAB 2/21/79. A Department representative failed to appear but the follow-

AGRICULTURE Cont'd

ing interested persons appeared: Jack Templeton, representing DeKalb in Grinnell; Ross Porter, General Counsel for Pioneer Hybrid International, Inc.; John Campbell, Entomologist on Pioneer staff; Winton Etchen, Iowa Fertilizer and Chemical Association; Representative Philip Davitt.

Discussion centered on the proposed ban on Penncap-M and Sevin in crop fields shedding pollen. Such action by the Agriculture Department was an attempt to protect honey bees which are essential to agricultural production.

Chairman Priebe recognized Templeton who spoke in opposition to the ban of Sevin, contending it should not have been included with Penncap-M.

Porter opined that banning the pesticides during the time a field is shedding pollen will have a serious economic impact on Iowa agriculture--the farmer as well as the seed corn industry. He added that corn is subject to many insects, including the European Corn Borer, Corn Rootworm, Armyworms, Western Bean Cutworm and Grasshoppers. He continued that loss to the European Corn Borer alone has been estimated by the USDA to be $1,000,000 each year in Iowa. The Cornworm Root Beetle, too, is a major problem. The adults from the beetle chew on the silks on corn ears and may prevent formation of sufficient silks for pollen to get established resulting in no kernels.

Porter emphasized that caution statements on the labels contain specific directions for application to avoid harm to bees. He advised that Sevin is the only thing currently available for control of Western Bean Cutworms. He mentioned other pesticides such as Furadan, Diazinon, Linnate, Melanthin and Lorsban which are also highly toxic to bees. Further, he knew of no pesticide for control of insects he had mentioned which would not be toxic to bees. Porter said it had been brought to his attention that the Committee of Iowa Fertilizer and Ag Chemical Association and the Committee of Iowa Beekeepers Association had agreed on a program whereby beekeepers could register location of hives with the County Extension directors so commercial applicators could co-ordinate any proposed treatment with local beekeepers to prevent bee kills. This program had not been given a true test.

Porter said that much time is expended by the industry in determining the economic need for treatment of an insect attack. He reiterated the seed industry does not use insecticides indiscriminately and, in his judgment, Penncap-M and Sevin were among the safest available to the corn seed producer and corn grower. Elimination of them will not

AGRICULTURE
Cont'd

significantly reduce the number of bees killed. He concluded the best solution is for all concerned to honor agreements to co-ordinate application and beekeeping.

Etchen opposed ban of the two products, at a time when they are most needed by all farmers, to possibly forestall a few bee kills. He too favored the "voluntary program" alluded to by Porter.

Davitt said he was concerned as to unrestricted use of Penncap-M and had petitioned the Department for an amendment since it was his feeling that "indiscriminate use of Penncap-M would threaten a major portion of Iowa's agricultural industry." He had much correspondence describing bee kills.

Campbell, responding to question by Tieden, said residue usually stays on the plant less than a week. However, weather conditions could alter that.

Priebe took the position that Sevin should not be banned. Schroeder, too, was hesitant to endorse an outright ban.

It was noted that the Committee had requested an economic impact statement on the proposed rule 10.31

Discussion of pros and cons as to the importance of bees in soybean production.

Doyle thought the Committee would be premature in taking any action prior to the public hearing which was scheduled for March 16.

Etchen commented that Penncap-M was "nothing more than a new form of Methyl parathion which has been used in field crops for many years and is twelve times safer to humans than the old form."

Doyle questioned Porter as to whether there were any cases where courts have held that warnings on labels is either prima facie evidence or that the court then finds for the beekeeper. Porter responded that, in his opinion, a court would hold that a precautionary statement appearing on a label would establish a duty of care which would be usuable in the ordinary negligence act.

Doyle asked if commercial applicators carry liability insurance. Etchen pointed out that proof of liability insurance is a prerequisite to licensing.

No further action on the proposed rules.

REVENUE

The Department of Revenue was represented by Elliott Hibbs, Deputy, and Gene Eich, Property Tax Deputy Director, for review of the following:

Prehearing conference, 7.16 ..... 2/7/79
Sales and use tax, amendments to chs 11, 12, 15-18, 20, 26 ..... 2/7/79
Railroad companies, value determination, ch 76 ..... 2/21/7
Utility companies, value determination, ch 77 ..... 2/21/7

Eich explained that Chapters 76 and 77 were very similar and that two changes had been made since the rules were under Notice: (1) in income approach to unit value--76.3(2), the example was deleted to ease concern that it would be the only one followed. The Department will still have authority to adjust the income for various factors. (2) 76.4(2)--determining the market value of securities traded--the words "December 31" were inserted for clarity.

In answer to question by Clark, it was explained that forms are not usually published when rules contain adequate description.

Tieden questioned how "ownership of interstate bridges was ascertained." Eich said the Department does not assess those bridges--by law this would be a matter for the local assessor. The boundary on the Mississippi is the middle of the navigable channel as it appeared in 1846.

Brief discussion of question by Doyle concerning coal trains. Eich said these are not usually owned by a utility company and would be taxed under another provision.

Hibbs explained 7.16 which was acceptable as published. Hibbs told the Committee that proposed amendments to sales and use tax were basically citations of the Attorney General opinions and court cases to offer the taxpayer some further information of reference as to the position the Department takes to determine the applicability of the rules to a given situation.
No objections voiced.

TRANSPORTATION

Harold Shiel, Director or Urban Systems, reviewed filed emergency rules dealing with highway bridge replacement funds, being (06,P), Chapter 6 and (06,Q), Chapter 19, published IAB 2/21/79.

In the four-year period that federal funds will be allotted to counties and cities for replacement and repair of bridges, Iowa will receive approximately $76.9 million--the first

TRANSPORTATION Cont'd

year, $14.9 million, second year $21 million, in 1981 $25 million and in 1982, $16 million dollars. The funds were apportioned on the basis of square footage of deficient bridges based on previous information provided to Washington, prior to the enactment of this legislation.

Shiel reported that, in an attempt to make fair distribution of the funds, the Department sought input from various jurisdictions, including County Supervisors Association, County Engineers Association, Iowa Association of Regional Councils, American Public Works Association and the Iowa League of Municipalities. The rules would allow 50 per cent to the state primary systems, 42.25 per cent to counties, and 7.75 per cent to cities, with the understanding that if the system did not work well, it would be reviewed again.

Schroeder thought the following apportionment of funds would be more equitable--46 to state, 42 for secondary and 11 to 12 percent for cities since cities are confronted with same problems as the state. He reasoned that if the road use tax formula was equitable, that same application should apply to the funds in question.

Priebe wondered if previous bridge construction had been taken into consideration. He concluded the procedure tended to favor those who had not maintained their bridges. Tieden concurred.

Shiel admitted that this concern was expressed at their meeting--one county had not even inspected its bridges.

Oakley asked when availability of funds became known to the Department and at what time did they initiate the discussions with various interest groups. Shiel replied that letters were sent out in December of 1978.

Oakley advised that his office is "taking a hard-line attitude on emergency filing of rules" and cautioned that all departments be prepared to justify such action.

Shiel said the Department policy is to develop a program, that obligated funds, the year in which the funds become available to avoid a backlog. The timetable set out provided for a final rule draft by January 15 and implementation to begin by February 2.

Priebe excused briefly to attend another meeting.
Schroeder took the Chair.

TRANSPORTATION Cont'd

Holden preferred provision to direct more funds to counties that had done work over the past two years--perhaps, recognize need on a predetermined basis.
Shiel agreed to report the Committee position on the rules.

BANKING

AUDITOR OF STATE

CREDIT UNION DEPARTMENT

The following were reviewed by the Committee, those relating to mortgage loan disclosure, being very similar context:

BANKING DEPARTMENT[140]
Credit union references deleted, 1.3, 1.4, 2.8, 3.4, chs 26, 27 ..... N 2/7/79
Small loans, 21.3, 21.4, 21.6, 21.7 ..... N 2/7/79
Home mortgage disclosure, ch 10, Filed emergency 2/21/79

AUDITOR OF STATE[130]
Mortgage loan disclosure report, ch 5, Filed emergency ..... F.E. 2/21/79

CREDIT UNION DEPARTMENT[295]
Share drafts, ch 7, Filed emergency 2/7/79
Home mortgage disclosure, ch 8, Filed emergency 2/21/79

Present for the review were: Howard Hall, Banking Department Deputy and Larry Kingery from their Small Loan Division; John Pringle, Savings and Loan Division, Auditor of State; and Marlin Reed, Credit Union Department.

Hall explained that references to credit union were deleted from their rules to conform with recent legislation to provide for a Credit Union Department that functions under its own rules. Amendments to small loans rules were intended to reflect updated Consumer Credit and UCC statutes.

Hall briefly touched on the reason for the emergency filing of Chapter 10 regarding "red lining." As provided in §535A.4 of the Code, the Banking Department, as well as Auditor of State, Insurance Department and Credit Union Department, with assistance from the Iowa Housing Finance Authority, were directed to promulgate uniform rules on disclosure reporting.

Hall stated that the five agencies had been developing "red lining" rules since last October but decided to file emergency guidelines to apprise lending institutions of the type of recordkeeping which will be required from the first of this year.

Hall reiterated that Chapter 10 of their rules was essentially the same as those of the other agencies concerning "red lining."

Banks and mortgage banking companies will not be required to file a disclosure statement in any county in which the total assets are less than $10,000,000 at the beginning of of the calendar year. The reporting period is based on calendar year beginning on 1-1-79 and ending 12-31-79 and

BANKING ET AL Cont'd

on 12-31 thereafter to aid the Housing Finance Authority which must report to the General Assembly in February 1980.

Hall continued that, although "residential property" was mentioned in the law, it was not defined, so, in 10.1(4), they set out the definition contained in the Federal Home Mortgage Disclosure Act--Regulation C. Limitation on construction loans for residential property was basically an idea of the Banking Department since they are limited to two years. Hall noted that 10.1(7) could be an extension of the law in limiting Standard Metropolitan Statistical Areas to Iowa. However, the Department thought this was legislative intent in 67GA, Ch 1190 [§535A.1(4)]

Tieden excused briefly to attend a Natural Resources meeting.

Hall said that 10.2 merely restates what the Department believed was contemplated in the Act regarding disclosure. However, it did pose a problem in that the Act [§535A.4(4)] would seem to permit financial institutions required to compile mortgage loan data pursuant to the Federal Act to file a copy of that report, whereas, their rule requires the filing of substantial additional information. He conceded that question could be raised as to whether this was within the authority of the five regulatory agencies. Hall agreed that 10.2(1) and 10.2(2) were controversial and asked for guidance from this Committee.

Priebe took the Chair.

In closing, Hall referred to a Federal Court decision in New Jersey, which, in effect, held that none of the federally chartered financial institutions would have to comply with disclosure requirements in that state's anti-redlining law. If that concept were to apply in Iowa, an extra burden would be placed on state institutions, according to Hall. It was his suggestion that the matter be reviewed by the legislature.

Oakley responded to question by Holden that first it must be determined whether or not Iowa law allows the five entities to require the additional information. He referred to section 4 of the Act [§535A.4] and said that it is arguable the legislature intended that a federally chartered bank would file the federal form of the state agency and that would satisfy recording requirements. Secondly, with respect to the emergency filing, Oakley stated that he worked closely with the five agencies to ensure that "the data base was not lost." Under normal rulemaking procedure, the rules could not have been promulgated before May.

BANKING ET AL Cont'd

With the emergency effective date, reporting institutions will have more time to gather data. He pointed out that identical rules were also published under Notice to allow for public participation.

Schroeder questioned whether the date of January 15 should be changed in 10.2(5), if statistics are to be accumulated through December 31. Hall pointed out that the Housing Authority is required by law to make their report to the GA in February.

It was agreed that banks were already overburdened with reports at the end of the year and moving the date up at least 30 days would be advisable.

Marcia Hellum, representing Banco & Company, voiced objection to 10.1(3) contending it exceeded the statutory definition of mortgage loans. Also, it was her opinion that 10.2(1) and (2) exceeded the law. The legislature was specific in allowing the financial institutions to file their federal report in lieu of the other reporting requirements, thus, eliminating needless filings, she said. She indicated she would be attending the hearing on April 2.

Oakley posed the question as to what reaction there would be if reporting was on fiscal year information when banking law required calendar year information--how would banks make up the six-month delay? Hellum agreed there would be additional work since information would be divided into six-month periods. A more convenient time for filing of the federal report would be sometime after July 1, in her opinion.

Hall said most banks are on a calendar basis but it was his understanding that most mortgage banking companies are on a fiscal year basis which can end any time.

Robert Parks, Des Moines Savings and Loan official, commented on the fiscal year requirement for federal disclosure, saying it is to be completed within ninety days after an institution ends its fiscal year. He emphasized there is no required filing of that federal disclosure report except the one included in 67GA, Ch 1190. It must be readily available upon request to anyone wishing to review or obtain a copy.

Holden summarized that two major points seemed to be whether the federal reporting was sufficient and whether they even had to file with the agency or merely retain information in their own files. Hall reiterated that Iowa law requires filing with Iowa Housing Finance Authority.

BANKING ET AL Cont'd

Parks responding to question by Priebe, indicated their major objection is to the additional information which will be required by Iowa law and which is not really used.

Parks quoted from a recent issue of their trade magazine, U.S. Savings and Loan News, which reported that of all savings and loan institutions in the nation that are required to compile the loan disclosure information, less than 60 per cent had any request for review or copy of the report and of those, there was not one in the nation that had more than 16 requests. In essence, the financial institutions have the burden and cost of preparing information which no one uses. The time could be better utilized in serving the customer, according to Parks.

Responding to question by Schroeder as to what additional material is being required, Parks referred to the Iowa Disclosure Statement forms, pages 3, 4 and 5. Hall added that the Banking Department also questions the value of such reporting and whether there is authority to require it. Consumer response, however, tends to favor the additional reporting, Hall said.

Further discussion on the question of whether the additional information requirement was within the purview of the law.

No formal action by this Committee pending the public hearing.

Clark requested that rules of the Auditor of State be desexed.

ACCEPTABLE AS PUBLISHED

The following rules appeared on the agenda but no agency representative was requested to attend the meeting and the rules were accepted by this Committee as published:

COMMERCE COMMISSION[250]
Economic impact statement, 19.4(15)"h", 20.4(17)"h" 2/7/79

INSURANCE DEPARTMENT[510]
Rate filings, form, 20.2(1) ..... N 2/7/79

LABOR[530]
Occupational safety and health, 10.21, Filed emergency 2/21/79

MENTAL HEALTH AUTHORITY[567]
Meetings, 1.3(2), Filed emergency 2/21/79

PHARMACY[620]
Organization, ch 9 ..... N 2/7/79

ACCOUNTANCY[10]
Fees, 14.1 ..... F 2/21/79

CITY FINANCE[230]
Employee benefits, 4.4 ..... F 2/7/79

COMMERCE COMMISSION[250]
Rural electric cooperatives, accounts, 16.2 ..... F 2/7/79

EMPLOYMENT AGENCY LICENSING[350]
Declaratory rulings, 3.1 ..... F 2/7/79

PUBLIC SAFETY
4.5

Michael Rehberg, Crime Laboratory Administrator, and Ted Becker, Assistant Attorney General, explained rule 4.5, pertaining to the criminalistics laboratory, which was filed emergency and published in IAB 2/21/79.

Rehberg said that main reasons for the revision of the rulewas a result of a Supreme Court Case, State v. Smith, holding technical aspect of what happened in the lab to be not in compliance with rules of evidence for criminal proceeding. Subrule 4.5(3) will now provide that evidence submitted to the lab will be received by an "evidence technician" and the chain of custody is preserved.

Clark called attention to a printer's error in 4.5(1) under Micro analysis, the fifth item, which used "Specifies" instead of "Species". Barry indicated this would be corrected. Under the same division, Doyle raised question as to whether ethnic group identification could be determined from the hair. Department officials replied in the affirmative.

4.5(1)

Doyle noted that one of the listed capabilities of the crime lab, under Crime scene section, was "special technique assistance such as soft x-ray analysis and metal detection." He pointed out that 67GA, Ch 1072 [H.F.82] required special training for operation and use of radiation emitting equipment and materials. Department officials were unaware of the legislation but agreed to follow up.

No formal action taken by the Committee.

SOCIAL SERVICES

The Department of Social Services was represented by the following persons: Judith Welp, Act Unit; Roger Herr, Bureau of Financial Assistance; Harold Poore, Bureau of Family Support Services; Barbara Gurdin and Ike Skinner, Bureau of Children's Services. Rules before the Committee:

SOCIAL SERVICES[770]

Organization, 1.3, 1.4	N						2/21/79
ADC, resources and need, 41.6, 41.8		N					2/21/79
ADC, income, 41.7			N				2/21/79
Medical assistance, 78.1(4), 78.22, 78.23				N			2/21/79
Medical assistance, sterilization, 78.1(16), 78.21, Filed emergency					N		2/21/79
Medical assistance advisory council, 79.7(5)"b"					N		2/21/79
Intermediate care, 81.10(4)"f", 81.10(5)						N	2/21/79
Child abuse, ch 135				N			2/21/79
Rural student loan program, 146.8, 146.10, Filed emergency					N		2/21/79
Legal services, ch 159						N	2/21/79
ADC, social security number, 41.2(6)	F						2/21/79
ADC, need standards, 41.8		F					2/21/79
Supplementary assistance, 54.3(13), Without notice			F				2/21/79
Medical assistance, eligibility, 75.5				F			2/21/79
Resources, eligibility, 130.2(5)	F						2/21/79
Child care center financial assistance, ch 133		F					2/21/79

1.3 and 1.4 amendments reflected organizational changes, including change of address. In answer to question by Priebe re 1.3(3), Welp explained that "purchase of service and quality control" were moved to the division administration--no substantive change was made.

SOCIAL SERVICES Cont'd ADC

The Department amended Rules 41.6 and 41.8 to adopt language from the Social Security Act which states succinctly what they wanted--money counted as income during a month would not be counted as a resource during the same month. Subrule 41.6(2) dealt with considering the amount of resources a family could have.

Discussion of 41.8(3)d pertaining to allowable school expenses. which would now include "school administered extracurricular activities."

Oakley had no quarrel with the substance of the provision but suggested that it could be rewritten for clarity.
Schroeder had heard complaints that children on assistance seemed to have an unfair advantage over others.

Herr referred to the statute and commented that many sports can be substituted for "courses." The same would apply to band and music activities. An example of "activity" would be membership in an organization which charged a fee as a science club.

Judy pointed out that "reasonable cost" would be added to the school expenses provision.
Schroeder thought a limitation as to the number of projects would be advisable.
No formal action.

ADC

According to Welp, Rule 41.7 was revised to co-ordinate with other programs. A major change was the requirement for monthly reporting. A client would be required to report his or her income every month and the budget would be figured on that basis.

Public Hearing

Doyle reported to the Committee that he had requested a public hearing on 41.7

Re unearned income in 41.7(1), Clark asked if that would be a change in department policy and Judy replied in the affirmative. Previously, they had considered that as income in the month that preceded but now would be considered as resource--similar to retroactive social security benefits. In answer to Tieden, Welp said the revision would be easier to administer.

Discussion of 41.7(1) h which read: "That part of the payment for education or training received from the veterans administration for an individual's dependents who are in the eligible group shall be counted as income." Committee members were of the consensus that it should be reworded for clarity.

Re 41.7(2)b(1),(2), Welp stated that "good cause" and "bona fide" are defined under the WIN program.

Clark called for explanation of 41.7(2)m which read: "In determining profit from furnishing board, room, operating a family life home, or providing nursing care, the following amounts shall be deducted from the payments received:..."

SOCIAL SERVICES

Welp explained that when someone is self-employed the Department needs to count their profit as income. The rule sets out the formula to be followed.
Clark also wondered if ten per cent would be adequate in 41.7(2)n(4).
Re 41.7(6), exemptions as income and resources, Clark took the position it seemed to be an "incentive to stay out of public sector employment and encouraged "double dipping from the public."
Welp responded that most of the exemptions spelled out in the rules were provided by law.
Dpyle was informed that money received by Indians from a reservation would be exempt as income.

Clark questioned 41.7(8)c(1), last sentence which provided: "The grant for the third and subsequent months shall be based on actual earned income received in the second prior month."

Welp pointed to paragraph e which provided for supplemental loss and hardship payment. Clark could forsee a problem if the hardship occurred on the 25th of the month.

After some discussion, Herr reminded the group that the "fundamental purpose of ADC is not an emergency program."

Clark was unsure as to how the food stamp program would be correlated with the income rules. Herr indicated that the Regional Office for Food Stamps in Denver was conducting a study on the matter. Department officials indicated that implementation of the income rules would be delayed until the study is completed.

Herr responded to question by Priebe by stating that the percentage of error in the ADC program is 24 to 25 per cent--8 per cent of which is paid to ineligible and overpaid cases. The federal maximum allowed for error is 4 per cent and a dollar amount based on the error percentage will be deducted from the federal appropriation to the state.

Doyle requested the Department to consider IPERS as earned income, in addition to FICA [41.7(2)c].

Doyle also recommended that 41.7(2)g, second unnumbered paragraph be rewritten for clarity. Said paragraph stated: "When there is in existence a court order specifically designating that a child or children may not be claimed by the wage earner as a tax ememption, the number of withholding exemptions shall conform with the court order."

Recess: Reconvene

Chairman Priebe recessed the meeting at 10:00 a.m.
The meeting was reconvened at 10:10 a.m., Priebe presiding.

78.1(4)

Discussion of medical assistance amendments to Chapter 78. Amendment to 78.1(4) set out circumstances when payment would be made for covered services and supplies in connection with cosmetic, reconstructive or plastic surgery and also listed certain conditions specifically excluded from payment.

SOCIAL SERVICES Cont'd

Welp told the Committee that Rules 78.22 and 78.23 would allow payment per visit to family planning clinics and "other" clinic services, respectively— Said rules being necessary to receive federal funds.

Amendments to 78.1(16) and 78.21 re sterilization and 79.7(5)b re quorum of the medical assistance advisory council were acceptable to the Committee.

Ch 81

Review of proposed amendments to 81.10(4)f and 81.10(5) re payment for reserved bed days in intermediate care facilities. Welp said the provisions would follow legislative intent to make payment at 80 per cent of the approved Title XIX rate rather than 80 per cent of the cost.

Blain Donaldson, Storm Lake Care Facility Owner, voiced opposition to the proposal. He cited figure comparisons which indicated his facility would suffer a loss of $2.21 per patient per day or approximately $900 annually. He urged the Committee to consider two points:

Cost to the care facility continues even when a patient is away temporarily--staff cannot be reduced.

Donaldson offered the following substitute language: "Payment for periods when residents are absent for visitation or hospitalization shall be made at the rate of 80 per cent of the audited cost. Such reimbursement shall not exceed the maximum Title XIX reimbursement rate."

Schroeder challenging 81.10(5), asked why the family of a private paying resident could pay a portion for holding the bed but Title XIX patients would not be allowed this.
Donaldson said many homes will not accept Title XIX patients and it is becoming increasingly difficult to relocate them when they return from being hospitalized or from an extended visit.

Oakley quoted from Ch 1018, 67GA, (§19(2)), which provided "...payment for reserve bed days under the medical assistance program shall be made at eighty percent of the actual reimbursement rate for those beds." He asked how the Department could avoid following that language.

Welp was aware of the language and added that the Department is attempting to implement Chapter 1018. She pointed out that when the family pays, a bed can be held beyond the time allowed under Title XIX.

Priebe had thought legislative intent was to pay 80 percent of reimbursable cost.

Discussion of possible clarifying legislation being needed since terms "reimbursable" "actual reimbursement" could be interpreted differently.

SOCIAL SERVICES Cont'd

Tieden pointed out that the Medical Advisory Board is considering extending the twelve days in 81.10(5).

Welp said that presently, the Department would pay 80 per cent of audited cost up to the maximum. Discussion of "maximum" with Priebe recalling that it would be $21.50, averaging approximately $21.35. Donaldson commented that effective January 1, 1979, it was $21.00.

Tieden commented he had received complaints of financial burden being imposed on facilities because of the audit being one year late. Clark indicated that study was being done in that area to provide more current information.

Donaldson could forsee the problem would continue to compound in homes such as his where there is no restriction on patients.

Clark was willing to pursue clarifying legislation on the issue.

Ch 135
Child Abuse

Welp highlighted their proposed rules pertaining to child abuse, being Chapter 135.

Barbara Leiser, Legislative Research Analyst, submitted the following memorandum to the Committee and spoke briefly concerning the rules:

> The legal doctrine of ultra vires holds that authority exists only as far as the legislative intent meant it to exist. In an Assistant Attorney General's Opinion on September 28,1978, Stephen Robinson wrote to Ms. Babs Gurdin, "the polestar is legislative intent." It is an accepted fact that Iowa courts use the doctrine of ultra vires in their deliberations.
>
> This memo is a brief summary of some of the discussions and conclusions of the committee which wrote the new child abuse law which has become Chapter 235A of the Iowa Code. The memo will focus on the deliberations which pertained to the definition of child abuse and neglect. It might be helpful in the discussion of the proposed rules.
>
> The committee was concerned with the development of a definition which would permit intervention where it was necessary to protect the child, but at the same time would protect the parent from inappropriate and arbitrary intervention. The key definitions which the committee discussed were: "neglect," "wilful neglect," "reasonable cause," "reason to believe," "suspect." In its deliberations, the committee was aware of the fact that research has shown that in abuse cases, workers tend to be influenced by middle-class standards and attitudes, and because of this, parental rights are sometimes abused. It wanted to avoid the same problem in Iowa.
>
> Conclusions:
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> 1. Neglect:
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> NOTE: In researching various state definitions, plus

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court challanges, the following ideas seemed to form the basis of the committee deliberations and ultimate decisions:

a. Use of the test of "a reasonably prudant man," the courts seems to use standards which are "minimum care for the health and welfare of a child."

1.) The New York State Court definition of "neglect" is "the absence of a minimum degree of care tolerable in a humanitarian community."

a). In Chapter 232.2 sub 5g (Definition of a Child in need of assistance) the term is ". . . fails to exercise a minimal degree of care."

2. "Wilful neglect": The committee decided that "wilful neglect" means "wanton neglect" as defined in Chapter 726.6 of the Iowa Criminal Code.

The attached chart should help in further definitions.

Clark cautioned that 135.1(2) defining "other care necessary for the child's health and welfare" was too broad and the qualifying things should be spelled out in rule form, rather than it being necessary to refer to a departmental manual for specifics.

Skinner responded that the qualifying words in 135.1(2) are words of "art." They refer back to 135.1(1) --"or other care which a reasonable and prudent person would provide under similar facts and circumstances." He wanted to avoid becoming entangled in a "word game."

Gurdin said the Department had tried to include the kinds of things which they believed children should have, recognizing there are degrees in everything. One difficulty they encountered was attempting to define these degrees. She referred to the Department manual on child neglect of which copies had been submitted to this Committee. Said manual contained guidelines for their staff to consider when making an investigation.

In response to question by Schroeder, Gurdin said they consider "patterns of neglect in specific kinds of situations which would have a long range effect on the emotional or physical health of a child." Cultural differences are also considered. Gurdin added that the Department "was open for suggestion."

Schroeder was inclined to leave matter to the courts.

Priebe recalled lifestyles when he was growing up which were very adequate but under the proposed rules would have been included in the category of "neglect."

Both Tieden and Priebe were concerned that there was not adequate protection and privacy for the family.

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Gurdin reminded the group that the Department is operating under an A. G. opinion which held that an investigation be made of every report of child abuse.

In response to question by Holden, Department officials answered that they do recognize different economic levels of families.

Gurdin outlined the procedure they would follow after receiving a complaint.

Schroeder called attention to a "rumor" that personnel was being drafted from other divisions, such as Title XIX, to help with child abuse investigations. Gurdin declined to comment, saying this was not within her purview. Clark indicated this problem would be addressed by the appropriations subcommittee.

Oakley defended the rules which set out minimum standards. He offered one suggestion that before the rules are adopted for filing, they be revised to reflect renumbered Code sections.

Holden took the position that the Department had "gone far beyond what the legislature intended." Other members concurred as they recalled that the legislation was basically aimed at "severe cases" where the child would require hospitalization, for example.

Sandy Schaefer, Technical Assistance and Training on Child Abuse and Neglect and a School Social Worker, posed three questions: (1)There is a real question as to whether Iowa law is in compliance with federal law. Bypassing this with these definitions, will we then have federal attorneys agreeing that we are in compliance? (2) Since "patterns" are important, why not set out patterns of parental care in 135.1(2)? (3) Substantial guidelines should be set out in rule form to aid the mandatory reporter.

Royce suggested that a public hearing on the rules might prove beneficial. Priebe reasoned that it was unlikely persons directly affected by the rules would attend.

Larry Bartlett, Counsel for Public Instruction Department, stated that they work with a number of mandatory reporters who would welcome the opportunity of the hearing.

Ron Thompson, Iowa State Education Association, distributed a prepared statement in opposition to the rules which, in his opinion, appeared to outlaw the use of reasonable corporal punishment in the schools.

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Gurdin indicated the Department would withdraw 135.1(7) defining "institution" to include public and nonpublic schools. They plan to work with school officials for more acceptable provisions.

A PTA representative also favored withdrawal of the subrule 135.1(7).

Skinner emphasized that the Department does not wish to prohibit use of corporal punishment, except in extreme cases.

Schroeder could see no need for the provision since adequate safeguards already exist within the school system.

Steve Brown, representing Civil Liberties, referred to correspondence he had mailed to the Committee prior to this meeting wherein he spoke to the vagueness of the proposed rules.

Oakley observed that the fact the subrule was omitted would not necessarily remove schools from liability.

Gaylord Tryor, representing School Administrators Association, urged removal of 135.1(7) but emphasized he was not opposed to curbing child abuse.

It was the consensus of most of those present that the Department had gone beyond the scope of the law.

Oakley quoted from the broad language of the law and recognized the frustration of the Department in attempting to reach a happy medium.

Public Hearing Requested

Tieden agreed with the Royce recommendation for a public hearing on the rules and he requested that one be held. Committee concurred unanimously.

146.8,.10

Amendments to 146.8 and 146.10 were acceptable as published.

Ch 159

Discussion of Chapter 159 pertaining to legal services. Doyle raised question in 159.3 which provided: "Legal services shall not be provided in criminal cases nor in those cases accepted by an attorney on a contingent fee basis." He asked if this meant that a delinquency action before a juvenile court would not be a criminal case and Skinner answered in the affirmative.
In the case of juvenile charged with a crime in an adult court and this being grounds to remove child from parents, Doyle wondered if the parents would be represented.

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Department officials indicated both juvenile and parents would be represented. However, they admitted this might be a duplication of section in the Juvenile Justice Act, and if so, they would rescind the rule.

41.2(6)

Amendments to 41.2(6) were revised since the Notice of Intended Action to provide that a recipient would not be denied assistance while awaiting receipt of a social security number.

41.8

Discussion centered on amendment to 41.8(3) which provided in part that "When the department agrees that repairs or improvements exceeding $10 are necessary to make or keep the recipient's homestead habitable, an allowance shall be approved"....under certain conditions.

Priebe took the position that any such repair would exceed $10 and he favored a more realistic amount of $25. He declared the $10 amount would tend to discourage self-help. Committee members concurred.

Motion

The following motion was made by Tieden:

Objection

The committee objects to social services rule 770-41.8(3), relating to state payment of property repairs for ADC recipients, on the grounds the provisions are unreasonable. The rule appears in 1 IAB 19 (2-21-79) and in essence provides that the state will pay for all necessary home repairs costing more than ten dollars.

It is the feeling of the committee that the ten dollar minimum cost is too low. In these inflationary times there are virtually no home repairs costing less than ten dollars, and certainly no carpenter or repairman could be hired for that amount. It therefore appears that the rule would discourage recipients from attempting even the most simple home repairs, since the department is, in effect, obligated to pay the cost of hiring the work done, and removed any incentive to "do-it-yourself". A more reasonable approach is to set the minimum at twenty-five dollars. The higher minimum would encourage the recipient to attempt the simpler type of repairs, while allowing professionals to be hired for the more difficult jobs.

Motion carried with 5 ayes. Holden out of the room and not voting.

54.3(13), 75.5

Amendments to 54.3(13) and 75.5 were acceptable as published.

Ch 133

Brief review of Chapter 133 with respect to child care center financial assistance.

Priebe questioned the necessity of maintaining records for five years--133.3(3). Poore said the requirement would be consistent with other recordkeeping in the Department.

Tieden recommended that they work toward a shorter period of time.

Priebe added that a main complaint of social workers is the voluminous amount of paper work required.

SOCIAL SERVICES Ch 133 Cont'd

Doyle noted an error in 133.3(1)--reference to "state treasurer's office" should be "secretary of state". Department indicated the point was well taken and they will make the necessary correction.

PUBLIC INSTRUCTION

Robert Glass, Consultant, Division of Teacher Education and Certification, was present for review of amendments to 13.8, 14.3, 15.21, 15.41, 16.4, 16.5 and 16.13 re teachers certification, published under Notice IAB 2/21/79.

Glass reviewed the clarifying proposals which were basically acceptable to the Committee. However, Oakley questioned the impact of 16.4 and 16.5 on the smaller school districts. The amendments were intended to upgrade the reading program but may place a financial hardship on some schools.

Priebe asked that the Department work with Oakley and the Committee on the question and resolve it before adopting the rule for filing.

Noon Recess Reconvened

Chairman Priebe recessed the meeting at 12:20 p.m. Meeting was reconvened at 1:22 p.m. with Priebe in Chair. Holden out of the room.

ENVIRONMENTAL QUALITY

David Bach, Hearing Officer, represented the Department of Environmental Quality for the following:

ENVIRONMENTAL QUALITY[400]

Rules of practice, ch 55 amendments	N	N	2/21/79
Air quality, pollution control, 1.2, 3.5, 3.6, 4.1(2), 5.1	N	N	2/7/79
Water quality, construction permits, 19.2(9), 22.12(2)"a", "c", 22.12(13)	N	N	2/7/79
Beverage containers, 34.3(1), 34.3(2)	N		2/7/79

ENVIRONMENTAL QUALITY[400]

Air quality commission rules of practice, ch 14 amendments, Without notice	F		2/21/79
Water quality standards, 16.3(3)-16.3(5)	F		2/21/79
Water, effluent and pretreatment, 17.4, Without notice	F		2/21/79
Public water supply systems, 22.12(2)"a", "b", 22.12(5)"a"	F		2/21/79
Water quality, forms, 24.1, Without notice	F		2/21/79
Solid waste disposal, permits, 32.1, 32.2, Without notice	F		2/21/79

Amendments to Chapter 55 were acceptable as published.

Discussion of proposed Air Quality rules to establish requirements in "nonattainment" areas (areas where the pollution levels are higher than the ambient air quality standards).

Priebe found objection to Item 3 relating to "fugitive dust". His concern was how could dust from roads, for example, be eliminated.

In answer to question by Tieden, Bach said that in determining nonattainment areas, they try to choose the smallest

DEQ Cont'd

political boundary, for example, a township, depending upon the type of pollutant involved.

Bach acknowledged that this is a complex area and there is no simple answer.

Priebe wondered if the rules were more stringent, in any area, than the federal law demands. Bach replied that the federal law demands the state to develop a plan to meet the ambient air quality standards. Iowa has the same ambient air quality as the federal government requires.
Holden arrived.

Motion

Schroeder moved that the Committee move on to the next item on the agenda and that Royce and Oakley be requested to attend the public hearing and report to the Committee.
Discussion followed.

Tieden and Priebe reiterated their concern that the rules would have an adverse affect on agricultural areas.
Bach conceded that there probably is what would be considered agricultural land in nonattainment areas since they do follow township lines, in many instances.

Priebe wondered what effect the rules would have, if Iowa returns to use of coal. Question was raised as to enforcement in border cities.

Clark pointed out corrections to be made in Item 3, second paragraph of 7.--"affects" should be "effects" and the word "strategies" was misspelled.

Bach thought the Committee would find some materials, available in their office, to be very helpful.

The Schroeder motion was adopted.

Bach summarized proposed amendments to rules of the Water Quality Commission as basically an adoption of design standards for municipal treatment plants. Very few comments were made at the public hearing on February 28.

Discussion of amendments which deleted "water quality commission " and inserted "executive director."
Bach explained that these amendments do not take away power but merely relieve the Commission of minor details, thus, providing more time for policy-making decisions.

Beverage Containers

Amendments to 34.3(1) and 34.3(2) were before the Committee re labeling of beverage containers to indicate refund information.
Schroeder called attention to what he considered to be unclear language in 34.3(1)--"The words 'Iowa Refund 5¢' may be abbreviated if a request to use a specific abbreviation is submitted to and approved by the executive director."
He suggested that the figure "5¢" be deleted.
Re air quality commission forms in general [Ch 14], question was raised as to the reason the Department did not provide for comments from the public. Royce assured the Committee that for this type of amendment, public participation was unnecessary.
Other published rules on the agenda were acceptable.

HEALTH DEPARTMENT

The following rules of the Health Department were before the Committee for consideration:

HEALTH DEPARTMENT[470]

Water wells, nonpublic, ch 38	N	2/21/79
Chiropractic examiners, ch 141	N	2/21/79
Cosmetology, salons in residences, 150.4	N	2/7/79
Barbers, shops in residences, 153.4	N	2/7/79

HEALTH DEPARTMENT[470]

Funeral homes, certificate of inspection, 86.1	F	2/7/79
Podiatry, disciplinary procedures, 139.200, 139.201	F	2/7/79
Podiatry examiners, meetings, 139.300	F	2/7/79
Optometry examiners, disciplinary procedures, 144.100-144.113	F	2/7/79
Hearing aid dealers, disciplinary procedures, 145.200-145.213	F	2/7/79
Hearing aid dealers, meetings, 145.300	F	2/7/79
Cosmetology examiners, disciplinary procedures, 151.101-151.114	F	2/7/79
Cosmetology examiners, meetings, 151.201	F	2/7/79
Barber examiners, disciplinary procedures, 152.200-152.213	F	2/7/79
Barber examiners, meetings, 152.300	F	2/7/79
Medical examiners, general, ch 135	F	2/21/79
Medical examiners, continuing education, ch 136	F	2/21/79

Representing the Department were Peter Fox, Hearing Officer, and Kenneth Choquette, Health Engineering Section. Choquette explained proposed rules to establish guidelines for the construction of nonpublic water wells and the installation of pumping equipment. Said guidelines would not be enforceable at the state level--only by the local Health Departments. The rules, under section 135.11(1) and (15) of the Code would be applicable only to wells constructed after their effective date. They would apply also to wells undergoing major reconstruction.

Schroeder expressed opposition to the rules as being "a viscious tool" which would be abused by local authorities. He suggested it would be more appropriate for the Department to address the sewer systems problem.

Choquette cited serious problems of high nitrates and bacteria in wells which have not been sealed off above ground level. He reiterated the purpose of the rules is to give counties helpful guidelines.

Schroeder thought a simple test of the water would be a better solution.

Committee members were inclined to agree that the Department had exceeded their statutory authority. Oakley noted they had used their general rulemaking authority.

Choquette was concerned about people in rural areas who need aid with this serious problem. The Department believes they have authority to promulgate the rules, according to Choquette.

Priebe urged the Department to co-operate with the Committee in an attempt to resolve the issue since it was apparent, the Committee would not allow the rules to become effective. Priebe recommended that the Department submit the matter to the Human Resources Committee for study.

HEALTH Cont'd Review of Chapter 141--chiropractic examiners--was deferred awaiting an opinion of the Attorney General.

Cosmetology Carol Tracy, Chairman, Board of Cosmetology Examiners, and Grace West, Executive Secretary, told the Committee that their amendment to 150.4 was less restrictive than former provisions in that a "separate" outside entrance would no longer be required for beauty salons in residences.

Barbers It was noted that the Barber Examiners have a similar amendment to 153.4.

In response to question by the Committee, Keith Rankin, Executive Director, Barber Examiners, said that elderly barbers will be permitted to take a correspondence course to fulfill continuing education requirements.
This amendment would appear in the March 7 IAB.

Brief review of filed rules of the Medical Examiners Board, with Chairman of the Board, Dr. John M. Rhoads, and Ronald Saf, Executive Director. Dr. Rhoads indicated that the Board had incorporated changes recommended by this Committee when the rules were reviewed under Notice in December.

The remaining filed rules of the Health Department were acceptable as published.

There was further discussion of meeting dates for this Committee. It was decided there would be a special meeting April 24, 7:00 a.m. for the purpose of reviewing the April 4 Iowa Administrative Bulletin.
Schroeder thought the Committee should meet on the statutory date of May 8 to consider any emergency situations and then recess until May 22. Priebe preferred to hold the May meeting on May 15 at 8:00 a.m. Tentative date was then set for May 15.
Next regular meeting will be held April 10, 7:00 a.m., Room 24.

Respectfully submitted,

Phyllis Barry

(Mrs.) Phyllis Barry, Secretary

APPROVED

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Chairman

Date _____