MINUTES OF THE REGULAR MEETING
- OF THE
ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of Meeting — The regular meeting of the Administrative Rules Review Committee was held Tuesday and Wednesday, July 10 and 11, 1990, House Committee Room 1, State Capitol, Des Moines, Iowa.

Members Present — Senator Berl E. Priebe, Chairman; Representative Emil S. Pavich, Vice Chairman; Senators Donald V. Doyle and Dale L. Tieden; Representatives David Schrader and Betty Jean Clark.

Staff present: Joseph A. Royce, Counsel; Phyllis Barry, Administrative Code Editor; Alice Gossett, Administrative Assistant. Also present: Paula Dierenfeld, Governor's Administrative Rules Coordinator.

Convened — Chairman Priebe convened the meeting at 10:05 a.m. and called on Economic Development for the following agenda:

ECONOMIC DEVELOPMENT

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]
Agency procedure for rule making, ch 101. Filed ARC 956A 6/13/90

Ch 101 — Appearing for the Department of Economic Development was Melanie Johnson who reported that there were no public comments received and no changes from the Notice on Chapter 101.

There was discussion of the fact that the Department of Economic Development Board has the final decision for rule making. Tieden was of the opinion that this concept should be reinstated legislatively for all agencies.

ENVIRONMENTAL PROTECTION — Appearing for the following agenda were: Victor Kennedy, Rex Walker, Robert Ribbens, Diana Hansen, Darrell McAllister, Michael Murphy and Morris Preston.

ENVIRONMENTAL PROTECTION COMMISSION[567]
NATURAL RESOURCES DEPARTMENT[561]"umbrella"
Controlling pollution, 22.4, Notice ARC 963A 6/13/90
Emission standards for contaminants, 23.1(3), 23.1(3)"a," Filed ARC 962A 6/13/90
Water supplies — coliform bacteria monitoring requirements, 40.2, 41.1, 41.2, 41.3(4), 41.3(7), 41.4(1), 41.4(10), 41.5(1)"b," 41.5(2)"a"(2)"3," 41.5(2)"e," Notice ARC 968A 6/13/90
Water supplies — filtration rules and operations requirements, 40.2, 41.2(3), 41.3(3), 41.4(2), 41.5(2)"e,"(10), 41.7, ch 43, Notice ARC 965A 6/13/90
Water quality standards, 61.3(5)"a"(2), 61.3(5)"e," Notice ARC 961A 6/13/90
On-site wastewater treatment and disposal systems, land application of wastes, 69.14(1)"e"(1), 121.3(1), 121.3(2), Notice ARC 969A 6/13/90
Grants for solid waste demonstration projects, 209.1 to 209.4, 209.6 to 209.11, Notice ARC 964A 6/13/90

22.4 — Walker reviewed amendment to 22.4 which will adopt EPA regulations which establish the maximum increase in ambient nitrogen dioxide concentrations allowed in an area above the baseline concentration. The rules will be applicable to major sources constructed or modified in areas which are expected to remain in attainment of ambient air quality standards and are a part of the Prevention of Significant Deterioration (PSD) program. Utilities or large industries in the state could be affected by the rules. No Committee action.

ENVIRONMENTAL PROTECTION Contd.

23.1 Walker described amendments to 23.1 as adoption by reference of the National Emission Standards for Hazardous Air Pollutants. This includes asbestos in the pollutant category with respect to demolition and renovation operations where asbestos is present. School facilities could be affected by the rule. One requirement is proper disposal of asbestos waste. Priebe asked about disposal sites for the waste. Preston responded that most landfills in the state can accept asbestos waste, but it must be bagged and covered. Landfill inspections are made at least quarterly and any time there is a complaint.

40.2 et al. Hansen said that 40.2 et al. regarding coliform bacteria monitoring requirements were being revised to implement EPA regulations which will become effective December 31, 1990. No one appeared at the June 9 hearing in Chariton and no written comments had been received.

Priebe was informed that there are fifteen service connections on a public water supply system.

Discussion of the definition of "sanitary survey." Hansen described this survey as basically a routine inspection conducted by the department in the water supply area. Samples would be taken and sent to a certified laboratory such as University Hygienic Laboratory (UHL). The Department has statutory authority for the surveys.

41.2 Tieden raised question as to variance in the number of samples collected. Hansen explained that 5 percent of the 40 samples would be two positive samples.

Tieden was interested in the time lapse for repeat samples. McAllister said that in the case of total coliform, UHL notifies the Department immediately when they have a positive sample. The Department then notifies the public water supplier immediately. There was discussion of affect of filtration or disinfection on surface water environment. McAllister advised that the THM standards were developed for larger communities and smaller communities would need to be aware that disinfecting could create other hazards. McAllister concluded that the overall risk to human health was smaller by disinfecting.

61.3 Hansen reviewed proposed changes relating to updating use designations for streams, lakes and rivers. Hansen pointed out that streams in Washington and Ottumwa areas were designated as limited source streams, and both cities were notified by letter of this action. No adverse comments were received.

69.14, 121.3 Amendments to 69.14 and 121.3 pertaining to land application restrictions for municipal and industrial sewage sludge were presented by Mike Murphy. Current rules are more liberal with respect to industrial sludge disposal than with

ENVIRONMENTAL PROTECTION Contd.

municipal and the major impetus of the rule making is to provide consistency. Three hearings had been scheduled.

Murphy advised Tieden that municipal sludge would have a predictable range of nitrogen content. With respect to the analyses performed at the UHL, Murphy told Tieden that he was not aware of any guidelines for approval of other laboratories by UHL--121.3(1)1(4). Murphy agreed to pursue the matter.

Ch 209

Kennedy described amendments to Chapter 209 as "fine tuning" of the administrative procedures that will be used in handling of the grants for solid waste demonstration projects. Caps are being placed on some of these projects. No one attended the hearing and no comments had been received by the Department on what they perceive to be noncontroversial changes.

Priebe expressed interest in the competitive grant process and Ribbens said that a request for proposal is sent to anyone upon request. That document contains the concise criteria which will be used to evaluate proposals. Tieden and Ribbens discussed the point system which will be eliminated in favor of a less subjective system for awarding the grants. The Department will respond to any request for overview or critique of the process.

Tieden asked about the difference between volume reduction and recycling and reuse. Ribbens stated that volume reduction was measures to prevent solid waste from ever entering the waste treatment system, e.g., yard waste used in backyard composting. Recycling would be the reuse of a product. Tieden questioned elimination of the energy and geological resources division from the approval process for funding. Ribbens explained tonnage fees will be used instead of oil overcharge funds. No formal action.

HUMAN SERVICES

The following agenda was presented by Mary Ann Walker, Kathaleen Kellen, Susan Bergwall, and Wayne McCracken.

HUMAN SERVICES DEPARTMENT[441]

State community mental health and mental retardation services fund and special needs grants, ch 32 title, 32.3, 32.3(1)"c"(2), (7) and (14), 32.3(2)"a," 32.3(2)"b"(9), 32.4, 32.5. Notice ARC 1002A, also Filed Emergency ARC 1001A 6/27/90
Granting assistance, conditions of eligibility — financial statement, 41.2(6)"b"(1), 41.2(6)"d," 75.14(1)"d." Notice ARC 972A 6/13/90
Increase in protected resources for the community spouse, 75.5(3)"d." Notice ARC 982A 6/27/90
Intermediate care facilities and intermediate care facilities for the mentally retarded, 81.10(6), 81.20, 82.14(6), 82.18. Notice ARC 994A 6/27/90
Collections, 95.8, 95.8(1), 95.10. Notice ARC 646A Terminated ARC 997A 6/27/90
Child support recovery program — income withholding, 95.8, 95.10, 95.13(3), 96.7, ch 98. Notice ARC 1000A 6/27/90
Court-ordered care and treatment, 151.1(1)"c," 151.1(4), 151.1(5). Notice ARC 995A 6/27/90
Sheltered work/work activity services, 172.1, 172.2(3), 172.2(4). Notice ARC 996A 6/27/90
Family support subsidy program, ch 184 preamble, 184.1, 184.2(2), 184.3(1), 184.3(4), 184.4(3), 184.5, 184.7, 184.8(1)"c." Notice ARC 1003A, also Filed Emergency ARC 1004A 6/27/90

Ch 32

According to Walker, the amendments to chapter 32 establish requirements for administration of veterans counseling and special needs grants similar to those already established for special allocation distribution from the community mental health and retardation services clinic. The appropriation was $30,000 for the veterans and $55,000 for the special needs grants.

HUMAN SERVICES Contd.

There were no questions regarding amendments to 41.2, 75.14, and 75.5(3)d.

81.1 et al.

Walker explained amendments to 81.1 et al. which provide that out-of-state ICFs and ICFs for the mentally retarded abide by the same policies followed by state facilities. Exceptions: Financial and statistical reports will not be required for out-of-state facilities; the reserve bed rate for out-of-state ICFs and ICFs/MR will be established at 75 and 80 percent of the rate paid to the facility by the Iowa Medicaid program. Within the state it will be 75 or 80 percent of their audited costs. Payment for special care for residents in intermediate care facilities shall not be applicable to out-of-state intermediate care facilities.

Tieden was interested in comparison of ICF rates with other states and Kellen said that Missouri was lower, Nebraska was similar to Iowa but Wisconsin and Minnestoa were higher.

Walker reminded that all care facilities rules were being rewritten.

95.8

Walker advised that proposed amendments to Chapter 95 published as ARC 646A were terminated. A revised version appeared as ARC 1000A.

Walker continued that the revision more clearly describes the procedures the Department will use in implementation of income withholding orders for delinquent child support. Immediate income withholding will be implemented as required by the Family Support Act of 1988.

98.24

Priebe raised question in 98.24 with respect to income withholding when a current obligation has ended and delinquency has not been satisifed. If there has been a change of legal custody from the obligee to the obligor, the amount withheld shall be 50 percent of the amount owed for support at the time obligation ended. He contended that the amount necessary to meet the obligation should be collected.

Walker informed Tieden that the Department has a record of the number of delinquent cases. No formal action.

Ch 151, 172 and 184

There were no questions on amendments to Chapters 151, 172 or 184.

INSPECTIONS AND APPEALS

Appearing for the Department were Rebecca Walsh and Mary Oliver who reviewed the following:

INSPECTIONS AND APPEALS DEPARTMENT[481]
Field survey administration, 30.2, 30.6, Filed ARC 967A 6/13/90
Residential care facilities for the mentally retarded, 63.47(1) to 63.47(7), 63.47(9) to 63.47(16), Filed ARC 988A 6/27/90

30.2, 30.6

Walsh stated that amendments to 30.2 and 30.6 were intended to clarify jurisdictions for inspections of hospitals and dairy plants. The definition of "mobile food unit" was

INSPECTIONS AND APPEALS Contd.

expanded to include food establishments and will now require that the unit report to its home base each night for cleaning and servicing. Service establishments with more than $20,000 annually in grocery sales will also be required to obtain a food establishment license. No comments were received either in writing or orally on these amendments.

Department officials explained that facilities inspected and licensed with a milk or milk products permit from the Agriculture Department would not be subject to DIA inspection.

63.47

In review of amendments to 63.47, Priebe questioned why the words "temporary waiver" had been stricken and "specialized license" committee substituted. Oliver pointed out the amendment reflects the fact that the nine-member committee was now a permanent appointed one. This Volunteer committee meets quarterly and makes decisions regarding level of care. Oliver realized that the statutory committee function was not clearly defined in the rules. Priebe was skeptical about the effectiveness of an unpaid committee. Oliver reiterated that they had a demonstration waiver project for three years but the legislature made that a permanent type of licensing which is no longer a waiver project.

Schrader asked about regulation of Veterans Hospital facilities where there are fewer than 10 residents. Oliver indicated that any facility providing care to three or more people would be monitored by the Department. The Veterans Administration also monitors those clients on a case management system. No further questions.

ABOVEGROUND STORAGE TANKS

Roy Marshall, State Fire Marshal, appeared as requested by the ARRC to report on the aboveground storage tank issue. There was discussion of the 1990 legislation which adopted the latest edition of the National Fire Protectors Association Rule 30A subject to the approval of the local governing body.

Marshall commented that NFPA 30A was the national standard for service stations but currently did not permit aboveground storage tanks. He added that restrictive exceptions were in place for indoor tanks for cities such as New York where there were no open ground spaces. Prior to amendment, Code section 101.12 provided for the aboveground storage tanks in cities of 1000 or less population. In an attempt to modify the statute to allow the tanks in small towns but not in rural areas, the national standard was adopted by reference. However, Rule 30A had not yet been adopted by the NFPA. Although, all interested parties assumed it would be adopted in May, aboveground tank storage was soundly rejected by the NFPA. Iowa voted for the standard but was in the minority with other fire marshals. There will be another vote in October. Marshall pointed out that NFPA membership comprises all fire marshals as well as representation of cities and industry. He had observed that a majority of the membership was from private industry.

ABOVE-GROUND STORAGE TANKS Contd.

Marshall emphasized that his office had no other option than to follow the law. There was further discussion of legislative intent and how it can be achieved.

Royce reviewed problems with the revised legislation: The adopted national standard is nonexistent; adoption of "the latest edition" of 30A is an undue delegation of legislative authority and is unconstitutional--a date certain should be added to NFPA Standard 30.

Motion

Doyle moved that the statutory problem in Code section 101.12 be referred to the Speaker of the House and President of the Senate for referral to the appropriate committee.

Carried

Motion carried.

Tinted Auto Windows

There was brief discussion of the controversy surrounding tinted automobile windows. Doyle reported on road blocks set up by the highway troopers near Urban Window Tint in Sioux City following Urban's testimony before the ARRC. Tickets were issued to drivers with tinted windows in Sioux City and Ida Grove. Committee members expressed their disappointment at such vindictive action by the troopers. Doyle suggested the possibility of referring the issue to the Legislative Council.

Minutes Approved

Doyle moved to approve the minutes of the June meeting as submitted. Motion carried.

COMMITTEE RULES OF PROCEDURE

Chairman Priebe called up ARRC rules of procedure as amended to November 4, 1987, and published in IAC Volume I, and there was discussion of proposed revisions by Royce. Doyle offered the following suggestions: (1) Revise rule 1 to read: There are six members on the committee, 3 senators and 3 representatives and a quorum of the committee of four members. (2) Amend Rule 3 by inserting following "chair" the words "or the vice chair in the absence of the chair"; (3) Revise Rule 11 to read: The committee may direct the secretary or a staff person to send specific rules to the chairs of legislative committees designated by this committee or to the president of the senate or the speaker of the house. (4) Add a new rule: 16. Correspondence and questions on committee procedures shall be sent to Joseph Royce, Room 116A, Capitol Building, Des Moines, Iowa 50319, phone 515-281-3084. (5) In rule 15, first sentence, substitute "chair or vice chair" for chairman or vice chairman. In the second sentence, strike "chairman" and insert "chair or vice chair".

Motion

Doyle moved his proposed amendments. Motion carried.

Schrader requested that Rule 4 be amended by adding after "chair" the words "vice chair" and that Rule 8 be retained as written.

Priebe expressed preference to retain the existing rules as amended. Royce pointed out the need for the committee to address their position on criteria for making awards or

COMMITTEE RULES OF PROCEDURE Contd.

grants by using a point system. He also referred to his recommendation for substantive rules regarding committee policies for examining and evaluating rules. Priebe suggested that this could be set out in Rule 17. Schrader wondered if specific language in this area would draw parameters and limit ARRC authority. Royce saw no problem since the rule would merely document the absolute, consistent and continous committee pronouncements. He added that, legally speaking, such a rule was not necessary.

Discussion of whether the ARRC should adopt rules of Procedure under Code chapter 71A.

Defer until August

There was committee consensus to defer final action on Committee Rules of Procedure until the August meeting.

Recess

Chairman Priebe recessed the committee for lunch at 12:05 and reconvened it at 1:30 p.m.

UTILITIES

The following rules of the Utilities Division were considered:

UTILITIES DIVISION[199]
COMMERCE DEPARTMENT[181] "umbrella"
Settlements and stipulations, 7.2(11), 7.7(4), 7.10(2), Filed ARC 975A 6/13/90
Consumer comment hearing options, 7.7(16), Notice ARC 980A 6/27/90
Pipeline permits, construction, and safety, 9.1(1), 9.1(3)"c," 9.5, ch 10 title, 10.1(6), 10.1(10), 10.2(1), 10.2(2), 10.2(3)"a," 10.3, 10.3(4)"a," 10.3(6), 10.7, 10.9 to 10.12, 10.14, 10.15, 10.17 to 10.19, ch 12, Notice ARC 978A 6/27/90
Pipeline employee drug testing, 10.12, 19.5(2)"a," Filed ARC 976A 6/13/90
Investigation of winter moratorium, 19.2(5)"j" and "k," 20.2(5)"j" and "k," Notice ARC 979A 6/27/90
Electric service — meter test reports, 20.2(5)"i," Notice ARC 983A 6/27/90
Class load data, 20.10(2)"c," 20.13(3)"c"(5) to (8), Notice ARC 673A Terminated, Notice ARC 981A 6/27/90

Cindy Dilley, Vicki Place, Anne Preziosi, and Dawn Vance were in attendance for the Division. Jack Clark, Iowa Utility Association was also present.

Ch 7

Dilley explained amendments to Chapter 7 which were intended to provide procedures for settlements and stipulations. The words "or law" were added following "facts" in 7.7(4) relating to stipulations to clarify that any of the parties could submit to the Board their agreement with respect to the applicable law within any given proceeding. The adopted rules provide that two or more parties by written notice may propose settlement for adoption by the board (1) at any time after docketing and (2) within 30 days after the last day of the hearing.

At least one conference will be held for the purpose of discussing the settlement. The party which does not join in the settlement has 30 days with which to file comments contesting a settlement. If a party does not file comments, it waives all objections to the settlement. If the settlement is contested, the board may schedule a hearing on the contested issues. The board's adoption of the settlement constitutes their final decision on issues addressed in the settlement. The settlement rules will become effective July 18, 1990--7.2(11). Dilley said there was a period of time where an objecting party can file a written comment, but the board's decision is final.

UTILITIES
Contd.

7.7(16)

Preziosi described revised 7.7(16) as discontinuing the requirement for mandatory consumer comment hearings. Currently, these occur automatically in every case. In the past two years, 17 hearings were held with an average of three consumers who spoke. On some occasions no consumers attended the hearing. Although the board voted that a public input system is useful, more flexibility would allow them to consider comments in a more cost effective manner.

Priebe expressed opposition since it was his opinion that every person should be heard. Preziosi said the Board plans to establish guidelines for a hearing if requested. Preziosi had not seen Consumer Advocate comments on the proposal.

Motion

Pavich moved that the committee send a letter to the agency informing them of their dissatisfaction with the subrule. Motion carried.

Preziosi pointed out the expense of conducting hearings throughout the State when no one attends. If hearing is requested, one would be held. Priebe reiterated his disapproval of this approach and commented that he wanted to hold an ARRC meeting in the Charles City area prior to Representative Clark's retirement.

Schrader suspected that many issues were argued in the press and without the opportunity for hearing, some citizens probably lack access to the press. Preziosi said that the Board plans to make local press releases which would provide opportunity for a hearing. Priebe noted the rule did not reflect that policy. No formal action.

9.1

Dilley presented proposed amendments to 9.1(1) et al. which will update the rules to industry standards. New Chapter 12 sets forth procedures for the inspection of construction maintenance and condition of interstate natural gas pipelines.

10.12, 19.5(2)

Dilley stated that adopted amendments to 10.12 and 19.5 would require all pipeline operators to implement an antidrug program for employees who perform safety-related functions. Drug testing will be required prior to employment, following an accident, randomly, and on the basis of reasonable cause.

Dilley informed Priebe that they have adopted the federal drug testing standards as of January 1, 1990.

Doyle quoted from language in the Uniform Act which he felt was very vague and he wondered about enforcement. Dilley reiterated that the federal regulations in 49 CFR 199.1-.23 would be followed. It was her understanding that a medical review officer determines whether or not there is legitimate cause for testing.

UTILITIES Contd.

Royce thought it would be advisable to review the federal regulations in view of potential controversy. Doyle asked Dilley to provide Royce with a copy. No formal ARRC action.

Pavich in the Chair.

19.2, 20.2

Preziosi told the committee that proposed amendments to 19.2 and 20.2 would require utilities to file monthly information to be used by the Board to monitor effects of the disconnection moratorium on low-income households.

Tieden noted that the hearing was not scheduled until August 23 and Preziosi responded that it took that long to fit it into the Board's schedule.

10.12, 19.5

Chairman Priebe recognized Dilley who offered further explanation with respect to drug testing--10.12 and 19.5(2). She advised that at least two of the employee's supervisors who are trained in drug detection shall substantiate and concur in the decision to test an employee. Through the Employees Assistance Program, each employee will be given a copy of all the guidelines.

20.2, 20.10, 20.13

There were no committee recommendations for the remaining Utilities agenda.

INSURANCE DIVISION

Appearing for the Division was Kenneth Booth, Property and Casualty Division, Bureau Chief, who explained the following:

INSURANCE DIVISION[191]
COMMERCE DEPARTMENT[181] "umbrella"
Property and casualty insurance rate and form filing procedures, 20.1(2), 20.1(3), 20.2(1), 20.2(3), 20.3(1)"d," 20.3(3)"a" and "c," 20.5(1), 20.5(2), 20.5(4) to 20.5(6), 20.6(1), 20.6(3), 20.9, 20.10, Notice ARC 970A 6/13/90
Regulation of securities offerings and those who engage in the securities business, 50.16(2)"b"(6) and (7), 50.22(2)"e"(6), Notice ARC 1006A 6/27/90

20.1

Booth stated that amendments to 20.1 et al. would implement 1990 Acts, H.F. 2320 which precludes filing of final rates with the Insurance Division on behalf of the rights of insurance companies. Booth added that the NAIC Model language was adopted. No action.

50.16, 50.22

There were no questions regarding proposed amendments to 50.16 or 50.22 so the proposal was transferred to the "No Representative Requested" portion of the agenda.

LABOR SERVICES

Representing the Labor Division were Walter H. Johnson, Deputy, Stephen R. Hampton and Ryan Genest. The following agenda was presented:

LABOR SERVICES DIVISION[347]
EMPLOYMENT SERVICES DEPARTMENT[341] "umbrella"
Employer requirements relating to non-English speaking employees, 1.3, ch 160, Notice ARC 1008A, also Filed Emergency ARC 1007A 6/27/90
OSHA rules for general industry relating to occupational exposure to hazardous chemicals in laboratories; corrections; air contaminants; and welding, cutting and brazing, 10.20, Notice ARC 1009A 6/27/90
OSHA rules for general industry relating to occupational exposure to lead; occupational exposure to hazardous chemicals in laboratories; air contaminants, occupational exposure to lead, 10.20, Filed ARC 1010A 6/27/90
OSHA rules for construction relating to excavations, 26.1, Filed ARC 1011A 6/27/90
Private employment agencies, 38.6(1), 38.6(2), 38.6(5), 38.8(3)"b," Filed Emergency ARC 1012A 6/27/90

Selective Review 82.3(2) License Fees for Asbestos Removal IAC

LABOR SERVICES Contd.

1.3, Ch 160

Discussion of 1.3 and Chapter 160 which, according to Johnson, would implement new legislation relating to service for non-English speaking employees--S.F. 2169. A public hearing was set for July 19 and comments on the proposal had revealed mixed feelings. Industry representatives had concerns about 160.7 relative to the employer's obligation to return an employee to the location of recruitment. The rule applied to both English and non-English speaking employees. Although legislative intent may have been to limit the obligation to non-English speaking employees, Johnson interpreted the transportation provision to apply to all recruited employees.

Johnson continued that employers must instruct the employees in the Right-To-Know regulations--the hazards and chemicals with which they are dealing.

Priebe took the Chair and questioned naming a specific publication (Rand McNally) for aid in determining the 500-mile distances--160.7(2). Johnson responded that virtually all trucking firms rely on that publication. They calculate mileage by the Household Movers Guide rather than by hub miles. Discussion of possible use of "the official state published road map." No formal action.

10.20

There were no questions regarding OSHA amendments to 10.20 and 26.1.

38.6, 38.8

Johnson said that amendments to Chapter 38 would emergency implement changes in the permissible amount that an employment agency can charge on an applicant paid placement--from 8 to 15 percent.

Asbestos Removal

Chairman Priebe announced special review of 347--82.3(2) relative to license fees for asbestos removal.

Royce introduced Mark A. Newman, a self-employed contractor for asbestos removal who questioned the fairness of the increase in the license fee--now called a business entity permit--from $50 to $500. The issue before the Committee was: Is a $500 permit fee fair, or does it discriminate against the part-time entities who perform the same service?

Newman devotes most of his time to supervising other asbestos companies and is presently on three large removal projects in Fort Dodge. He spoke of the definite need for small operations which are decreasing because of complex paperwork and the $450 increase for the permit. Newman spoke of his frequent contact with the Division of Labor and their excellent service and assistance with compliance and clarification of regulations. He stressed that loss of service persons to respond quickly in the small local areas is causing actual environmental damage. People who cannot afford qualified asbestos removers are relying on local plumbing and heating personnel. It was Newman's opinion that increased license fees encourage illegal removal of asbestos.

LABOR SERVICES Contd.

Johnson attributed the entitlement fee increase to the associated costs. The approximate cost of issuing an asbestos permit was $238 plus the annual inspection cost of $555, totaling $793. Johnson was aware of drastic increases in other states--$2000 to $3000. Annual fees in surrounding states range from $100 in Minnesota up to $3000 in Nebraska. Minnesota has a one percent project cost with no ceiling which the state receives.

Johnson recalled that last November--just before his lengthy illness--Representative Halvorson had questioned the fee increase. He said the Iowa statute was based on the one in Maryland. Maryland has increased their fees--approximately doubled with a sliding scale. Johnson explained that the time needed for reviewing did not vary a great deal for a large or small operation. He emphasized that many contractors lack the expertise of Newman. Although asbestos removal was a serious business, Johnson did not want to force small contractors out of business. He asked for Committee suggestions to address licensing for limited projects. He was very cognizant of the equipment and other costs involved for asbestos removers.

Schrader wondered about the possibility of imposing a project fee and lowering the annual fee. Johnson said that probably was not a viable solution under the current statute unless they could adopt a two-part fee--an upfront fee and an individual project fee. This approach would amount to a significant increase for some companies.

Johnson cited significant staff problems in reviewing large numbers of notifications to determine project costs. Fees would have to be assessed and collected in advance of the project. The Division lacks staff for that major undertaking.

Newman concurred that it was very costly to administer this program and to adequately protect the workers' health and safety and the environment. It would seem to him that a fee for permits or licenses based on the number of employees would be in keeping with the purpose of the Division of Labor. Newman contended that the $20 per person worker license and the $50 per superviser license fees were very insignificant and could be increased to $50 to $100. He pointed out that companies pay 13 cents on a dollar for workmen's compensation insurance, $350 for training and another $350 for a preemployment physical before a worker can begin a job. Johnson recalled that the building trades had opposed a proposed $30 to $40 worker fee.

Pavich asked how many licensed workers they have at this time and Johnson estimated 2,000. There were 98 employers licensed in 1989, 39 in 1988, and to date there were 54 in 1990 with 13 pending. There is a large turnover--over 50 percent are new worker licenses.

LABOR SERVICES Contd.

Tieden mentioned complaints in his district because of varying fees in bordering states.

Schrader presumed there was logic behind the increase but ideally there would be equitable fees without burden to the Division. Johnson had not discussed staffing load with other states. Iowa receives a number of notification of asbestos abatement projects. The law requires 10-day notification unless it is an emergency and the Division receives many emergency calls.

Pavich suggested referral of the material to the General Assembly.

Schrader was sympathetic to Newman's concerns but failed to see how the Committee could direct a lower fee when the Division is short $300 of meeting the cost of current licensure and inspection.

Motion

Tieden moved to refer the issue of license fees for asbestos removal contractors to the Speaker of the House and President of the Senate to be studied by the appropriate committees. Motion carried.

Recess

Pavich recessed the meeting at 2:50 p.m.

Reconvened

All Committee members and staff were present when Chairman Priebe reconvened the meeting at 9:05 a.m., July 11, 1990.

NATURAL RESOURCE COMMISSION

Appearing for the Commission were Victor Kennedy, Steve Dermand, Daryl Howell and Bob Walker. The following agenda was considered:

NATURAL RESOURCE COMMISSION[571]
NATURAL RESOURCES DEPARTMENT[561]"umbrella"
Private open space lands, ch 32, Filed ARC 998A 6/27/90
Operation of motor vehicles in meandered streams, navigable streams, and trout streams, ch 49, Notice ARC 992A 6/27/90
Turtles, 86.1, 86.1(1), 86.1(5), Filed ARC 990A 6/27/90
Trapping limitations, 110.5, 110.6, Notice ARC 991A 6/27/90

Ch 32

Kennedy summarized that intent of Chapter 32 was to establish a broad definition of exemptions to encourage dedication of privately owned lands for natural resource purposes.

Priebe questioned the words "areas which meet the criteria specified in statute or rule"--as used in 32.2(5).

Clark suggested substituting "and" for "or". Royce thought the intent was to provide that when a statute does not address an issue, the rule would be followed.

Kennedy said that presumably they would not have rules that conflict with the statute. Priebe preferred that "or rule" be deleted. Tieden questioned Kennedy with respect to land purchased by the Department to protect certain species. Howell indicated that such land was usually purchased by the U.S. Fish and Wildlife Services. Normally, they negotiate with the landowner to acquire only the parcel of land necessary to protect the species.

NATURAL RESOURCE COMMISSION Contd.

Walker reviewed proposed Chapter 49 which identifies streams where ATVs will not be allowed. Ford crossings for agricultural purposes will be permitted.

Ch 49

86.1 — No questions regarding amendments to 86.1.

110.5, 110.6 — Dermand told the ARRC that amendments to 110.5 and 110.6 would essentially clarify Code section 109.92, with respect to removal of animal carcasses from traps or snares within 24 hours. Priebe wondered about enforcement and Dermand responded that the Department would need clear evidence that the 24-hour limitation had been exceeded. No action taken.

PERSONNEL DEPARTMENT — Clint Davis and T. A. Meyer appeared for the following agenda:

PERSONNEL DEPARTMENT[581]
Definitions; coverage and exclusions; classification; pay; recruitment, application and examination; grievances and appeals; equal employment opportunity and affirmative action; combined charitable campaign, 1.1, 2.4, ch 3, 4.5(1)"g," 5.2(1), 5.2(6), 12.1(1)"c," 12.2(1), 12.2(6), 20.1, 20.2(1), 25.2, 25.3(1) to 25.3(3), 25.3(5), 25.4, 25.5, 25.6(1)"b" and "g," 25.6(3)"b" and "c," 25.6(5), Filed ARC 966A 6/13/90

Davis summarized the changes from the Notice. He informed Tieden that the broad salary range for internship appointments was necessary to cover the different types since interns are included in one class.

20.2 — In discussion of 20.2(1), Davis gave the Iowa Finance Authority as an example of an organizational entity--an autonomous agency under the administrative agency of Economic Development.

PHARMACY EXAMINERS — The following Pharmacy agenda was reviewed by Lloyd Jessen, Executive Secretary:

PHARMACY EXAMINERS BOARD[657]
PUBLIC HEALTH DEPARTMENT[641]"umbrella"
Purpose and organization — administrative law judge, 1.2(5)"a," "e," and "g," Notice ARC 955A 6/13/90
Licensure — Iowa drug law exam, 2.10(1), Notice ARC 954A 6/13/90
Minimum standards for evaluating practical experience — pharmacist-intern, 4.1, Notice ARC 953A 6/13/90
Minimum standards for the practice of pharmacy, 8.7(1), 8.7(4), 8.9(5)"a," 8.14(1)"h," Notice ARC 952A 6/13/90
Controlled substances, 10.16, Notice ARC 951A 6/13/90

1.2(5) — No questions on 1.2(5).

2.10(1) — Jessen said that amendment to 2.10(1) would add the Iowa Drug Law Examination to requirements for licensure as a pharmacist. The passing score shall be no less than 65 percent.

Clark asked if the examination dealt with processes or the ways to handle drug-related matters. Jessen said that would be in the standardized National Examination (NABPLEX) which is given in all but one or two states. The passing score for that test is 75. Clark expressed the opinion that passing scores should be much higher.

Jessen responded to question by Doyle that 90 to 95 percent pass the test.

PHARMACY EXAMINERS Contd.

There were no questions on amendments to 4.1, Chapter 8 or 10.16.

Pavich in the Chair.

PROFESSIONAL LICENSURE

Appearing for the Division was Susan Osmann. The following agenda was considered:

PROFESSIONAL LICENSURE DIVISION[645]
PUBLIC HEALTH DEPARTMENT[641] "umbrella"
Speech pathology and audiology continuing education and disciplinary procedures — complaint and hearing procedures clarified, 301.101, 301.103, Notice ARC 958A 6/13/90
Speech pathology and audiology assistants, 302.2, 302.4(2), Filed ARC 959A 6/13/90

301.101, 301.103

Clark questioned new language in 301.101 which would allow the Board by motion to investigate a complaint against a licensee. She thought investigations would be made through the Department of Inspections and Appeals. Osmann said the language would permit the Board to begin an investigation on their own volition without a complaint. The DIA investigator only works on a case when it is assigned by the Board.

It was noted that "administrative law judge" should be substituted for "hearing officer" throughout the rules.

302.2, 302.4

No questions regarding 302.2 or 302.4.

PUBLIC HEALTH

Those present for rules of Public Health were: Phyllis Blood, Maternal and Child Health Bureau; Jane Culp, Office of Rural Health; and Gerd Claybough, Health Planning. The following agenda was before the Committee:

PUBLIC HEALTH DEPARTMENT[641]
Maternal and child health, 76.4, 76.6(2), 76.7(2), 76.12(2), 76.12(3), 76.14(4)"b," 76.14(5)"b," Notice ARC 960A 6/13/90
Office of rural health — graduate nursing grants program, 110.6, Notice ARC 1005A 6/27/90

Ch 76

Blood reported that amendments to Chapter 76 include a definition of "physchosocial counseling" which will now permit a social worker or someone with a degree in sociology or psychology to provide the counseling service. "Registered nurse" was eliminated from the definition because the Medicaid rules for enhanced services requires a social worker or someone with a degree in psychology or sociology. Those rules do not recognize an R.N. Also, there is consensus that clients need more than screening and social workers are better qualified to make assessments.

110.6

In review of new rule 110.6 Culp said that the Department was administering the only grant program in Iowa to maintain a postgraduate nursing program for Iowa resident nurses. The program will start at the end of August at Drake University and emergency implementation of the Notice will be necessary.

Recess

The Committee was in recess for 10 minutes.

Priebe took the Chair and called up Racing and Gaming rules as follows:

RACING & GAMING

RACING AND GAMING COMMISSION[491]
INSPECTIONS AND APPEALS DEPARTMENT[481] "umbrella"
Mutuel departments — pic-nine, 8.1, 8.2(4), 8.2(4)"n," Filed ARC 948A 6/13/90
Thoroughbred racing, 10.1, 10.4(19)"j," Notice ARC 947A, also Filed Emergency ARC 946A 6/13/90

RACING & GAMING Contd.

Ch 8

Mick Lura, Director, stated that amendments to Chapter 8 address a new type of wager called Pic-nine. It is used in Council Bluffs as an attempt to compete with Nebraska.

Pavich commented on the statewide video lottery planned in Nebraska. Lura continued that Pic-nine was a very difficult race to pick and they offer a million dollar guarantee in the form of a 20-year annuity. Lura emphasized that the method of payment is clearly advertised. Tieden thought information on the annuity should be included in the rules.

Lura contended that emergency adoption of the Pic-nine rules was justified because of the potential revenue to the state.

Tieden asked about disposition of the money when no one wins and Lura said at the end of the season the rules provide for a payoff. However, instead of the million dollars, there is a consolation winner. They take 20 percent off the top; 6 percent goes to the state in taxes; 14 percent of it is theirs to pay purses and expenses. Of the remaining money, 50 percent is carried over.

Schrader questioned use of (x) place finisher in 8.2(4)n as being unclear. He declared that it is easier to make a horse or dog run last than first. There was discussion of drug testing and the fact that a photofinish camera catches the entire field. Lura explained the reason that Bluffs Run wanted to use fourth place for drug testing was because they make a random selection and can get insurance for $1 million. Lura was doubtful that the Commission or the track would ever approve last place.

He added that when an animal runs out of form, they are tested. If an odds on favorite finishes fifth, they are tested. He contended a change in medication rules would help.

Lura continued that they could eliminate (x) place but would have to duplicate this rule for each place. The Pic-nine is very common around the country but unusual in the sense of using the fourth place position.

Priebe asked Lura's opinion on eliminating the medication testing barn and using random testing. Lura responded that with use of the detection barn, they would not need all tests required by the Code. Priebe favored random testing. The law requires that those same animals that are in the barn for 4 hours have to be tested, before and after the race. It seemed obvious that these animals would be least likely to show substance.

10.1, 10.4

Amendment to Chapter 10 addresses a recent controversy concerning weight of clothing worn by jockeys. When the wind chill factor reaches a certain level, jockeys will be

RACING & GAMING Contd.

allowed an extra two pounds. However, the betting public must be notified of this prior to a race. The rule is unique to Iowa because of weather conditions. No questions.

REVENUE AND FINANCE

Dennis Meredith was in attendance for the following Revenue agenda:

REVENUE AND FINANCE DEPARTMENT[701]
Examples of computation of alternative minimum tax when there are net operating loss carryforwards and carrybacks to a tax year; clarification of computation of federal tax deduction when separate Iowa corporation and consolidated federal returns are filed and there are capital loss carrybacks, 52.5(2), 53.3(1)"c," 58.5(2), Notice ARC 1013A 6/27/90

Meredith reviewed examples which will assist the taxpayer. No questions.

SOIL CONSERVATION

Appearing for the Division were Kenneth Tow and James Ellerhoff who presented the following:

SOIL CONSERVATION DIVISION[27]
AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]"umbrella"
Coal mining, rescind chs 40 to 49, new ch 40, Notice ARC 971A 6/13/90

Ch 40

According to Tow, their mining rules will be rewritten to incorporate changes mandated by the U.S. Office of Surface Mining. Existing chapters 40 to 49 will be combined into one Chapter 40. He anticipated changes following the Notice and another comment period.

Schrader reasoned that it would be appropriate to provide cross compliance to control the disposal of different types of waste. Tow thought the Division's enforcement tools were probably stronger than those of DNR. The Division has general authority with respect to permanent renewal to consider the record of safety violations. He thinks they would have grounds for taking that into consideration. He viewed revocation of a mining permit to be a fairly severe action. He thought statutory change would be needed for cross compliance.

Priebe was advised that fees in 40.33(3), (2) were the same as those in 1988.

Doyle pointed out that "administrative law judge" should be substitutued for "hearing officer". No formal action.

TRANSPORTATION

Appearing for the Department were Will Zitterich, Mike Winfrey, Terry Dillinger and E. Rees Hakanson. The agenda follows:

TRANSPORTATION DEPARTMENT[761]
Primary road access control, ch 112, Notice ARC 950A 6/13/90
Regulations applicable to carriers, 520.2 to 520.5, Filed ARC 987A 6/27/90
Driver licenses, types of motor vehicle licenses, license examination, nonoperator's identification, application for a license, license issuance, 600.6(3) to 600.6(5), 600.7, 600.10(4), 600.10(5), 600.11, ch 601, 602.30, 604.7(1)"a," 604.10(1), 604.10(3), ch 605, 630.3(2), 630.3(3), Filed Emergency ARC 986A 6/27/90
Removal of tracks from crossings, 800.20, Notice ARC 984A 6/27/90

Ch 112

Zitterich said that the revision of Chapter 112 had been reviewed by the League of Municipalities, Associations of Consultants and Federal Highway Administration. In response to Tieden, Zitterich said that County Engineers had no input.

TRANSPORTATION Contd.

Zitterich described the revised rules as providing a much fairer and more consistent policy for control of access to primary roads.

At the recommendation of Doyle, Zitterich agreed to substitute 30 days for 10 days in 112.3(3)b. No formal action.

Ch 520

No questions on Chapter 520.

600.6 et al.

Dillinger stated that emergency amendments to 600.6 et al. would implement 1990 Iowa Acts, S.F. 2329, which revised the classification system for motor vehicle licenses and the procedures for issuing them.

Doyle asked about motorcycles and Dillinger explained that the new license would not be valid for motorcycles without the specific Class M validation. Doyle referred to 605.9(2) which addressed payment of fees and asked about "bad" checks. In the case of a bad check, Dillinger said the license would be canceled until payment was received.

Doyle wondered if a separate rule would be adopted for the military. Dillinger thought the statute was specific. However, another set of nonemergency rules was being drafted and would cover military personnel.

800.20

Hankanson advised that new rule 800.20 was intended to implement 1990 Acts, HF 2465, pertaining to the removal of railroad tracks from crossings after abandonment. The rules adopt the Federal Code of Regulations governing railroad abandonment procedures. In response to question by Priebe, a local jurisdiction could place a lien against the railroad property, thus preventing sale of the land until abandoned tracks have been removed.

INDUSTRIAL SERVICES

Appearing for the Division was Clair Cramer, Acting Commissioner. Also present was Dennis J. Mohr of Sioux City. The following agenda was before the Committee:

INDUSTRIAL SERVICES DIVISION[343]
EMPLOYMENT SERVICES DEPARTMENT[341] "umbrella"
Payroll tax tables, 8.8, Filed Emergency ARC 977A 6/27/90
Selective Review 343 IAC 4.20, Limit Filings on Workers Comp IAC

8.8

In review of 8.8--payroll tax tables--Cramer explained that the maximum rate is based upon the average weekly wage in Iowa adjusted for withholding of federal and state income taxes.

4.20

Chairman Priebe announced selective review of rule 343--4.20 relative to prehearing conference on workers compensation cases. He recognized Mohr who represents injured workers in complicated workers' compensation cases. Mohr had learned of a plan to limit the amount of evidence submitted to the workers' compensation judges. He presumed that such a plan would be included in a formal rule making but learned that rules were never proposed.

Mohr voiced opposition to any limitation on the number of pages of evidence--contending there was no precedence for such action. He recalled cases where unpaid medical bills exceeded 100 pages and the proposed limitation is 50 pages of evidence. Mohr referenced documents he had produced following exhaustive research on the issue. In his research, which included all the major treatises, Mohr had not found one single jurisdiction in America where there was a page limit on relevant evidence in Administrative procedures. He concluded that any policy to limit pages of evidence should be set out in the rules of the Industrial Commissioner. However, it was his opinion that such a rule would be unconstitutional.

Cramer offered background on the matter and referenced preliminary information he had furnished the ARRC. He spoke of the very serious backlog of contested cases in his agency and the fact that he and his Staff have considered various ways to address the problem. Cramer cited as a major problem volumes of irrelevant and unduly repetitious material. He exhibited a large package of materials from one contested case which the Division refers to as a "box" case. From the "box," Cramer called attention to reproductions of photo copies which were illegible and probably irrelevant.

Cramer continued that the Iowa Supreme Court has said that the Deputy Industrial Commissioners and the Industrial Commissioners on a de novo review must look at all the evidence or offer explanation as to the reason for rejection or no reference. This mandate necessitates a thorough review of much unreadable information. Cramer added that opposing counsel has not exercised the right of objection based on materiality so this results in a tremendous amount of evidence in many different cases. He suggested that the parties who appear before the tribunal--the commissioners--should accept some responsibility. In response to that concern, the staff with 80 to 100 years of hearing experience recommended a limit on the amount of relevant information which can be submitted. They later recognized that approach was not feasible but they would place limits on irrelevant information. This limitation would be accomplished through the prehearing process but was not intended to be by rule.

Cramer addressed Mohr's concerns as to (1) whether or not the limitation should be in rule form and (2) was it appropriate? First, each prehearing order is customed to each particular case. There will be some repetitive language for standard orders. The Commissioners recognize the need to adjust the 50-page limitation at the time of the hearing if the parties can show more relevant information. Cramer emphasized there had never been an intent to exclude "relevant information." Regarding the contention by Mohr as to lack of uniformity, Cramer said that each deputy now rules on admissibility of evidence in each contested case hearing. The uniformity by deputy cannot be accomplished by rule.

INDUSTRIAL SERVICES Contd.

Secondly, with respect to the reasonableness of the 50-page limitation, Cramer maintained that it was essential for the agency to be able to control the process of the hearing on each particular case and issue orders accordingly. They determined this was a way to assist agencies. Cramer was confident that no relevant information would be excluded through this process, and possibly it could be reviewed by the Industrial Commissioner as to its relevancy. It was his opinion that individual parties can make their cases when relevant material exceeds 50 pages.

Mohr cited examples of worst case scenarios, e.g., asbestos cases that involve a 20-year work history, treatment of lungs, history of smoking, employer records, etc., where it would be virtually impossible to reduce the material to 50 pages of relevant evidence. He spoke of difficulties with long distance telephone communication with the deputy. Mohr argued that a 50-page limitation provides advantage to insurance companies and the affluent who can afford to pay for "live" testimony.

Doyle declared there was no excuse for submitting unreadable material and he saw no problem with a rule to address the issue. Cramer stressed that an exclusion of evidence must take place at or before the time of the hearing.

Mohr discussed the Social Security Administration's rule on legibility of evidence.

Pavich wondered if certain businesses had more contested cases than others and Mohr responded that he had been involved in 18 trials with IBP in the last 20 months--they seldom negotiate.

Schrader saw the burden of proof being shifted on admissibility of evidence. Previously, all evidence was considered as admissible unless during the prehearing meeting agreements were made that evidence was not admissible. Under the order, only 50 pages will be allowed and it will be the party's responsibility to make the case that more evidence should be admissible. Schrader opined that the major issue was the question of where does the burden of proof lie.

Mohr was concerned that he may have to converse with 10 different deputies by telephone and he was opposed to having his case analyzed in this fashion. Cramer clarified that the prehearing order is conducted by one deputy industrial commissioner in the office. The information in this order is compiled by one deputy, in nearly all cases. There is no possibility of 10 different deputies issuing prehearing orders. Also, the prehearing deputy does not see the evidence. The hearing deputy, at the time of hearing, will have the documents that the party wants to be admitted into evidence. In response to Schrader's concern about the burden of proof, Cramer said that currently, any party who wants to introduce evidence which

INDUSTRIAL SERVICES Contd.

is challenged on the basis of materiality of relevance has the burden of proving that the evidence is relevant or material. The rule provides that all relevant information and evidence will be admitted.

Schrader reiterated his main point was that previously the hearing officer made the decision about relevancy or materiality out of the evidence submitted that was not relevant. With the proposed change, the person submitting evidence must offer some kind of proof that over 50 pages is relevant or they will automatically be considered irrelevant.

Priebe emphasized the Committee's function as attempting to protect the public. He was of the opinion that the issue should be studied and placed on the agenda next month.

Doyle thought it was obvious that the agency planned to speed up cases as the legislature wants. However, he suspected there would be more court cases which would ultimately delay the final action even longer.

Cramer was hopeful for the reverse effect. He added that counsel will have to review the evidence before the hearing, and may be inclined to settle sooner.

Royce was sympathetic to the Commissioner's problem. However, the question for the ARRC was to consider whether the order was an administrative rule which must go through notice and public participation. Royce quoted from the definition of rule and took the position that the order came under that definition.

Priebe thought the Committee would be in order to ask Royce and Dierenfeld to research the matter and provide information for a subsequent agenda.

Doyle assumed the agency would not implement the order until the Committee makes a decision and Cramer responded that he would be ill advised to act otherwise.

Royce asked for permission to discuss the issue with the Bar Association Committee of which he is a member. The Committee was amenable to his meeting with any interested groups.

Tieden expressed the opinion that some control over legibility was needed.

Schrader asked Royce to comment on Industrial Service rule 343--4.22(86) relative to orders and he advised that those orders were essentially generic.

There was discussion of possible inclusion of this issue on the August agenda. No formal action.

EDUCATION DEPARTMENT (See also Conference Call of 7-19-90)

The following Education agenda was considered:

EDUCATION DEPARTMENT[281]
Open enrollment, ch 17, Notice ARC 974A, also Filed Emergency ARC 973A 6/13/90
Procedures for charging and investigating incidents of abuse of students by school employees, 102.3, 102.4(1), 102.8(5), 102.9(1), 102.10, 102.13, Notice ARC 989A 6/27/90

Appearing for the Department were Kathy L. Collins and David Bechtel. Also present: Kelly Gonder, Fort Dodge; Janet Kinney, Executive Director of P.U.R.E.; Tom Williams, Superintendent of the Belmond-Klemme School District; Laverne Schmidt, Lynette Nuehring, and Cal Bruggeman, Klemme Board members; Representatives Janet L. Adams and Stewart E. Iverson, Jr., and Senator Joseph Coleman.

Ch 17

Chairman Priebe called on Bechtel to review Chapter 17 which was intended to emergency implement Iowa Code section 282.18 as amended by 1990 Iowa Acts, SF 2306, section 1 and HF 2313, section 10 and SF 2423, section 25. The rules address options for enrolling students in a public school district other than their district of residence.

Bechtel presumed that interest focused on the "good cause" exception [SF 2306] as it related to a school closing situation in Fort Dodge. Pupils from that school who transferred to Badger elementary school were to be uprooted again when the Fort Dodge school board voted to close Badger and bus those children eight miles. Many parents were upset and preferred access to open enrollment so their children could go to the Humboldt school district for the 1990-91 school year.

Bechtel indicated that the Department was aware of legislative activity in an attempt to isolate the Badger situation and have it to be filed as a good cause reason under provision added to open enrollment legislation. The Department has discussed this matter with Senator Coleman and many others but believe the legislation failed to accomplish their goal by several points. Bechtel noted that "good cause" was defined in two basic sections but the only one of concern in this situation was the status of the resident district. He continued that the statute mentions a change in the status of a child's resident district, such as failure of a reorganization plan, failure of a dissolution agreement, failure of a whole grade sharing agreement--it does not talk to the issue of action to approve any of those issues.

Royce interjected that it was his interpretation that the definition of "good cause" in section 1 of SF 2306 was limited to that section since the paragraph was prefaced with "For the purposes of this section." The language relevant to Badger was contained in Section 2.

Bechtel disagreed contending that Section 2 contained an exemption to Section 1. Royce asked if it could be argued that the "good cause" definition in Section 1 has no applicability to Section 2. Bechtel responded that Section 2

EDUCATION DEPARTMENT Contd.

only brings in the exemption of Section 1. Bechtel pointed out that the final language did not include school closing as an action under "good cause". Following the Session, Department officials questioned caucus and legislative service staff as to Department's odds in court if Fort Dodge decided to challenge that "school closing meets good cause". A negative response was received from both groups.

Coleman spoke of the fact that legislative intent was to draft language to resolve the Badger problem. In the Senate version of the bill they used "school closing". However, it was pointed out that with use of "school closing", there would be probably 50 or more people who would want to change their residence or change to different schools. He then worked with Senator Murphy, Representative Ollie and others for a solution. After much discussion with legislative members and the Service Bureau, it was agreed that the language in Section 2 [SF 2306] would allow parents of the Fort Dodge school district access to open enrollment for the 1990-91 school year through the phrase "...if a district has a minority enrollment of less than ten percent of the total district student population, the desegregation provisions of section 282.18, a parent or guardian may file a request to use open enrollment for the balance of the 1989-1990 school year..." The legislature believed that the language was unique to the Fort Dodge school district since it was one of the six districts with a minority enrollment of less than 10 percent [§282.18] that chose not to participate in open enrollment for the 1990-91 school year.

Coleman declared that objections to this part of the law would be arbitrary and capricious.

Priebe referred to a letter from Representative Art Ollie who took the same position as Coleman.

Schrader had been made aware of certain problems in Badger by Coleman, Adams and Badger residents. He then spoke with Coleman, Adams, Murphy and Ollie and there was no dispute as to intent. Priebe concurred that there was no question as to intent.

Iverson, who had served on the Conference Committee, was of the opinion that the final version met legislative intent.

Adams also believed that intent had been accomplished by Section 2 of the Act [SF 2306].

In response to Tieden, Bechtel clarified that the Department has never argued the intent--only that the law does not reflect intent. He added that when "school closing" was deleted from the "good cause" definition, the Department presumed it was intentional. Bechtel emphasized that the law as written does not isolate Fort Dodge. In fact, it will cover approximately 400 school districts.

EDUCATION DEPARTMENT Contd.

Collins reiterated that the department does not question legislative endeavor but was concerned about the court's interpretation. Obviously, Badger parents would be happy with the Department's acceptance of legislative intent. Fort Dodge might very well appeal. Collins said that based on advice of attorneys who have reviewed the language, the Department believed that regardless of intent, the language did not accomplish it.

Royce recognized the Department's problem with the ambivalent language but was of the opinion that the court could consider legislative interpretation and intent. He thought it could be argued that the good cause exemption in Section 2 [SF 2306] was a completely independent provision. Although Section 2 was entitled "good cause exception," Royce said headnotes were not part of the law.

Bechtel was at a loss as to how they could draft rules or legislation applicable to one school district if the definition were broadened. He also pointed out that if Section 2 stands alone, there would be no reference to minority problems of segregation in Section 1. Priebe was not convinced that Fort Dodge would pursue litigation.

Bechtel suspected that financial obligations could be a factor to prompt action by Fort Dodge.

There was discussion of the desegregation provisions in Code section 282.18 and the fact that open enrollment law was to provide parental choice. Bechtel reiterated the difficulty with "single-district legislation."

Schrader and Bechtel discussed the "good cause" exemption in Section 2 of SF 2306 with Bechtel reminding that it was a one-year moratorium.

Schrader thought that the exemption in Section 2 clearly related only to those districts with a desegregation policy in place of less than 10 percent which narrowed the field to the Fort Dodge district. He then focused on the definition of the status of the child's residence which differed in Sections 1 and 2.

There was discussion of the fact that ARRC options with respect to the emergency rules were limited to objection which would shift the burden of proof to the Department. An objection to emergency rules would expire in 180 days.

Royce recapped his opinion on SF 2306: "Section 2 makes a specific reference to Code section 282.18 dealing with desegregation for that limited purpose and Section 1 contains a laundry list for the definition of "good cause." The good cause definition begins with "For purposes of this section" which he considered to be significant.

EDUCATION DEPARTMENT Contd.

With respect to the deletion of "school closing" as part of "good cause," Bechtel stated that he never met with Murphy during the session, was never asked to appear before the Senate and was never involved with any side of that discussion. Bechtel recalled that he had alerted Ollie of his reservations that the language would not accomplish what Bechtel believed to be legislative intent. Bechtel concluded that this legislation was the worst he had dealt with in 30 years in the Department.

Motion

Tieden moved to object to rule 281 IAC 17.5(282) relating to the "good cause" exception for early open enrollment on the grounds that it exceeded the authority of the Department.

In response to question by Schrader, Royce explained the two different types of objections: One is substantive which says that a rule is unlawful; and the other is procedural which says that it was wrong to file under emergency provisions. Either type has an impact on the emergency rule--it will expire in 180 days.

Bechtel indicated that the State Board would review the Noticed version at their August meeting.

Doyle was interested in knowing why the rules were adopted under emergency provisions. Bechtel said the Department had no other choice since the rules applied to applications up to June 30 of this year.

Motion Carried

The Tieden motion to object carried unanimously. The following was prepared by Royce:

> At a meeting held on July 11, 1990, the Administrative Rules Review Committee voted to object to 281 IAC 17.5 on the grounds that it exceeds the authority of the department in that it does not fully implement the provisions of Senate File 2306, section two. It is the committee opinion that section two of the Act provides a specific and limited open enrollment option for residents of the town of Badger, Iowa; and that the department has failed to recognize that option inrule 17.5. This rule appears as part of ARC 973A, published in XII IAB 25 (6-13-90).
>
> Rule 17.5 ties the applicability of the section two exception to the "good cause" provisions set out in section one of the Act. This action precludes Badger from taking advantage of the section two exception because the school closing in that community was not enumerated as one of the "good cause" exceptions contained in section one. Section two states:
>
> SEC. 2. GOOD CAUSE EXCEPTION.
> FOR THE SCHOOL YEAR COMMENCING JULY 1, 1989, AND ENDING JUNE 30, 1990, IF THERE WAS A CHANGE IN THE STATUS OF THE CHILD'S RESIDENT DISTRICT, NOTWITHSTANDING THE ENROLLMENT LOSS PROVISIONS AND, IF A DISTRICT HAS A MINORITY ENROLLMENT OF LESS THAN TEN PERCENT OF THE TOTAL DISTRICT STUDENT POPULATION,[NOTWITHSTANDING]* THE DESEGREGATION PROVISIONS OF SECTION 282.18, A PARENT OR GUARDIAN MAY FILE A REQUEST TO USE OPEN ENROLLMENT FOR THE BALANCE OF THE 1989=1990 SCHOOL YEAR, OR FOR SUCCEEDING YEARS, ANY TIME PRIOR TO AUGUST 1, 1990 AND THE BOARD OF THE DISTRICT OF RESIDENCE SHALL GRANT THE REQUEST.
>
> *language editorially added

EDUCATION DEPARTMENT Contd.

Although the headnote of this section is entitled "Good cause exception", that does not mean it is specifically tied to the enumerated groups set out it section one. The section one language specifically states that it is "...[f]or purposes of this section..." The committee believes that the exception set out in section two is completely independent of the grounds set out in section one.

In addition, the committee believes the wording in section two was deliberately crafted to benefit the city of Badger. It is the only city in Iowa with a minority enrollment of less than ten percent which is operating under a voluntary desegregation agreement (Iowa Code section 282.18). Based on these two considerations, it is the opinion of the committee ~~that a portion of section~~ two was drafted specifically to assist the town of Badger and that it is improper to deny residents of that city the benefit accorded them by statute by tying the applicability of the section two exception to the "good cause" provisions set out in section one.

Athletic Transfers

Chairman Priebe asked Royce to explain a question raised by Senator Bill Hutchins regarding athletic transfers.

Royce described a situation in Exira where negotiations for whole grade sharing have halted without completion of the formal procedure to reject the proposal. The question is, should the four athletes who wanted to transfer, pursuant to an agreement that was never completed, be allowed to do so under Section 2 of SF 2306?

Bechtel explained their reasoning on that issue. The Department allowed 23 Exira pupils to transfer under the "good cause" section for open enrollment starting this fall. Exira later asked that those children be considered under the "good cause" exemption because of the rejection of a whole grade sharing agreement. The Department was hopeful that the school would not make an issue out of it, since he would have to respond in writing. There was no whole grade sharing agreement to reject. It was never adopted by the two boards and this law applies only to those single school districts where it was rejected--Monroe-Prairie City. Bechtel was concerned about inconsistent application of the law. He recalled consensus for eliminating the one-year exemption from athletics for open enrollment but suddenly people are wanting it.

There was discussion of legislative intent and Royce calling attention to the fact that SF 2306 does not specifically require a formal rejection procedure.

Chairman Priebe recognized Williams, who distributed copies of a prepared statement wherein he expressed concerns that the rules do not reflect legislative intent--17.4(2)c(2). It appeared to him that they were written to cover certain questions and complaints of certain parents. Williams contended that the law expressly states that "change in status of a school district" means "failure of the district to enter into a whole grade sharing agreement". He added that the rules have an adverse effect on districts that have taken the initiative to whole grade share, which he believed was a priority of the legislature and Department, by creating a potential for the agreement to dissolve.

EDUCATION DEPARTMENT Contd.

Belmond-Klemme now has about 15 applications for open enrollment. Williams thought the process in the law should be followed for those petitions to be acted upon. Good cause should be shown for going to another district. Williams urged that the process be allowed to work. If after an agreement, some disgruntled parents are allowed to open enroll, there will be a negative impact on promoting additional whole grade sharing. Williams suggested a stricter definition of "good cause" with specific conditions that ' change in status of local school districts that have entered into whole grade sharing agreements for 1990-91.

Bechtel admitted that the Department tried to be liberal and interpret intent of the General Assembly to be in favor of parents. On one issue, they addressed failure of a whole grade sharing. Parents who filed a petition to get out and were denied by the district should have an option for open enrollment on the intent section to be broadly interpreted in favor of the people. Bechtel agreed it was "stretching" the issue.

Bechtel also spoke of one of several statutes that he considered to be strange. It requires that an athlete must have been paying tuition one or more years to be allowed to participate in athletics. The legislature then revised the law to provide a year or more prior to the enactment date of the law--March 10, 1989. He pointed out that five years from now a parent would have to pay six years' tuition before their child could be in athletics. The Department used "a year or more" in the rule.

Priebe suggested that the General Assembly should be alerted to these problems and Bechtel indicated they would follow their usual practice by submitting problem areas and concerns.

There was discussion of Royce's memorandum on athletic transfers. Royce's argument was that basically the statute could be construed liberally to benefit the parents and pupils to the extent practical. He reasoned that rejection of a sharing agreement would include a failure to act.

Motion

Priebe moved to object to 17.5, unnumbered paragraph 2, on the grounds that it exceeds the authority of the Department. Motion carried.

Objection

The following was prepared by Royce:

> At a meeting held on July 11, 1990, the Administrative Rules Review Committee voted to object to 281 IAC 17.5, unnumbered paragraph two, on the grounds that it exceeds the authority of the department in that it does not fully implement the provisions of Senate File 2306, section two. It is the committee opinion that section two of the Act provides an exemption from the limitations on athletic participation when there has been a <u>failure</u> to achieve a whole grade sharing agreement. Rule 17.5 recognizes the applicability of this section only when there has been a formal rejection of a sharing agreement. This rule appears as part of ARC 973A, published in XII IAB 25 (6-13-90). That section of the Act states in pertinent part:

EDUCATION DEPARTMENT Contd.

Objection Contd.

...CHILDREN WHO ARE THE SUBJECT OF REQUESTS, WHICH ARE FILED PRIOR TO AUGUST 1, 1990, AND WHICH MEET THE GOOD CAUSE REQUIREMENTS FOR A CHANGE IN THE STATUS OF THE CHILDREN'S RESIDENT DISTRICT DUE TO REJECTION OF A WHOLE GRADE SHARING AGREEMENT, ARE NOT SUBJECT TO THE RESTRICTIONS ON ATHLETIC PARTICIPATION CONTAINED IN SECTION 282.18 IF THE DISTRICT TO WHICH THE CHILD IS TO TRANSFER UNDER THE REQUEST IS OR WAS A PARTICIPANT IN A WHOLE GRADE SHARING AGREEMENT.

The department is of the opinion this exception is not applicable in cases where the whole-grade sharing plan was not formally rejected according to procedural requirements. It is the opinion of the committee that the department's position is too rigid and the exception provided in section two should be applied even for "informal" rejections. It should be noted that Senate File 2306 does not specifically require that a formal rejection procedure be followed, it simply states that rejection of the agreement results in an exception for athletic transfers. This language should not be restricted by implying any formal procedural requirements not specifically required. Note the introduction to the Act set out in section one:

IT IS THE GOAL OF THE GENERAL ASSEMBLY TO PERMIT A WIDE RANGE OF EDUCATIONAL CHOICES FOR CHILDREN ENROLLED IN SCHOOLS IN THIS STATE AND TO MAXIMIZE ABILITY TO USE THOSE CHOICES. IT IS THEREFORE THE INTENT THAT THIS SECTION BE CONSTRUED BROADLY TO MAXIMIZE PARENTAL CHOICE AND ACCESS TO EDUCATIONAL OPPORTUNITIES WHICH ARE NOT AVAILABLE TO CHILDREN BECAUSE OF WHERE THEY LIVE.

The statute requires that it be construed "broadly" to maximize choice. This would imply that provision establishing exceptions should be liberally construed in favor of the student, and that technical restrictions should be minimized.

No Rep — There were no recommendations for the following except for Schrader's request to add Law Enforcement Academy to the August agenda:

NO AGENCY REPRESENTATIVES REQUESTED TO APPEAR FOR THE FOLLOWING:

DISASTER SERVICES DIVISION[607]
PUBLIC DEFENSE DEPARTMENT[601] "umbrella"
Uniform rules, chs 2 to 4, Notice ARC 949A 6/13/90

REGENTS BOARD[681]
Personnel administration — one-year extension for red-circled salary, 3.39(4), Notice ARC 957A 6/13/90

The next regular meeting was scheduled for August 14 and 15, 1990.

Adjourned — Senator Tieden moved for adjournment at 12:15 p.m. Carried.

Respectfully submitted,

Phyllis Barry

Phyllis Barry, Secretary
Alice Gossett, Admin. Asst.

APPROVED:

Chairman