

MINUTES OF THE REGULAR MEETING
of the
ADMINISTRATIVE RULES REVIEW COMMITTEE

TIME OF MEETING: Tuesday, November 14, 1978, 9:35 a.m.

PLACE OF MEETING: Senate Committee Room 24, Statehouse, Des Moines, Iowa.

MEMBERS PRESENT: Chairman Berl E. Priebe, Vice Chairman W. R. Monroe, Jr., Senators Minnette F. Doderer and E. Kevin Kelly, Representatives Donald V. Doyle and Laverne W. Schroeder.
Also present: Joseph Royce, Administrative Coordinator.

MINUTES Doyle moved to dispense with the reading of the October minutes and that they stand approved.
Motion carried viva voce.

REVENUE Donald R. Cooper reviewed amendments to chapters 38,
Chs 38, 40, 41, 43 40, 41, 43 (IAB 10/18/78) regarding individual income, corporation income and franchise taxes. The amendments were intended to implement legislation enacted by the 67th GA. Findings of the department's tax review committee and policies adopted by the department have been incorporated into these rules. Cooper noted, in chapter 38, procedures have been set out re bonding. Discussion of delinquent filings with Cooper reporting requirements are similar to filing of bonding on delinquent sales tax. Doyle inquired if the filing of bonding were withheld, would an employee be liable. Cooper replied in the negative.

40 The civil service retirement exclusion has been incorporated into chapter 40. Also, the jobs tax credit allowing a person to claim credit thus reducing their Iowa taxable income for federal purposes. Cooper advised after stare decisis by the Iowa Supreme Court in re the First National Bank of Ottumwa, the department reinstated rules for computing Iowa tax adjustments.

41 Amendments to chapter 41 incorporate the department's present policy of determining federal income tax deductions for persons filing separate returns.

43 Chapter 43 contains departmental rules regarding tax assessment abatement and qualifications and examples. In reply to Priebe's question, Cooper said the director of the department will have final decision as to abatement.

REVENUE
(cont'd)
53, 54

Changes made in chapter 53 were implemented stare decisis re the First National Bank of Ottumwa. In re 54.2(3)"i" and "ii", rental income, Schroeder was concerned Iowa truckers would lease out-of-state, in order to avoid paying tax on rental income. Cooper replied if a person is unable to determine where the actual income is earned, the state commercial domicile would be taxed. He indicated most of the rules had been gleaned from the multistate compact rules. Schroeder wanted assurance truckers would not be taxed by two states. Priebe commented that reciprocity should prohibit this.

In answer to Schroeder's question as to whether the trucking industry had been apprised of the rules, Cooper replied the Iowa Taxpayers Association had been notified. Schroeder asked and received unanimous consent to temporarily postpone action on chapter 54, while he placed a call. When the matter was brought up again, no action was taken.

54.2(2)a"iii"

In response to Schroeder, Cooper pointed out that Regents' institutions are tax exempt. No action.

ENVIRONMENTAL
QUALITY

David Bach, Hearing Officer, was present for review of the following filed rules:

ENVIRONMENTAL QUALITY[400]

Water quality, definitions, 15.1	F.....	11/1/78
Waste water construction and operation permits, amendments to ch 19	F.....	11/1/78
Water distribution and treatment, operators, amendments to ch 21	F.....	11/1/78
Water supplies, amendments to ch 22	F.....	11/1/78
Water quality, rules of practice, amendments to ch 24	F.....	11/1/78
Procedures in contested cases, amendments to ch 55	F.....	11/1/78

15

Bach pointed out revisions in the definitions, and construction standards for sewers, contained in chapter 19, were adopted by reference. Standards of ten states were modified to conform with specific Iowa needs. Bach also informed the committee that periodic modification is anticipated.

19

Discussion centered around site approval, 19.2(2) and Joseph Obr said the rule is identical to that used since 1930. Priebe asked if changes had been made and Bach agreed to research an answer. Doyle made the point that allowing wastewater treatment plants within twenty-five feet of property lines and rights-of-way is questionable practice. Obr and Bach responded it is unlikely a wastewater pond would be placed close to highways since the twenty-five

ENVIRONMENTAL
QUALITY
(cont'd)

19 foot requirement is a minimum. Obr reminded the rule applies to newly approved plants and asked if Doyle was suggesting making the requirement greater distance from a right-of-way.

22 In re chapter 22 amendments, standards for drinking water main extensions, standards for separation and site and water main requirement standards for local governments are included. In answer to Schroeder, if city and state ordinances conflict, state law would not supersede city. Obr stated local laws are generally more restrictive than state.

Bach reminded the rules concern public water supply systems, which are defined as those serving more than twenty-five people.

Obr advised that guidelines for private water lines and systems are set by the state health department. He noted the Department of Environmental Quality had worked with the departments of Agriculture, Social Services and Health in an attempt to achieve greater consistency.

In response to question by Doyle, Obr informed that the DEQ is responsible for checking water supplies of state facilities.

ch 24 Discussion of rules of practice and site survey applications as well as requirements for becoming a civil or sanitary engineer.

ch 55 In re 55.8(1), Doyle questioned the grammar and suggested probably the word "hearing" should have been included. In checking, Bach noted the word "hearing" was not in the filed rules. He agreed to make the correction.

ch 21 Bach advised amendments to chapter 21 give greater credit to operators of treatment plants or water distribution systems for taking directly related continuing education courses.

The committee reviewed the August 15, 1978 delay placed on filed emergency amendments to 3.1(1), anaerobic lagoons.

Bach discussed the following rules under notice:

- Water quality standards, 16.3(3)"b", 16.3(4)"b", 16.3(5)"e" N..... 11/1/78
- Odor, Public hearings on effective date delay, 1.2(35-37), 4.4(12), 4.5(1,2)-14.3(3)..... 10/18/78

ENVIRONMENTAL
QUALITY
(cont'd)

Anaerobic lagoons, 3.1(1), filed emergencyE..... 11/1/78

Attention was directed to the IAB 10/18/78 wherein the department proposed a one-year delay on the rules pertaining to nuisance odor standards. Bach announced a public hearing to be held January 11, 1979.

Bach indicated since the delay for legislative perusal is in effect, DEQ will await legislative action upon the anaerobic lagoon problem. He said in the event the general assembly fails to act, the rule will become effective.

16.3(3-4,5) deals with revised water quality standards to meet EPA requests which are more restrictive. A hearing is scheduled for December.

ARTS COUNCIL

Dwight Keller, Fiscal Officer, discussed policies and procedure--2.1(5)"a"--under Notice of Intended Action. He discussed changes in grants made by the council. Application procedure has been changed to July through June, corresponding with the state fiscal year. More flexibility is being allowed in submitting applications for grants and special needs grants have been dropped. Doyle cited the postmark deadline legislation he had implemented in the legislature and requested Keller include this in the rule. [§622.105] Keller was amenable.

AGRICULTURE

Betty Duncan and Duane H. Leive were present to review filed rules re processed animal waste products, IAB 11/1/78, 6.15-6.20. Mr. John L. Fuller, Corral Industries, was also present. Both Priebe and Schroeder expressed opposition to 6.17(8) concerning undried, processed animal waste products. Schroeder stated a situation could arise where the product would contain an excess of 30.0% combined wood, litter, dirt, sand, rocks, etc. Priebe expressed a desire for perusal of the rule by the legislative Agriculture Committee during the 1979 legislative session.

DELAY
6.17

Schroeder moved the following delay:

The Administrative Rules Review Committee moves to suspend the effective date of rule 6.17, relating to quality standards for animal waste

AGRICULTURE
(cont'd)

products, until the expiration of 45 calendar days into the 68th General Assembly, pursuant to the authority of SF 244, §19. The committee is concerned that subrule 6.17(8), which allows a maximum of thirty per cent of the waste product to be either dirt, sand or other foreign material, is excessive considering that the wasteproduct is ultimately used in animal feed. The rule is to be forwarded to the House and Senate Agriculture committees for their consideration.

Discussion of open-space material as opposed to pit material in animal waste products as to the feasibility in Iowa. Fuller said the process has been used successfully in Arizona and Colorado.

VOTE
6.17

The Schroeder motion to delay carried with 4 aye votes. Doderer and Monroe, absent.

Discussion centered around the requirements for food service establishments, food establishments, hotels and vending machines, chs. 37-39, 46.1, 46.2, IAB, 11/1/78. Priebe reiterated his concern as to the Iowa mandate to keep silverware covered. No action taken.

VETERINARY
MEDICAL EXAMINERS

Bette Duncan represented the Veterinary Medical Examiners in re 4.1(1), 4.2, 4.5-4.7, filed emergency, IAB 10/18/78. There was discussion as to the definition of "lay veterinary assistant", which was amended to substitute "animal technician." Schroeder opined the language is unworkable and asked for a definition of "surgery." Duncan noted there was no definition. She was amenable to amending 4.5(2) to delete "shall not perform surgery." Duncan further suggested that the following be added: ",except as assistant to and under the direct supervision of a licensed veterinarian." The legislative intent was to prohibit an animal technician from prescribing drugs.

RECESS

Chairman Priebe recessed the meeting briefly to await a quorum.

Duncan agreed to forward committee comments to the Board.

ENGINEERING
EXAMINERS

Arnold Chantland and Patty Lewis were present for review of conduct and disciplinary actions, 1.7, 4.1-4.3, 4.5-4.7, Notice of Intended Action, IAB 10/18/78.

ENGINEERING
EXAMINERS
(cont'd)
4.7(5)

In answer to Priebe's question, Chantland said the board considered the rule to be non-controversial. Royce called attention to language in 4.7(5) which restricted employment to be "solely" on the basis of merit. Doyle was concerned as to implementation, in particular, for an engineer working under a federal contract, which mandates affirmative action be a part of the program. Discussion ensued about affirmative action, merit and registrants employed by engineers. Doderer inquired as to how rules might be written to encompass private enterprise.

Chantland stated the engineering examiners hoped, under the federal contracts, there would be no conflict in the affirmative action area. Doderer said the state's merit system is not compatible with affirmative action, and, many times, minority individuals are not included in the top five candidates for a position.

It was the consensus of the committee that the word "solely" should be deleted and Chantland was amenable. Also, Doderer requested the word "knowingly" be removed from 4.7(5) whenever included, as it is redundant. Chantland agreed.

Royce reminded that in 4.6, being adjudged "mentally incompetent" requires a court decision. Doderer suggested deleting the word "mentally" and Chantland said the Board would review the matter.

Priebe inquired, in re 1.7(6), as to the quorum requirement. Chantland replied there are seven board members, thus a quorum of four meets requirements.

NURSING BOARD
ch 5

Lynne Illes, Executive Secretary of the Board, and Barbara Steen, Chairman, Iowa Board of Nursing, were present for review of chapter 5, IAB 10/18/78, continuing education. Illes commented there had been ten informational meetings before the public, with approximately 2500 in attendance. In addition, an October 25 public hearing was attended by 250 persons. She continued that in the matter of first-year continuing education after graduation, the board had received an unofficial attorney general's opinion. If requirements are accepted by the board in lieu of the first full year of continuing education, the person would not be required to have continuing education within two to three months after graduation.

NURSING BOARD
(cont'd)
ch 5

Illes said these rules are a result of compromise among the various agencies of nursing, but the nurses prefer control of all programs. Discussion of travel problems encountered in meeting continuing education requirements. Priebe pointed out that the word "expert" is not defined, with Illes saying the point was well taken. She added that the board has attempted to keep uniformity in definitions. Illes advised that the department had apprised all nurses of the continuing education requirements.

In re Schroeder recommendation to mail individual notification to each nurse, Illes was reluctant due to lack of funds. It was pointed out that the Administrative Code and Bulletin were created for this purpose. No formal action.

In re 5.1(13), Monroe said the Nursing Board should be more explicit. He suggested the Nursing Board seek accreditation by the North Central Association. Illes replied the Board is attempting to include nationally recognized nursing schools on the provider list.

Kay Meyers, Executive Director, Iowa Nursing Association, commended the Nursing Board for their efforts in obtaining input from every nurse in the state.

CHIROPRACTOR
141.10(1) "c"

Dr. Ronald Masters was present for review of filed rule 141.10(1) "c", licensure fees, IAB 11/1/78. Monroe expressed opposition to the increase of fees to \$50 noting that this will triple the appropriation. No action taken.

LUNCH

The chairman recessed the committee at 12:00 noon for lunch to be reconvened at 1:30 p.m.

RECONVENED

Chairman Priebe reconvened the meeting at 1:45 p.m. with Doyle, Monroe and Schroeder present. Doderer and Kelly not present.

HEALTH

Peter Fox, Hearing Officer, and Dana Petrosky were present for review of the following:

Chiropractors, licensure fees, 141.10(1) "c" F.....	11/1/78
Funeral directors continuing education, 147.102(4) F.....	10/18/78
Blood testing laboratories, 3.2 F.....	10/18/78
Care facilities, amendments to chs 57-59, 63, 64 F.....	11/1/78
Psychology continuing education, 140.100-140.109	10/18/78.

HEALTH
(cont'd)

HEALTH DEPARTMENT(470)

Physical therapists, continuing education and disciplinary procedure, 138.100-138.113	N	10/18/78
Physical therapy examiners, open meetings, 138.300	N	10/18/78
Podiatrist continuing education and disciplinary procedure, 139.200-139.213	N	10/18/78
Podiatry examiners, open meetings, 139.300	N	10/18/78
Psychologists, disciplinary procedures, 140.200-140.214	N	10/18/78
Psychology examiners, open meetings, 140.300	N	10/18/78
Optometrists, disciplinary procedures, 144.100-144.113	N	10/18/78
Optometry examiners, open meetings, 144.300	N	10/18/78
Hearing aid dealers, disciplinary procedures, 145.200-145.213	N	10/18/78
Hearing aid dealers, open meetings, 145.300	N	10/18/78
Barber continuing education and disciplinary procedures, 152.200-152.213	N	10/18/78
Barber examiners, open meetings, 152.300	N	10/18/78
Speech pathology and audiology continuing education and disciplinary procedures, 156.100-156.113	N	10/18/78
Speech pathology and audiology, open meetings, 156.300	N	10/18/78

✓ Petrosky, Division of Health Facilities, presented amendments to chapters 57-59, 63 and 64, IAB 11/1/78 to overcome committee objections filed earlier. The rules were acceptable.

Fox noted that 147.102(4) will provide for self-study to comply with continuing education for mortuary examiners.

3.2 In re 3.2, venereal disease testing, positive test results are to be submitted within twenty-four hours. The disease contact center is interested in expediting investigations and prohibiting unnecessary spread of disease.

138, 138.300, 138.100-138.113 and 140.100-140.109 were acceptable as published.

139.200-139.213 Mention was made of the Royce memorandum of 11/2/78 wherein substance abuse by licensees was addressed. Schroeder stated that a license should be revoked if a licensee unlawfully uses a controlled substance. He suggested further study with the possibility of attempting a compromise with a bit more stringent language.

2:10 p.m. Doderer arrived. Monroe took the position in the event a licensee is guilty of substance abuse within the scope of their practice, their license should be suspended or revoked.

In 139.212, suspension, revocation or probation of licenses, Royce suggested substituting "may" for "shall". Fox indicated the language is a direct quote from the statute. The remainder of the Health Rules on the agendum were acceptable as published.

MERIT Wallace Keating, Director, appeared for review of the following:

MERIT
(cont'd)

MERIT EMPLOYMENT[570]

Pay increase upon promotion, 4.5(4)"a-g", filed emergency ... ~~FE~~..... 11/1/78
Pay increase upon promotion, 4.5(4)"a-d, g", filed emergency ~~FE~~..... 11/1/78

Rules were acceptable as published.
Kelly arrived.

2:15 p.m.

MENTAL HEALTH
AUTHORITY

Carolyn Brewer, Mental Health Nurse Consultant,
discussed the following:

MENTAL HEALTH AUTHORITY[567]

Agency organization, ch 1..... ~~N~~..... 11/1/78
Guidelines for grants-in-aid, amendments to ch 2. ~~N~~..... 11/1/78
Standards, ch 3..... ~~N~~..... 11/1/78
Review and evaluation, ch 4..... ~~N~~..... 11/1/78
Administrative procedures, ch 5..... ~~N~~..... 11/1/78

Since 1977, the program has been expanded with chapter 1 now addressing definitions, as well as organization, responsibility and functions of the agency. No questions.

RECESS

The chairman recessed the committee for fifteen minutes. Monroe inquired if the interim study committee had copies of the rules. Royce answered in the affirmative. Brewer informed the committee that the governing board membership was fifty-six and the mental health authority has recommended that this be decreased.

SUBSTANCE ABUSE

Aaron Martinez reviewed amendments to chapter 3, licensure standards for treatment, IAB 11/1/78. Chapter 1, organization, chapter 3, licensure standards for treatment and procedures, chapter 4, were acceptable as published.

SOCIAL SERVICES

No representative was called for perusal of the following:

SOCIAL SERVICES DEPARTMENT[770]

Medical assistance advisory council, 79.7..... ~~F~~..... 11/1/78
Intermediate care facilities, amendments to ch 82... ~~F~~..... 11/1/78

Schroeder moved the following objection:

OBJECTION
79.7(5) "b"

The Committee objects to paragraph 79.7(5)b, relating to voting requirements for Medical Advisory Council, and appearing in the 11-1-78 IAB, on the grounds that it is unreasonable. The rule would allow a motion to pass the council upon a vote consisting of the majority of the quorum. This would allow a minority of the council members to pass or adopt measures. This objection may be overcome by amending the paragraph to require a majority vote of the entire council to carry a vote.

The motion was adopted with 4 ayes--Monroe and

SOCIAL SERVICES
(cont'd)

Doderer absent.

The following rules were acceptable as published:

ACCOUNTANCY, BOARD OF[10]		
Colleges recognized, applications for examinations, 3.1, 3.5, 3.7(4,7)	F	10/18/78
Application deadlines, 4.5	F	10/18/78
Office manager, 7.5	F	10/18/78
Continuing education, amendments to ch 10	F	10/18/78
Professional conduct, ch 11	F	10/18/78
Procedure for enforcement, ch 12	F	10/18/78
Forms, 13.1	F	10/18/78
Licensee discipline, ch 15	F	10/18/78
ARCHITECTURAL EXAMINERS[80]		
Continuing education, disciplinary action, chs 3 and 4		10/18/78
CONSERVATION COMMISSION[290]		
Wild turkey hunting, ch 111	N	10/18/78
Employment Agency Licensing Commission[350]		
Rendering decisions, time period, 3.1	N	10/18/78
NURSING HOME ADMINISTRATORS BOARD OF EXAMINERS[600]		
Open meetings, 3.300	N	10/18/78
PLANNING AND PROGRAMMING[630]		
Building code, 5.200, 5.700	N	11/1/78
PLANNING AND PROGRAMMING[630]		
Building code, vent dampers, 5.800(4)	F	10/18/73
REGENTS, BOARD OF[720]		
Animals on university campus, 13.7(1), filed emergency after notice	FEAN	11/1/78
COLLEGE AID COMMISSION[245]		
Scholarship program, 2.1(7)"d"	N	11/1/78
National guard educational benefits, ch 9	N	11/1/78

Kelly moved to accept all of the above agency rules.
Motion carried.

Priebe reiterated concern for the Regents rules,
animals on university campus, but after discussion,
no formal action taken.

COMMERCE COMMISSION	Electric and gas utilities, customer service, 19.4(15), 20.4(17), see also amended notice	N	11/1/78
	Electric and gas utilities, customer billings, amendments to chs 19 and 20	N	11/1/78
	Electric utilities, services area maps, new chapter	N	11/1/78
	Gas and electric utility service, 19.3(1), 20.3(1)	F	11/1/78

As requested by the Commerce Commission, the committee
agreed not to review the above rules which were pub-
lished in the agendum. However, written request was
made regarding that portion of Docket RMU-78-8 which
prohibits a utility from shutting off service during
the winter months.

Priebe called to the telephone.

TRANSPORTATION

Monroe in the chair. Carol Coates, vehicle regis-
tration, discussed the following:

TRANSPORTATION
(cont 'd)

Dealer plates, [07,D]10.4(1).....F..... 11/1/78
 Vehicle registration and certificate of title, amendments to [07,D]ch 11F..... 11/1/78
 Temporary use of vehicle without plates, validation stickers, [07,D]11.19, 11.53 .F.. 11/1/78

No adverse comments had been received concerning the rules.

Coates said dealer plates will be changed to contain only numbers. Chapter 11 amendments are merely "clean up". 11.44, statement of nonuse, was amended as a result of committee concern--mobile homes being exempted.

Priebe resumed the chair.

Monroe questioned 11.3(6)"a"(9) as to how the cost value is determined and Coates replied that book value is used and weight is determined by the manufacturer's certification. General discussion with Monroe of the opinion that the information should also be set out in rule form. He moved the following objection to 11.3(6)"a"(9):

OBJECTION
11.3(6)"a"(9)

The Committee objects to subparagraph 11.3(6)a(9), relating to the weighing of vehicles, and appearing in the 11-1-78 LAB, on the grounds that the subparagraph is unreasonable and arbitrary, because it does not specify a uniform method to weigh the vehicles. Specifically, the Committee notes that such factors as whether the vehicle has a full tank of gasoline, or whether air conditioning has been added, can make a difference in the taxable value.

The motion carried with 6 aye votes.

Doyle pointed out similar problems did exist with vans. Coates was not aware of a different way to administer from a practical standpoint.

In response to question by Priebe, Coates admitted that complaints had been received concerning color of the 1979 registration plates. Priebe requested that the department consider correcting the method of computing registration fees for pick up trucks including wagons used by farmers to haul grain.

DECEMBER MEETING

Discussion of date for the December meeting, after which Doderer moved the committee meet Monday, December 11, 1978, one day prior to the regular statutory date. Motion was adopted.

Doderer asked for and received unanimous consent that in the event new committee members have been appointed they be invited to attend the December meeting, with their expenses being paid pursuant to 17A.8(3) of the Code.

11-14-78

CITY FINANCE
4.2 DELAY

Royce brought up for discussion rule 4.2, City Finance, which had been delayed for 70 days at the October meeting. He had reviewed the matter with Larry Blumberg, Assistant Attorney General and concurred that current amendments did not change the rule. The City Finance Committee requested the Committee to withdraw the delay.

MOTION

Kelly so moved. The motion carried with 4 ayes by Priebe, Monroe, Schroeder and Kelly, Doyle passing and Doderer voting "no".

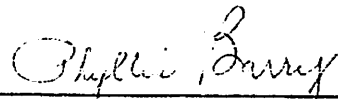
Priebe thanked the three retiring members for their faithful service. [Doderer, Kelly and Monroe]

ADJOURNMENT

Doderer moved to adjourn at 3:40 p.m. Carried.

Next regular meeting to be held Monday, December 11, 1978, at 9:00 a.m., Senate Room 24.

Respectfully submitted,



(Mrs.) Phyllis Barry
Assistance of Vivian L. Haag

APPROVED _____

CHAIRMAN