MINUTES OF THE REGULAR MEETING
of the
ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of Meeting: Tuesday and Wednesday, September 11 and 12, 1979, 9:20 a.m.

Place of Meeting: Senate Committee Room 22, State Capitol, Des Moines, Iowa.

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

ENERGY POLICY COUNCIL

Doug True, Deputy Director of the Energy Policy Council, presented proposed Chapter 6 rules relating to the operation of the technical assistance and energy conservation measures grant programs published under notice IAB 8/8/79.

On 8/14/79, True appeared before this Committee and presented Chapters 4 and 5 which dealt with earlier phases of the same programs which, when concluded, will draw $15 million to the state of Iowa and will require a like match by either state or local governments or hospitals in the state. True pointed out this is just a scope of intended action and, as yet, the Council has not been asked to adopt any regulations.

Schroeder reiterated his concern that Regents' institutions and local schools because of their budget process should have been given some lag time in the program to allow time to get their requests approved, etc., because right now it is a gamble when they submit a request.

True acknowledged there are some biases in the program due to federal regulations. The major one he sees is the bulk of the money for the first cycle has to be committed by the end of the year and the applications must be in by November 15; therefore, school facilities were handicapped by having to apply for the initial phases during the summer months with less staff available.

At the Council's meeting this afternoon, True explained they will be asked to consider a proposal to take money they have already been awarded and grant it in two cycles -- one-half now and the balance early next year -- to alleviate some of the problems of the school districts.

In response to Schroeder, True said even though a request is submitted, they are not committed to do anything. True hoped that many school districts have already budgeted some money in their current budgets at least for audits of their facilities. Those that have not are going to be in a bit of a bind. The same thing is true of local governments and hospitals. It is pretty hard for them to come up with match money in the middle of a budget cycle.

True reported 1,500 applications have been received, and spoke of the difficulty as far as equity when you have hospitals and schools competing for the same pool of money. As a result, they have earmarked 30 percent

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of the money for hospitals, 30 percent for schools and 40 percent would be competed for based on criteria to be developed. The prime basis for funding will be the rate of return -- how much energy is going to be saved and how much does that energy cost.

True further explained that the Board of Regents has been granted funds, as have other state departments, for building energy management and these funds can be used for match money for this federal program.

In Schroeder's estimation, it seemed hospitals have the most flexibility in their budgets to take advantage of this program, and he favors the three-way split of the funds.

Holden cited several references in these rules to areas of discretionary powers given the Council, and specifically asked when the Council imposes additional requirements will they be set out in the rules. True assured him this would be their procedure.

In response to Tieden, True explained that, although no one appeared at the public hearing and only one written comment was received, they are in almost daily contact with representatives of eligible institutions so they feel they have their input already and, also, they sit on the advisory council. In terms of the general public, there is no great interest because the general public is not eligible.

Clark noted two grammatical errors in 6.4(1) and recommended striking the comma in line 8 and in the last sentence strike "solicits" and insert "solicit".

Oakley asked about the time frame for completed rules. True was hopeful they would become effective near the end of October which would allow until the end of December to commit all of the money. Oakley explained that a summary of subject matter was under notice and now the Council must make the decision whether to allow time for additional input by publishing a complete list of the rules prior to publishing adopted rules. Holden's main concern was that the rules be set out in writing.

Set-aside program special review

At the Committee's request, Dr. Edward Stanek, Director, Energy Policy Council, was present for special review of the set-aside program. He referred to Summary of the proposal published in IAB 5/30/79.

He favored flexible rules to permit the program to respond to emergency and hardship needs with the potential for changing with the same degree of rapidity that the fuel shortage situation can change. He was totally in concurrence with the feeling of this Committee that rules of procedure and practice for this program were of the utmost importance for the benefit of the people.

ENERGY POLICY COUNCIL (cont'd)

Stanek reviewed the progress of the rules since their inception in January of this year and distributed copies of a schedule of events for the Committee's information.

Stanek introduced the committee that was formed at their last Council meeting to study the set-aside program and develop rules which would serve the concerns of both this Committee and the needs of the public. Those members present were: Andrew Varley, Chairman, Kathleen Wood, Delmar Nelson, Senator Forrest Schwengels, Representative Arlo Hullinger and Senator James Gallagher, members of the Energy Policy Council.

Proposed substantive rule changes (copies of which were distributed to the Committee) which the Council planned to act on later today were reviewed by Stanek. The proposed rules would establish a more substantive basis for persons to make appeals of denials of requests for set-aside product and also contain a priority ranking they intend to publish in the form of regulations, deleting numbers 5 and 6 from the proposal.

Schroeder questioned the order of priority of numbers 2 and 3 and suggested they should be reversed. Stanek replied these are not, in all cases, the ranking of the highest priority to the lowest since that needs to be done on a month-by-month basis. He indicated the proposed rules would require the Council, at its regularly scheduled monthly meeting, to review priority items and set out what the priority system would be for that particular month. It ensures that there will be accountability of the program in the distribution of that product to the public.

Copies of an example of the guidelines for the distribution of the set-aside fuels for the month of September were presented to the Committee. This afternoon the EPC will consider whether to reschedule their monthly meeting to occur at the beginning of the month so that this information is given to the public with adequate notice for input.

Patchett interpreted Item IV of the proposed rule changes to mean there is no provision that the Council approve the priorities for the coming month but that the Council shall only review, and this leaves the decision making power in the hands of the staff.

To a great degree, Stanek said this was true, but he contended it does establish public accountability while at the same time allows the program to adjust to meet hardship and emergency needs based on facts re petroleum as opposed to how the Council might decide the situation weeks before it occurs. Stanek said the staff is allowed the flexibility to use its discretion, and any variance must be reported to the Council at the beginning of the next month.

Varley indicated it was the feeling of their committee that flexibility was important, since it would be impractical to call a meeting of the Council every time there was a new development. They wanted the Council to set out a general

ENERGY POLICY COUNCIL (cont'd)

list of priorities, and at the beginning of the month the staff would present to the Council the anticipated needs and priorities. The Council has authority to change priorities at any time and the staff has the responsibility to carry that out and report to the Council what they have done.

Varley explained the reason for not being specific is that the Council at the beginning of the month can't anticipate everything that is going to happen and they must be able to respond to new situations.

Schroeder wondered if an emergency amendment to the rules would be filed when decisions to meet emergency needs were made.

Stanek was aware of an accountability problem in ensuring that the public understands the rationale they use in their decision making. He requested guidance from his committee, the Rules Committee and Oakley, as to what procedure would be appropriate. Stanek definitely expected to make a public announcement of change in the priority mechanism to be reviewed by the Council at its next meeting, and, if the Council felt the decision was unwise, they could order that the priority be reversed.

Patchett had no problem, given the circumstances, with the flexibility during the month between the two Council meetings. However, he thought it would be more appropriate to have the Council itself establish the priorities at the beginning of each month subject to a proviso that the staff could make changes in certain sets of circumstances, because he saw this as a policy decision.

Varley responded that the Council initially sets the priorities and the month-to-month decision would not change their list of priorities, but the question will be how far down the priority list they can go in that given month.

Patchett wondered about applicability of these rules if the Council failed to agree with those monthly priorities. Varley was confident that the staff would comply with the Council's wishes at the beginning of the month.

Patchett was unsure whether the authority given to staff, by rule, to set the monthly priorities could be reversed without a rule change.

Schroeder stressed the rule should be clarified to provide that recommendations made by the staff would prevail unless the Council dictated otherwise.

Holden emphasized there should be a rule to require that these emergency decisions be publicized and then spell out this procedure.

ENERGY POLICY COUNCIL (cont'd)

Referring to page 1, item II, of the proposed rule changes, Holden pointed out the language would indicate the assignment priorities are in rank order and suggested they should avoid a statement referring to "rank order" and say instead "the requirements shall be established within the following petroleum uses."

On page 2, item IV, Holden questioned the use of the word "review" since he interprets it to mean a re-examination, and suggested the substitution of the word "determine".

Varley explained that essentially the petroleum uses were pretty much a priority listing.

Oakley was disturbed by the nature of accountability. The subject matter seemed to him to be one that lends itself much more to after the fact, and he thought it important to recognize who is accountable for what and to whom. In this particular case, the most immediate accountability was the staff to the Council and he considered it impractical to require a formal mechanism of publicity. Oakley observed that agencies have a tendency to over publicize when given a mandate.

It was Oakley's contention that inasmuch as the meetings are open, the reports are reviewed by the Council and are available to the press, and that would satisfy any criticisms as to how those allocations were made in the preceding month.

Holden referred to the theory for establishing the Administrative Procedures Act and insisted that any decisions or changes in the rules made in regard to the allocation system must be publicized.

Oakley reasoned if rulemaking is needed for every allocation request, it will create ridiculous situations.

In re Item III, (c), Release of Set-Aside Volume, Tieden was concerned with the use of the words "to the extent possible".

Stanek described the intent of that section. Fuel will not be released in its entirety at any particular point during the month, but it will be the goal to retain roughly 25 percent of the product for each individual brand and distribute no more than 25 percent of that product by the end of each week in the month. That will guarantee fuel if a higher priority need arises near the end of the month.

Holden pointed out a mechanical problem that may not be in the realm of this Committee regarding the apparent inability to shift between major suppliers. He asked if legislation was needed.

ENERGY POLICY COUNCIL (cont'd)

Stanek said that part of the problem is that a credit check is needed and this takes time. It wouldn't be very appropriate for a state agency to order the release of a product to someone who had no established credit rating. In re C.O.D. shipments, Stanek said it could be done, but sometimes a particular end user may not have the funds available at the time of delivery.

As a practical matter, Stanek said, the fuel may not be released by the supplier until credit clears, and if that release were to take place after the middle of the month and it takes three weeks to go through that credit clearing process, then they have done nothing except hold up fuel until the end of the month that is never released to that end user but reverts to the oil supplier. In order to avoid this problem, Stanek indicated the Oil Jobbers Association intends to propose to the Council the establishment, at least partially, of an "anonymous" amount of fuel that could be billed through them.

Holden urged the policy council to pursue a method of getting fuel to the end user other than from the normal supplier.

Varley reported the EPC has no authority to force a particular station that is out of fuel to accept any other named product when that is precluded by their own company. He thought this would require legislation.

Priebe took exception to the EPC's placing railroads as the last category on their priority list, since more grain can be moved by railroads with less fuel than by trucks.

Stanek responded that Council members have met with executives of all the major railroads serving Iowa and, basically, the problem is poor tracks and unavailability of hopper cars. Priebe contended there is no shortage of cars, but that fuel is unavailable, except through "black market".

Stanek reviewed the situation in July when the railroads were short 1.4 million gallons of diesel fuel and the set aside was 1.7 million gallons, meaning that if they had helped out the railroads to the extent they needed fuel, there would have been none left for any other purpose. Except for one railroad, they were all able to purchase this fuel in the spot market. Because of the requirements for shipping large quantities of fuel on a monthly basis, railroads are able to purchase and get delivered that quantity of fuel on a monthly basis.

Priebe favored giving the highest priority to railroads moving grain, considering they are able to move seven times as much grain by rail as by truck with the same amount of fuel.

Priebe called attention to what he considered to be a waste of fuel and manpower by the DOT's system of directing traffic

ENERGY POLICY COUNCIL (cont'd)

at construction sites and requested Stanek to investigate.

In answer to question by Priebe, Stanek knew of only two instances where evidence was available regarding misuse of set aside and they were reported to the attorney general's office.

Patchett urged the Council to consider the Committee's comments about whether or not the Council itself ought to at least approve the monthly priorities, subject to the staff having the discretion to change them.

Patchett clarified a comment he made at the August meeting. He had made the statement that the program might have to be stopped until rules were established, since it was not inconceivable that a particular person who was denied an allocation of the set-aside program could challenge the fact that the whole process was being done in the absence of rules, and the court would clearly have the power to order the program halted until rules were established.

In re Section V of the proposed rules, Patchett indicated the process should be reversed and the hearing should be held prior to making a decision to deny participation in the set-aside program. It was his feeling that until a person has been proven, through a hearing process, to have actually misused that fuel, you have to presume they haven't.

This afternoon, Varley said, the Council will be reviewing the appeals mechanism. Also, he stated there is a problem due to the immediacy with which the decisions have to be made.

Stanek asked for guidance from the Committee on how they should proceed with the promulgation of these rules. He noted Patchett's apprehension with regard to the vulnerability of the program to a legal challenge without the promulgation of rules, yet at the same time Holden has concerns about the rules without due process, interaction by the public, publication, etc.

Schroeder suggested their position would be improved by taking into consideration suggestions indicated by this Committee, e.g. the hearings and publication of the shifting of allocations, etc.

Schroeder inquired whether or not there are any perennial applicants asking for allocations. Stanek believes there probably are people who apply monthly, some with good reason. One group is those involved in the U.S. Department of Energy's hearing and appeals procedure for getting an increased allocation which is lengthy and they do come in month after month until the DOE resolves their case.

Responding to Tieden, Stanek said there are no controls on the prices of distillate, only on the retail prices of gasoline.

ENERGY POLICY COUNCIL (cont'd)

Holden was outraged by the EPC's refusal to supply information in re the set-aside program. He reminded them that on July 2 he had inquired about the distribution of the information of where the allocations were made and asked if they intended to make a determination of whether this will serve a public purpose. Also, he had formally requested the allocation of the product for May and June. Specifically, he asked for information in re the special one million gallons of diesel fuel provided by Koch Refining Company as to cost paid, recipients, etc.

Stanek maintained this information could not be revealed because it was considered confidential under federal trade secret laws. However, the attorney general's opinion, which was requested by Stanek and recently released, said that Stanek could name the recipients if he made the determination that the disclosure of this information would serve a public purpose.

Stanek said he intends to make the decision today after consultation with the Council, and he intends to recommend that the information be disclosed because it does serve a public purpose and that's public accountability of state programs.

With regard to the information on Koch, Stanek said he could have released that information earlier because it was not in the set-aside program. However, those receiving the product were operating under the premise that the information they provided and their request would be kept confidential and, as members of the public, they are due the opportunity to be notified of their rights in the event the information is to be released.

At today's Council meeting, Stanek intends to recommend to the Council the information requested be released, except for suppliers' information, which the Attorney General's office says should not be released. By the end of this week, Stanek expects they will provide notice to appropriate affected parties, informing them of his determination in consultation with the Council. He expects they will receive these notifications through the mail by the following Tuesday and, as the Attorney General's office suggests, they will start a five-day work period for them to seek relief if they feel that determination is illegal, unlawful or irresponsible; and by the 26th of this month he feels they ought to be able to disclose that information.

Holden inquired approximately how many recipients or users were there in the distribution of the one million gallons from Koch. Stanek responded there were about 150 -- primarily for agricultural production and the balance for trucking operations, most probably going to truck stops.

Holden asked whether the tax had been collected on the diesel fuel distributed to truck stops and if they had determined

ENERGY POLICY COUNCIL (cont'd)

the taxable status of the buyers under the Revenue Department rules. Stanek had not made that determination and was not prepared to respond to Holden's question as to whether the tax had been collected.

Holden maintained that fuel going to a truck stop that is in the business of selling motor fuel for truck use does not buy it tax exempt unless he is the prime supplier himself. Charles Haack, Tax Policy Officer, stated diesel fuel is taxed at the pump whether you are a dealer or user.

Patchett understood that records were kept in terms of those who were granted requests for set-aside products, but no records were kept on denials prior to August 13. Stanek clarified that they had been kept from the beginning of August, but, essentially, there had been no denials of set-aside product because of its availability. Increasing demands on staff time necessitated their decision not to prepare records that would have little practical value. In his re-evaluation of staff and programs as of August 1, Stanek named Doug Gross in charge of the Fuels Division, and it was his assessment that these records should be retained at the cost of the time required to prepare them and they have been kept since the first of August.

Patchett asked if, in the future, would they be making public not only those who received set-aside product but those who didn't. It was Stanek's personal feeling that the same reasoning in the Attorney General's opinion in regard to recipients would also apply to applicants, and he will be asking the Attorney General to respond to that question.

In summary, Patchett stated the problems, as he saw them, were that this was a program that was operating at both ends without any accountability, even though it might be operating extremely well -- at the front end, it had no rules for letting people know what to do if they were turned down; and, at the end, there was no accountability because there was no public release of information about who was or wasn't getting fuel.

It was the consensus of the Committee that they should file, under emergency provisions, the results of their meeting today so they have current rules, and then file the same set of rules under notice and go through the regular rule making procedures which would incorporate any changes that would come out of the public comments, etc.

Oakley commented there is accountability with regard to the number of appeals, and one of the best criteria for how well the program is run is the number of appeals made and those that are eventually reversed. Secondly, he felt, to leave the impression there has been no accountability, is somewhat unfair to the agency in the sense that (1) it has a council which does include legislators to which that staff is accountable, and (2) the director is accountable to the

ENERGY POLICY COUNCIL (cont'd)

Governor. He said the Governor has consistently been very supportive of this program and has felt that the staff has done a tremendous job, but that doesn't mean that the point for the necessity for rules isn't a good one. However, Oakley thinks that the impression that the agency was trying to get along without promulgating rules is a bit unfair.

Oakley recommended putting under notice only the proposed rule changes setting out the criteria and the appeal process, considering the time and expense to the agency and the costs to the public and those who represent the public.

Schroeder believes the Committee would endorse this concept.

With regard to the development of rules for this program, Stanek indicated there have been some misconceptions: (1) Although this Committee did point out there was an absence of rules for the program, they had been undergoing rulemaking since January and a hearing had been held in June. Furthermore, he stated, there is a set of federal regulations governing the operation of the program in the absence of state rules.

Recess
Reconvened

The meeting was recessed at 11:05 a.m. by Chairman Schroeder and reconvened at 11:10 a.m.

CONSERVATION COMMISSION

Kenneth Kakac, Law Enforcement, reviewed rules of the Conservation Commission dealing with hunting seasons, snipe, sora, rails, woodcock and grouse, chapter 109, published 8/8/79 as ARC 0467.

Kakac noted these rules adopt the federal regulations for the first three species. The fourth is a native specie and the season is identical to 1978.

Following up on a question raised by Patchett at the 6/5/79 meeting as to procedure followed by the Commission in adopting rules, the Committee requested Kakac to apprise the Commission that, in light of the Attorney General's opinion, they should take action to amend their rules so that minimum voting requirements are necessary to approve Conservation Commission policy. Schroeder urged action be taken prior to the next meeting; if not, it might be called up for special review.

REVENUE DEPARTMENT

The following rules of Revenue Department were before the Committee for review:

Procedures, 7.11(1)"a", "b", 7.11(2) ARC 0475	N	8/8/79
Motor fuel and special fuel taxes, chs 63 to 65 ARC 0515	N	8/22/79
Motor fuel—time tax attaches, 64.2 ARC 0514	N	8/22/79
Assessment practices and equalization, 71.3, 71.11 to 71.13, 71.15 to 71.18, filed emergency ARC 0513		8/22/79
Gambling, 91.1, 93.5, 93.7, 94.1, 94.9, 95.5, 96.1, 96.2 ARC 0476	N	8/8/79
Assessor education commission, 122.2 ARC 0477	N	8/8/79
Practice and procedure, oral hearings, 7.19 ARC 0511	F	8/22/79
Property tax exemptions, ch 78 ARC 0512	F	8/22/79

Those present for the review included Darwin Clapper, Hearing Officer, Mel Hickman, Assistant Director, Excise Tax Division, Michael Cox, Director of Property Tax Division, and Charles Haack, Tax Policy Officer.

REVENUE (cont'd) Ch 7

Amendments to rules relating to practice and procedure were essentially technical corrections and were acceptable.

Chs 63-65

In response to question by Clark, Hickman said the penalty for a late filed report under 63.8 is consistent with that for income tax and sales and use tax. Also, in 63.8, Clark thought it would be helpful to the reader if the monetary penalties dealing with the same thing could be read in proximity.

Clark suggested the first sentence in rule 65.16 should be restructured for clarity, and pointed out a typographical error in 64.20(1) where the word "or" should be changed to "of".

Clark noted in 64.13, line 5, the word "been" should be inserted following the second word "has" and in 64.9(4), insert the word "be" following the word "will".

In Schroeder's estimation, Table I showing gallon usage in field operations on tandem disk schedules v. chisel plowing or plowing is too low on the gallons per acre allowances on disking and, also combining rates are somewhat low, and he wondered if there had been any complaints. Tieden and Priebe concurred with Schroeder's suggestion that the Department update the figures in the charts to be more realistic.

Hickman pointed out these figures are averages and will be their guide with consideration given for different soil conditions.

Oakley observed that a public hearing is scheduled on these rules for September 17.

Priebe regarded the figures in Table III of 64.14 as unrealistic in estimating one gallon fuel to winter and raise a calf to 400 lbs. and suggested they be reviewed.

In response to Tieden's question about the previous system, Hickman responded they previously had an unpublished guideline. He said these tables had been prepared by Professor Harl, Iowa State University, and the formula was updated six or eight months ago.

Brief discussion of refundable sales. Hickman stated some of their auditors had pointed out that 97 percent was being collected and 100 percent was refunded to cities. Holden suggested possible need for legislation in this area.

Gambling

In re amendments to the gambling rules, Hickman explained it was necessary to delete some language to avoid conflict with an Iowa Supreme Court case which held that sections 99B.6 and 99B.7 must be interpreted separately.

Clark referred to Item 3 (93.7) re definition of a bona fide social relationship and thought enforcement of the rule would be impossible.

REVENUE (cont'd)

Ch 71

In response to Tieden, Cox stated that value for rural property is established on a countywide basis for equalization purposes. They establish an assessment level or an average per acre value for a particular county. Cox said these amendments basically implement 68 GA H.F. 757, and require equalization orders to be issued to the county auditor instead of the assessor.

Clark pointed out a grammatical error in 122.2, line 3 -- "their" should be changed to "his or her".

Ch 78

Cox briefed the Committee on the background of chapter 78. He explained, when these were under notice, there was an objection raised as to whether or not property would be exempt when purchased by a public body. In view of this objection, and also 68GA S.F. 159, two subrules were stricken. Cox added that previously, whenever the state or any political subdivision purchased property, all existing tax liens were extinguished even though the tax had already been levied. Under Senate File 159, current levied taxes must be paid.

AUDITOR OF STATE
BANKING DEPT.
CREDIT UNION DEPT.
INSURANCE DEPT.

The following rules concerning mortgage loan disclosure and report were before the Committee:

AUDITOR OF STATE[130]
Mortgage loan disclosure and report, ch 1, filed emergency after notice ARC 0458 ..... 8/8/79
Mortgage loan disclosure and report, ch 5, filed emergency after notice ARC 0457 ..... 8/8/79

BANKING DEPARTMENT[140]
Home mortgage disclosure, ch 10, filed emergency after notice ARC 0459 ..... 8/8/79

CREDIT UNION DEPARTMENT[295]
Home mortgage disclosure, ch 8, filed emergency after notice ARC 0460 ..... 8/8/79

INSURANCE DEPARTMENT[510]
Disclosure of mortgage loan applications, 5.50 to 5.55, filed emergency after notice ARC 0478 ..... 8/8/79

Mortgage disclosure

Department representatives were: Bob Braman, Deputy Auditor, Administration; Thomas Huston, Superintendent, and Howard Hall, Deputy, Banking; Herbert Anderson, Insurance Commissioner; and Betty Minor, Administrator, Credit Union Department.

Clark inquired if mobile homes are included as single family homes in 1.27(3)f. Schroeder responded, if the tongue is removed and the mobile home is put on a permanent foundation, it is considered real property and would qualify for this financing.

On the issue of redlining, Patchett contended the departments were inconsistent with the sense of the Attorney General's opinion about the contents of information that can or should be required, and he wanted to explore why only the Insurance Department rules, consistent with the Attorney General's opinion, require information on varying terms and the other three agencies have struck those requirements from their rules.

Mortgage Disclosure (cont'd)

Anderson responded section 5 of the Act charges him and the other agencies with administering and enforcing section 2 (includes the varying of the terms of the loan) and section 4 (requires disclosure of whether loans are made or denied on a geographic basis). Ordinarily, the Insurance Department does not examine the lending practices of insurors, so they have no data base upon which to make the determination as to whether there is varying of the terms of loans by insurors. For that reason, they felt it was necessary to require that the data base be constructed to give them a means to review assembled data and see whether there are variances between geographic areas. Anderson said he knew of no other way to carry out the mandate. Since there are no penalty provisions in the law they can impose, Anderson concluded it appears the intent is to gather this information so that individuals who have been harmed by redlining have the means to make their case.

Braman reviewed the status of their rules and indicated certain requirements for information had been eliminated from their rules because this Committee decided they had overstepped their legal authority.

Huston told the Committee it is the policy of the Banking Department to examine all real estate loans on the books of every bank examined during each visit. They have access to much more information than even legislative authority is giving to enforce this law. It appeared to Huston that 56 banks will be reporting banks out of 550 that are regulated in the State of Iowa.

Holden recalled the reason for Committee objection was the concern for the potential of more extensive requirements than the federal. He indicated the intent was to meet minimum federal reporting requirements.

Patchett referred to the Attorney General's opinion which said - "The coverage of the Iowa mortgage loan Act is not simply a parity of the federal home mortgage disclosure Act" and, also, "We are of the opinion that the specified state agencies can and must collect the requisite information even if the information required exceeds that required in the federal mortgage loan disclosure statement." Patchett considered our law to be fairly clear about denial by area as well as varying terms by area, and questioned if the one agency is complying with the requirements of the law, how the other three could be in compliance if they are ignoring fifty percent of the legislation.

Patchett inquired, "Can an individual who may feel they are aggrieved have access to information on an across the board statewide basis?" Huston responded, if there were a complaint of any kind, they could get the information relative to that complaint. He noted Mr. Anderson is just gathering information for his own office which Huston feels the Banking Department already has.

Mortgage disclosure (cont'd)

Oakley observed that, in effect, they were back to "square one" despite efforts in the rules process. Oakley said the Governor has been very supportive of the concept and it is one of his priorities, but he mentioned legislation was needed.

The problem, as Oakley saw it, was not in the area of the loans that are granted, but when they are turned down for various reasons. These rules really don't address that problem.

Bob Bray, Legal Services Corporation of Iowa, argued that the law mandates rules to implement "varying the terms" and that those things have to be disclosed.

Oakley questioned Bray if he would agree or not agree that the questions of these kinds of practices are subject to examination on an institution-by-institution basis and, secondly, if they are, Oakley assumes that from his posture Bray did not believe agencies were doing their jobs.

Bray commented that it was his opinion the intent of the law is to provide as public information patterns and practices. Two separate studies have shown that "red-lining" does exist in Des Moines. Bray would not say the agencies aren't performing their jobs but suggested the law was inadequate.

Anderson knew of no provision in the law which would make it any kind of misconduct on the part of an insurance company to "red-line". It may be immoral but Anderson felt he had no authority to take action against an insurance company. In the past, they have not examined lending practices but could examine a loan file.

Oakley responded to question by Priebe concerning the emergency filing of the mortgage disclosure amendments. Oakley had recommended that the effective date of the rules which had been under notice be 7/31/79 to avoid any interruption in the continuity. Identical rules had been in effect under temp. Emergency provisions but would expire on July 30.

No formal action taken by the Committee.

Noon Recess Reconvened

Chairman Schroeder recessed the meeting for lunch at 12:35 p.m. Meeting was reconvened at 1:30 p.m. with Schroeder in the Chair.

CITY DEVELOPMENT

Michael Miller, Office of Planning and Programming, represented the City Development Board for review of Chapter 5 of their proposed rules pertaining to urban revitalization areas. The rules were published as ARC 0482 in the 8/22/79 IAB and would implement 68 GA, Chapter 84.

Committee members concurred that clarification was needed in 5.2 with respect to making any "other exhibit presented

CITY DEVELOPMENT Cont'd

at the hearing" a part of the minutes of public hearings. They could forsee possible harassment if the language were to be construed literally. It was recommended that "facsimile" or similar words be used.

Tieden questioned Miller as to response concerning the Notice and was told there had been no reaction at this time.

COMPTROLLER
Charitable Organizations
Ch 3

William Krahl, State Budget Director, was present for review of rules covering payroll deductions for charitable organizations, published under Notice in IAB 8/8/79 as ARC 0470--Chapter 3.

In an opening statement, Krahl pointed out differences from the noticed rules and those which were filed under emergency provisions 9/7/79 (to be published in IAB 10/3/79). Copies of the emergency version were made available to the Committee.
Rule 3.3 was changed from providing "a continuous open enrollment" to having the enrollment period designated by the charitable organization.
Rule 3.10 limited the number of contributions to four in the initial version but was revised to leave this to the discretion of the payroll system administrator who may allow a maximum of nine charitable organizations for each employee.
Rule 3.11 was expanded under the emergency version by adding after "No cash contributions will be accepted" the words "or administered through the payroll process or system."
Rule 3.16 which provided application for exemption for regents instutions was deleted on 9/7.

Krahl said that opposition to continuous enrollment has been voiced at hearings held concerning the rules.

John C. Cortesio, Jr., Bradshaw Law Firm, appeared as spokesman for six United Way agencies: United Way of Greater Des Moines, Linn County, Ames-Gilbert, Quad Cities area, Siouxland, and Black Hawk County. He referred to §79.14 and 79.15 of the Code. He pointed out that "enrollment period" was defined as the "time during which the charitable organization conducts an annual consolidated effort to secure funds." He doubted that the rules were in compliance with the statute since that language had been ignored.

Clark could see no problem with the rules.

Oakley stated that as a matter of policy, there would be no difficulty in allowing deductions any time. He noted that the Comptroller would need to "intrude" to determine what a "consolidated effort to solicit funds" would be. He doubted that the legislature ever intended to preclude organizations who have continuous effort.

COMPTROLLER Contd

Oakley added that the Comptroller should not be placed in the position of "refereeing the process."

Joe Smith of United Way of Des Moines urged that agencies be required to designate a specific time for their "annual consolidated effort to secure funds."

No formal action taken by the Committee.

REGENTS 9.4

Oakley stated that it was his understanding that the Board of Regents rule 9.4, ARC 0450, re employee payroll deductions for charitable contributions, would be terminated. Notice was published in IAB 8/8/79. No departmental representative was requested to appear before this Committee.

HEALTH Chiropractic Ch 141

The Board of Chiropractic Examiners was represented by their President, Ronald Master, D.C., for special review of filed rules, being Chapter 141 which was published in IAB 9/5/79. A notice had been published in IAB 2/21/79 and revisions were made as a result of hearings and advice from the Attorney General's office. Masters stated that emergency amendments were filed on 8/30/79 to further clarify Chapter 141. The word "chiropractor" was substituted for "physician" in 141.24(4), 141.24(5), 141.41(30) and 141.71; also, 141.1(6) defining "chiropractic" was revised. Masters referred to the following "Concise Statement" which had been sent to the Iowa Medical Society on September 4 setting out the Board's position on the rules:

C O N C I S E S T A T E M E N T

Re: Proposed Rules of the Iowa Board of Chiropractic Examiners Health Department (47), Sections 141.1 (4), (6) and (17) published February 21, 1979.

On February 21, 1979, the Iowa Board of Chiropractic Examiners published certain proposed rules pursuant to authority given by the Code of Iowa. The rules were published pursuant to a majority vote of the Board to promulgate the rules, taken January 30, 1979. In March 1979, the Iowa Medical Society, through its counsel made timely written objection to proposed Rules 141.1 (4), (6) and (17), Health Department (470), Iowa Administrative Code. Hearing was on the Iowa Medical Society objections on March 29, 1979, at which time the Medical Society presented its written objections as well as the testimony of Donald C. Young, M.D. of Des Moines and Robert B. Throckmorton, counsel to the Iowa Medical Society.

The Board of Chiropractic Examiners has met from time to time since the hearing date to consider the objections. On April 26, 1979, the Iowa Attorney General, through Solicitor General Mark E. Schantz, issued an opinion on proposed Rules 141.1 (6) and (17). On August 5, 1979, the Board amended the proposed Rules 141.1 (4), (6) and (17). On August 29, 1979, by emergency rule, the Board deleted proposed Rule 141.1 (6), and deferred any action on a substituted Rule 141.1 (6) until further consideration.

Inasmuch as the change in Rule 141.1 (17), now defined "chiropractic practice acts" to be Chapter 151 and those provisions of the Code of Iowa which incorporate by explicit or implicit reference to the practice of chiropractic", the Board deems the objections of the Medical Society to be met. This definition is intended to conform to the Attorney General's opinion of April 26, 1979. The Board has made conforming modifications in proposed Rules 141.1 (14), 141.2, and 141.21, and deem any objections to these proposed rules by the Iowa Medical Society to be met.

HEALTH
Cont'd

The Board has considered the Medical Society's objection to the proposed rule on temporary licensure, formerly proposed Rule 141.15, and finds the objection valid. Accordingly, the Board has voted to withdraw any such rule.

The Board has considered the Medical Society's objection to proposed Rule 141.51, concerning chiropractic ethics. The Board has amended the Rule to clarify that the Rule applies only to the ethics governing chiropractors. The Board finds that all other objection of the Medical Society to this proposed rule comes from a peculiar interpretation of some of the words contained therein by the Iowa Medical Society and its counsel. To the extent that the Medical Society has any rational objection to Rule 141.51, the Board hereby clarified its intent by stating that the rule would not forbid a chiropractor from associating with a person licensed under Chapter 148, 150 or 150A, Code of Iowa.

The remaining objection of the Medical Society to be addressed at this time is the proposed Rule 141.1 (4).

The originally published proposed Rule 141.1 (4) read:

> "Physician" shall mean a person licensed to practice chiropractic under the laws of this state. Licensee shall place upon all signs used by him/her and place on prominent display in his/her office the words "chiropractic" or "chiropractor" in conjunction with other titles in accordance with chapters 135.1 (5) and 151.6."

By action of August 5, 1979, the Board amended by substituting as new Rule 141.1 (4) which reads:

> "Chiropractor" shall mean a physician licensed to practice chiropractic under the laws of this state."

To the extent that this amended provision does not meet the objection of the Medical Society to the former proposed Rule 141.1 (4), the Board makes this concise statement of principal reasons for and against the rule adopted, incorporating reasons for overruling considerations against the rule, pursuant to Iowa Code Section 17A.4 (1) (b):

PRINCIPAL REASONS FOR THE RULE

1. The Rule conforms to Iowa law.
2. The Rule reaffirms the traditional status of chiropractors in Iowa as one of three types of "physician" licensed to practice the healing arts in Iowa.

PRINCIPAL REASONS URGED AGAINST THE RULE (by the Iowa Medical Society)

1. The Rule is alleged to be contrary to Iowa law.
2. It is alleged that the rule will cause confusion to the public.

DISCUSSION OF REASONS FOR REJECTING THE MEDICAL SOCIETY'S CONTENTIONS

Traditionally, under the Code of Iowa, chiropractors have been one of three types of "physicians" licensed in Iowa. Section 135.1 (5) of the Code provides, for purposes of Title VII "physicians" shall mean "a person licensed to practice medicine and surgery, osteopathy and surgery, osteopathy, or chiropractic under the laws of this state..." The law of this state licensing chiropractic is found in Chapter 151. Section 135.1 (5) further provides that a person licensed as a chiropractor shall be designated as a "chiropractor". Title VII states many obligations of "physician", as defined by Section 135.1 (5), which, of course, are obligations of a chiropractor.

There is no overall definition of "physician" contained in Title VIII of the Code presently.

HEALTH
Cont'd

Former Section 146.5 excluded dentists, dental hygenists, nurses, pharmacists, physical therapists, optometrists, embalmers, podiatrists, barbers, cosmetologists and Christian Science practitioners. Thus, for many years, Titles VII and VIII both contained provisions clearly indicating that chiropractors were a type of "physician" in Iowa, along with M.D.'s and D.O.'s

As late as 1974, the General Assembly has reaffirmed the chiropractors are "physicians". Section 151.8 provides that chiropractors licensed before July 1, 1974, must possess the degree of proficiency and exercise the degree of care "which is common to physicians in this state", in order to use procedures otherwise authorized by law.

It must be noted, however, that Title VIII formerly contained a Basic Science Law, Chapter 146, Code of Iowa (1973). Former Section 146.2 (2) stated: "The practice of the healing art shall mean holding one's self out as being able to diagnose, treat, operate or prescribe for any human disease, pain, injury, deformity or physical or mental condition..." It should be noted that this former provision of the Code is the source of the words contained in rule of the Iowa Board of Medical Examiners defining "practice of medicine and surgery" approved as correct by Assistant Attorney General Blumberg in opinion dated December 29, 1978. Section 146.3 of the former Basic Science Law clearly indicated the M.D.'s, D.O.'s and D.C.'s were the three types of practitioners of the healing arts recognized by Iowa law.

The Medical Society claims that "physician" refers only to M.D.'s and D.O.'s pointing to Sections 148.1, 148 B.1(5), and 148 C.1(6) of the Code. Reference to 148.1 begs the question, because Section 148.2 clearly indicates that a chiropractor would be within the scope of the provisions of Section 148.1, but for the exception contained in Section 148.2 (4). This, as everyone knows, was the Iowa law prior to the act separately licensing chiropractors.

Section 148 B.1(6) is a definition of "physician" for purposes of the chapter on physician's assistants only. This definition merely was employed as a device to clarify that a chiropractor cannot utilize a licensed physician's assistant.

Section 148 C.1(6) provides that only medical and osteopathic physicians are members of the "medical profession". We do not contest this. Chiropractors do not utilize prescription drugs.

Various sections of the Code state that a chiropractor shall use the word "chiropractor" in any titles or advertisements. Likewise, an M.D. must use the word "physician" or "surgeon" and the D.O. must use the word "osteopathic physician" or "osteopathic surgeon". This is clearly designed to avoid confusion among the various types of physicians licensed in Iowa. Nothing contained in the Board's Rule 141.1(4) would permit a chiropractor to use the word "physician" standing alone as a representation to the public. But if a chiropractor is not a physician, as word is used in its general sense, then neither is an osteopath. And here, the Medical Society's argument breaks down, because it contends that both M.D.'s and D.O.'s are "physicians."

There are three types of physicians licensed to practice in Iowa, D.C.'s, D.O.'s and M.D.'s. Perhaps the Medical Society want chiropractors eliminated from that status, but the General Assembly has traditionally and recently rejected that view. The Code places several duties and obligations on chiropractors because they are physicians. The rule merely recognized the status granted by the General Assembly.

Clark pointed out the areas which contained only masculine gender and recommended appropriate revision.

HEALTH Cont'd

James West, Counsel for Iowa Medical Society, expressed opposition to use of the word "physician" and contended this was in conflict with the Code--Title VIII where Chapter 151 is contained. He quoted from §147.72 and 150.2 and noted that the definition of "physician" in 135.1(5) is limited to Title VII and the Practice Acts are contained in Title VIII where use of "physician" is limited to Chapters 148, 150, 150A, 148B and 148C.

West took exception to 141.1(17) which defined "Chiropractic practice Acts" shall mean chapter 151 of the Code and those provisions of the Code of Iowa which incorporate by explicit or implicit reference to the practice of chiropractic." It was his opinion that use of "implicit" was too broad--a specific reference to Chapter 147 would have been more acceptable.

West further voiced opposition to use of the word "scientific" in 141.51(4)--the subrule provided in part "A chiropractor should practice a method of healing founded on a scientific basis;..."

Discussion of definition of "chiropractor"--141.1(4). Clark could see no conflict with it.

Tieden asked who determines that malpractice exists and Masters said this would be a Board decision.

Tieden brought up the matter of continuing education and Masters listed the three methods for compliance: There are accredited sponsors--National organizations, state organizations, sponsors prior or postapproved.

Responding to further question by Tieden, Masters wanted to make it clear that 141.5(14) would not preclude a chiropractor from consulting with a medical doctor.

Holden recommended deletion of the word "entire" before "board of examiners" in line 1 of 141.11(3)d. Re 141.13(1), Holden questioned inclusion of "credentials" in line 3. He further recommended that 141.13(1) d be clarified; that the words "if any," be added in 141.13(1)f, after "other states," in line 2; and that "if any," be added in 141.13(1) g after "has practiced," in line 3. Holden continued by recommending that the word "shall" be substituted for "may" in 141.13(3) since "may" seemed to imply that there were no mandatory requirements.

Discussion of 141.13(11) which provided: "Any failing paper must be reviewed by the entire board (professional members only)." Holden thought public members should be included.

Holden took the position that 141.14(6), second sentence re reciprocal license, was discriminatory since it required an applicant to have two years of full-time practice before making application.

Masters noted that, due to two court cases pending, Iowa does not have reciprocity at this time.

HEALTH Cont'd

Holden was critical of language in 141.24(25)--"delegation of chiropractic services". It was his contention this would be unlawful. In addition, he questioned Masters as to who makes the inspection to determine if "sound professional standards" have been met--141.24(27).

Masters indicated the board would make the determination or delegate the task to the local health board.
Holden felt more detailed standards would be preferable.

Holden referred to nebulous language in 141.41(1) with respect to disciplinary procedure which provided an "alternative to the procedure stated in Code sections 147.58 to 147.71." Masters responded this was included at the suggestion of the Attorney General in an attempt to placate conflicting statutes. Royce noted that "older statutes in Chapter 147" do indeed offer "alternatives" which conflict with the later enactment--Chapter 258A.

Discussion of continuing education requirements.

Objection 141.13 Failed

Holden moved to object to 141.13(11) on the grounds that is goes beyond the statutory authority.
Roll call on the motion showed Schroeder and Holden voting "aye" Priebe, Clark, Tieden and Patchett "no". Motion lost.

Schroeder brought up the definition of "chiropractor" for further discussion--141.1(4). It was his opinion this could be interpreted to prevent a chiropractor from practicing if he were not a physician.

Masters could see no problem--the common definition of physician includes chiropractor and he referred again to 135.1 of the Code.

Oakley returned to the meeting and asked for a recap of the Committee's position concerning the rules (Ch 141). He had been absent for the discussion because of a previous commitment.
Schroeder summarized problem areas. Clark emphasized the need to amend 141.1(17) by deleting the word "implicit".
Priebe questioned Oakley as to his position on the rules. He had no statement to make at this time but added the Governor's office will be reviewing the rules carefully before their October 11 effective date.

Recess

Chairman Schroeder recessed the meeting at 4:15 p.m. and reconvened it at 4:25 p.m.

CAMPAIGN FINANCE DISCLOSURE

Cynthia Eisenhaur, Director, Campaign Finance Disclosure Commission, appeared for review of their rule 4.16, 5/30/79 IAB, which was delayed for 70 days by this Committee at its June meeting.
An Attorney General opinion on the legality of the rule was issued as requested by the Commission and held that statutory authority had been exceeded in promulgating the rule. However, the AG had concurred with the concept and suggested legislation to achieve the purpose.

CFD Cont'd — Discussion of appropriate action to be taken by this Committee.

Motion — Priebe moved to delay CFD rule 4.16 forty-five days into the next General Assembly. Motion carried with 5 ayes. Tieden voted "no".

SOCIAL SERVICES — Social Services Department was represented by Judith Welp, Policy, Research and Analysis; Mary Eldred and Jane Jorgenson, Food Programs; Joe Mahrenholz and Gary Gesaman, Medical Division; Charles Ballinger Penny Bjornstad. The following rules were before the Committee:

ADC, responsibilities of recipients, 40.7(4) ARC 0504 ..... 8/22/79
ADC, period of adjustment, 41.8(4) ARC 0503 ..... 8/22/79
Food stamp program, administration, 65.3, filed emergency ARC 0495 ..... 8/22/79
Medical services, 78.1(11) ARC 0502 ..... 8/22/79
Intermediate care facilities, involuntary transfer or discharge of residents, 81.5 ARC 0516 ..... 8/22/79
ADC, eligibility factors, 41.2(4), 41.2(5-13) ARC 0499 ..... 8/22/79
ADC, computation of income, 41.7(4)"i", 41.8(3)"a" ARC 0491 ..... 8/22/79
Food stamp program, ch 65 ARC 0494 ..... 8/22/79
Medical assistance, former recipients, 75.1(8) ARC 0498 ..... 8/22/79
Medical assistance, authorization process, 80.5(1), 80.5(3) ARC 0497 ..... 8/22/79
Intermediate care facilities, payment procedures, 81.10(4)"f", 81.10(5) ARC 0493 ..... 8/22/79
Intermediate care facilities for mentally retarded, 82.2, 82.3(1), 82.4, 82.7, 82.8, 82.10(3), 82.11, 82.12, 82.14(1) ARC 0496 ..... 8/22/79
Legal services, ch 159 ARC 0492 ..... 8/22/79

ADC — Amendments to Chapter 41 were acceptable. In answer to Priebe, Welp said the rules are basically the same as those under which the Department has been operating.

Food Stamps — Priebe wondered how successful the direct mail service for food stamps had been. Department officials indicated losses are reported and there is no record of serial numbers on the coupons. Priebe requested the Department to provide him with percentages of loss.

Clark raised question re 65.6(1) and 65.6(3)--delays in certification. Welp explained that the department is supposed to process food stamp applications within 30 days and prior to these rules there were no options available. Re 65.6(3), Clark could not conceive a local office allowing delay beyond 60 days and she was disturbed to see this concept in a rule.
Oakley noted that this matter was brought out at the public hearing and it was the consensus that information held beyond 60 days would not be valid. He concluded it will be difficult to evaluate the program for at least a year.

Discussion of 65.8--utility allowance. Jorgenson said the table would be changed annually as mandated by federal regulations. Oakley reasoned that allowances for home heating oil was of great concern and he was interested in reviewing the entire process with the department.

Regarding the "hotline" for complaints or questions about the food stamp program, Schroeder thought this service was discriminatory. Welp indicated that persons can call collect concerning any of the programs. Schroeder could forsee abuse of this privilege.

SOCIAL SERVICES Cont'd

Welp stated that 75.1(8) was intended to clarify the procedure for allowing four months of medical expenses following terminatic of ADC benefits. Bjornstad emphasized the procedure was an effort to provide extra help so it would not be necessary for the recipient to return to the ADC rolls.

Amendments to Chapters 80, 81 and 82 were acceptable as published.

Ch 159

Patchett rasied question as to the legality of 159.1(2) pertaining to a "provider of legal services". The rule would require the provider to be a nonprofit legal aid organization. He considered this to be inconsistent with the Cannon of Ethics of the bar. He continued that the department could not terminate the client-attorney relationship; they could terminate the payment of services. Secondly, it would be improper for the department to terminate the legal services when it is "deemed to be in the best interest of the client" as provided in 159.5. He recommended placing a period after "service" in line 3 of 159.5.

Oakley wondered what options are available to the Department to avoid payment of unwarranted legal services and at what point can this be discontinued.
Schroeder proposed amendment to 159.5 by adding at the beginning, before "Legal services" the words "payment for".

Oakley agreed that Patchett had made a valid point and he was willing to work with the department for alternatives.
Welp indicated they would be amenable to making revisions as recommanded.

Royce wondered what mechanism were available to ensure against pointless litigation. Oakley indicated that this area is being studied.

Amendments to 40.7(4) and 41.8(4) were acceptable as published.

Discussion of 78.1(11)which sets out criteria for payment of surgery for treatment of obesity in any hospital.
Priebe wondered how the Department arrived at the 175 percentage of ideal weight. Bjornstad responded that they followed criteria based on the Iowa Foundation for Medical Care.
Oakley was concerned as to the exclusion of the alcoholic from treatment under the rule. He favored some discretion.
Bjornstad noted that the rule speaks of "nonalcoholic" which is a condition at a given time. Many of these victims would not be physically able to withstand surgery. Ballinger indicated the matter is being reviewed.

65.3, updating a reference, was acceptable as published.

COMMERCE
Warehouse, Grain Dealers

Wallace Dick and Dave Conn were present for review of proposed chapters 12 and 13 pertaining to bonded warehouses and licensed grain dealers. They were published in 8/22/79 IAB as ARC 0486.

In an opening statement, Dick said many of the changes were merely for clarification of existing rules. A major change was the sentence: "Only assets subject to execution will be allowed in determining net worth." This language was added to 12.4--financial statements--upon recommendation of the legislature last year. Rules pertaining to grain dealers are new and will implement Chapters 542 and 542A of the Code.

Schroeder questioned the legality of the first paragraph of 12.13(1 which provided in part that "Grain will be construed as storage at any time less than 30 days if the receiving warehouseman has a policy specifying when such grain will be construed as storage. Such policy must be posted at all times in a conspicuous location in the place of business." Dick recalled the statute provides "no later than 30 days" and their procedure will better serve the public. Schroeder declared they could not allow an option by rule. Priebe concurred with Schroeder that the time could not be shortened.

Conn quoted from the law and could not interpret it to preclude a warehouseman from setting a policy of less than thirty days.

Schroeder challenged the department re authority to require storage facilities to provide ventilation and may require installation of aeration equipment to preserve the quality of stored products. Dick cited §543.2 and 543.8 of the Code as their authority.

In answer to Oakley, Conn said the statute gives the Commission general supervision over storage, warehousing, classifying according to grade and otherwise weighing and certification of agricultural products and inspection as to quantity and quality.

Oakley raised question as to whether the Commission was appropriately in the category of prevention. He asked if the rules would provide substantive departure from past procedures and Dick replied that they would not. They have required aeration in the past and have denied licenses when it was lacking. The federal government has always followed this practice and all other states do also. Dick admitted there were no rules previously to require aeration equipment but they had relied on the statute.

Priebe made it clear he would oppose the rules when filed if they have not been modified.

COMMERCE Cont'd

Conn asked the Committee for guidance. Dick emphasized that measures are needed to avoid loss.

Schroeder and Priebe took the position that 12.25(2) a and b also exceeded statutory authority with respect to temporary storage facilities. Paragraph a dealt with aeration equipment and b would require asphalt or concrete base for each storage unit.

Brief discussion of Chapter 13. Clark noted that the word "be" should be inserted before "limited" in line 4 of 13.11(1).

No formal action taken.

Recess

Chairman Schroeder recessed the meeting at 6:10 p.m. to be reconvened at 9:00 a.m., Wednesday, September 12, 1979.

Reconvened Chairman Schroeder reconvened the meeting at 9:15 a.m. in Senate Committee Room 22. All members were present.

PUBLIC INSTRUCTION

The Department of Public Instruction was represented by Orrin Nearhoof, Director of Teacher Education and Certification. Before the Committee for consideration were filed amendments to 13.8, 14.3, 15.21, 15.41, 16.13 as published in IAB 8/8/79 ARC 0466. Also, this Committee had requested the Department to be prepared to answer questions concerning Chapter 13 of their rules with respect to the required human relations course.

The filed amendments were acceptable to the Committee as published. Also, the proposal to rescind Chapter 21 was unopposed--IAB 8/8/79, ARC 0465.

Human Relations

Nearhoof reviewed briefly their existing rules governing human relations requirements for teacher education and certification--13.18 to 13.22.

Virgil Corey, Representative for the 83rd District, appeared before the Committee to comment on a human relations course of study offered by the Heartland Area Education Agency. He had provided Committee members with an index of the curriculum which included such topics as "Me-In-A-Box", "People Building", "Luxury Liner Cruise", to name a few.
Corey said the course was brought to his attention by some school administrators and teachers. He questioned whether the human relations course should be mandated. He referred to differences and inconsistencies. Teachers have confided to him that the course parallels with "Project teach" which they had previously Many of them consider the course of little value. Corey thought the couse was mandated without sufficient consideration of the impact. He pointed out that costs to teachers vary from $40 to $200.

Schroeder and Priebe mentioned the avenues available to opponents. Corey said that people are hesitant to challenge the DPI.

Nearhoof recalled that only 4 persons attended the hearing on the rules in the fall of 1975. Even now he has had no adverse criticism.

Patchett saw a basic problem was many of the text books and instructional materials were sexist. As Chairman of the Education Committee in the legislature, he encountered many educators who wer not open-mindedto multicultural nonsexist concepts. He viewed the law as legislative intent to make people sensitive to this type of program. He concluded that it may be years before the advantages will be realized.
Patchett recommended a complete review of all the human relations programs by DPI.

PUBLIC INSTRUCTION Cont'd

Nearhoof remarked that each program is given two-year approval unless the State Board changes its policy. He said that even though contents may be basically the same, the delivery method may be different in various institutions.

Clark reported that she had spoken with a number of teachers who were desirous of following leadership in their profession but after becoming involved in the program they realized it was a reiteration of previous training. Teachers are not opposed to the concept but feel that seminars would be less costly and a more effective approach.

Holden commented that a legislative intent "often mushrooms out of proportion" and he made reference to computer proliferation.

Oakley observed that Corey has raised the "consciousness of the public to the problem" but it seemed appropriate to allow the Department to evaluate complaints and make a determination. He agreed the Heartland course contents looked somewhat "bizarre" but doubted a fair evaluation could be made from that alone.

Nearhoof assured the Committee he would take the initiative to review, without formal request, not only the Heartland program but all that have been approved.

Priebe thought the Committee should go on record as requesting that these programs be referred to appropriate legislative committees --Chairmen of Schools Committee and Appropriation Committee on Schools.

Tieden pointed out that he knew of dissatisfaction with the way funds are being spent on these programs.

No formal action taken.

AGRICULTURE

Bette Duncan, Counsel, represented the Agriculture Department for review of the following: "Half-price" gasoline sales, 55.47, filed emergency as ARC 0449 and Pesticides, apiaries, 10.31, filed as ARC 0469, both were published in 8/8/79 IAB. Other interested persons in attendance were: Glen Stanley, State Apiarist; Representative Phil Davitt; Ellsworth Gustafson, Iowa Honey Producers; and Steve Schoenbaum, Attorney, who represented Iowa Fertilizer and Chemical Association.

Duncan briefly explained the purpose of 55.47.
Holden took the position that the Department was too hasty in promulgating the rule to authorize half-gallon pricing for gasoline. He contended that oil companies have been aware of this matter for years.
Duncan said they had been criticized for not implementing the rule sooner.

AGRICULTURE Oakley supported the rule and said the "timeliness was fully justified."
Question was raised as to whether all pumps in a given station had to be converted and the Department made the determination this was the best procedure.
Clark favored the directive. She was inclined to agree with Holden's position but she realized it was the station operator not the oil company who would have the problem.
No formal action taken by the Committee.

Pesticides Duncan stated that Chapter 206 of the Code requires approval of the Chemical Technology Commission of any rules dealing with pesticides. The Commission gave unanimous approval to 10.31 at its September 10 meeting. The rule was revised after its publication under Notice to reflect recommendations of the Administrative Rules Co-ordinator.

Responding to question by Schroeder, Duncan said she had no communication from the chemical and fertilizer interests. Stanley knew of some bee kill during the summer.

Priebe asked Royce to advise him as to whether the Department had exceeded their authority. Royce referred to Chapter 206 and offered his opinion that the bee program did not seem to follow the philosophy behind the statute.

Motion Priebe moved to object to 10.31.

Duncan quoted from §206.11 which enumerates unlawful acts which the Department is charged with enforcing. Royce noted that a criminal statute must be construed narrowly against the interest of the state and in favor of the citizens who may be subject to it. He could forsee a problem in applying the stringent reporting program on general statutory language.

Duncan thought rules were needed to apprise the public of what would be considered unlawful.

Oakley recalled a point he had made on the earlier version of the rules. It was his judgment that if the Department were going to proceed on the basis of the concept of notification, certain changes were needed and these were made. However, he had serious doubts from an administrative standpoint as to the workability of the program. In addition, he questioned the authority for the action. Finally, it was his understanding that the entomology division would have preferred to start with a voluntary program.

Schoenbaum addressed the issue and urged that formal objection be filed. Further, they shared reservations which had been expressed. Their association has developed a voluntary program with the honey producers which is working well. Details of the program were outlined in a document furnished Committee members.

AGRIC. Cont'd

Davitt addressed the Committee as a corn producer and declared it is imperative that he be allowed to use pesticides which are toxic to bees. He supported the rule as providing a responsible means for pesticide use.

Gustafson commented that bee kills occurred last year even though the voluntary program was in effect. He pointed out the value of bees to Iowa agriculture and was dubious that the voluntary plan would work.

Tieden was not sure the rule would help. Duncan reviewed the plan for registration of hives and notification procedures.

Patchett found it to be of some concern that a substantial percentage of the applicators were not members of the association. He had mixed feelings about supporting the objection.

Holden was convinced that a rule was unworkable.

Duncan said most restricted pesticides would be used by commercial applicators.

Objection

Schroeder called up the Priebe motion to object which was as follows:

> The Administrative Rules Review Committee objects to agriculture department rule 30--10.31 relating to application of pesticides toxic to bees on the grounds the rule is beyond the authority of the department. The rule appears as ARC 0469 in Vol. II, Number 3, IAB, August 8, 1979. In essence the rule provides for mandatory reporting system to be followed prior to the application of pesticides harmful to bees. It is the opinion of the committee chapter 206 of the Code relating to pesticides neither implicitly or explicitly authorizes such a program. Chapter 206 in essence establishes a licensing program for commercial applicators and is additionally designed to ensure that all applicators use the product according to manufacturer's instructions. It does not contemplate a mandatory warning system prior to the use of these chemicals.

The motion carried with 5 ayes. Patchett voted "no".

HEALTH

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

HEALTH DEPARTMENT[470]

Physical therapy examiners, public notice, 137.2(6) ARC 0452	F		8/8/79
Physical therapy, open meetings, 138.300 ARC 0453	F		8/8/79
Psychology examiners, open meetings, 140.300 ARC 0451	F		8/8/79
Chiropractic examiners, open meetings, 141.52 ARC 0455	F		8/8/79
Optometry examiners, open meetings, 144.300 ARC 0454	F		8/8/79
Cosmetologists, continuing education, 151.2(1), 151.2(5) ARC 0507	F		8/8/79
Speech pathology and audiology aides, ch 157 ARC 0461	F		8/8/79
Cosmetology schools and examinations, 149.3(1), 149.7 ARC 0506	N		8/22/79
Certificate of need program, ch 202 ARC 0473	N		8/8/79
Certificate of need program, summary review, 202.2(2), 202.5, filed emergency ARC 0483			8/22/79
Certificate of need review, standards, 203.1, 203.2, 203.4, 203.6 ARC 0474	N		8/8/79

HEALTH Cont'd

The following persons were present for review of the rules: Peter Fox, Department of Health Hearing Officer; Grace West, Director of Cosmetology Division; Barbara Failor, Board of Cosmetology; Cooper Parker, Health Facilities Officer; Joan Muldoon, Nursing Home Administrator; Neal VerHoef, Chairman, Board of Speech Pathology

The first five items on the agenda were acceptable as published.

Discussion of 151.2. Schroeder questioned West as to the authority to require cosmetology instructors to complete 16 hours of continuing education. West cited §157.8 of the Code as their authority and added that it is important for instructors to receive the additional training.

Schroeder wondered if the rule would create problems for older instructors. He also thought larger schools would have an advantage. West could see no problem in either area.

Holden opined that those most affected by the rule are probably unaware of it at this time.

Discussion of license renewal period.

Schroeder had been alerted to the "excessive cost" of the continuing education program. West responded that the Board has no authority to set the cost. Schroeder recommended that they establish some maximum allowable amount.

Tieden questioned the reason for changing from an option to a mandate the mannequin required for use during an examination--149.7. Department officials indicated it was very difficult to administer the examination when live models were permitted. Fox thought there was sufficient authority for the provision.

Schroeder argued that such a rule would leave the Department open to challenge. Priebe preferred the option. Clark supported the Board's position.

No formal action taken.

Ch 157

Ver Hoef told the Committee that Chapter 157 had been clarified following the Notice. Modifications were made as recommended.

Patchett asked if a certificate will be issued to signify that the individual is a qualified aide. When Ver Hoef replied in the negative, Patchett wondered how qualification would be verified for aides desiring to change jobs. Ver Hoef said request would come from the licensed person. He indicated they retain information with respect to prior employers.

HEALTH DEPARTMENT (cont'd)
ch 79

Dr. Ronald Eckoff, Division of Community Health, represented the Health Department for review of amendments to chapter 79 relating to funds for home health care. He noted the new rules update the amounts appropriated for the current year and fiscal year 1980-81 and, also, change deadlines in accordance with Senate File 487.

ch 202

Cooper Parker of the Health Department distributed to Committee members a summary identifying changes in the rules together with a brief explanation. Parker explained the new rules reflect some changes in the law made by the Legislature, some federal requirements and a year of experience with the law. Furthermore, he said the certificate of need rules have undergone extensive review having been in the public domain since February of 1978.

Tieden reported some concern with regard to federal regulations which make it very difficult for hospitals and care facilities in smaller districts and almost mandate they go out of existence. Parker reminded that these rules refer to standards to be applied for future expansion and they have no mechanism to shrink the system. In state health planning, Parker said they have to reference the federal guidelines, but they indicate those variances from the federal guidelines that will be instituted as policy in Iowa.

In re 202.11(4), Clark urged an in writing statement be given whether or not an application for rehearing is granted. Royce pointed out that rule could cause some very serious problems if the hearing is not deemed denied at the proper time.

Parker described the process of developing the rules for standards for certificate of need review.

Schroeder questioned subrule 203.1(1)c(4) as to whether hospitals would be able to remodel and construct larger rooms. Parker responded there are specific rules which provide that, for instance, if there is an overbed in a particular county and a hospital wants to add a CT scanner, it prohibits the Health Systems Agency from reviewing anything except that scanner.

In rule 203.2g, Clark questioned whether the word "tranvenous" was correct or should it be "transvenous". Parker was unsure but would investigate.

Clark called attention to 203.2(8) and 203.4(8) which make a vague reference to rights of patients and 203.6(8) which refers to specific standards for patients' rights and responsibilities and was informed by Parker there are no specific standards on the first two. Oakley was not satisfied with these references either and will pursue the question.

HEALTH Cont'd

Oakley raised question concerning depreciation schedules in 203.2(4) and 203.4(4). He wondered why it was acceptable in one area to use hospital association schedules and the other one regarding equipment was set.

Parker said it had been proposed to refer to American Hospital Association schedules in both instances but the Health Coordinating Council adopted the other procedure. Oakley urged caution in the area of financing.

In re 203.4(2)b, Oakley asked that the specific federal guidelines be cited if it is meaningful to understanding, if not, omit the reference.

Oakley referred to 203.4(5)b which says services should be provided to all patients regardless of their ability to pay and questioned the degree of enforcement in this area. Parker said the thrust was to say to the hospitals that, if there is a program available within the state in an institution which serves the medically indigent, they should make referrals there. Oakley will pursue clarification of this rule.

NURSING HOME ADMINISTRATORS

Fox explained that 2.6(2) was intended to prevent substitute test takers and, also, would prevent persons from going to surrounding states and completing the tests several times.

Discussion of requirements for an administrator revealed presently they must have an Associate of Arts Degree in health care administration. Priebe reported some administrators feel, and he agrees, the requirement should be a four-year certificate in health-related fields, and it is a necessity if there is to be reciprocity.

In re 2.7(1)a, Holden inquired if NAB and PES are defined somewhere in the rules. If not, they should be.

In response to Holden, Fox stated the Board allows the required bachelor's degree to be in any field. Priebe stressed the need for requiring a four-year degree in a health-related field.

Oakley suggested either specifying what health-related field would mean or if they have a major in business administration they also must have a certain number of accredited hours in a health-related field.

The consensus of the Committee was that the Board should take their concerns into consideration before these rules are filed.

On a matter not before the Committee, Patchett asked if spot checks are made to determine if administrators are receiving "kickback" on drugs and supplies. Further, he inquired as to what sanctions might be imposed against administrators or suppliers.

NURSING HOME ADMINISTRATORS Cont'd

Although Fox had not been confronted with this situation, he stated it would appear to be unethical conduct and the Board would probably schedule a disciplinary hearing concerning the licensee. Spot checks are made only in the event of a complaint. Fox will research the question of possible action against a supplier and report to the Committee at a later time.

ENGINEERING EXAMINERS 4.2(6)

Tom Hanson, Counsel, and Harriet Wheeler, Acting Executive Secretary, represented the Engineering Examiners for review of amendments to 4.2(6) Discipline and professional conduct, filed and published IAB 8/8/79.

In response to Schroeder, Hanson explained there was a drafting error which necessitated making this change from three to five years, but the Board's decision was five.

Patchett noted that by setting specific time limitation, it becomes a statute of limitations. Schroeder suggested dropping the specific limitation so that at any time the action could be brought inasmuch as the word "reasonably" in the rule leaves it open indefinitely. Hanson thinks it is necessary for their own administration to give people some guidance as to how they are going to operate. It is for the protection of the public and a protection against stale claims.

Holden sees a parallel in Hanson's argument with the argument on product liability and professional liability and sees this as an effort to accomplish something that the Legislature has not seen fit to enact.

Objection

Patchett moved the Committee object to Engineering Examiners rule 4.2(6) relating to discipline and professional conduct on the basis it is in excess of their authority.

Oakley commented this rule is not a statute of limitations and doesn't place any appeal from a decision in any different light. Also, if the Committee objects to this rule, it does not revert to three years but the end result is no rule.

Motion Carried

On short form vote, Patchett's motion to object carried. Tieden is recorded as voting "No."

The following objection was prepared by Royce and published IAB 10/3/79:

> The Committee objects to Engineering rule 4.2(6), appearing as ARC 464 in II IAB 3 (8-8-79), on the grounds it exceeds the authority of the board. The rule in effect establishes a form of statute of limitations for the imposition of licensee discipline. Chapter 114, the Code empowers the board to impose licensee discipline on certain specified grounds; it does not appear to contain any time limitations for the imposition of discipline.

Recess — The meeting was recessed at 12:20 p.m. by Chairman Schroeder.

Reconvened — Meeting was reconvened at 1:30 p.m. All members present.

ENVIRONMENTAL QUALITY — Odell McGhee, Hearing Officer, Environmental Quality Department, was present for the following filed rules:

Water quality standards, effluent limitations, 17.8(2), ARC 0517, 8/22/79 IAB

Wastewater construction and operation permits, 19.2(10), ARC 0510, 8/8/79 IAB

Contested cases, amendments to Chapter 55, ARC 0500, 8/22/79

There was brief discussion but no recommendations were offered.

CIVIL RIGHTS

Thomas Mann, Jr., Executive Director, represented the Civil Rights Commission for review of the following:

Public accommodation, discrimination, 6.2(6), 7.2(1), 7.3, ARC 0480, notice; public accommodation, discrimination, 1.1, 7.2(1), 7.3 rescinded, filed emergency, ARC 0481; both published in IAB 8/8/79; and discrimination in schools, ch 8, ARC 0435 (carried over from August meeting), published in IAB 7/25/79.

Other persons in attendance included: Rachel Evans, Chairperson, Evelyne R. Villines, Vice Chairperson, Lawson Tait Commins and Annette Pieper, Commission members, Deborah Donaldson, Protection and Advocacy Division, and Louis Martin, Probable Cause Hearing Officer, all representing Civil Rights Commission; Roger Maxwell, Board of Regents; Casey Mahon, Assistant to the President, and Christine H. B. Grant, Women's Athletic Director, University of Iowa; David J. Henry, Assistant to the President, and Charles L. Samuels, Affirmative Action Officer, Iowa State University; Harold B. Strever, Jr., University of Northern Iowa; Betty J. Durden, Special Assistant to the President for Equal Opportunity Programs, Drake University; Nancy Bergert, teacher and coach, Cedar Rapids Community Schools; Tim McCarthy, Executive Director, Iowa Catholic Conference; Joann Critelli, League of Women Voters of Iowa; David C. Johnston, United Cerebral Palsy of Central Iowa; Lowell Craven, Governor's Committee on Employment of the Handicapped; Wayne Cooley, Executive Director, Harold Isley, Superintendent of Pleasantville Schools, David Owens, Superintendent of Schools, Wapsic Valley, all representing Iowa Girls H.S. Athletic Union; Joe Kelly, Kathleen Reimer, Kirk Cunningham, Dennis Drake, Iowa Manufacturers Assn; and Peggy Burke, Iowa City.

Mann briefly reviewed amendments relating to discrimination in public acccommodations which propose to define the term "public accommodations" and determine what constitutes discrimination within the public realm.

Schroeder asked Mann to cite their statutory authority for these rules and whether they are federally mandated.

Mann stated they principally relied on section 601A.2(10) which defines "public accommodations" as their authority for 7.2(1) which merely illustrates the kind of public operations that might be a public accommodation. Also, section 601A.7 would also constitute authority for the kind of prohibitions included in 7.2 and 7.3. In addition, Title VI of the Civil Rights Act of 1964 contains the same general kind of prohibition against discrimination for those agencies receiving federal funds.

Schroeder suggested Mann proceed with an overview of chapters 7 and 8 at this time since they are interrelated before proceeding to general discussion by the committee.

CIVIL RIGHTS (cont'd)

In re chapter 8--discrimination in schools, Mann pointed out the two provisions causing the most concern were athletics and financial assistance, particularly, 8.14(4), which deals with the question of high school basketball.

In response to Patchett, Mann recalled no specific reasons for leaving religious institutions out of these rules other than the fact that the statute itself states a pretty clear exemption for religious institutions where they do not fall within the parameter set out in section 601A.7. Mann concurred the Commission's position is that in reading all of these rules (public accommodations and chapter 8) that they should be read in conjunction with that religious exemption.

Oakley asked Mann to comment on the impact of these rules in light of information available today regarding Title IX legislation concerning intercollegiate athletics.

Mann referred to an article in The Des Moines Register which said the U.S. Commission on Civil Rights abandoned its earlier stand on Title IX rules (a section of the education amendments Act of 1972) which essentially prohibits sex discrimination in educational programs). The U.S. Commission had previously taken a position that educational institutions could do a phased-in program of increasing expenditures for women's athletics. In the past, the Department of Health, Education and Welfare had taken a position that educational institutions should expend their sports budget based on the participation of women in athletic programs within the school - a pro rata kind of expenditure. Today, the U.S. Commission took the position that the schools should spend moneys on a per capita enrollment basis.

Mann is unsure of the legal impact. The U.S. Commission on Civil Rights has no enforcement power. HEW enforces Title IX. To the extent that the U.S. Department of Civil Rights has any power, it has the power of persuasion, so that in his mind it isn't going to have any legal impact, but it may have the impact of encouraging HEW to revise its previous position.

Chairman Schroeder opened the meeting to those persons who had expressed a desire to speak. The Committee then heard from other interested persons.

As spokesperson for the Regents, Mahon re-emphasized their concerns presented at the July 10, 1979 meeting of this Committee. The Regents fully subscribe to the principles underlying the Commission's rules, but have serious concerns about conflicting governmental jurisdictions.

Mahon contended the Iowa Legislature specifically omitted Regents' institutions when the amendments to chapter 601A were adopted in 1978 which, apparently, is the base for the Commission's rules. Mahon expressed concern in re chapter 8 rules which engraft a prohibition against discrimination based on disability in rules designed for sex discrimination and urged the Commission to work with the universities to develop rules related to the universities' problems and the

CIVIL RIGHTS (cont'd)

problems of the handicapped.

Mahon stated the Regents' specific objection to 8.10(3) - athletic scholarships - which would require them to provide, roughly, equivalent expenditures for scholarship awards for students of each sex in proportion to the number of each sex enrolled in school. As they understand the opinion of the U.S. Civil Rights Commission referred to by Mann, they have amended their stand to prefer equal expenditures based on the numbers of students enrolled in athletics. In the case of the University of Iowa where 51 percent of the enrollment are women, the Commission's rules would require them to award 51 percent of their scholarship moneys to women and in this context Mahon considered that to be unrealistic.

Christine Grant expressed support for the concept of comparable scholarships for men and women. However, because of past discrimination, there is not as much interest in athletics as they would like and time is needed to build up that interest. She suggested retention of the concept which she considers very important, but that a phase-in period be permitted to allow institutions to gradually accommodate the interest and ability of the students.

On the basketball issue, Grant stated that athletic scholarships for women in Iowa are decreasing significantly. It was her feeling that surrounding states are catching up quickly with five-player ball and out-of-state women, rather than Iowa women, will be recruited by the University.

Nancy Bergert, speaking as a teacher and coach, favored the five-woman basketball game. It was her opinion that girls should no longer be restricted from the full court movement which demands an agile, well-conditioned individual. She suggested that if the mandate for the six-player game remains, then it must also be mandated that colleges give instruction to coaches of the six-player game.

David Owens supported six-player basketball because it provides an opportunity for many more girls to participate who lack ability to play a more refined game.

Joe Kelly made reference to previous statements filed with this Committee by the Iowa Manufacturers Association. (See minutes of 5/21/79 and 7/10/79.) Speaking for the Association, Kathleen Reimer stated the republication of these rules in the exact form, in effect, defeats the purpose of the Iowa Administrative Procedures Act to have public input. Reimer pointed out the CRC is attempting to avoid the objection that was placed on the rules by this Committee, and it is burdensome for interested groups to appear repeatedly.

To supplement comments previously made on rules requiring job restructuring and job modification, Reimer cited two Code sections, 601A.6, unnumbered paragraph, and 601D.2,

CIVIL RIGHTS (cont'd)

which she believed pertinent. She reiterated that the whole text of the Iowa Civil Rights Act and the supplemental Act is to employ the handicapped on the same basis and that employers are not required to make these affirmative changes in jobs requiring job restructuring or modification which would not be permitted under the National Labor Relations Act without negotiations and in many cases employers are bound by those job descriptions.

Reimer urged the Committee to renew their objection to these rules.

Dennis Drake requested that all prior comments, written and oral, letters, etc. be a part of the consideration of these rules.

Peggy Burke, speaking as a former coach and player, urged the separation of the arguments of those that seem to be supporting a business venture from those interested in supporting the educational opportunities of students. Burke presented arguments against six-woman basketball. She concluded the issue is whether the school systems in Iowa should be used to teach outdated skills and those only being taught to one-half of our school population, that being female.

Tim McCarthy referred to the following prepared statement which was presented to the Committee:

McCarthy statement

My name is Tim McCarthy, and I am the Executive Director of the Iowa Catholic Conference. I represent the Diocesan Superintendents of Schools/ Education of the four Catholic dioceses of Iowa, who are responsible for the education of approximately 48,000 children in Catholic schools.

The four superintendents object to the proposed rules of the Iowa Civil Rights Commission in regard to "Public Accommodation, Discrimination" and "Discrimination in Schools, Chapter 8."

While the superintendents praise the basic purpose of the Iowa Civil law and the Commission--and hereby state that their mission, which is "to teach as Jesus did," is compatible with the thrust of civil rights--they find that the proposed rules constitute burdens which are intolerable in principle. Private religious schools and their parent boards must have the right and freedom to decide admissions as they relate to marital or parental status. Also, these rules could well force private--non-state financed--schools to accept children with mental and physical disabilities at a cost that could put them out of existence. Very possibly there are constitutional issues as to freedom of religion in this type of rule.

The proposed rules constitute legislation. There are already legislative definitions of "public accommodation" at section 601A.2(10) and "education institutions" at 601A.9. Neither of these definitions include private, religious schools.

I request that the Iowa Civil Rights Commission, in their final rules, just follow the existing statutory definitions and not attempt to expand their authority by rewriting the present law.

CIVIL RIGHTS (cont'd)

McCarthy requested that the Committee again object to chapter 7 and, also, object to chapter 8.

Betty Durden submitted the following statement concerning their position on CR rules:

Drake Univ. statement

On behalf of Drake University, I am presenting comments and concerns regarding the proposed rules on discrimination in schools. As Special Assistant to the President for Equal Opportunity Programs, I monitor Drake's practices and policies for compliance with the local, state and federal regulations in the civil rights area and coordinate Drake's handling of charges and on-site reviews.

Today I want to make clear that I speak for Drake not in opposition to anti-discrimination but in cooperation with the ICRC in its responsibility to develop rules which accurately interpret the requirements and intent of Chapter 601A of the Code of Iowa. I also wish to stress the need for consistency with the federal rules and regulations covering the same areas.

Drake University, through the Iowa Association of Independent Colleges and Universities, is on record as opposing the definition of public accommodations in Chapter 7, Discrimination in Public Accommodations, 240--7.2(1). This listing of colleges and universities in a grouping of places which are open to, accept or solicit the patronage of the general public - such as inns, taverns, barrooms, drug stores, bathhouses, barber shops, to name only a few - seems to defy common sense. Our legal counsel believes that it exceeds the intent of the legislature and the wording of the law. The establishments named are so different in nature and purpose from colleges and universities that no general set of rules and regulations, no matter how conscientiously written, can hope to be applicable to all. As you know, the decision on that definition of public accommodations has been delayed by action of the Rules Review Committee.

In the meantime, we are today considering Chapter 8, Discrimination in School. The purpose of these rules is "to supplement rules contained in Chapter 7, Discrimination in Public Accommodations, and to provide specific guidance to schools on those acts or conduct which will be considered to be unfair or discriminatory under the Iowa Civil Rights Act." Since the coverage of colleges and universities is still under consideration, we are concerned that the final rules will be clear, enforceable and also consistent with the federal regulations. We appreciate this opportunity to have input on their development. It is in this spirit of cooperative intent that we appear before you this morning to make our comments and suggestions.

Drake Univ. statement

It seems appropriate and relevant to comment that Drake University, as well as most other institutions of higher education, is covered by other anti-discrimination legislation whether or not it is covered by Iowa law as a public accommodation. In regard to discrimination on the basis of race, we are covered by Title VI of the Civil Rights Act of 1964. We are covered by Title IX of the Education Amendments of 1972, which forbids discrimination on the basis of sex in any educational program or activity receiving Federal financial assistance. We are under the jurisdiction of the Des Moines Human Rights Commission in the enforcement of its ordinance. As an employer, we are covered by additional local, state and federal regulations covering every aspect of our personnel policies.

We are also covered by Section 504 of the Rehabilitation Act of 1973 which covers both physical and mental disabilities. The possible total cost of making changes to physical plants in order to comply with the handicap regulations is staggering, especially when all of these costs for private institutions must be financed through student tuition and contributions from alumni and friends.

The potential liability if found in violation of any of these regulations is frightening. What is even more frightening is the increasing involvement of external agencies into the administration of the institution. We are struggling with the administrative and financial burdens of compliance with rules and regulations from every level of government. For example, one discrimination in employment case was filed against Drake on August 30, 1973, as an internal grievance and also with HEW and the Iowa Civil Rights Commission. It was investigated through Drake's internal grievance procedure, later by HEW, reviewed by the Iowa Civil Rights Commission and finally closed by the St. Louis office of EEOC in a letter dated March 22, 1979. This one case cost us an incredible number of hours and some legal fees to prove that we had not discriminated in the first place.

What the ICRC has attempted to do in proposing this set of rules is to improve conditions for those individuals and groups who have suffered or are currently suffering from discriminatory practices. We do not believe these rules will accomplish that commendable goal.

To be more specific about the concerns we have with these proposed rules, let us examine them more closely. One general comment is that much of the language in these rules is from the federal rules and regulations developed to cover Title IX enforcement. The other categories of illegal discrimination have been added to that language which was intended to deal with sex discrimination only. This results in

Drake Univ. statement

confusion, both as to intent and to acceptable procedures. Certainly 601A.9 Unfair or discriminatory practices - education, relates only to discrimination on the basis of sex. If the rules are intended to relate to that section, then they should deal with sex discrimination only. They should also be consistent with the federal regulations on Title IX.

It is well known that there are still unresolved questions regarding Title IX, particularly in the area of athletics. We have had seven years of spirited debate regarding the meaning of certain rules and terms. It is still not decided at the federal level what equal opportunity for males and females means in athletic programs. There has been much discussion of the overwhelming financial cost of equalizing programs and granting athletic scholarships to women. A real consideration is the source of the income but I see no such concern or awareness of that controversy in these rules

8.10(3) athletic scholarships takes this extreme position.

a. "To the extent that a school awards athletic scholarships or grants-in-aid, it must provide roughly equivalent expenditures for scholarship awards for members of each sex in proportion to the number of students of each sex enrolled in school." Not the number involved in athletics or the number who wish to participate but based on the entire school population! I would guess no school is presently in compliance with that rule.

Another general but very important concern which we have with these proposed rules is the inclusion of mental and physical disability in the Title IX languages. This fails to address the special needs of the physically or mentally handicapped person. Also it does not give sufficient guidance to the school regarding compliance requirements and methods.

8.3(1) No school shall discriminate on the basis of race, creed, color, sex, national origin, religion, or physical or mental disability in admission or recruitment except as provided by Section 8.15. (Section 8.15 allows a school to take affirmative action.)

An institution of higher education should not, and Drake believes it does not, discriminate in admissions on the basis of race, creed, color, sex, national origin, or religion. We do, indeed, discriminate on the basis of physical or mental disability. We do require certain physical ability for athletic programs and we do

Drake Univ. statement

require certain mental ability and achievement for admission to both undergraduate and graduate programs. In fact, we maintain that such decisions are an essential part of higher education's mission. We believe that we have the right and the duty to make such decisions and that we should not be placed in jeopardy of a suit on the basis of illegal discrimination.

The federal regulations on Section 504, Nondiscrimination on the Basis of Handicap, make clear that they are intended to relate to the "qualified" individual. They explain that "qualified handicapped person" means: (1) with respect to employment, a handicapped person who, with reasonable accommodation, can perform the essential functions of the job in question, (2) with respect to postsecondary and vocational education services, a handicapped person who meets the academic or technical standards requisite to admission or participation in the recipient's education program or activity.

I do not see any such qualifier in these rules, although the Act in 601A Unfair employment practices, specifies some limitations relating to the person's qualifications to perform a particular occupation.

This blanket prohibition of discrimination on the basis of mental and physical disability is very difficult to interpret and can cause serious complications in attempting to conform to it. We would have particular concern with 8.3(1) Admissions, 8.3(2) Validity of admission criteria and 8.3(4) Nondiscriminatory recruitment. Under 8.4(1) and 8.4(2) we wonder if any special programs or services would be allowed. Similar concerns should be apparent in regard to 8.7 Access to course offerings and to 8.8(1) Counseling and 8.8(2) Testing.

Again we stress the fact that a number of federal agencies have jurisdiction over higher education institutions, including Drake. In order for progress to be made in eliminating illegal discrimination, there must be clarity of meaning, uniformity of regulations, and if possible a reduction in the number of agencies with similar jurisdiction. We must be allowed to make administrative decisions necessary to carry out our chief mission, the education of our students. It is our hope that out of these hearings will come final rules which will lead to the goal we jointly seek, equality of opportunity for all individuals.

Durden stressed their main concern is the multiplicity of coverage, the difference in procedure, the difference in interpretation and, of course, the financial impact on their

CIVIL RIGHTS (cont'd)

procedures. Durden urged the Committee to consider the financial impact of these rules on educational institutions if they were considered "public accommodations."

David Johnston spoke of his difficulty in entering this building to present his situation and the problems of the handicapped. He supported the CR rules as originally presented.

Harold Isley referred to a statement by Wayne Duke, Commissioner of the Big Ten, and indicated in the Pleasantville school the six-player game fits their aims and objectives and they have a high degree of participation. He would dislike to see a change to something that is uncertain.

Wayne Cooley addressed the Committee in re the controversy surrounding the basketball rule codification factor. He said that consistently the federal government has held in favor of that which the Iowa girl holds to be essential to her welfare, i.e. present and past basketball rule codification. He used as an example the two tests that have involved the proponents of the six-player game. The first, a judicial test wherein the I.H.S.G.A.U. stood as a friend of the defendant to the State of Tennessee through the judicial process. The defendant did win and the 8th Circuit Court of Appeals, leaving the six-player game free of the charge of discrimination.

The second pursuit Cooley mentioned was the federal administrative process which was the test solely identified with the I.H.S.G.A.U. by HEW. The outcome as to whether or not there was discrimination involved was that HEW indicated Congress did not intend to authorize the federal government to dictate that a school cannot offer six-player, half-court basketball.

Cooley pointed out that in two tests there was ipso facto judgment that the six-player game has not been a factor of discrimination. Cooley denied emphatically that there exists any discrimination adversely affecting the Iowa girl.

Chairman Schroeder asked Oakley to respond to comments as to the reason for an apparent duplication of a previous submission.

Oakley focused on what he considered to be the most important issues before this Committee. He spoke of the legislative mandate with which CRC must comply and the economics of compliance confronted by industry and schools. Even those who subscribe to the concept find it difficult to accept the definition mandate by CRC. Oakley continued that large school athletics likewise deal with millions of dollars and certainly investment in the very successful six-girl basketball in this state is well known; and understandably the economic accountability influences the reaction to this.

CIVIL RIGHTS (cont'd)

Oakley thought it was important to note the CRC had, in good faith, determined its mandate. He observed its constraints are not the same as those of people responding to it.

He recalled that some of these rules were published under notice last December to allow time for public comment, but little interest was expressed, and those rules were filed. Additional rules - Chapter 8 on discrimination in schools - which is really a compilation of those rules applicable to education, were proposed.

Oakley explained that at the request of the Governor, CRC renoticed the subject of public accommodations, using the same language they had adopted initially, and also rules dealing with employment discrimination. Oakley reasoned that the proposal for 6.2(6)a(2) was a nullity since the Commission had not rescinded the existing language.

Oakley focused on four areas for Committee consideration. In the area of public accommodations in education, they might want to explore the area of determining, for example, for an educational institution whether some of its functions are in fact public accommodations and some are not a possible middle ground. There are some noneducational functions that are carried on by educational institutions which fall in the more classic definition of public accommodation, but those dealing with certain criteria for academic achievement, certain scholarships, etc. which may fall outside the definition of public accommodation, appropriately so.

Secondly, explore the relationship of federal regulation to these state rules to determine the gap CRC feels obligated to fill.

Questions of jurisdiction are particularly important.

A third area would be review of HEW's definition in Title IX re discrimination in athletics. Important issues would be distribution of financial aid and rules of the game.

Oakley was interested in knowing the Commission reaction if 8.14(4) were to be deleted.

In conclusion, Oakley asked Mann to apprise the group of any public hearings anticipated on the proposals.

Schroeder recognized Royce who addressed the question of legalities of deciding rules of the game for girls' basketball - the five-player game. Under 601A.9, there is broad power to declare as discriminatory any practice that denies comparable opportunity, but 280.13 of the Code authority to determine the rules of the game is vested in the D.P.I. He posed the question: Does Commission action to declare six-girl basketball as being discriminatory usurp a power that by statute seems to be vested in the D.P.I.?

CIVIL RIGHTS (cont'd)

Mann responded to Oakley question. He recalled that the Commission was willing to allow for additional input as suggested by the Governor.

They decided, however, to wait until comments had been received before drafting final language.

Mann stated that the issue of 6.2 being a nullity was never considered but the point was well taken.

Discussion of fact that the Governor has no veto power over 6.2 as presented at this time.

Schroeder urged the Commission to take action to correct the rules so all will be subject to more input.

Patchett and Priebe made the point that the job restructuring aspect of the rule had been objected to by this Committee.

Holden noted that it was pointed out to the Committee at the time they voted objection to the rule that time for veto by the Governor had expired.

Mann considered it presumptuous at this point to assume that their amendment was a nullity, because the Commission had not reviewed it in conjunction with the latest input.

Schroeder took the position that chapter 6 should not have been treated differently than the other amendments. It was his understanding that the entire "package" was to be resubmitted for consideration. It had been more difficult to realize the ramifications when amendments were reviewed in segments.

Tieden concurred with Schroeder.

Mann addressed question raised earlier by Oakley. Proposed rules that deal with the subject of education are based on the broad public accommodations definition in section 601A.2 of the Code. He added that the question of discrimination is always dependent upon the facts in a particular case. Mann thought it would be very difficult to itemize all of the services that are provided by an educational institution and attempt to determine whether or not they are within the parameters of the Act. Consequently, you adopt a general rule that applies - that sets legal parameters and then you deal with this question of discrimination the way any court would, based on the facts of any given case.

Oakley observed that the Commission had obviously done a considerable amount of research and investigation, to decide prima facie that five on five basketball must be offered, i.e. six-girl basketball is discriminatory.

Mann wanted to make it clear that he was not suggesting that many activities of an educational institution should be

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excluded under the CR administrative rules. They may be excluded under action by the Iowa state legislature and the CRC has a mandate to follow the statute.

Mann thought that the question of whether different services of an educational institution might be excepted from the parameters of the Act is more properly a question for the legislature to respond to than it is a question for the CRC to attempt to deal with by administrative rule.

Patchett had become convinced since the last meeting that the Commission's interpretation that colleges, universities, etc. are included in the definition of public accommodations was a fairly reasonable one. He concurred in Oakley's concern that certain aspects of their operations do not mesh together neatly with other kinds of discrimination in other kinds of public accommodations.

Patchett continued that when you speak of absolute right to equal athletic participation completely apart from physical disability, any denial is discrimination under the rule and he had 15 or 20 different individual aspects of that. He thought CRC had no choice but to carry out their mandate but suggested it would be appropriate to more finely tune those rules applying to colleges and universities to their unique functions.

Patchett also thought it would be helpful to include in the rules some specific references to the religious exemptions. He raised as an issue the rule dealing with equal expenditures for athletic scholarships. He recalled that when the Education Committee developed the new bill on sex discrimination in elementary and secondary education, a very deliberate effort was made to move away from the idea of equal funding, equal dollars in terms of scholarships and toward the concept of comparable opportunity. Patchett took the position that equal opportunity to participate in sports does not necessarily mean spending the same amount, either for a particular sports program or scholarships. Application of CRC rule on scholarships seemed to him to have the effect of forcing the University of Iowa and Iowa State University to withdraw from the Big Ten and Big Eight Athletic Conferences, respectively.

With reference to basketball, Mann reiterated their rule was mandated by statute and irrespective of the rules, there was authority for an administrative hearing officer to determine the legality or illegality of that question.

Patchett offered his opinion re question raised by Royce concerning general authority of DPI over rules of interscholastic athletic competition. It seemed to him that CRC probably had authority to deal with that aspect of the rules.

Patchett then turned to the matter of job restructuring (6.2(6)) which had been considered and objected to by this Committee at a previous meeting. He noted the two aspects of the rule--

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one to make facilities accessible to handicapped and the second aspect requires job restructuring. The Committee objected to the second aspect because it was their judgment that §601A.6(1)a does not require--in fact, would prohibit, the Commission from requiring job restructuring or modification as an element of whether or not it was discrimination.

Mann responded: "The last point re reasonable accommodation and requirements of §601A.6, the CRC drafted its rule to be not inconsistent with federal requirements. The Rehabilitation Act of 1973, regulations 503 and 504, requires reasonable accommodation of the known disabilities of an applicant or present employee. Their previous rule on this subject was revised in an attempt to harmonize the state and federal requirements.

Royce questioned Mann as to whether Iowa statute was more "all-inclusive of employers than the federal statute" and Mann replied in the affirmative.

In response to further question by Royce, Mann said that for a short period of time, many Iowa employers would be subject to state-imposed restrictions when they had not been subject to those by federal rule. Mann continued that clearly more employees are included under coverage of the state Act. However, it was his understanding that Congress is moving in the direction of Iowa law.

Patchett asked the Commission to review their rules on disabilities in educational institutions as to the inconsistency with federal regulation 504.
Mann said that federal rules--essentially Title IX--deal only with sex discrimination. Iowa law includes sex, as well as age, race, disability, and a number of others. Consequently, CRC had to draft a rule broad enough to include those other protected classes.

Holden noted it was difficult to deal with so many issues and he selected two to discuss. Re the matter of public accommodation as it applies to schools was a problem to him. It was his position that public facilities must comply with the same requirements that are imposed upon private employers or private institutions. However, he considered Oakley's proposal to be reasonable and he was sympathetic with McCarthy and Durden. He was inclined to believe the rule might be in conflict with the statutory definition of public accommodation.

Mann took the position that §601A.2 sets out an extremely broad definition of public accommodation which includes private institutions. CRC relied on general rules of statutory construction which says you give a word its ordinary meaning. In researching the definition of "service", CRC concluded that private educational institutions clearly fall within the parameters of that definition. If they are not to be included, it seemed to Mann this would a legislative matter.

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Holden wondered about the language: "Public accommodation shall not mean any bona fide private club or other place, establishment, or facility which is by its nature distinctly private..." Mann read on: "except when such distinctly private place, establishment, or facility caters or offers services, facilities, or goods to the general public.. He pointed out that many of these private institutions do offer services to the general public. Those which would not permit anyone to apply or be admitted or benefit from their services would not be included under the statute and would not be in the rule.
Holden opined that they were on "much shakier ground than in publicly funded facilities and disagreed that they should be brought under this.

It was disturbing to Holden that the CRC had become so involved in girls' basketball issue. It seemed as ridiculous to him as arguing whether someone ought to be offered rugby 'experiences' because they want to attend a chiropractic college where there is a rugby program. The responsibility should be left to each school--right down to the local system. He maintained that if there ever was an issue that a local school system and school board ought to have the right to decide, this would be one. He favored a statute specifically placing this within the province of the local school board.

Mann agreed legislation was needed if that type of discrimination were to be excluded--at this time it is not a discretionary matter, in his opinion.

Tieden asked for explanation as to why there was no option between five and six member teams. He thought it was a matter of interpretation which was one of the problems.

Mann cited §601A.9(2) which in part addresses the area of comparable opportunities to participate in athletics on the basis of sex.
He also clarified that ICRC is not attempting to enforce Title IX--a federal statute. He added that Title IX merely placed a negative prohibition that educational instiutions could not discriminate on the basis of sex. Section 601A.9 has both--the negative prohibition, as well as placing an affirmative duty upon institutions to provide comparable opportunities for participation in athletics. There is a greater responsibility on the state law.

Mann continued that after you have made the legal analysis of what to require of the comparable opportunities is a factual question. Does five-player basketball deny comparable opportunities for females who participate as opposed to men who participate?

Tieden observed that at the high school level more opportunity is afforded to more individuals with six players.

Mann explained the Civil Rights analysis is not women against women but women against men. CRC is not interested in rules of the game, only

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to the extent that they have a discriminatory impact. Further, they are attempting to set rules under chapter 280 of the Code. If greater opportunities are available to men but not to women because they play the six on six as opposed to five on five, that would be differential treatment between the two sexes.

Tieden asked if CRC was completely disregarding decisions by the Supreme Court, Court of Appeals and HEW. Mann said these decisions dealt with Title IX which does not require comparable opportunities.

Clark considered Holden's illustration on rugby to be beside the point. She contended that "if six-person ball is so great then we are really cheating a bunch of boys." She was sure there were boys who could not shoot well but could guard well. They are not getting a chance with "five-man ball" because of that and yet nobody considers them "deprived." If you are providing "more opportunities to girls with six-player ball, you should be doing it for the boys," she said. She observed that "We participate where we are allowed to " and if we went to a five-girl team, it was her opinion that participation would be just as high.

Clark was vehemently opposed to any effort to forbid six-person ball. However, she was equally against mandating it. She preferred a procedure to allow a choice and that both must be offered.

Re the issue of job restructuring, Clark thought the rule was unrealistic. She made it clear she concurred with making buildings and work places accessible to all but she feared job restructuring would place tremendous hardship on most businesses. She noted that many big businesses operate on small profit margin and this fact should be addressed in the rulemaking.

Mann referred again to the broad language in §601A.2.

Clark commented on the issue of whether universities come under definition of "public accommodation." She said that they simply are not open to the "general public"--a restaurant would come under the definition.

Mann: "It's general public to the extent that any one who wants to avail themselves of the services or facilities provided by that establishment can avail themselves of it simply by following the rules of the establishment which is to say that all you are going to have to do is to apply for that school. They are either admitted or denied admittance based upon the rules, but at any rate there are rules set up and anyone who complies with the rules, who fits within all the parameters of the rules can be permitted to enter and receive the services of that institution and to the extent that they offer it to everybody at large they constitute a public accommodation.

On the other hand if they were to say that we are a private school and only those persons who have joined our organiza-

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tion, for example, if Drake University would limit entrance to those individuals who possibly had joined as a kind of private club situation and were not permitting anyone at large, anyone from the general public, to come and apply, then it seems to me that they would be excluded from the statute. They would be distinctly private in nature. They would be operating as a private institution and I think that's the kind of exception that's generally not included.

It's a very difficult responsibility to try to enforce the statute in the first place and then attempt to determine what was meant by the legislature in enforcing that statute becomes even more difficult. To some extent we have some help. The rules of statutory construction, in particular section 601A.19, says that the rights Act is to be construed broadly. It tells the CRC that you have to give the statute the most liberal interpretation, that is a legislative stated expressed intent. In doing so, the Rights Commission when it attempts to draft rules or when it attempts to issue a decision must give the most liberal interpretation. And the most liberal interpretation is that a private educational institution comes within the definition of public accommodation."

Clark referred to 8.4(2)"h" --specific prohibitions re school programs and activities--as being "a catch-all." Re 8.5--housing--Clark interpreted "including housing provided only to married students" to mean that a school could not have housing just for married students.

Mann made a general statement concerning their rules. Chapter 6 on reasonable accommodation were finalized after the Commission had considered many comments on them. However, Chapter 7--public accommodations-- and Chapter 8 on educational institutions are initial drafts which will be revised when the Commission has had ample time to review all recommendations concerning the rules. Mann recognized an advantage of the rules review process is that ultimately someone will point out deficiencies in the proposals and they anticipated this. They rely on expertise of the various factions.

Clark suggested that the Commission review 8.3 for clarification. At this juncture, it seemed to her they were admitting that affirmative action is discriminatory.

Mann referred to 8.15 which provides that a school may take affirmative action to overcome the effects of conditions which resulted in limited participation by persons based on race, sex, etc. It would essentially permit affirmative action.

Discussion of the status of Committee objection to Chapter 7 and it was noted that 7.2(1) and 7.3 were delayed 45 days into the next GA but Chapter 7 was later withdrawn by the Commission and resubmitted, thus, nullifying the delaying action.

Responding to question as to the number of states participating in six-girl basketball, Cooley said that assuming all states play--he was unsure about Hawaii and Alaska--there are two, Oklahoma and Iowa He then cited statistics concerning the matter.

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Priebe noted other types of possible discrimination--players who are of shorter stature who probably won't make the team. He concluded that the issue was of such magnitude that it should be decided by the entire legislative body. Mann did not disagree with that position.

Burke commented on figures compiled by Cooley as being misleading and pointed out it is important to consider the number of participants who one could expect to aspire to college athletes.

At the request of Patchett, Owens outlined the composition of the athletic union: A board of directors is elected by the general constituency and a representative council advisory group serves under it. For each sport, there are advisors selected from a constituency of coaches and officials. Owens thought all of the 445 school districts were members of the athletic union. Patchett also learned that very few women are involved in the governing structure--advisory committees are 46.9% women, the board of directors has 25% and the representative council which is advisory to the board of directors is entirely male.

Patchett questioned Owens further as to the likelihood of a few schools deciding to play 5-person basketball and what ramifications would this have. Owens admitted this would be a problem since they obviously could not play a five-player game in a six-player tournament. These schools would be allowed to participate in other athletic union sanctioned activities, however. Patchett was told that it would be the representative constituency--the 445 school officials who would vote on whether to play five or six-person basketball. Owens emphasized that this type of vote would never take place, however. No superintendent would make this decision without discussing it with those involved--coaches, school boards and even parents, Owens said.

Clark could visualize that given a choice, some schools may well decide to move toward five-girl ball and she wondered if there were anything in the system which would tend to "squelch that process." Union officials declared there would not and added that their function is to encourage rather than punish.

Chairman Schroeder expressed appreciation to the Commission members and staff for their participation at today's meeting. He urged them to seriously consider rescission of the Chapter 6 amendments and resubmitting them to allow to input from interested persons as they did on their other amendments.

Oakley also thanked all concerned for their co-operation.

Law Student

Chairman Schroeder told the Committee that Royce and Oakley had recommended employing a law student to review several cases with

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respect to Civil Rights rules and he had tentatively authorized a $500 expenditure for this project. There were no objections. So ordered.

The following rules were acceptable as published:

AGING, COMMISSION ON[20]
Elderly care program, ch 8 ARC 0472, also filed emergency ARC 0471 ..N..x..F,E..... 8/8/79
Elderly care program, defining "local match", 8.1(9) ARC 0485, also filed emergency ARC 0484 ..... 8/22/79

DENTAL EXAMINERS[320]
Auxiliary personnel, unauthorized practice, 20.2(2)"g" ARC 0518 ....F..... 8/22/79

EGG COUNCIL, IOWA[345]
Excise tax, 4.1 ARC 0447 .....F..... 8/8/79

EMPLOYMENT SECURITY[370]
Public employees retirement system, 8.4(3), 8.5(1), 8.6(5), 8.8(4), 8.11(3-6), 8.13(2,3,6,7), 8.15, 8.18(1), 8.19(4,5) ARC 0462 .....F..... 8/8/79
Federal social security, 9.2, 9.3, 9.4(2,3), 9.5(1), 9.6(1-6), 9.7(2,3) ARC 0463 ..F..... 8/8/79

MERIT EMPLOYMENT DEPARTMENT[570]
Long-term disability and worker's compensation, 1.1(51), 1.1(52), 4.5(1)"c"(1,2), 14.6(3) ARC 0487..N..... 8/22/79

Eligible lists, 6.1, 6.3, 6.5, 6.6(1,3-9), 6.7, 6.8 ARC 0488 ...F..... 8/22/79
Olympic competition leave, 14.17 ARC 0489 .....F..... 8/22/79

TRANSPORTATION, DEPARTMENT OF[820]
Temporary registration for unregistered vehicles, [07,F] 1.15 ARC 0505 ..N..... 8/22/79

Minutes

Holden moved to dispense with reading of minutes of the August meeting and that they stand approved. Carried viva voce.

ADJOURNMENT

Chairman Schroeder adjourned the meeting at 4:45 p.m. The next regular meeting will be held Tuesday and Wednesday, October 9 and 10, 1979.

Respectfully submitted,

Phyllis Barry

(Mrs.) Phyllis Barry, Secretary
Joyann Benoit, Assistant

APPROVED

Laverne Schroeder
L. B. Chairman

DATE 10-10-79