MINUTES OF THE REGULAR MEETING
of the
ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of Meeting: Tuesday, November 13, 1979, 10:00 a.m. and Wednesday, November 14, 1979, 9:00 a.m.

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

Members Present: Representative Laverne W. Schroeder, Chairman; Senator Berl E. Priebe, Vice Chairman; Senators Edgar H. Holden and Dale L. Tieden; Representatives Betty J. Clark and John E. Patchett, all members being present.
Also present: Joseph Royce, Staff; Brice Oakley, Administrative Rules Coordinator.

CONSERVATION COMMISSION

Richard Bishop, Wildlife Service, reviewed wild turkey hunting, chapter 111, Notice, [IAB 10/31/79]. Comparison of hunting zones was made, with Bishop noting two new zones established by the Conservation Commission. One zone, in southwest Iowa, borders the Missouri River; the other zone is in east central Iowa, north of Cedar Rapids. Bishop displayed a map for perusal by Committee members and he stated there have been reports of 60 to 80 turkeys in a flock. He advised that the Stephens State Forest zone, west of Lucas, will still be maintained.

In answer to Priebe, Bishop emphasized that deer and turkey hunting zones do not encompass the same boundaries. Priebe asked for a turkey trap priority list, but Bishop did not have an available list but indicated there were a few unstocked areas. Discussion of the shortage of game wardens in certain areas and Priebe noted he had received many calls from people regarding the habitat stamp.

Tieden expressed his concern for possibility of hunters not distinguishing between the male and female bearded turkeys and he wanted to keep the amount of wounded turkeys to a minimum. Bishop assured him that the illegal hunting of turkeys has not been a problem.

10:20 a.m. Oakley arrived.

Discussion centered on 111.3(1) stating "Permitted weapons. Shotguns and muzzleloading shotguns not smaller than 20 gauge and shooting shot only, and long bows with broad-head arrows only will be permitted in taking wild turkey." There was discussion of the type of weapons allowed with Schroeder emphasizing the impact of the shot should be considered.

CONSERVATION Comm. Cont'd

In answer to Clark, Bishop explained deer and wild turkey hunting zones are different--turkey zones are stocked by the Commission. Bishop continued that turkey management is in an adolescent period and the department is proceeding with caution in an attempt to avoid imbalance. Zone maps are included with each license.

Since the rules are Notice, Clark suggested a format for eliminating repetitious language in 111.2(2)a to i by inserting a colon after "Wild turkey, in accordance with the tenure of license issued, may be taken in" and then listing zones alphabetically. Bishop was amenable.

ch 108

Marion Conover, Supervisor, Fish Management, reviewed filed chapter 108 on sport fishing [IAB 10/31/79]. He called attention to a change which allows live bait fishing on Spring Branch Creek. Previously, only artificial lures were permitted. In response to Tieden, Conover reminded him that the catfish length limit pertains to commercial fishing on the Mississippi River. He concluded that the sport fishing catfish length limit has not been approved and is awaiting legislative action.

EMPLOYMENT SECURITY (job service)

Paul H. Moran, Administrator, Job Service Division, James A. Hunsaker, Hearing Officer, Job Services, William Angrick, Citizens' Aide, John Spinnato, Legal counsel, Citizens' Aide, and Robert Bray, Legal Services Corporation of Iowa, were present for review of the following:

EMPLOYMENT SECURITY[370]
Employer's records and reports, 2.8(2), 2.9(1), 2.18(3) **ARC 0665** ..... N 10/31/79
Employer's contribution and charges, 3.1(1"e", 20), 3.6(1)"h", 3.6(2), 3.8(8), 3.12(1, 2), 3.28(1)"b"(1), 3.28(2-4), 3.32(1), 3.40(2"a, e", 4), 3.41(3), 3.43(4"a", 7, 8"c", 9"a", 10, 11"b", 12"b", 14), 3.44(3), 3.50, 3.54(2, 5, 6), 3.58, 3.59(2), 3.70(13), 3.71(4), 3.72(3, 6), 3.85 **ARC 0666** ..... N 10/31/79
Claims and benefits, 4.2(1)"h", 4.8(7), 4.22(1)"r"(3), 4.22(4)"c", 4.24(8, 16), 4.26(6, 18), 4.34(11) **ARC 0667** 10/31/79
Employer's contribution rates, 6.7(1)"a" **ARC 0671** ..... N 10/31/79

EMPLOYMENT SECURITY[370]
Administration, 1.7(1)"c"(1) to (3), 1.7(1)"e", 1.7(2) **ARC 0668** ..... F 10/31/79
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Claims and benefits, 4.2(1)"b"(8, 9), "c"(1-3), 4.2(2)"a", 4.8(1)"a, b, d", 4.13(1)"g, o, r", 4.13(2)"b, c, m", 4.16(3), 4.18, 4.22(1)"v"(2-4), 4.22(4), 4.23(15-18), 4.24, 4.24(2)"b, c", 4.24(15), 4.26(15)"b", 4.27(1)"b", 4.28(1, 2), 4.31, 4.31(2, 5, 6), 4.32(1)"b", 4.32(2) **ARC 0670** ..... F 10/31/79

In re 2.8(2), 2.9(1) and 2.18(3), Tieden questioned the advisability of the word changes. Responding to Tieden as to the reason for substituting "subjectivity" for "liability" (2.8(2), Moran advised that it seemed more appropriate.

There was review of 3.12(1) pertaining to separation notices. Holden opined failure to file a separation notice could prejudice the employer's case. Moran replied the employer has several alternatives and, if a person leaves for a disqualifiable reason, the employer can initiate a protest

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without filing a claim. After the protest is recorded, the individual's right to receive official notice is not waived. Since the employer protest period has been changed from 7 to 10 days, job service thought the same 10-day period should be extended to the separation notice.

Tieden inquired as to how promptly employers send in claims and if people are well informed. Moran indicated pertinent information on new tax rates was mailed several weeks ago.

The Committee's attention was directed to the problem of employers who are faced with increased contributions to the fund even though employees have not drawn unemployment. According to Moran, the payroll and the amount paid in over the years continues to increase. He discussed the method of determining percentages paid by employers. Priebe thought, if the employer had employees who were not drawing unemployment, there should be no increase. Holden concurred with Priebe and suggested triggering the increase to the employer more gradually.

In answer to Tieden's question as to the condition of the fund, Moran replied the balance was $150 million. He continued that the trust fund is building up to a point where it would accommodate a bad recession.

Priebe asked if the bill [68thGA, ch 33] had reduced the cost. Schroeder commented that if the employer's payroll remained stable, the contribution to the unemployment fund would be reduced. Moran said the 8,900 [employers] in the zero rate are not increasing their excess--their average payroll is going up, resulting in loss of their zero rate next year. Zero rate is good for one year.

In discussing 3.43(11), Moran said the government-type employer, the reimbursable employer, doesn't pay cost of administration, and doesn't pay tax to the trust fund. He explained that if an unemployment claim is initiated as a result of action by an employer, the claimant would be paid from the reimbursable fund. Subsequently, the employer is billed by job service. The trust fund accumulates from contributions by employers in the private sector and money distributed to the government employer has to be reimbursed. Schroeder questioned the fifty percent factor on the reimbursable system.

With respect to 3.43(10)b, Clark favored offering the claimant the same agreement set out in c. Schroeder had difficulty believing there would be overpayments as large as $3000. Tieden inquired re the number of overpayments and the Committee was informed that, in the last ten years, there had been approximately $2 million. Discussion of money which is never

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regained and the overpayment process used. In the event an individual files another claim, the total amount of money due to job service would be "scarfed off" until the fund is repaid. Tieden suggested the possibility of charging interest and Moran agreed to check the matter.

Clark pointed out grammatical errors: 3.43(10)e "having been" should be changed to "has been", and 3.43(10)f, second line, delete "that".

With respect to the department's responsibility to recover overpayment of benefits, Oakley favored shortening the time frame. Moran was willing to consider Oakley's recommendation, however, he pointed out a second problem with the possibility of notices crossing in the mail.

In re 3.58(96), the last sentence, Holden preferred using "shall" in lieu of "will". In 3.59(2)a, b, he requested that "shall" remain. Bervid was amenable. Bervid said the collection unit had requested permission to use discretion in each situation.

Holden raised a question, in 3.72(3), as to changing the initial period of elective coverage from two years to one.

In response to Schroeder, re 4.22(1), Moran said there is no definition in the Code. He indicated this is a constant problem and he cited drivers with the Winnebago firm as an example. Moran thought the rule was starting to define "on-call". Schroeder expressed opposition to the rule. Oakley was supportive of the rule stating it was intended to provide guidelines.

With respect to form IESC 1688, Holden questioned the deletion of the last sentence in 4.22(4)c and Moran explained that the department's efforts in attempting to verify whether or not an employer is out of business has been one of their biggest headaches [approximately 7000 accounts are closed each year]. He called upon Committee members to recommend solutions. Oakley said this will continue to be a difficult area and predicted eventual adjudication. He was of the opinion that the problem might be one for the legislature to resolve.

Oakley urged the department to confer with the Civil Rights Commission and Social Services personnel in an attempt to establish more definitive criteria with respect to handicapped persons' accessibility to a job. (4.24(16). Moran was amenable.

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Moran commented that rule 4.34(11) was intended to implement sections 96.5(3) and 96.5(4) of the Code as interpreted by the Iowa Supreme Court case of Galvin v. Iowa Beef Processors, filed January 18, 1978, federal regulations and recent legislation. The rule redefines labor dispute on job openings. The department does not refer prospective employees to employers who are involved in labor disputes.

The Committee reviewed 1.7(2) which provided in part "Information subject to the confidentiality of this rule shall not be made available to any authorized agency, bureau or department prior to written notification to the individual involved, except in criminal investigations...."

Patchett asked if written notice were necessary when requesting additional information. Moran responded that each employer is required, quarterly, to report to job service the names, social security numbers and gross wages of all employees. The information is kept by employer account number and employer name and job service has no way of notifying the claimant when an information request has been made. Moran stated that, since July, claimants have been advised that information will be released to specific agencies, upon request. Moran continued Employment Security complies with several specific federal laws regarding distribution of information. He recalled legislation which basically closes any conformity issue. Patchett favored placing an objection to the rule which would reverse the burden of proof.

Clark and Schroeder expressed interest in changing the statute. Patchett contended it contemplated specific notice and the rule did not.

Bervid commented the statute does not provide "specific notice"--only "prior notification". General discussion of the legislative intent. Moran told the Committee information is not released by telephone or by verbal request. In response to Committee question, Moran did not think information could be released to a legislative committee without written authorization. He concluded job service would have to consider each case on its own merits.

Discussion centered around dissemination of confidential information between agencies and safeguards were considered. Spinnato explained the procedure the Ombudsman follows when investigating complaints. There was disagreement with regard to Job Service granting the Citizens' Aide access to confidential information. Patchett pointed out the law states information shall be released to an agency operating "a program of

EMPLOYMENT SECURITY Cont'd

public assistance", which, in his opinion, would include the Citizens' Aide. Bervid referred to §601G.8 and noted that the Citizens' Aide may maintain security...." and he interpreted that to mean may or may not as used in that context. Spinnato advised the Committee that complaints, unless originated from an individual, are not investigated.

There was discussion of the role of the Citizens' Aide, if any, under the statute as written, and Patchett referred to §23(7)d, ch 33 [68th GA].

Schroeder concurred there was a problem and he recommended that the Ombudsman make recommendations to the appropriate legislative committees.

There was further discussion of confidentialy requirements as per the statute, and Bervid thought they could not be sidestepped. He said the specific notice is not spelled out in the statute. Patchett did not concur with Bervid.

Spinnato stated they could find nothing in the statute, federal regulations or the Privacy Act requiring confidentiality requests to be in writing.

Angrick commented he has a problem if his office is not providing public assistance, however it is defined. He emphasized that the function of his office is to provide public assistance. He was confident they should have access to the confidential information referred to in chapter 33 [Acts of the 68th GA]. He reiterated the confusion which has ensued as a result of Job Service procedures having been imposed upon the office of the Ombudsman. Angrick urged a more expeditious method for handling confidential information and added, previously, there were no problems. He preferred a system which would satisfy Job Service as well as citizens.

Oakley addressed the Committee as to the important service both departments are performing and he stressed the necessity of rapport between the two agencies. It was his opinion that the Committee should decide whether or not delays involved in the matter of written waivers would more than balance out the necessity for almost overnight, or same day, service that the Ombudsman has been providing in certain kinds of cases. He continued that a decision must be made as to which option would be of greater value for the claimant.

There was comment upon the problem of citizens being unaware of the time frame for contesting a particular claim.

As to the position the Committee should take in the matter between the two agencies, Patchett reasoned an objection could

EMPLOYMENT SECURITY cont'd

result in one agency suing another. Oakley indicated his office planned to make a recommendation for the two agencies.

There was further review of chapter 33, §23 of the Acts. Patchett reiterated it deals with agencies authorized to obtain information regardless of whether or not it involves a request from the claimant.

In answer to a question by Oakley, Hunsaker indicated if the Ombudsman's office were construed to be a public assistance agency, information would be released to them and he explained the process.

Patchett referred to the objection which was placed on the rule 1.7(1), Filed Emergency, [IAB 9/5/79]. Patchett moved the objection, as originally placed by the Administrative Rules Review Committee, be reinstated as follows:

OBJECTION 1.7(1)c

> At its November 13, 1979, meeting the administrative rules review committee voted the following objection:
>
> The committee objects to 370 IAC 1.7(1)"c", relating to agencies entitled to obtain claimant information from the department, on the grounds this provision is unreasonable. The paragraph appears as part of ARC 0668 in Vol. II, IAB, No. 9 (10-31-79).
>
> It is the opinion of the committee the office of the citizens aide/ombudsman should be included in the enumeration of agencies entitled to obtain information from job service, since the office should qualify as an agency responsible for "public assistance to unemployed workers" and as such an agency should have access to records as provided in SF 373, section 23. The citizens aide/ombudsman is a statutory agency created to assist members of the public in handling problems they may have with government. The committee feels such a service does indeed qualify as "public assistance" as provided by the Act.

VOTE

Short form requested and the motion to object carried viva voce.

1.7(2)

Patchett thought it important for the statute to be clarified as to whether specific notice or a general blanket notice was required. No formal action taken.

Clark inquired as to the meaning of "noncharged" as used in 3.43(15). According to Moran, when a person voluntarily quits, he or she must requalify in order to accept new employment. He explained, when the person requalifies, all of the wage credits from the former employer are transferred to the requalifying employer. Ten weeks of charges are forgiven if a person has zero earnings for ten weeks, but if there are some earnings, it is questionable as to how much would be "noncharged." He added the Employment Security determined that "noncharged" would be ten times the weekly benefit amount. Moran said "noncharged" is synonomous with "forgiven" although Iowa is unique in this area.

In answer to Clark, Moran assured her the problem with two conflicting paragraphs, SF 373, ch 33[68th GA], and §96.14(3) of the Code] would be corrected with recommended legislation. Schroeder interjected that the last enacted statute takes precedence.

EMPLOYMENT SECURITY Cont'd

Patchett said there is also a statutory rule of construction and was of the opinion the matter could not be resolved merely by administrative rule. In answer to Patchett, Moran replied that Employment Security is not planning a change in 3.43(11)a, Filed, [IAB 10/31/79]. Moran continued that it would not be possible for the federal to pay the cost of contributing employer extended benefits and Bervid added that the rule is based on the federal law.

Patchett advised the department to seek Iowa legislation consistent with federal statutory changes and Committee members concurred. Schroeder pointed out the federal law already supersedes state law and Moran reiterated governmental subdivisions do not pay that tax.

There was general review of 4.22(4), going out of business, with Patchett inquiring if employers would be qualified under the definition. Moran replied in the affirmative. Patchett suggested a transitional period be provided and Holden recommended the words "plant closing" be included in the rule.

In view of the fact there is a redetermination right, Oakley opined the initial determination was not quite as important. General discussion of problems in calculating compensation and eligibility for benefits for those affected by plant closings. Moran said, usually, a community has advance notice of closings.

Patchett called attention to subrules 4.23(15), (16), (17), (18), which had not been included in the notice.

Bray, Legal Services Corporation of Iowa, spoke in opposition to this practice as being in violation of the Administrative Procedures Act. It was his contention the amendments constitute a significant change in a substantive law relating to job searches as a requirement for eligibility for benefits.

Hunsaker agreed to resubmit the subrules under notice to allow time for public comment.

Bervid said the additions alluded to by Bray were inserted at the request of the Administrative Rules Review Committee, and as a result of input gleaned at a public hearing.

Royce noted Legal Services had a valid point since their opportunity, authorized by 17A.4 of the Code, to comment on the rules had been denied.

Bray interpreted 4.22(1) to implement 96.5(3) of the Code, dealing with individuals who fail to apply for or accept suitable work. It would appear the Legislature intended to require certain applicants to verify their efforts. He contended the

EMPLOYMENT SECURITY cont'd

result in one agency suing another. Oakley indicated his office planned to make a recommendation for the two agencies.

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1.7(2)

Patchett thought it important for the statute to be clarified as to whether specific notice or a general blanket notice was required. No formal action taken.

Clark inquired as to the meaning of "noncharged" as used in 3.43(15). According to Moran, when a person voluntarily quits, he or she must requalify in order to receive benefits. He explained, when the person requalifies, all of the wage credits from the former employer are transferred to the requalifying employer. Ten weeks of charges are forgiven if a person has zero earnings for ten weeks, but if there are some earnings, it is questionable as to how much would be "noncharged." He added the Employment Security determined that "noncharged" would be ten times the weekly benefit amount. Moran said "noncharged" is synonomous with "forgiven" although Iowa is unique in this area.

In answer to Clark, Moran assured her the problem with two conflicting paragraphs, SF 373, ch 33[68th GA], and §96.14(3) of the Code] would be corrected with recommended legislation. Schroeder interjected that the last enacted statute takes precedence.

EMPLOYMENT SECURITY Cont'd

Patchett said there is also a statutory rule of construction and was of the opinion the matter could not be resolved merely by administrative rule. In answer to Patchett, Moran replied that Employment Security is not planning a change in 3.43(11)a, Filed, [IAB 10/31/79]. Moran continued that it would not be possible for the federal to pay the cost of contributing employer extended benefits and Bervid added that the rule is based on the federal law.

Patchett advised the department to seek Iowa legislation consistent with federal statutory changes and Committee members concurred. Schroeder pointed out the federal law already supersedes state law and Moran reiterated governmental subdivisions do not pay that tax.

There was general review of 4.22(4), going out of business, with Patchett inquiring if employers would be qualified under the definition. Moran replied in the affirmative. Patchett suggested a transitional period be provided and Holden recommended the words "plant closing" be included in the rule.

In view of the fact there is a redetermination right, Oakley opined the initial determination was not quite as important. General discussion of problems in calculating compensation and eligibility for benefits for those affected by plant closings. Moran said, usually, a community has advance notice of closings

Patchett called attention to subrules 4.23(15), (16), (17), (18), which had not been included in the notice.

Bray, Legal Services Corporation of Iowa, spoke in opposition to this practice as being in violation of the Administrative Procedures Act. It was his contention the amendments constitute a significant change in a substantive law relating to job searches as a requirement for eligibility for benefits.

Hunsaker agreed to resubmit the subrules under notice to allow time for public comment.

Bervid said the additions alluded to by Bray were inserted at the request of the Administrative Rules Review Committee, and as a result of input gleaned at a public hearing.

Royce noted Legal Services had a valid point since their opportunity, authorized by 17A.4 of the Code, to comment on the rules had been denied.

Bray interpreted 4.22(1) to implement 96.5(3) of the Code, dealing with individuals who fail to apply for or accept suitable work. It would appear the Legislature intended to require certain applicants to verify their efforts. He contended the

EMPLOYMENT SECURITY cont'd

section did not require all claimants referred by Job Service to supply a signed statement from prospective employers. He concluded the adopted rule exceeds the scope of the legislative intent and encouraged modification.

Priebe commented that even though the statute seems burdensome, he believed it was the legislative intent.

LUNCH 12:30 p.m.

Chairman Schroeder recessed the Committee for lunch to be reconvened at 1:30 p.m. to continue review of Employment Security rules.

The Committee agreed to request Executive Council to appear on Wednesday, November 14, 1979, at 9:00 a.m.

Reconvened

The meeting was reconvened at 1:35 p.m. with a quorum present.

MOTION 4.22(1)v(2)

Review of 4.22(1) continued. Clark moved an objection to 4.22(1)"v"(2). [The specific language was drafted by Royce following the meeting].

Priebe asked where Job Service obtained their authority for the exception [4.2(1)"c"(1)] as mentioned in 4.22(1)"v"(2).

Moran said the rule is directed toward people who are not actively seeking employment. Most people make legitimate searches and he pointed out that demanding signatures on all claims, which amount to upwards of 200 to 300 million yearly, would be a "horrendous" problem for the department. In response to Tieden, Moran agreed it would be difficult to spot check however, some effort is made on a weekly basis.

Priebe and Tieden recalled instances of the entire system being highly abused by people on unemployment.

After brief discussion on the proposed objection, Royce suggested he prepare the language in a rough draft form to present to the Committee on Wednesday re the Clark motion to object to 4.22(1)"v"(2). Committee was amenable. [No formal action was taken by the Committee at their Wednesday session].

Oakley asked how the rule would affect the reverse referral system. Moran could not supply a dollar figure but said the impact on the budget would be substantial.

Chairman Schroeder delayed the calling of the question on the Clark motion to object to 4.22(1)"v"(2) until Wednesday.

Patchett called attention to the fact that certain forms of the department had not been published under provisions of 17A. He made specific reference to form 201A.

EMPLOYMENT SECURITY Cont'd

Patchett noted that 4.24(15) did not contain all criteria which must be met with respect to suitable work. Bervid pointed out that the statute contained information which was not repeated in the rule.

Patchett recalled discussion at a previous meeting re Needham, General Growth case and whether or not the rules should be applied retroactively and whether or not changes applied retroactively should take the form of a rule, thus allowing advance notice to interested persons.

Hunsaker said the issue was in the courts and Job Service thought it more appropriate to await the court's decision before submitting a rule.

2:00 p.m. Holden returned.

Bervid said it was his opinion they could proceed with or without a rule as long as the department is acting under the cover of the law.

Royce agreed this was indeed a "gray area." There was discussion as to the principle of general application.

No other formal action by the committee.

TRANSPORTATION

George Calvert, Director, Development and Candace Bakke, Regulation, were present for review of the following rules:

TRANSPORTATION, DEPARTMENT OF[820]
Primary road access control, [06,C] en 1 ARC 0652 ..... N 10/31/79
Excess size and weight, vehicles, special permits, [07,F] 2.3(4), filed emergency ARC 0627 ..... F,E 10/17/79
Interstate registration and operation of vehicles, [07,F] 1.15 ARC 0648 ..... F 10/31/79

Schroeder asked if DOT officials envisioned that, at a later date, access could be gained to property, adjacent to I-380, which had no access when sold. Calvert replied in the negative.

In re the current policy on access control, Calvert advised the Committee that the current policy was originated in 1966, and the rule revision reflects knowledge and experience gained since that time. Access policies are established for class I, II, and III highways----proposed policy establishes regulations according to functional classification, such as freeway, expressway, etc. Functional classification restrictions will, in general, be less restrictive as to minimum spacing requirements. He continued that the state policy of controlled entrances is an energy-saver, allowing for an efficient, free flow of traffic. He listed the spacing requirements for highways and cited Highway 65, between Des Moines and Indianola, as a good example of controlled access. Tieden favored allowing common sense to prevail and suggested variances be provided.

In re 1.2(11), Schroeder expressed dismay at the inclusion of a posted daytime speed limit in excess of 55 mph, when 55 mph

TRANSPORTATION Cont'd

is the maximum. Holden thought the rule should be amended to reflect the current speed limit. There was general discussion of minimum required stopping distances.

Discussion of problems which are confronted by farmers who need entrance to their fields. DOT officials took the position that Iowa law would prevent dictating land use policy. Consequently, there would be no provisions prohibiting a traffic generating source. Tieden thought the rules were too rigid and suggested county zoning could resolve this problem. Priebe maintained access control is abused in his area.

In answer to Oakley, Calvert indicated there had not been a request for oral hearing. Calvert reminded the Committee that the existing rule was merely being liberalized. Oakley made the recommendation that the department conduct a public hearing and Committee members were inclined to concur.

According to Tieden, slope requirements for corridors along highways are atrocious and he thought practicality should be considered, particularly in hilly areas. He wondered if Iowa was meeting the Federal Highway Safety Act standard and Calvert replied in the affirmative. No formal action taken by the Committee.

Bakke reviewed [07,F]2.3(4) and called attention to the fact that paragraph "h", which contains the refund provision for people who do not have the 58 foot permit, is under injunction, so DOT is enjoined from doing anything. Permits issued after September 4 were for 55 feet in length and for the weight that they could bridge with that length. All permits issued between August 14 and September 4 for 58 feet remain valid.

Schroeder questioned the rationale of charging the same fee for 55 feet as was previously charged for 58 feet. Bakke said the change was initiated on advice of counsel.

Bakke explained that the Iowa Motor Truck Association sought the 58 foot length when they took DOT to court.

Oakley observed that the department was not precluded from extending those permits issued after September 4 to more than 55 feet. Bakke reiterated that, on advice of counsel, the department has elected not to do so.

Priebe questioned the authority for increasing to $70 the fee for additional weight. Committee members referred to §321E.14 as possible authority. However, Bakke agreed to research the matter further and advise Priebe. Priebe favored the 80,000 lbs. weight. In answer to Tieden, Bakke stated the emergency order expires December 31, 1979.

TRANSPORTATION Cont'd

Attention was directed to 1.15, temporary registration for unregistered vehicles (hunter's permit), which allows an owner-operator to travel legally after he or she has terminated a lease. Previously, it was difficult to move to the sight of a lease. In answer to Schroeder, Bakke said the Nebraska permit law differs from Iowa. Schroeder recalled Nebraska has a 24-hour permit and Bakke added that Iowa has a demonstration permit valid for five days in order to allow trying a vehicle before buying it. She agreed to request the vehicle registration division to provide additional information.

SPECIAL REVIEW

There was special review of existing rule [08,G]1.4 pertaining to restrictions on highway projects, published in the IAC. In answer to Schroeder re banning parking on four lane road improvements in cities, Robert Humphrey, DOT, advised that in negotiating with cities, one of the items discussed and agreed upon is the removal of parking. He continued public hearings are held and alternatives are considered and said DOT would stand fast in continuing the practice of working with communities.

Schroeder was confident the issue would surface again since many communities oppose the ban. Humphrey said it was important to understand that DOT policy was to maintain or increase capacity where the width is available and try to avoid expenditure of the road use tax money. He agreed everyone has a different philosophy. No formal action taken.

COMPTROLLER

Eldon Sperry and James Anderson represented the accounting division of the Comptroller's Office for review of 1.6(2)b.[10/17] Also appearing was John Ayers, Lawyer, representing the American Federation of State, County Municipal Employees, Local 61. He noted that provisions of collective bargaining provide $12 daily for meals. Ayers contended the allocations set out in the rule were inadequate since more employees claim breakfast and lunch than the evening meal. Priebe was sympathetic with Ayers' concern but doubted amounts could be changed. A DOT inspector was present and voiced concurrence with Ayers.

Holden could not forsee a serious problem. Ayers reiterated AFSCME preferred flexibility with a possibility of $6 per person between breakfast and lunch and $6 for the evening meal. There was general agreement the Committee should not make recommendations.

Sperry mentioned the fact that a public hearing had been held and persons who spoke in opposition to the lunch allowance lacked facts to support their claims. He advised the Comptroller's office had analyzed quite a few claims between the time of the administrative hearing and the public hearing and

COMPTROLLER Cont'd

it was determined the average lunch cost was $2.50. Oakley observed that Gene Vernon, Director, Employment Relations, had no opposition to the rule as filed. It was Oakley's opinion the subject did not belong in collective bargaining and that the rule was reasonable. In answer to Priebe, Sperry indicated the rule would be reviewed in about a year when negotiations begin. The Committee took no formal action.

COMMERCE COMMISSION

Daniel Fay, Counsel, and Bill Randolph, Engineer, were present for review of Commerce rules pertaining to soil conservation protection standards, chapter 9 [Notice, IAB 10/17/79].

In a matter not officially before the Committee, Fay presented Schroeder with a letter re warehouse rules. Fay reminded the Committee SF 447, [68th GA, ch 118] required adoption of rules before January 1, 1980. He remarked the Commerce Commission had appointed a "blue ribbon committee" of farmers, engineers, pipeline experts who perused a draft by the Commission staff. The proposal was the result of the joint venture. Proposed rules were sent to various county boards of supervisors and written comments from the pipeline industry were received at the hearing. In answer to Schroeder, Fay said one pipeline company [Northern Natural Gas Company] challenged Commerce Commission jurisdiction with respect to interstate natural gas pipelines.

Discussion of channel location and pipeline angle, with Priebe and Schroeder questioning the 2'0" length of channel. Schroeder preferred 3' to 4'. According to Randolph, state and federal soil conservation officials, in most instances, were satisfied with 1' of support on each side.

Priebe inquired as to why similar rules were not applicable to electric companies and he requested the Commission to draft some rules for burying underground cable, if possible. He cited cases where lines crossing roads were cut by big equipment. There was discussion as to whether or not this was a matter for legislation. Fay said lines are franchised and distribution lines are not placed underground. The Committee agreed burying lines, whether telephone or electrical, was a problem.

In answer to Schroeder re 9.2(1)f, Randolph defined hand-tamped backfill as nonmachine auger-type or dozer-type fill--it is carefully placed by hand operated pneumatic tampers to avoid damaging a tile repair. Discussion of pros and cons of plastic, steel or clay drain pipes with the Commission expressing opposition to plastic for drain pipes.

Priebe requested the Commission to check their authority with respect to buried cable and high lines with the possibility of requesting legislation. Fay was amenable.

RECESS — Chairman Schroeder recessed the Committee at 3:45 p.m. to reconvene at 3:50 p.m.

CREDIT UNION — Betty Minor, Administrator, gave a brief review of share drafts, chapter 7; real estate loans, chapter 10, and insolvency, chapter 11 [Notice, IAB 10/31/79]. A public hearing was scheduled for November 27, 1979, and the rules, chapter 7, as promulgated by the Banking Department would be replaced by rules of the Credit Union Department. She concluded the liquidity reserve requirements were changed by the statute. Information required by Credit Unions re the share draft programs was spelled out in 7.4.

Schroeder contended the heading of chapter 10 did not seem to fit the rules and Minor agreed to insert the words "ninety percent" before "real property" in 10.1 for clarification. No further recommendations.

DENTAL EXAMINERS BOARD — Dr. Clarence Hosford, Chairman of the Board, offered background on dentistry rules dealing with advertising and professional notices, chapters 26-28 [Filed, IAB 10/31/79]. Other interested individuals who appeared were: Marcia J. Hellum, Attorney; Robert Egge and James Monroe, Attorneys representing two dentists, Robert L. Wright and Robert L. Burns; and William Baker, Attorney for Dr. Thomas J. Schemmel.

According to Hosford, the rules, created in November 1977, were revised several times, hearings were held and public comment was incorporated in the liberalized version. Oakley acknowledged he had advised the Board during the revision. Priebe reported receipt of many complaints from concerned dentists.

Hosford commented that although there was not complete acceptance of the rules, the Board believed the profession could be regulated. He reiterated the rules were probably some of the most liberal in the United States.

Responding to Schroeder re 26.4(3)b, Hosford said "cure" was substituted for "relief." Board members contended a dentist could not promise to cure. There was general agreement that extraction would not constitute a cure. Schroeder questioned the statutory authority for including court cases in the implementation clauses. Hellum responded that the advertising rules were based on the results of the Bates v. Arizona decision. Clark recommended omitting the case reference from the implementation clause and listing it in a separate reference. Hosford was amenable.

Monroe explained that his clients have been advertising for approximately two years and have had no complaints. He urged the Committee to object as the rules would become a prototype

DENTAL EXAMINERS BOARD Cont'd

for various other professions and were not supported by public policy.

Hosford emphasized that the Board had received complaints, relative to advertising, but lacked rules to deal with the matter. In answer to Tieden, Monroe explained their position was the rules were being promulgated illegally. He stated four specific objections--(1) not in the public interest (2) the Board lacks authority to promulgate these rules--they are limited to rules re fraudulent advertising or misleading or misrepresentation of certain quality of services (3) the rules are unconstitutional (4) content is ambiguous and too restrictive.

Baker, representing Dr. Schemmel, supported Monroe's position. He was critical of 27.3(4), 27.3(5), 26.1(2) and 26.3(1) as being inadequate, too restrictive and vague. There was brief discussion of the sample advertising brochure [The New Alternative in Dental Care] sent to the Committee. Holden asked if Hosford thought the advertising, which has been in practice since 1977, had anything false, misleading or deceptive in it. Hosford replied in the affirmative and cited an example. He was confident the Board had the authority in chapters 153, 147 and 258A to promulgate the rules.

Discussion of 26.4(1)h with Clark suggesting use of a date certain in a telephone directory. Hosford thought people would tend to overlook that information in an advertisement. Clark viewed the rule as an attempt to alert dentists to be very specific. Hosford agreed to consider Clark's recommendation. He stressed that the Board is interested in preventing misrepresentation to the public and allowing the public the right to compare fees. A direct mail brochure would not allow equal access for all. Priebe supported direct mail.

Holden questioned the regulation on the basis of false, deceptive or misleading advertising as to how they are inherently these things in themselves, preventing the development of any unfair competitive advantage. Holden asked what was inherently wrong about that.

Board officials cited the problems of enforcement and lack of funds. In re 26.3(1), Holden asked if a full page ad would be deceptive or misleading and Hosford replied that each case would have to be considered individually. He added they had been more concerned with content than with form. Holden questioned limitations in 26.4, with Hosford stating the ad is their sole method to disseminate information to the public and should not be confusing.

Holden doubted use of "may" in 27.3--signs--would convey the Board's intent. He preferred placing an objection on the entire

DENTAL EXAMINERS BOARD Cont'd

set of rules because, in his opinion, they were designed to prevent competition among dentists, which was not the intent of the law or what the supreme court envisioned when advertising was permitted. Patchett questioned the practice of advertising by dentists or professionals and thought the Bates decision was right.

Hosford pointed out they were allowing any procedures recognized in the American Dental Association Uniform Code. In answer to Schroeder, Hosford said that brochure had not been identified in the rules. There was discussion of prerecorded advertisements and the Committee expressed opposition to 26.3(2).

After perusing earlier drafts of the rules, Oakley notified the Board there were some areas the governor would possibly veto. After substantial revision, the only objectionable area is 27.3(4).

Tieden thought the governor was imposing his concept of advertising for lawyers and all professions on this particular field. Priebe concurred.

Oakley remarked that these rules were considerably liberalized from those which relate to lawyers. Oakley said the governor is reflecting his attitude of representing the public in delineating threshold standards. He discussed the impact of the rules on the public. Although the governor is not required to explain his reasons for a rescission, Oakley stated this would be useful as guidance for future agency action and to the public in judging whether or not he has exercised his power arbitrarily.

Oakley conceded his office had advised the Board that certain policy decisions would, in fact, be rescinded. Priebe cautioned that the governor could be exceeding his authority. He agreed the governor has the "veto" and should exercise it, but thought discretion should be used in advising an agency during the rule-making process. After reviewing comments from dentists on both sides of the issue, Tieden was concerned the Board had been unduly influenced.

Hosford indicated the Board considered it advantageous to know the governor's position.

Egge asked for statutory authority for the Board to ban use of the United States mail. Hellum explained it was the form of advertising, not the use of the mail. It was Egge's contention there was no authority for this ban.

Holden, because of his long-held position that licensed pro-

DENTAL EXAMINERS BOARD Cont'd

fessionals are more protective of their profession than they are of the public, in many cases, could not reconcile regulating the rules to prevent false, deceptive and misleading advertising. He moved the following objection: [Royce draft]

OBJECTION

The committee objects to certain rules adopted by the board of dental examiners, relating to advertising by dentists, on the grounds they are unreasonable and beyond the authority of the board. The rules appear as part of ARC 0653 in Vol. II, IAB, No. 9 (10-31-79), and are codified as 320 IAC 26.1(3), 26.2, 26.3, 26.4(1) and (2), and chapter 27 in its entirety.

It is the feeling of the committee professional advertising should be regulated to protect the public against false, misleading or deceptive advertising. The rules appear to be more designed to protect the dentist against competition by limiting the use of advertising. In *Bates v State Bar of Arizona*, the United States Supreme Court held that advertising by attorneys could not be subject to "blanket supression" with the provisio that advertising which is "false, deceptive or misleading" is properly subject to restraint. This approach seems equally applicable to dentists as well as lawyers.

The appearance or manner of advertising is less important than the content in determining whether an advertisement is false, misleading or deceptive. As long as the message in the advertisement is true and presented in a straightforward manner, it should not matter what size type is used, what type ink is used or what advertising media is used. To the extent these rules regulate the appearance of an advertisement, as opposed to its truthfulness, it is the opinion of the committee these rules violate the basic principles of the *Bates* case and unreasonably interfere with the advertising of dental services.

VOTE

Priebe requested short form--the Committee decided to exclude 26.1(1) and (2) and 26.4(3) from the objection. The motion carried viva voce.

The Committee recessed at 5:45 p.m. to reconvene at 9:00 a.m., Wednesday, November 14, 1979.

Reconvened

Chairman Schroeder reconvened the Committee at 9:00 a.m. Wednesday, November 14, 1979. All members were present. Also present were Joseph Royce and Brice Oakley.

EXECUTIVE COUNCIL

West C. Wellman, Secretary, introduced John Crandall, Director, Disaster Services, and Dennis Jacobs, Acting State Coordinating Officer, for review of chapter 15, Filed Emergency [IAB 10/17/79]. Jacobs cited §29C.20 as authority and advised the Committee that the intent is to provide for loans or grants to aid communities following natural disasters. He discussed the implementation process, noting the governor's involvement.

Disaster services, in behalf of the executive council, submits recommendations to the attorney general for assessment and review. Ultimately, the executive council makes the final decision as to whether or not the grant will be made.

It was noted that in order to participate in the grant program, communities' expenses must have been $6 or more per capita due to a disaster. In answer to Schroeder as to the derivation of the $6 figure, Jacobs replied that the program was relatively new and he was unable to justify the figure other than "past precedence." Previously, there had been no administrative rules dealing with the program. A repayment period is established under §384.8 and §24.6, The Code.

In response to Tieden, the Committee was informed that the department is not connected with OPP and they provide certain administrative services to the executive council. Oakley

EXECUTIVE COUNCIL (disaster services) Cont'd

commented he had worked with the department in drafting language.

Patchett requested the statutory authority for hiring the State Coordinating Officer. Jacobs commented that, normally, the director of disaster services serves as the SCO and cited chapter 29C as authority. Since there was no formal director, Jacobs served in the capacity of SCO. In the future, John Crandall, newly hired director, will again be the SCO. Jacobs is under the jurisdiction of the Department of Public Defense.

Clark called attention to gender errors in 15.7(1) and 15.7(3)b.

Priebe commended disaster services for their efforts during the Algona tornado disaster last summer.

SOCIAL SERVICES

Judith Welp, Policy, Research and Analysis; Pat McClintock and Robert Bray, Legal Services Corporation of Iowa, were present for review of the following:

SOCIAL SERVICES[770]
John Bennett correctional center, ch 16 ARC 0633 ....F..... 10/17/79
ADC, income, 41.7 ARC 0634 .....F..... 10/17/79
Intermediate care facilities, 81.2 rescinded ARC 0635 .....F..... 10/17/79
Rural rehabilitation student loans and grants, 146.2(6) ARC 0636 ..F..... 10/17/79

SOCIAL SERVICES[770]
Inpatient psychiatric services, ch 85, filed emergency after notice ARC 0632 ..F.~~E~~A.N..... 10/17/79

Chapter 16 rules were acceptable as filed. Welp reported that chapter 41 had been completely rewritten, with the Department defining income--earned and unearned--enumerating the types of income, and the budgeting process would be a monthly reporting system.

Schroeder questioned 41.7(2)m(1) and Welp explained it pertains to determining the profit from a self-employment type enterprise. Schroeder inquired as to the validity of the practice of reverting to the state any child's earnings in excess of $3100 per year. Welp replied that student earnings are exempt unless a child drops out of school, then earnings would be calculated in the same manner as adults.

Pat McClintock opined the reversion of moneys applies to persons receiving Social Security survivor benefits. There was general discussion with the Committee deciding the program was either under SSI or Social Security.

Tieden questioned deviation and wondered, in the exempted income category, if federal guidelines were followed. Welp thought most of them were, but Tieden said there were some deviations. Welp advised "reimbursement from the employer job-related expenses" had been added by the Department, with the reason being a person has the paycheck, pays expenses while on the job out

SOCIAL SERVICES Cont'd

of his or her own funds and the employer reimburses the person. Welp continued, re the income tax refund, there was a choice because the Department uses the withholding table and they do not have to count the income tax refund.

Priebe, re 41.7(7), wondered about contributions, gifts and winnings and Welp said the lump sums, similar to insurance benefits, which are received on a one-time basis, are counted as a resource but not as income.

In answer to Clark, Welp stated a recipient is allowed a certain amount of resources, e.g. homestead, car, up to $800 cash for the first person and $400 for each addtional person. She added the recipient would be canceled from ADC if he or she received winnings (resources).

Oakley asked Welp how funds received in a judicial settlement as a result of an injury would be handled--would it be broken down between pain and suffering, loss of future earnings, etc. Welp replied that medical settlements, generally, are not counted as a resource if it is set aside. It would be considered under the Title XIX program as a third-party resource.

In a property damage settlement, a two-month time frame would be allowed for replacement of damaged property and there is an exception -- loss of house by fire in midwinter. Oakley also questioned the rule re shared living arrangements (41.7(3) and Welp commented on the types of situations where two mothers live together and share expenses. Oakley wanted to know about the situation where a non-ADC parent moves in with an ADC parent and agrees to pay the rent, and if that were a change from Department policy with regard to shared living arrangements. Welp answered in the negative, stating the Department was attempting to clarify the rule.

Welp spoke of a hypothetical situation of an ADC mother living with a boyfriend, the Department could not assume the boyfriend was supporting the mother and the children. Oakley wanted to know Department policy if the boyfriend were known to be paying the rent, utilities, etc. He stated a preference for the rule to be more narrowly drawn and expressed opposition to the use of "exclusively."

Priebe pointed out two situations of ADC program abuse in his county. He urged the Department to consider flex time for employees in order to implement evening investigations. Clark reasoned that legitimate ADC recipients are wronged by abusers.

Schroeder suggested the Committee could petition the Department to review the area in question and Priebe asked Welp to request this of the Council.

At Oakley's request, discussion moved to 41.7(9) budgeting process which he concluded was a key issue. Welp explained the original notice provided a monthly reporting system,

SOCIAL SERVICES Cont'd

where a client reported earnings each month accompanied by pay stubs. Presently, reports are made every six months. She said public comment had been received and the legislative Human Resources Committee requested reporting on a monthly basis--Clark interjected it was the "Budgeting" Human Resources Committee. Welp stated the Department would respond to the Budgeting Committee in December which requested the rule not be implemented until after that time. For these rules, the Department used the other option, called a prospective rather than a retrospective process which involves using three months of income to average income for the next six months. The detail in the rules enumerates outcome when there is a change of income, when it begins, etc. and how it is handled.

Oakley inquired as to the advantage and Welp replied the Department preferred the retrospective budget process, in that it would be more accurate in the long run. Oakley questioned the advisability of submitting the rule at the present time and contended they were changing the system.

Schroeder viewed 41.7(9)c(2) as a "loophole." Welp responded it was basically written to allow for errors which could arise. If there were substantial changes in the recipient's income, that would be considered under 41.7(9)f.

McClintock thought the rules were essentially the same as those the department had been following with exception of a change in the three-month base averaging period--called prospective budgeting. Further, it was his opinion 41.7(9)f was narrow in the definition, inconsistent with legislative intent, and less responsive than existing rules. McClintock, in a discussion with Roger Hurr of the Department, interpreted his comments as indicating the rules might not necessarily reflect Department plans. The Committee reacted strongly to the statement by McClintock. He added the rules seem to contradict other rules.

Holden concurred with the Department in determining uniform payment.

Bray asked if the rules were procedurally in conformance with the IAC since they had been totally rewritten after Notice.

Priebe spoke in opposition of this practice. Bray noted the only opportunity for public hearing was before the Administrative Rules Review Committee. Schroeder noted that although a public hearing had been held, the rules had been changed completely. General discussion re the rules process and legislative intent with consensus this was a difficult area.

In answer to Tieden re the recourse for the ARRC, Royce responded a 70-day delay, with a request that the Department hold

SOCIAL SERVICES Cont'd

a hearing, could be filed. Holden suggested the significance of a change could be considered in filing of rules. Various alternatives were offered.

Priebe suggested the Committee request a hearing. Royce said the Department could withdraw the filed rule, placing the current rule into effect. Priebe preferred moving a 70-day delay, with a request for the public hearing. Discussion of legal ramifications in requesting a public hearing at this time.

Schroeder recommended letting the rule stand, but thought the problem should be addressed. Priebe reiterated he favored the concept of the rules but opposed DSS "circumventing the system."

In answer to Holden, Welp indicated counties had been apprised of the pending rule changes. Holden and Tieden opposed the DSS directives to county field workers in anticipation of favorable action.

MOTION TO DELAY

Priebe moved a 70-day delay on the effective date of 41.7 to allow for citizen input and he requested short form.

In response to Tieden as to the status of the rules if delay were voted, Welp indicated they would continue with the 6 months budgeting process as opposed to 3 month budgeting. There was further discussion by the Committee regarding the effective date of the rules and the budgeting process. Tieden asked who had made the decision to modify the rules without allowing further input from the public. Welp indicated it would have been the Department personnel responsible for the area as to notification of field workers throughout the counties.

Tieden inquired if the rules would be more susceptible to challenge. Royce responded there were some problems with holding a hearing while rules are under a 70-day delay, because a specific procedure is set out in the statute. Bray assured the Committee that, should another hearing be held, Legal Services Corporation would have input.

VOTING

Holden called for the question on the motion. The motion lost. Schroeder, Holden and Tieden voted "no." Patchett, Clark and Priebe voted "aye."

Schroeder said the other alternative would be to place an objection.

Directive to DSS

Holden moved that the staff be instructed to write the Department of Social Services expressing the extreme displeasure of the Administrative Rules Review Committee in the practice of extensive revision after notice and hearing. No formal action. Priebe was of the opinion a letter would have no impact whatsoever. There was discussion as to the possibility of a strong

SOCIAL SERVICES Cont'd

reprimand of all departments (either by letter or publication in the IAB) indicating the Committee's intolerance of the practice. It was the consensus of the Committee that if agencies publish notice, conduct hearings and then make substantive revisions in the adopted rules, the hearing process should be repeated. The Committee agreed the letter should be sent to DSS with the thought in mind that, in the future, all rulemaking agencies would be apprised of the Committee's position.

In answer to Priebe's question as to whether or not DSS intended to change the rules again in December, Welp replied they would have to await the report of the Budgeting Human Resources Committee.

Welp noted rescission of 81.2 would eliminate a duplication.

Subrule 146.2(6) was acceptable as filed.

In re 85.4, Schroeder raised the question as to age limitations. Welp commented they implement the inpatient psychiatric services for individuals under 21 and over age 65, which w 1978 Legislature. This was part of the Medicaid program and rules were filed emergency in order to receive federal matching funds. Welp concluded the age limitations were in the federal law.

ENVIRONMENTAL QUALITY

Odell McGhee, Hearing Officer, reviwed the following rules:

ENVIRONMENTAL QUALITY[400]
Air quality, emission standards, coal fired steam generating units, 7.1(12), termination of notice in IAB 3/7/79 ARC 0637 ..... N 10/17/79

ENVIRONMENTAL QUALITY[400]
Solid waste disposal, dumping sites and sanitary landfill, 26.6(2)"a, b" ARC 0638 ..... F 10/17/79
Solid waste disposal, permits, 27.2(1)"a", 27.2(2), 27.2(2)"a", 27.3 ARC 0639 ..... F 10/17/79
Solid waste disposal, sanitary landfills, 28.2(2)"c-f, i" ARC 0640 ..... F 10/17/79

In re 26.6(2)a, b, etc., McGhee said DEQ has tried to liberalize rules pertinant to dump sites. Schroeder was of the opinion 26.6(2)a, "when dump site is closed" should be included. McGhee was amenable.

In a matter not officially before the Committee, Priebe asked if DEQ had considered requesting an appropriation to be used for some experimental recycling by mixing sludge and garbage to make fertilizer. Priebe was anxious to find alternatives for dumping before we are forced to use productive land because all marginal land has been used. McGhee thought the DEQ had considered the process, but private industry usually presented plans in that area. McGhee agreed to refer the matter to Harold Ober.

Schroeder complimented McGhee for clarification of 28.2(2)e

ENVIRONMENTAL QUALITY Cont'd

as he had suggested when rules were under Notice. However, he was opposed to language in 28.2(2)r requiring a "professional engineer registered in Iowa" to make landfill inspections. Tieden spoke in opposition to annual inspections, seeing no reason for them. McGhee agreed to check the matter and provide an answer after recess. DEQ deferred temporarily.

Recess

The Committee was recessed at 10:35 and reconvened at 10:45 a.m.

MENTAL HEALTH ADVISORY COUNCIL

Sally Titus Cunningham, Staff Coordinator, reviewed chapter 1 [Notice, IAB 10/31/79] and she informed the Committee that the Mental Health Advisory Council was established per HF 2440 [Acts of the 67th GA, ch 1087] and mandated by P. L. 9463. The rules were acceptable as published.

REVENUE

Brian Bruner, Supervisory, Assessment and Equalization, Property Tax Division, Donald Cooper, Assistant Director, Income Tax Division, and Carl Castelda, Exise Tax Division, were present for review of the following:

REVENUE DEPARTMENT[730]
Protest, practice and procedure, 7.7 ARC 0660 ..... F 10/31/79
Motor fuel and speical fuel, chs 63 to 65 ARC 0661 ..... F 10/31/79
Motor vehicle fuel, 64.2 ARC 0662 ..... F 10/31/79
Real estate, recording, 79.1(4) ARC 0534 (carried over from October meeting) ..... F 9/5/79

REVENUE DEPARTMENT[730]
Forms, 8.1(4)"b" ARC 0658 ..... N 10/31/79
Individual income tax, 38.1(9), 38.2(1), 38.5, 38.9, 39.1(1, 5, 7), 39.2(2), 39.4(1, 5, 8), 39.5(7), 40.4, 40.5(2)"a", 40.9, 40.12, 40.15(1), 40.19, 41.4, 42.2(2), 42.5, 43.3(3-5) ARC 0656 ..... N 10/31/79
Corporate income and franchise taxes, 51.2(1, 2), 51.6, 52.1(1-3), 52.2(3), 52.4(3), 53.7, 53.8, 53.10, 53.10(4), 54.2(2,"b, c, d"), 54.4(2), 54.7(5), 54.8, 54.9, 55.3(4, 5), 55.4(1), 57.2(1, 2), 57.3, 57.5, 58.2(2), 58.6, 59.7-59.9, 59.9(3"a, c"), 60.3(4, 5) ARC 0657 ..... N 10/31/79
Hotel and motel tax, 103.14, 104.8, 105.3 ARC 0659 ..... N 10/31/79

Rule 7.7 was acceptable as filed. Chapters 63 to 65 were considered and Cooper advised all of the recommended changes had been made. Holden commended the Department for their concise rules and for including examples.

Delay to 79.1(4) Withdrawn

In re 79.1(4), Bruner reminded the Committee that the Revenue Department had sent a letter explaining their position. Holden made the motion to withdraw the 70-day delay which had been placed on this rule. Motion was adopted unanimously with Patchett and Priebe out of the room and not voting.

DEQ

Chairman Schroeder recognized McGhee, who had returned to the Committee for further review of 28.2(2) [IAB 10/17/79, p. 424]. which had been deferred. McGhee reported that department officials take the position a professional engineer should perform the landfill inspections--they would be qualified to recognize problem areas. Tieden concurred with Schroeder that a professional engineer should not be required, as they might not necessarily be more qualified for the inspections. Clark reasoned that an ecology professor might be more capable than an

ENVIRONMENTAL QUALITY Cont'd

engineer. McGhee explained that DEQ does check sites and Tieden thought that would be adequate. In response to Schroeder's question, Oakley defended the Department's position. Schroeder stated a preference for placing an objection. However, no action was taken.

Governor's Rescission

Oakley informed the Committee that the governor had exercised his power of rescission on a Department of Social Services rule, [142.6(1) dealing with interstate compact on adoptions. The issue dealt with the necessity of terminating parental rights prior to the child being brought into Iowa. The reason for the "veto" was that intrastate and interstate placements were treated in a different fashion.

REVENUE RESUMED

Rule 8.1(4)b was acceptable as published. Cooper noted the changes in the individual income tax were as a result of SF 494 [Acts of the 68th GA], the confidentiality statute, chapter 421, and the statute of limitations bill, HF 2132 [Acts of the 67thGA]. All other changes were basically referenced to court cases which support existing rules.

In re 38.2(1)e, burden of proof of additional tax owed under a six-year period, Patchett contended the rule states the burden of proof is on the Department on one hand and includes a provision placing it on the taxpayer.

Cooper opined the burden of proof was on Revenue when they initiate the audit. Under federal exchange agreement, Revenue does not receive anything from the IRS until final settlement has been reached. It would be at that point the Revenue Department would be able to make the determination that IRS has asserted the fraud penalty.

In answer to Patchett, Cooper said Revenue would receive the audit once the taxpayer has paid a settlement--if the audit is appealed the person has the right to protest the department's assessment. Revenue would hold in abeyance until the final settlement of the appeal through the federal courts.

Pertaining to 38.2(1)f, Patchett asked if Revenue were requiring the taxpayer to notify Revenue of any final disposition by the IRS. Cooper replied in the affirmative, stating they are notified by the IRS, but the system is not "foolproof" and the burden is upon the taxpayer to notify Revenue before any audit begins.

Priebe returned.

General discussion of the federal audit process.

REVENUE Cont'd

Under 38.5(422), last sentence of the first paragraph, Patchett asked if Revenue gives the individual taxpayer notice that information is being exchanged. Cooper replied that has not been required of Revenue and, at the present time, Iowa does not exchange with any other state. It would be administratively unfeasible because of volume involved. Patchett urged notification if another state sought information. Schroeder thought the federal privacy Act might cover Patchett's concern. Cooper said the notification could jeopardize investigations if the state were required to notify an individual immediately that information had been exchanged with IRS.

Priebe made the point that IRS audits were used automatically by the state. If that were wrong, the state audit would be automatically wrong. Cooper said the state had the capability for reviewing an IRS audit. Priebe continued that if the state verifies a tax matter with the federal IRS audit for funds owed, likewise, the state should refund immediately in instances where refunds are due.

In answer to Patchett re notification for criminal or noncriminal procedures, Cooper said that had been discussed. Patchett asked Revenue to peruse the matter with the possibility of devising a notification procedure. Cooper was amenable. The Committee was reminded that the rules are under Notice.

Amendments to corporate income and franchise taxes were acceptable as published. Castelda advised that the rules re hotel and motel tax were written pursuant to HF 662 [68th GA, ch 99].

In response to Tieden, Castelda indicated 105.3 was amended to include the word "sleeping" thus, bringing the rule into concurrence with the law.

In a matter not officially before the Committee, Clark mentioned a church being audited on use tax as a result of purchasing their materials from ~~Oxford~~ Augsburg Press in Minnesota. The Department contended the church should have been paying use tax on all of the materials ordered out of state for the previous five years. Clark pointed out the statute imposes this tax on all out-of-state purchases but she could find no administrative rules which spelled out the procedure. She conceded ignorance of the law was no excuse, but indicated the church had no knowledge the tax was to be paid. She wondered why the Department had not explained the use tax collection process.

Clark opined that practically all of the churches in Iowa purchase materials out of state and were not deliberately evading the tax.

REVENUE cont'd

Castelda responded the Department, for a number of years, had been aware of a situation where, not only churches, but all "nonprofit" organizations, because they don't have to pay income tax, assume they are also exempt from sales and use taxes. He continued there is no statutory exemption for use taxes. Guidelines to nonprofit organizations were promulgated three years ago (rule 17.1(3), 17.1(4)a, b and c). Newsletters to retailers are distributed reminding them that when selling to nonprofit organizations, the tax is to be collected. This information is also distributed to county treasurers.

Castelda advised the audit of the church was initiated when the minister attempted to register a new car exempt with the county treasurer. Revenue contacted the church requesting $170 for the use tax due on the car. The minister was fairly adamant and said he had never paid sales or use tax. An audit by the Department revealed the organization operated its own broadcasting system. No taxes had been paid on that equipment. Castelda stated the Department has audited churches off and on for a number of years even though they are not a great source of revenue.

Castelda continued the use tax was implemented in 1937, one year after the sales tax, for the very reason people were going out of state for purchases. He explained there are two types of use tax--consumers and retailers. In order to require a vendor to pay or to register and collect retailers' use tax, they have to be doing business in the state, i.e., have property, salesmen or an agent. In the situation where churches are buying through mail order or by telephone, there is no "nexus" and they are not required to collect state use tax. However, a consumers' use tax would be applicable in these instances. The Department, in its rules, has tried to distinguish the difference between a retailers use tax and a consumers use tax. Beginning two years ago, an information booklet has been distributed to every new permitholder. However, Castelda admitted to Clark the booklet had not been sent to churches. Clark did not oppose auditing the church, only that they were not apprised. She further contended there was much misunderstanding about use tax on the part of many people.

Castelda said the Department has 110,000 permitholders on their mailing list. Schroeder questioned placing the retailer in the position of collecting the tax for the state. There was general discussion as to the question of liability. Clark favored supplying information to every church in the state.

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REVENUE Cont'd

Schroeder thought the area demanded attention and he mentioned the possibility of the Committee petitioning for a directive to be mailed. Castelda agreed to review the problem and apprise the Committee of a course of action they plan to resolve it.

Oakley called attention to the filed emergency rule which allowed for delay of 65.8 until July 1, 1980 to allow the Agriculture Department time to seek appropriations for personnel. [IAB 11/28/79]

Minutes

At the request of Oakley, the secretary agreed to revise page 1032, lines 20 and 21 of the 10/9/79 minutes by deleting "He noted that, for the time being, the board had delegated authority to establish uniform rules..." and inserting "The board stated for the time being, they had delegated authority to establish uniform rules". Priebe moved that the minutes, as corrected, be approved. Motion carried viva voce.

APA & PRIMER

Holden brought up for discussion suggested changes for the APA, some of which were gleaned at the NCSL meeting. Royce was requested to draft language to provide for the governor's approval before rules go into effect.

Holden suggested adding language to 17A.5(2) to allow the governor to approve rules before they are filed with the Administrative Rules Co-ordinator.

Patchett was not certain this would be a good idea. Right now, there is a sort of "reverse approval" in that the governor has the effect of approval by being able to veto any rule disapproved. Patchett thought that provided a system for more selective review of the rules--similar to the system used in the Administrative Rules Review Committee. He thought that "might be doing (1) nothing, leaving it the way it is now because it is virtually impossible for them to go through every single rule and actually put an approval on or (2) you may have the situation where you would have to take an office like Oakley's and quadruple staff and maybe delay the whole process."

Holden commented that although "the governor has the right to veto, he cannot make that determination unless he has some input from people like Brice" who is in a unique relationship to advise him on the various rules. He recalled the situation where there were some problems with the civil rights rules and the time had already passed when the governor could have vetoed them. "This would not be likely to happen with Oakley in the position he is in today." Holden could see advantages for the governor's office to have a good handle on what the departments are doing. It was his opinion that the governor's approval of rules before they become effective would have a desirable affect on departments.

APA & PRIMER Cont'd

Patchett made the point even the Rules Committee perused the rules selectively. He mentioned the incident with Dental Examiners Rules which were considered on Tuesday, wherein the governor had input before rules were submitted.

Clark asked Oakley if doing this would be putting a bigger burden on his office than they could handle. Oakley responded that this would require a greater commitment of time in that every rule would have to be formally briefed and it would require a substantial increase in the size of his office. The governor would need additional assistants to review the rules in his office and a longer time period would be necessary.

Clark could forsee that process as shifting the power and responsibility from the ARRC to the executive department.

Priebe reminded the Committee that the "legislature writes the laws, the governor signs or vetos and from that point on, it becomes an administrative process." He thought it wrong for the governor to approve the rules and the ARRC to rubber stamp them.

Holden pointed out the governor would not take action until after ARRC had reviewed the rules. Schroeder said he would be more inclined to extend the veto power and allow for selective review of a rule at any time. Clark indicated she was misinterpreting the time frame in the matter. Holden favored giving the ARRC veto power, also. General agreement that the matter would be discussed further at a later date.

Royce stated that the Bar Association would have recommendations for chapter 17A amendments and Oakley indicated there would be other suggestions as well, hopefully by January.

MEETINGS
January

Discussion of the January meeting date with the decision being made to keep the statutory date of January 8, 1980.

December

Patchett requested possible change of the December meeting. Priebe announced he would be on vacation and Clark had a conflict. The meeting dates were set for Wednesday, December 12 and Thursday, December 13, 1979. Clark asked that, in the event only one day was necessary, it be on the thirteenth.

Civil Rights Report

Royce requested an additional $200 for Denise Lange to complete her analysis of the civil rights rules. Priebe moved the approval of the $200. Motion carried viva voce.

PRIMER

Royce presented a rough draft of pages of the Administrative Rules "Primer" prepared by the House Public Information Office. In answer to Schroeder, Royce informed him Wallace-Homestead bid for 1000 copies, 32 page-booklet with cover, was $793.

PRIMER Cont'd

Royce continued the bid for approximately 2000 copies was still in process. Pat Berry, PIO, was trying to obtain a bid of under $1100. Priebe asked if a competitive bid procedure was followed and Royce answered in the negative. There was general agreement there should be more than one bid, with discussion of possible printers. The possibility of the prison industries doing the printing was raised but the point was made the cost would be greater. Schroeder favored an initial printing of 2000 copies with the option for a rerun. Priebe made mention of Hahne Printing, Webster City.

In answer to Priebe, Royce indicated legislation dealing with publication of bids in the IAB is being drafted.

Barry wondered if it would be good to contact the Superintendent of Printing for a distribution list.

Members were informed by Royce that the Primer would not contain sample petitions. Members were under the impression that these samples were to have been included. The time frame for completion of the project was estimated to be approximately 4 weeks after authorization. Schroeder said discretion regarding the number of books to be printed would be given to Royce, Barry and Oakley, not to exceed 3000.

No Representative

The following rules were acceptable as filed and no representatives were called:

CIVIL RIGHTS COMMISSION[240]
Organization, rules of practice, 1.2(1), 1.18 to 1.20, amended notice ARC 0644 ..... 10/31/79
Hearings and deadlines, 1.9(5)"a" ARC 0642 ..... 10/17/79
Sex discrimination, employment policies, 3.9(3), 3.10(2), 3.10(3), amended notice ARC 0646 ..... 10/31/79
Age discrimination, employment benefits, 5.6(1), 5.6(3), amended notice ARC 0647 ..... 10/31/79
Age discrimination, retirement, 5.7, amended notice ARC 0645 ..... 10/31/79

COLLEGE AID COMMISSION[245]
Podiatric training, 8.1 ARC 0628 ..... 10/17/79

HEALTH DEPARTMENT[470]
Local boards, 77.1(2), 77.2(2), 77.3(1)"a" ARC 0629 ..... 10/17/79
Vital statistics, 96.1 ARC 0630 ..... 10/17/79

MERIT EMPLOYMENT[570]
Long term disability, worker's compensation, 1.1(51, 52), 4.5(1)"c"(1, 2), 14.6(3) ARC 0663 ..... 10/31/79

REGENTS, BOARD OF[720]
University of Northern Iowa, organization, 14.1 ARC 0664 ..... 10/31/79

VETERINARY MEDICAL EXAMINERS BOARD[842]
Fees, 2.2, 4.3 ARC 0651 ..... 10/31/79

ADJOURNMENT

Priebe moved adjournment at 12:25 p.m. Carried.

The next meeting will be held Wednesday and Thursday, December 12 and 13, 1979.

Respectfully submitted,

Phyllis Barry

Phyllis Barry, Secretary
Assistance of Vivian L. Haag

APPROVED

CHAIRMAN