

MINUTES OF THE REGULAR MEETING
OF THE
ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of Meeting: Monday, Tuesday and Wednesday, March 12, 13 and 14, 1984.

Place of Meeting: Committee Room 116, State Capitol, Des Moines, Iowa.

Members Present: Senator Berl Priebe, Chairman; Representative Laverne Schroeder, Vice Chairman; Senators Donald Doyle and Dale Tieden; Representative Ned Chiodo. Not present: Representative James O'Kane, due to inclement weather. Staff present: Joseph Royce, Committee Counsel; Kathryn Graf, Governor's Coordinator; Phyllis Barry, Deputy Code Editor; and Vivian Haag, Administrative Assistant.

Convened Chairman Priebe convened the meeting at 7:45 a.m. Monday, March 12, 1984, Room 116.

COMMERCE COMMISSION Bill Haas, Diane Munns and David Lynch appeared for Commerce to review the following:

COMMERCE COMMISSION[250]
Findings of fact and conclusions of law. 7.7(14), 7.7(15) ARC 4461 ..F..... 2/15/84
Rehearings. 7.9(1), 7.9(3) ARC 4462 ..F..... 2/15/84
Assessment of cost and pipeline permit extension proceedings. 10.8, 10.10, 10.9 ARC 4509 ..F..... 2/29/84
Uniform extension policy, 19.3(10), 20.3(13), 21.3(12) ARC 4463 ..F..... 2/15/84
Coin-operated telephones in incorporated municipalities, 22.3(6)*a ARC 4510 ..F..... 2/29/84
Complaint procedures, ch 6 ARC 4458 ..N..... 2/15/84
Civil penalties, ch 8 and notice ARC 4100 terminated ARC 4459 ..N.T..... 2/15/84
Late payment charge, 19.4(8)*f, 20.4(9)*f, 19.4(11), 20.4(12) ARC 4465 ..N..... 2/15/84
Annual electric supply and cost review, 20.13, 23.4 amended and renumbered to 20.13(3) ARC 4460 ..N..... 2/15/84
Electrical safety code, 25.4, notice ARC 4269 terminated ARC 4464N.T..... 2/15/84

Also present: Charles Wasker, Home Builders of Iowa, and Don Whalen, Davenport builder.

7.7, 7.9 No questions were posed re 7.7(14), (15); 7.9(1), (3).
10.8, 10.10, 10.9 Lynch indicated that no changes from the Notice were made in rules 10.8, 10.10, 10.9. Also, no opposition had been raised to the rules which comply with the statute. Lynch responded to Schroeder that the 160-foot deviation had been dropped--once the line is constructed, its precise route is filed with the Commission. No other questions.

19.3(10), 20.3(13) In re uniform extension policies, 19.3(10), 20.3(13)
21.3(12) and 21.3(12), there was lengthy discussion. Haas noted since the rules were under Notice twice, major change was the Commission agreed with Iowa Power and Light that the provision for bonding should be allowed to be extended so utility can accept a refund after three years.

Schroeder questioned justification for requiring the builder to finance the city gas, water and power lines in the future. Haas pointed out that the 50-foot requirement was not a change.

COMMERCE
COMMISSION
Continued

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However, he admitted it was not in the law, only in the rules--19.3(10)b(4).

Wasker spoke in opposition to the rules which, in his opinion, will result in even higher cost of shelter. The objectionable requirement was for "cash up front" in signing an institution contract and inability from time to time for the builder to lay the lines at a more competitive price.

Whalen was most concerned with water line extensions. He recalled hearings in 1979 in which his firm had participated and he expressed frustration with rule changes made in 1982, of which they were not notified. Whalen admitted that the Notice was published in the IAB April 28, 1982, but took the position it was inadequate notification. Since they had been interested, he contended they should have been advised. Whalen declared the "Rule enables Commission and its staff to frustrate the people of Iowa." He urged delay so his group could avail themselves of the judicial process. Whalen concluded, "There is a fundamental difference between the cost of electricity and water."

Schroeder asked the opposing factions to prepare a timetable of events from 1979. Chiodo arrived.

Haas commented that instead of the burden being placed on the agency to provide notice in addition to the Code requirements to publish in the IAB, homebuilders have the option of contracting with the Commission for a fee to receive every Commission order. Haas pointed to 21.3(12)e which provides the option for companies to construct their own extension.

Graf was assured that Commerce had complied with Code chapter 17A. There was discussion of construction costs of mains. Chiodo wondered why a different formula was not set up for water main construction. Haas responded that it was considered but there was no evidence as to what would be appropriate--no specific recommendations.

Haas was not familiar with the 1979 rules and could not respond to Schroeder's question as to the impact should the water rule be reinstated. Wasker interjected that the alternative of "cash or bond" in the rule was not sufficient. He opined a letter of credit would be preferable.

Motion
70-day
Delay

Schroeder moved to place a 70-day delay on 19.3(10), 20.3(13) and 21.3(11) to allow time for further study. Motion carried viva voce. Chairman announced there were 4 ayes. Absent and not voting, Doyle and O'Kane.

ch 8

In re 22.3(6)a, Lynch explained that one change had been made. No questions were posed. In review of chapter 8, Schroeder suggested inclusion of an example of willful violation as mentioned in 8.1. Haas agreed to refer that to the Commission.

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COMMERCE
COMMISSION
Continued

There was brief discussion of the late payment charges, 19.4 et al. Munns advised that 1½ percent per month on any amount not covered by a payment plan could be charged. Schroeder wondered if a bookkeeping nightmare were being created. Munns told Chiodo that budget billing would be considered a reasonable payment plan. Priebe thought that problems which might be caused for utilities should be perused.

ch 6

Responding to question by Schroeder re complaint procedures, chapter 6, Munns assured him that a commission staff member follows up on any complaint and information is forwarded to the utility. Admittedly, the Commerce staff had increased considerably.

20.13

Haas advised that 20.13(1)d was from the statute. It will be a judgment call on their part as to whether contracts are reasonably available. There was brief discussion of warning markers--25.4--and it was noted that utilities will implement warning sign programs at their discretion.

AGRICULTURE Bette Duncan, legal counsel, was present to review:
DEPARTMENT

AGRICULTURE DEPARTMENT[30]

Ethylene dibromide (EDB) residue levels in food, 10.45 ARC 4499, also filed emergency ARC 4498 *NFFE*..... 2/29/84

Priebe referred to 10.45(1) and asked how the Department would know if grain were intended for human consumption when it is delivered to the elevator. Duncan reasoned the Department would have to show evidence and burden of proof for enforcement but she agreed to pursue Priebe's question.

HEALTH
DEPARTMENT

Rules of the Health Department were reviewed as follows:

HEALTH DEPARTMENT[470]-

Cosmetology examiners, 149.1(1) ARC 4455 *F*..... 2/15/84
Chiropractic examiners, 141.12(3), 141.70(2)"b", 141.37, 141.64(1), 141.64(2) ARC 4477 *N*..... 2/29/84
Board of optometry examiners, 143.10, 160.4, filed emergency after notice ARC 4454 *N*..... 2/15/84
Board of mortuary science examiners, funeral directors license fees, 146.1(2), 147.98, filed emergency after notice
ARC 4453 *FENN*..... 2/15/84

Peter Fox, Harriett Miller and Irene Howard appeared on behalf of the Department. Fox indicated that no comments had been posed re 149.1(1). He assured Schroeder that use of "for any other use" would not preclude a group of students from visiting the school. Graf was informed that the Board defined "premises" as being the actual building. Fox indicated that the actual diagram of rooms which are used is sent in on the application for cosmetology school.

ch 141

Miller explained the amendments to chapter 141. No recommendations.

Board of
Optometry

Chiodo questioned the emergency adoption and Fox cited a directive from the Comptroller for fees to be collected prior to the next fiscal year. Howard added that the rule must be presented to the Board of Examiners which meets only 4 times annually. Chiodo reiterated his opposition to emergency adoption of rules. Fox emphasized that it was not a usual practice of the Department.

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HEALTH
DEPARTMENT
continued

Priebe had problems with the fact that excess fees are not refunded but deposited to the general fund and he also opposed the Comptroller "calling the shots."

146.1
147.98

Schroeder raised question re 147.98(5) and was told that the Continuing Education would still be required. He suggested that the matter be perused in the future for possible modification.

NURSING
BOARD

Ann Mowery and Merle Fleming represented Nursing Board to review:

NURSING BOARD[590]

Administrative and regulatory authority, ch 1 ARC 4475 *F*..... 2/29/84
Licensure to practice registered nurse/licensed practical nurse, ch 3: Disciplinary proceedings, ch 4: rescinds ch 8
ARC 4501 *N*..... 2/29/84
Obstetric-gynecologic nurse practitioner, 7.1(11), 7.2(1) *F* ARC 4474 *N*..... 2/29/84

In re chapter 1, Mowery indicated that she and Fleming had met with Graf to address concerns raised by the ARRC.

Schroeder viewed 1.3(2)f(2), (3) as constraints. Mowery indicated the intent was to preclude the audience from behaving as if they were participants in the meeting. Priebe interpreted it to preclude granting two minutes to a member of the public if the chair so chooses.

chs 3, 4

Chiodo questioned requirement that application for tests be sent by certified mail--3.4(3)c(3). Department officials responded that this was part of the contract and permits candidates notification that test application has been received--National Council License Examiners (NCLEX) is located in California. In 1985, post cards will be utilized. Mowery suggested that procedure specifics should be eliminated and "by procedures the testing service requires" be added. Committee could not support adoption of unknowns in the future.

Discussion was generated re contract the Nursing Board has with the National Council of State Boards of Nursing. Mowery indicated the Board has ample opportunity to know when changes in the test are forthcoming. She continued that the rule should have been changed in advance of the contract change. Mowery had voted at the national conference on the items.

Schroeder was alarmed by what he considered to be lack of input on the part of the state to the National exam. However, Mowery contended the Board has had input. She offered to meet with Schroeder to discuss outside issues in detail. Also, she explained that the exam process will be revised in '85.

In response to Priebe, Mowery said there had been no provision for fines in their rules. She continued that fines will be imposed only after a hearing process. Priebe envisioned that, under these rules, the Board's power would be increased. He thought the \$1000 fine to be quite drastic. Schroeder posed several hypothetical situations and reasoned that amendments were needed to correct some problems.

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NURSING
BOARD
Continued

Mowery pointed out that only 15 hours of CE were necessary to maintain a current license. Fleming reminded ARRC that the Board has a complete newsletter which apprises the nursing profession of rule changes of importance--they are not hidden in "these esoteric publications that only lawyers and legislators read." Chiodo suggested there be a distinction as to whether or not the nurse has received compensation without having a valid license. Mowery pointed to Code §152.1 which defines the practice of nursing and, in her opinion, was quite clear.

Responding to Committee concerns, Mowery thought it was highly unlikely the Board would have problems with the "going next door to help the neighbor" concept.

Fleming defended the practice of instituting a fine. She declared that a little practice without a license has far ranging implications. Fleming cited advantage of the test being given in all 50 states which allows the nurse to obtain employment anywhere in the country. If Iowa were to have its own test, that would create problems. Chiodo saw a disadvantage in this mobility since a certain portion of discretion and rights are sacrificed.

Royce questioned why practices set out in 4.17(4)g were unethical. Mowery was unsure of the background of the rule which dates back several years. She assured Priebe that the Board notifies, by mail, those who have not renewed their license.

7.1(11)
7.2(1)f

Tieden expressed his personal opposition to rules 7.1 and 7.2 and pondered, "Where will the Board stop?" According to Mowery, the Board will declare a "moratorium" after the mental health area rules are presented. Mowery concluded that the Board would be transferring \$100,000 to the state treasury. No formal action taken.

REVENUE
DEPARTMENT

Carl Castelda, Gene Eich and John Christensen appeared on behalf of Department of Revenue. The following agenda was before the Committee:

REVENUE DEPARTMENT[730]

Corporation tax—filing returns, payment of tax and penalty and interest, 52.1(3)k, "m" and "s", 52.2(3), 52.3(1), 52.4(4), 52.6(12); determination of net income, 53.12(4), 53.15(4)e; allocation and apportionment, 54.3(2), 54.6(4), 54.8; refund of overpaid tax, 55.3(3); franchise tax—filing returns, payment of tax, 58.2(2), 58.3(1), 58.4(3), 58.6(11); refund of overpaid tax, 60.3(3)	ARC 4514	F	2/29/84
Corporation and franchise tax—venture capital fund credit, minimum tax, 52.1(4), 52.5, 58.5	ARC 4513	F	2/29/84
Exempt sales, 17.9(6)	ARC 4466	N	2/15/84
Additional deduction for wages paid or accrued for work done in Iowa by certain individuals, 40.21, 53.11, 59.8	ARC 4467	N	2/15/84
Determination of value of railroad companies, ch 76	ARC 4511	N	2/29/84
Determination of value of utility companies, ch 77	ARC 4512	N	2/29/84

52.4 et al

No questions were posed re the omnibus amendments to the corporation tax rules. Amendments to 52.4, 52.5 and 58.5 were identical to the Notice. Castelda gave brief history of exempt sales--17.9(6). Amendments to 40.21, 53.11 and 59.8 were intended to implement 1983 Acts, chapter 174, which provided for additional income tax deduction equal to 50 percent of the first 12 months' wages paid for certain employment--usually for handicapped or those with

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REVENUE
DEPARTMENT
Continued

criminal history. Because of the complexity of the issue, the Department spent much time in developing the rules. Castelda stated that subrules 40.21(6), 53.11(6) and 59.8(6) re "probationary period" would be revised before the rules are adopted. Further research revealed that 12 months were excessive.

chs 76, 77 Chapters 76 and 77 were identical to the rules which had been reviewed at length previously. It was believed that the railroads had reached an agreement. According to Eich, the main reason for going this route was because of the concise statement request and two litigations. No action taken.

Recess Chairman Priebe recessed the Committee at 9:42 a.m. to be reconvened Tuesday, March 13, 1984.

Reconvened Chairman Priebe reconvened the meeting at 7:40 a.m. with a quorum present. Not present: Representative Chiodo. Also present: All staff members and Graf, Governor's Coordinator.

HUMAN SERVICES DEPARTMENT Judy Welp, Research, Hearing and Analysis; Mary Ann Walker; Kathi Kellen, Medicaid; John Terrell, Fair Hearings and Appeals; Morris Gater and Dan McKeever were present to review:

HUMAN SERVICES DEPARTMENT[498]
Unemployed parent workfare program, ch 59 ARC 4519 .F..... 2/29/84
Medical assistance, reimbursement for hospitals, 79.1(3)"a" ARC 4520 .F..... 2/29/84
Fair hearings and appeals, ADC, 7.1(14), 7.9, 40.2(5)"d" ARC 4518 .N..... 2/29/84
ADC-unemployed parent, 42.4(2), filed emergency ARC 4515 .N..... 2/29/84
Transferring rules from social services department to human services department, filed emergency ARC 4516 .FE..... 2/29/84
Transferring, reorganizing and renumbering rules from social services department to human services department, filed emergency ARC 4517 .FE..... 2/29/84
Adoption services, 139.2, 139.13(1), 139.13(2) ARC 4457 .N..... 2/15/84

Welp introduced Walker as her successor to appear before the ARRC.

ch 59 The parent workfare program was before the Committee. According to Welp, the changes were made to address public concerns. Tieden inquired as to how the emotional capability would be determined. Welp admitted that was rather difficult to assess--client completes self-assessment form and interviews are held with the caseworker. Welp assured Royce that concerns addressed by Senator Bruner had been resolved.

79.1 There was brief discussion of 79.1(3)a and the fact that rates had been established under the Medicare program. Tieden had received complaints from the smaller hospitals in his constituency.

7.1 et al Priebe thought if a recipient were to request a hearing, that person could continue on food stamps almost indefinitely. He wondered what recourse the Department had to recover funds in this program. Welp explained that if the recipient appeals during the timely notice period, the assistance is continued at the old level until hearing decision is reached.

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HUMAN
SERVICES
DEPARTMENT
Continued

If the decision rules against the client, that is subject to recoupment. Priebe was told it could be taken from their continuing grant. A monthly billing system exists. Priebe expressed opposition to the rules. Terrell responded to Priebe that federal regulations mandate continued assistance when an appeal is made on a timely basis--no alternative. There is a 50-day average in completing an appeal.

The Committee wondered if other states had filed complaints at the federal level. Schroeder wanted assurance that the Department was cooperating with other states to express dissatisfaction to the federal authorities. Terrell responded that the AG's office had written letters but there was no indication that other states would concur. The ARRC requested the Department to work with Royce to compile information for submission to Iowa's congressional delegation. Graf was asked to report to the Governor. Priebe was informed that there are 300 appeals monthly. He expressed his opposition to the continuation of benefits.

42.4 Tieden called attention to lack of date certain in 42.4(2). Welp was unsure the reference to the program was even necessary.

Transition Rules & ch 139 No questions were posed with respect to transition rules or amendments to chapter 139.

REAL ESTATE COMMISSION Kenneth Smith, Acting Director of the Real Estate Commission, was present to review discipline and hearing procedures, civil penalties for violation, 4.40, ARC 4508, filed, IAB 2/29/84.

Language pertaining to managing property for others as salesperson or broker associate was deleted after Notice. Schroeder wanted assurance a penalty would not be imposed because of late mail. Smith said the Commission was interested in cases where realtors are flagrantly neglecting to remit fees. Schroeder thought the rule was "tight enough" to make harassment a possibility. Smith saw no problem since a hearing would be held. No formal action.

Minutes Schroeder moved approval of the February minutes. Motion carried unanimously.

April Meeting The ARRC concurred that they would meet on the statutory date of April 10 to review filed rules of the 3/14/84 IAB. The meeting would then be recessed until April 24 and 25.

Royce Salary Schroeder moved that Joe Royce's salary be advanced to step 27 on the pay scale effective July 1, 1984. Motion carried.

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WATER, AIR AND Mike Murphy, Patty Allen, Morris Preston and Darrell
WASTE MANAGE- McAllister were present to review:
MENT DEPT

WATER, AIR AND WASTE MANAGEMENT[900]

Monitoring, analytical and reporting requirements, amendments to ch 63 ARC 4472 ..N..... 2/15/84
Criteria for award of grants, 91.1, filed emergency after notice ARC 4471.....F.E.A.N..... 2/15/84

ch 63

Discussion of the monitoring tables which were included in chapter 63 amendments. According to Murphy, the tables were included in the rules in an effort to clarify monitoring requirements for wastewater facilities. Categories were created to allow less monitoring for smaller facilities and to maintain some kind of order.

The ARRC found the tables to be complex and Royce and Graf were requested to peruse the tables and report to the Committee before the rules are adopted. Murphy pointed out that comments on the rules had been positive-- they had heard from Davenport and Cedar Rapids with suggestions that the Department will incorporate.

Priebe brought up a problem with the Humboldt County landfill. Officials were unaware but were certain the matter would be investigated by DWAWM.

01.1

In re 91.1, Allen and O'Kane briefly discussed comments contained in a letter re separation of federal funding from the 60 percent lid. O'Kane and Preston discussed funding and the impact on Des Moines and other cities.

ARTS COUNCIL

Sam Grabarski, Director, Arts Council, was present to review:

ARTS COUNCIL[100]

Policies and procedures, literary awards, 2.3(14), 2.3(19) ARC 4496 ..N..... 2/29/84
Forms, outstanding achievement awards, 3.12 ARC 4497N..... 2/29/84

Grabarski indicated the rules address a new program to recognize talented writers within Iowa.

2.3(14)d(8)

In re 2.3(14)d(8), Schroeder asked what constituted "non-commercial use of winning entries" and was advised that winning entries are published in an anthology for non-commercial use. They are sold at cost. Grabarski thought the term was within the copyright laws but offered to include "for nonprofessional uses only." Graf asked if those uses could be defined in the rules. Grabarski thought "for promotional uses only"--Schroeder preferred "Arts Council promotional uses only." General discussion.

Graf also raised question re inclusion of deadline for entries and the words "last Friday in July" were agreed upon.

No questions re 3.12.

EMPLOYMENT
SECURITY

James A. Hunsaker III and Joseph Bervid appeared to review the following agenda:

EMPLOYMENT
SECURITY
Continued

EMPLOYMENT SECURITY[370]

Employer records and reports, employer's contribution and charges, claims and benefits. 2.16(1), 3.27(7), 3.49(1), 4.23(41),
4.24(8), 4.39(14) ARC 4504 .F..... 2/29/84
Employer's contribution and charges, 3.40(2)"a" ARC 4505 .F..... 2/29/84
Gender changes and amendments to chs 1, 4, 5, 6, 7 and 10 ARC 4506 .N..... 2/29/84
School duration period definition, claims and benefits, food stamp program. 3.88, 4.2(1)"b"(8), 4.7(2), 4.24(4)"b", 4.43(3),
4.43(4), 4.46, 7.15, 10.10 ARC 4507 .N..... 2/29/84

4.24(8)

According to Bervid, amendments in ARC 4504 were basically for clarification. He called attention to 4.24(8) regarding disqualification on a refusal of suitable work. O'Kane questioned the workability and Bervid replied that it would be a disqualification until they requalify. This new procedure is intended to eliminate abuse of the system.

No questions re 3.40(2)a.

Amendments to chapters 1, 4, 5, 6, 7 and 10 eliminate gender references as recommended by the Governor's Rules Coordinator.

3.88 et al

Bervid called attention to 3.88(3) where the Department will comply with ARRC recommendation to spell out policy with respect to 12-month school employees. Schroeder was concerned about possible manipulation by the schools regarding employees on the 9-month school year--full-time vs part-time employees. Bervid admitted abuse was possible but would be a violation of Code Chapter 96. Also, collective bargaining contracts enter in.

INSURANCE
DEPARTMENT

Fred Haskins, Denise Horner and Dick Baldwin represented the Insurance Department. The agenda was:

INSURANCE DEPARTMENT[510]

Regulation of insurers, examination reports. 5.1 ARC 4476 .N..... 2/29/84
Nonprofit health service corporations. 34.2, 34.7 ARC 4473 .N..... 2/15/84

Also present: Tim Gibson, Iowa Medical Society; Linda Goeldner, Iowa Hospital Association and Brice Oakley, Blue Cross/Blue Shield.

Discussion of nonprofit health service corporations rules 34.2 and 34.7 which were extensively reviewed by ARRC at a special evening meeting. Oakley distributed copies of the statement that Blue Cross/Blue Shield made at the public hearing March 12. Complete sets of materials were presented to Royce and Graf. Haskins took the position that it would be inappropriate for him to comment on the matter since he would be writing the AG opinion.

Oakley reiterated that BC/BS contends that members of the independent nominating committees ought to be subscribers to the service of that particular corporation--proposed rules provide for "subscriber to any one of the services corporations." Further, BC/BS believes that the definition of "spouse" should be consistent with that of "immediate family." Oakley referenced SF 2277, 1984 General Assembly (technical corrections to Code chapter 514 as amended by HF 196 in 1983). The bill contains a publication clause and he assumed the Commissioner would be in a position to adopt emergency conforming amendments to the rules. Priebe and Schroeder recalled that the Committee determined at the evening meeting that there would be no problem with emergency filing when all problems are resolved.

Recess

Committee recessed at 8:55 a.m.

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Reconvened Chairman Priebe reconvened the meeting at 7:36 a.m. Wednesday, March 14, 1984 and noted that a quorum was not present.

PUBLIC SAFETY DEPT. 5.100(6) et al Wilbur Johnson, Fire Marshal, and Connie White, Administration, represented Public Safety for review of fire marshal rules, 5.100(6), 5.305(1), 5.40 and 5.41, ARC 4503, Notice, IAB 2/29/84.

Johnson said the rules were updated in accordance with recent editions of the National Fire Protection Association re automatic sprinkler systems in existing buildings; standards for portable fire extinguishers and Halon fire extinguishing systems. Johnson continued that, although portable systems are toxic to a point, they are needed in computer, telephone rooms, etc. No questions.

In re subrule 5.100(6), it will clarify that sprinkler systems are not mandatory in "everybody's basement."

FAIR BOARD 4.17 Jerry Coughlon appeared on behalf of the Fair Board. Space sales, dismantling, 4.17, ARC 4456, Notice, IAB 2/15/84 was before the Committee. Coughlon indicated the closing date for dismantling will be included in the contracts and will be eliminated from the rule. That generated discussion as to whether contracts were standardized and Coughlon said they would be. He pointed out a problem that most vendors are eager to leave before the Fair is over.

PLANNING & PROGRAMMING Lane Palmer, Jude Conway, Larry Tuel and Jeff Pogolowitz were present for Planning and Programming. The following agenda was reviewed:

PLANNING AND PROGRAMMING[630]
Community development block grant entitlement program, 23.4(2)"b", 23.4(2)"h", filed emergency, ARC 4468, FE..... 2/15/84
Iowa community development loan program, ch 25 ARC 4502 ..N..... 2/29/84

ch 23 Palmer reviewed changes made to chapter 23--eligibility was changed slightly to conform with federal law; would serve to allow more funds to be spent on items found in 23.4(2)h.

ch 25 Tuel spoke for OPP with respect to chapter 25. Emergency rules were filed in July 1983 to implement the program. Those rules are now being placed under Notice and hearing will be March 21. No specific comments have been received and there was no reaction to the emergency rules.

The rationale for project limitations was that with limited funds, it seemed inequitable to grant more than one loan to a city per funding cycle--900 cities are seeking loans.

During the interim since the emergency rules, the Department was able to monitor the program. They were also awaiting approval of funding before there would be need for the Notice. Priebe expressed displeasure with the loan policy.

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PLANNING &
PROGRAMMING
Continued

Department officials were unsure of what per cent was used for administration because audits have not been completed. Time frame for pay back was discussed--legislation does not place cap on loan terms. Priebe was told that about three-fourths of loans average \$250,000.

CONSERVATION The following agenda was before the Committee:
COMMISSION

CONSERVATION COMMISSION[290]
Maintenance of waterway markers. 31.4 ARC 4478 ..F. 2/29/84
Nonpermanent structures, ice fishing shelters. 44.1 ARC 4479 ..F. 2/29/84
State parks and preserves. 45.2(4), 45.2(5), 45.4(6), 45.5(3), 45.5(4) ARC 4480 ..F. 2/29/84
Divisions of department, method of operations. 60.2, 60.3 ARC 4481 ..F. 2/29/84
Declaratory rulings. 61.2 to 61.5, 61.1(2) ARC 4482 ..F. 2/29/84
Contested case proceeding, ch 64 ARC 4483 ..F. 2/29/84
Snowmobile registration revenue cost-sharing with public agencies, ch 52 ARC 4484 ..N. 2/29/84
Conservation and outdoor recreation employment for senior citizens, amendments to ch 70 ARC 4485 ..N. 2/29/84
Crow hunting season, 101.1 ARC 4486 ..N. 2/29/84
Rabbit and squirrel hunting seasons, 102.1 to 102.3 ARC 4487 ..N. 2/29/84
Pheasant, quail and gray (Hungarian) partridge hunting seasons, 103.1 to 103.3 ARC 4488 ..N. 2/29/84
Mink, muskrat, raccoon, badger, etc., seasons, 104.1 to 104.4 ARC 4489 ..N. 2/29/84
Deer hunting regulations, ch 106 ARC 4491 ..N. 2/29/84
Waterfowl and coot hunting seasons, 107.1 to 107.4 ARC 4492 ..N. 2/29/84
Common snipe, Virginia rail, sora, woodcock, and ruffed grouse hunting seasons, 109.1 to 109.4 ARC 4493 ..N. 2/29/84
Wild turkey fall hunting regulations, 112.1 to 112.4 ARC 4494 ..N. 2/29/84

Stan Kuhn, Rick McGeough, Bob Fagerland, Bob Walker, Al Farris and Arnold Sohn appeared on behalf of Conservation Commission. Also present: Marv Hirkins, Iowa State Snowmobile Association.

60.2, 60.3 Priebe asked what "providing staff for state advisory board" entailed in 60.2(1). Kuhn explained that staff works full time and previously reported to the Planning Section--they will now report to the Wildlife Section as required by the Code. Priebe was informed that the wildlife exhibit at Boone had been closed.

61.2 et al Kuhn continued that chapter 61 on declaratory ruling was updated to be consistent with an AG office recommendation on state of the art with other agencies. No comments had been received. Schroeder challenged removal of "thirty-minute period" in 60.3(3)a. Kuhn explained that the intent was to allow flexibility and there was no intent to restrict the public's right to participate.

ch 64 Quorum now present.
No questions re chapter 64, contested case proceeding.

ch 70 Amendments to chapter 70 were updated to correspond with current Conservation Commission practice. Priebe referred to 70.3(5) and recalled that legislation specifically spelled out "horticultural." Kuhn agreed to follow up. He was aware that the original "green thumb" legislation contained the word.

31.4 Rule 31.4 contained housecleaning amendments. Farris reviewed proposed hunting and trapping seasons--public hearing will be April 7. In most instances, there were no changes except for adjustment to calendar for opening and closing dates. Priebe had received complaints from constituents who want pheasant hunting banned. Farris was doubtful that closing the season was a good solution.

3/14/84

CONSERVATION Priebe thought a hearing on the matter should be held
COMMISSION in Kossuth County. Farris reminded ARRC there would
Continued always be complaints regardless of hearing locations.
Priebe thought it advisable for the Commission to hold
the hearing in location where "everyone is complaining"
and requested a hearing be held in Algona.

Tieden was advised that with a hunting license, the only
fur-bearing animals that may be taken are coyote and
groundhog. All others require fur-bearer's license
under the law. Game management areas were mentioned.

ch 106 Schroeder questioned 106.7(3)--special muzzleloader
season and Farris said it would open after the second
deer hunting season. It is restricted to hunting on
public lands. The Commission was concerned about acci-
dents on private lands and the likelihood of complaints
from landowners. However, they were open to comment on
this issue. Farris pointed out the Commission was pro-
posing to legalize "party hunting" which will coincide
with current practice in deer hunting. Hunting dates
would begin Saturday, December 1; muzzleloader season,
December 15.

Tieden's constituents have requested a higher doe kill
for the northeast portion of the state.

Farris explained that "any-sex license quotas" cannot
be changed until the final rule since data is unavail-
able until that time. He reviewed the seasons and li-
censing for each and Priebe requested that information
be sent to him.

Priebe knew of interest in lengthening the first season
by one day. Farris responded that Conservation seeks
balance between the seasons--the first one is shorter
and the second provides twice the number of "any-sex"
licenses. In response to Priebe, Farris said the per-
centages average about 60 per cent for the first season,
40 per cent for the second. Farris agreed to consider
Priebe's request to lengthen the season.

106.7(2) Tieden called attention to possible misunderstanding of
subrule 106.7(2). He suggested inserting "muzzleloaded"
before "rifles" in line 3. Farris agreed to review the
request with the Attorney General. He was doubtful that
rifles would ever be authorized for deer hunting.

ch 109 No comments re 109.1 to 109.4. Schroeder opposed water-
ch 107 fowl hunting zones being divided by the interstate high-
way--ch 107.

ch 112 Farris displayed a map showing wild turkey hunting zones
which will be expanded for the fall gun season. That
season is less popular than spring hunting.

3/14/84

CONSERVATION Tieden wondered about state's liability for degradation
COMMISSION of wildlife and was advised that the Court has ruled
Concluded this a hazard of agriculture.

ch 44 Adams commented that chapter 44 was identical to that
ch 45 filed under Notice. The word "aged" was removed and
"person aged sixty-two or over..." were substituted in
amendments to chapter 45. According to Walker, rules
ch 52 governing snowmobiles had been revised with the help of
a committee made up of Commission representatives, Iowa
State Snowmobile Association and County Conservation
Boards.

Tieden was told that the \$400,000 in the snowmobile
fund would probably be reduced to \$250,000 by the end
of the season. Funds are not automatically returned
to counties--counties and municipalities make applica-
tion for them.

Hirkins viewed the revision as "good and workable."
Doyle was informed that signs are made by Prison In-
dustries.

CORRECTIONS Chuck Patton was present to review for Corrections De-
DEPARTMENT partment:

CORRECTIONS, DEPARTMENT OF[291]
Miscellaneous amendments, 1.1. 1.6(1), 1.6(3), 11.3(1), 20.12(4)"c", 40.4(2), 50.5(5)"b", 1.2. 1.6(2) ARC 4470 .N..... 2/15/84
Organization, 1.6(1)"g", filed emergency ARC 4469FE..... 2/15/84

No questions were posed.

Special O'Kane moved that a special meeting be held at 8:00 a.m.,
Meeting Wednesday, March 21, 1984, to consider ARC 4528, Racing
Commission rules, IAB March 14, 1984. Motion carried.

It was decided that the following would be placed on an
April agenda:

CONSERVATION

Migratory game bird regulations, 105.3(3) ARC 4490N..... 2/29/84

TRANSPORTATION, DEPARTMENT OF[820]

Interstate motor vehicle fuel permits and transport carrier registration, (07.F) 7.4(4)"a" ARC 4500 .N..... 2/29/84

No agency No agency representative was requested to appear for the
Reps following:

CIVIL RIGHTS COMMISSION[240]
Organization and administration, 1.2 ARC 4495N..... 2/29/84

Recess The Committee was recessed at 8:48 a.m.

3/21/84

SPECIAL
MEETING

The recessed meeting of the Administrative Rules Review Committee was reconvened by Chairman Priebe Wednesday morning, March 21, 8:02 a.m., Room 116, State Capitol, Des Moines, Iowa. All members and staff were present.

RACING
COMMISSION

Jack Ketterer, Executive Secretary, and Mick Lura, staff, were present for the Racing Commission.

ch 5

Chairman Priebe called on Racing Commission officials to explain filed emergency rules, chapter 5, published 3/14/84 IAB as ARC 4528. The rules were also Noticed at the same time.

Ketterer distributed a chronology of Commission activities prepared by Lura. The Commission first addressed necessary revisions needed in the law--amendment was prepared and they met with legislative leaders and the Governor's office prior to having the bill drafted.

Administrative rules were the next priority--a timetable was needed so applications could be taken and ruled on by this summer; construction of facilities could begin and be operational by next spring. The Racing Commission preferred becoming self-supporting as soon as possible.

Graf, Royce and Garrett Hayward, Assistant AG, had advised the Commission in their rulemaking and concurred that simultaneous Notice and emergency filings would be appropriate. Proposals were mailed to those on their mailing list--anyone interested in racing, Greyhound or horse organizations and the Division of Criminal Investigation. Input was solicited and incorporated and rules were adopted at a meeting on February 24. A public hearing on the Notice will be held April 19; the emergency rules become effective April 1.

Ketterer emphasized that the rules involve only information that will be required on the application. They do not address location of tracks--that will be determined with later rules.

O'Kane questioned the justification for filing emergency rules. Because of the type of activity to be regulated and because racing is extremely new to Iowa, he thought the statute should be followed explicitly. O'Kane asked Royce to delineate Committee options which were: File objection which would reverse the burden of proof in the event of a court case challenge and make it easier to challenge the rules as being procedurally improper. This would also have the effect of sunseting the rule after 180 days. The Committee also has the power to delay the emergency rules up until their April 1 effective date.

Graf accepted responsibility for advising the Commission that, in her judgment, emergency adoption would be permissible. She was hopeful the Committee would not take action against the Commission since they had sought public input.

3/21/84

RACING
COMMISSION
Continued

O'Kane suspected the "informal public input" was directed at proponents of the pari-mutuel system and not really at public participation.

Motion to
Delay

O'Kane moved a [70-day] delay. Discussion followed. It was Schroeder's understanding that all parties who have requested information concerning racing were contacted about the proposed rules and he reiterated that a public hearing was scheduled. He recalled emergency Social Services rules were often necessary to implement deadlines and the Racing Commission rules seemed to fall into that category. O'Kane declared that public hearings held after rules have gone into effect have little impact.

Royce reviewed the Committee's authority under chapter 17A.

Substitute
Motion

Schroeder made a substitute motion that an objection be placed on the emergency rules. Graf argued against an objection contending that the Committee has allowed for emergency rule filing under similar situations in the past. Priebe defended the Committee and added that an objection only shifts the burden of proof. He was reluctant to impose a delay. O'Kane disagreed with Graf's position that the ARRC was singling out this particular agency. Royce responded to Tieden that he, too, had conferred with the agency and saw no problem with the emergency filing. He pointed out that Ketterer wasn't hired until December 2 and needed some time to organize the Department.

In Royce's opinion, an objection would not hamper this process. However, it would place the whole concept under a "dark cloud."

Tieden opined the Commission had acted in good faith and he preferred waiting until April, after the public hearing, before taking Committee action. Priebe reminded ARRC that a meeting was scheduled for April 24 and the matter could be considered at that time.

Chiodo saw the issue as one of perception--a new entity is involved. He declared the message must be made very clear, particularly with racing, that "we want to go the extra mile to allow for scrutiny." He reiterated his opposition to emergency rules in general.

Motion

O'Kane reasoned that it was unfortunate that this new agency in state government utilized the emergency filing for their very first rules. He asked that his motion be voted upon.

Motion

After further discussion, Schroeder withdrew his motion to object. O'Kane asked to withdraw his motion to delay and moved an objection.

Vote

Vote on the O'Kane motion to object lost on roll call vote of 3 ayes by Doyle, Chiodo and O'Kane and 3 no votes by Priebe, Schroeder and Tieden.

3/21/84

RACING Ketterer assured Priebe that pari-mutuel tote boards
COMMISSION would be allowed under 5.3(21). Committee members
Concluded thought that should be more clearly defined in the rules.
Priebe also suggested clarification re quarters for
jockeys---5.3(20).

Lura stressed that these rules are basically informational.
Ketterer added that the Commission was in the process of
developing criteria. It was agreed that chapter 5
would be reviewed again at the April 24 meeting.

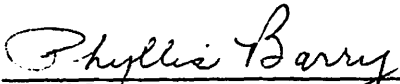
Steel Shot Royce had received questions from gun dealers re the
proposed ban on lead shot. Priebe advised that dealers
should, "Order shells the same as last year." He was
doubtful that anything would be done this year but sus-
pected that the ban would be statewide, ultimately.

Chiodo said his intention was that a ban of any kind
would be statewide. No other discussion.

Adjourned Committee was adjourned at 8:42 a.m.

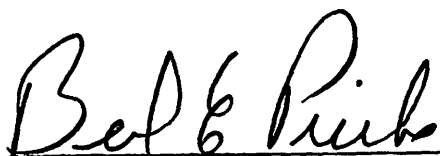
Next Next meeting will be Tuesday, April 10, 1984.
Meeting

Respectfully submitted,



Phyllis Barry, Secretary
Assisted by Vivian Haag

APPROVED:



CHAIRMAN