

MINUTES OF THE REGULAR MEETING
of the
ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of Meeting: Tuesday and Wednesday, October 9 and 10, 1979, 9:00 a.m.

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

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

CONSERVATION

The following rules were before the Committee:

CONSERVATION COMMISSION[290]	
Wildlife habitat stamp revenue, cost sharing, ch 23	ARC 0594 F..... 10/3/79
Examination and copying of public records, ch 63	ARC 0592 F..... 10/3/79
Inland commercial fishing, 110.1 to 110.3	ARC 0595 F..... 10/3/79
Pheasant, quail and partridge hunting seasons, ch 103	ARC 0556 F..... 9/19/79
Migratory game birds, ch 105, <u>filed emergency after notice</u>	ARC 0555 9/19/79
Waterfowl and coot hunting seasons, ch 107, <u>filed emergency after notice</u>	ARC 0554 9/19/79
Fishing regulations, ch 108	ARC 0520 N..... 9/5/79
Falconry regulations, 18.1(3)"c"	ARC 0593 N..... 10/3/79
Operation and public participation, 60.2(3)"j", 60.3(5), 60.4	ARC 0610 N..... 10/3/79
Contested case proceedings, ch 64	ARC 0611 N..... 10/3/79
Grants-in-aid program, 72.4(1), 72.13	ARC 0589 N..... 10/3/79

Representing the Department were: Robert Barratt, Wildlife Superintendent, Marion Conover, Fisheries Supervisor, and Stanley Kuhn, Chief of Administration Division.

Ch 23

With respect to Chapter 23, Barratt said substantial changes were made in the rules since they appeared under Notice and there was general acceptance of the final draft.

Tieden called attention to the last sentence of 23.10 re commencement of projects as to who would make the determination to terminate a project and cancel the grant. He suggested more specific language to ensure that the decision would not be made by one individual.
Clark's recommendation to add at the end of the rule the words "by the Commission" was acceptable to Barratt.

Ch 63

Kuhn explained changes in Chapter 63 as a result of comments from the public and the ARR Committee: Agency assistance provided at no charge was extended from 15 minutes to one hour. Withholding of services because of nonpayment of charges for previous services would apply only to requests resulting in significant additional expense to the agency. In response to question by Schroeder, Kuhn replied that only 4 or 5 extensive requests were received over the past 4 or 5 years.

CONSERVATION
Cont'd

Oakley commented that the general area of copying public documents was being reviewed to determine if it is a legitimate subject of rulemaking by a number of agencies and, if so, it would probably be useful to have uniformity. For general policy, it may be the subject of an executive order.

110.1--.3

Conover told the Committee that rules pertaining to inland commercial fishing were revised as a result of comments made at the public hearing: "The geographic limit of commercial fishing at Red Rock was extended west of Highway 14 to that point where the Des Moines River is within its banks; Coralville Reservoir was extended to Highway 218 to County Road 'O'; both areas would be closed between September 1 and December 1 to allow harvest of rough fish during high water periods without jeopardizing waterfowl hunting. Use of West Overlook and Sugar Bottom boat ramps at Coralville would be prohibited to commercial fishermen from May 28 to September 6 to prevent tying up high demand recreation ramps."

Tieden thought the Commission should specify water level to avoid rule changes. Conover noted that Coralville had been closed a number of years because of the pesticide level. There was discussion of the history of commercial fishing at the lakes.

Schroeder questioned statutory authority for denying access to the two boat ramps. Conover stated the rule was in response to a meeting held with the Corps of Engineers. He could see no problem but was willing to work with the Corps to relax the restriction.

103, 105,
107

Chapters 103, 105 and 107 were acceptable as published.

108

Conover explained the minor changes in fishing regulations--chapter 108--from 1979.

Tieden reiterated his grave concern for the unnecessary taking of panfish resulting in waste of this natural resource, and he has received many complaints on the matter. Conover explained the difficulty in standardizing regulations among bordering states. Tieden favored a limitation of 25 panfish per person. Conover said the Commission has not documented over-harvest of blue gill or crappie on the Mississippi River and they were hesitant to place restrictions in this area. For several years, the Commission has requested public comment and there have been no complaints concerning wanton waste or over-harvest.

18.1(3)c

Barratt stated that 18.1(3)"c" would require falconry hunters to obtain both state and federal permits. Federal regulation has changed the possession limit from two to three raptors.

CONSERVATION
Cont'd

Schroeder questioned the limitation of two replacement birds in any 12-month period. Barratt explained that the Commission prefers that the birds remain in the wilds and persons who practice falconry concur.

Ch 60

Kuhn stated that as a result of criticism relative to public participation at their meetings, the Commission has completely redrafted their organization and public participation rule which would clarify and improve many procedures. The revision would afford the public opportunity to respond in three different ways: (1) They could appear at the public participation portion of an agendum without prior notice to speak on any matter relating to the duties and responsibilities of the Commission; (2) request to be placed on the agendum by submitting the request along with their subject to the director at least 15 days prior to a meeting; (3) respond to any topic on the agendum by giving advance notice to the chairman.

Subrule 60.3(5)a incorporates language from a recent attorney general opinion re agendum and notice of meetings.

In the matter of voting, the Commission changed rule from Roberts Rules of Order to comply with Rules Review Committee policy, by requiring that motions receiving a majority of affirmative votes from commissioners sitting shall pass.

Rule re public complaints about performance of agency employees was rewritten, containing a balance between employee and taxpayer rights. Rules re meeting decorum and use of cameras and recording devices were similar to those of Social Services. Also, the Commission took into account obligations to management under the collective bargaining agreements and Merit Department rules.

Patchett and Oakley discussed the matter of voting by Commissioners. Oakley wasn't sure the Commission was complying with Rules Review Committee policy. Priebe noted that all other agencies have met the Rules Review Committee criteria.

Patchett preferred that the rule should state "four affirmative votes are required." Oakley noted the Commission had not addressed the possibility of absenteeism or vacancies.

Kuhn could not recall when there had been two vacancies at one time. He tried to handle problem of the vacancies by using the expression "sitting". Oakley reiterated his disagreement with the basic philosophy of requiring four affirmative votes, contending it has a tendency to disproportionately magnify the minority to the point where it has a virtual veto power. Patchett concluded the Commission must ultimately make the decision.

CONSERVATION
Cont'd
Ch 60

Patchett indicated he could find no equivalent rules under Social Services re meeting decorum and questioned 60.3(5) allowing the chairperson to limit participation.

Royce said the statute provides interested persons opportunity for oral presentations and he contended the language was being broadly construed. Kuhn recalled the conflict which resulted in Commission chairperson recessing the meeting. Patchett thought it should be clarified that discretion of the chair doesn't extend to the denial of right to participate.

Priebe made the point he had received many complaints on the Conservation Commission meeting where a five-minute limitation was imposed. The meeting, originally scheduled for all day, was over before 11:00 a.m. because of the five-minute limitation. He took the position it would be difficult for one set of standards to apply at every meeting.

In 60.4(3), the last sentence, Patchett asked assurance that the Commission would not interpret it to mean less than the statute which says "...the agency shall either deny the petition in writing on the merits, stating its reasons for denial or issue a rule...". Kuhn stated the Commission was seeking clarity and agreed this was somewhat redundant.

Patchett also questioned the second paragraph of 60.4(5) and its relationship to meetings with Merit or Collective Bargaining groups and rights of employees, etc. Kuhn responded that the Commission had struggled with the matter. Their interest was to ensure an employee would not be placed in a position of being guilty until proven innocent. They preferred the Director to maintain supervision of the staff--not to be superseded by Commission action. Patchett expressed opposition to "informal meetings" for the purpose of gathering facts.

Ch 64

Schroeder considered language in 64.2(1), third paragraph, to be a bit strong and both he and Clark could foresee a district court proceeding as the only alternative. Kuhn said the language was drafted with assistance of the Attorney General's staff. He added the Department is lacking in experience since they have had no contested cases. It was their intent that the first paragraph speak to the Commission's determining whether or not an item is in fact a contested case as envisioned by The Code.

Clark called attention to a grammatical error in the first paragraph of 64.3.

Ch 72

Schroeder raised question as to the formula set in 72.4(1) for grants to cities. It would seem to favor the more heavily populated areas.

CONSERVATION
Ch 72 Cont'd

Kuhn explained the rule was an attempt to fund more small projects as opposed to a few large ones. Normally, there are 30 to 40 eligible projects but only 4 to 6 can be funded. Kuhn agreed that Schroeder's point was well taken but the figures were prepared by the Grant Review Committee with intent to aid smaller cities. He agreed to review the matter which had not been brought up at the Commission meeting.

Holden asked for explanation of 72.13--ineligible items. Kuhn responded that by eliminating federally funded projects with respect to donated real property, it was felt funds would be available for more types of cost-sharing projects. It was noted that L&WCF is the federal Lands and Water Conservation Funds.

Priebe brought up a matter not officially before the Committee with respect to renting of land under the jurisdiction of the Conservation Commission. He requested a list of these lands and Kuhn was willing to provide the information.

CREDIT UNION
Chs 1 to 6
and 9

Betty Minor, Administrator, Credit Union Department, Deputy, James Brody, and Gary Plank, Iowa Credit Union League, appeared for review of proposed Chapters 6--Branch Offices and Chapter 9--Second Mortgage Loans which were published in IAB 9/5/79; filed rules Chapter 1--Description of Organization, Chapter 2--Organization of a State Chartered Credit Union, Chapter --Examination and Supervision Fees, Chapter 4--Adoption of Rules Procedure, and Chapter 5--Small Employee Groups, published in IAB 9/5/79 as ARC 0522 and 0521, respectively.

Discussion of Chapter 6. Minor pointed out changes which would be made as a result of public comment at the September 26 hearing and advice of the Attorney General. Subrule 6.3(1)--"may" will be changed to "shall"; 6.1(6)--add after "If" the words "after notice and hearing"; 6.2(1) will read: "The rules governing the establishment of a branch office shall also govern the relocation."

Schroeder could see a possible "bookkeeping nightmare" with 6.3 pertaining to co-owned or shared facilities. Minor advised that separate books would be kept--a large credit union would merely offer space to a smaller union at cost. Schroeder favored limiting the number of branches to 3 or 4. He could envision a massive union taking in all small credit unions. Minor indicated this would be covered in bylaws.

Holden considered it important to afford other credit unions an opportunity to object to having a branch moved too close to their establishments. Minor replied the hearing would provide an opportunity.

CREDIT
UNION
Cont'd

Discussion of definition of small employee groups which would be not less than 10 nor more than 450 persons--5.1. Holden took the position the Department did not follow the law as closely as they should have. He maintained a group's economic stability rather than the number of persons would be a more logical approach.

Minor pointed out that each individual credit union is comprised of different economic background. In some instances a 150 member group might be more successful than one with 300 members.

Oakley observed the rule did not define what an insufficient number would be--there was no criteria for making this judgment.

Holden could see no incentive to organize under 450 persons--those employee groups with large credit unions would solicit small employee groups. He suggested the Rules Review Committee consider placing a delay on chapter 5.

In re 3.1(3), Schroeder commented this was "class" legislation. Minor replied that corporate central, to which the rule refers, operates from an asset base broader than any other credit union. Schroeder said fees should apply uniformly to all. Minor advised the first five chapters of these rules were from the Credit Union Review Board. Plank agreed Schroeder might have a valid point. Corporate central derives all of its funds from member credit unions; they pay an examination fee on assets, thus the fee has been paid once. Examination fees are based on the time required to examine a credit union--pro rata divided among the credit unions. Those serving corporate members require much less time than those serving others. Schroeder reiterated he could not see the difference and preferred comparable rates.

Returning to discussion of size of CU's, Patchett thought that, by inference, there is a clear preference for credit union groups to form their own employee credit unions. Upon a finding and a showing that an employee group has insufficient numbers to form or conduct the affairs of a CU, a smaller group could then merge with the larger. He concurred with Holden's suggestion for a delay.

DELAY
ch 5

Discussion of the delay with Holden reluctant to forfeit the Rules Review Committee's right to object. Royce reminded that, at the expiration of the 70-day delay, the committee could file an objection. Holden requested the Credit Union Department interpret much more closely what some legislators had in mind relative to this authority for small credit unions, i. e., the legislation was to cover those areas where establishing credit unions was just not feasible. Holden moved the committee request

CREDIT
UNION
Cont'd

a 70-day delay on all of chapter 5. The motion carried unanimously. [On October 10, 1979, the governor, by executive order (see IAB 10/31/79), rescinded 295--IAC ch 5. This chapter appeared as ARC 0527 in the IAB, 9/5/79.]

11:05 a.m.
Recess

Chairman Schroeder recessed the committee to reconvene at 11:10 a.m.

COUNTY
FINANCE

Marjorie Schneider, Supervisor, County Budgets, Comptroller's Office, was present for discussion of chapters 1-3, Notice of Intended Action, IAB, 9/19/79. She explained that the County Finance Committee was temporarily formed to study county government funding, and to make recommendations to the governor and the General Assembly. In re membership, she pointed out that the 68th GA, chapter 25, section 18 provides for four-year terms, yet section 22 of the Act abolishes the committee on July 1, 1981. She added the county finance committee wasn't created under the home rule legislation.

ch 2

Clark requested the following changes: 1. 2.1(1) "by making" to "and to make". 2. 2.2(1) insert "of" between "call" and "and". 3. 2.2(2) change "said" to "the". Schneider was amenable.

Schroeder questioned language in 2.1(2). Schneider reminded *them* that the state comptroller shall serve as chairperson as provided in section 19(3) of the Act.

SOIL
CONSERVA-
TION

Leon Foderberg reviewed till incentive program, 7.21-7.29 and wind erosion control incentive program, 7.31-7.40, both published under Notice as well as Filed Emergency in 9/5/79 IAB. He reported the incentive program is called the Iowa Till Program, distinguishing it from all other conservation tillage. The legislation passed by the 68th GA allows 10 percent of the \$5 million cost-share appropriation to be used for incentive programs to set up demonstration areas around the state.

Priebe questioned the advisability of the Till program not encompassing all of the state's watersheds. Foderburg said \$500,000 of Road Use Tax money provides funding for conservation tillage to twenty-two north central counties, whereas the 78 watershed districts will be sharing the money funded in the Iowa Till Program.

General discussion of wind erosion and tillage. Tieden asserted the first people to utilize the Iowa Till Program will be those co-operators who are presently practicing soil and water conservation on their land. He preferred the rule state "new co-operatives or new people" as those who need assistance. Foderburg agreed what Tieden said would be partially true, but not

SOIL
CONSERVA-
TION
Cont'd

all of the old co-operatives would be the first to receive money. Tieden preferred the language read "at least fifty percent of funds in every watershed area should be available for new co-operatives." Foderberg thought this could be accomplished in the future, but not at this point. Tieden said he will be watching the program very closely.

In re 70.38(3), Priebe was concerned with a provision for a one-time payment of \$30.00 per acre to farmers who will maintain the practice of conservation tillage for a period of five years. Priebe raised questions as to what might occur when a person who is leasing land only stays one year, or the landowner sells the property or, after agreeing, does not participate. Foderberg responded the landowner, in a leasing situation, is required to sign and the other areas of concern would be addressed by permanent soil conservation practices. Also, the attorney general's office can file through the courts to obtain the money. Priebe contended the information was not in the rules. Foderberg pointed out that 7.27(7) answers Priebe's question.

Clark said language contained in 7.27(7) re the Iowa Till Program is not included in the wind erosion rule, 7.38(3) and requested the language be inserted. Foderberg was amenable.

IOWA
DEVELOP-
MENT

Ronald Kraft, Director, Industrial Development Division, reviewed chapter 4, published under Notice and Filed Emergency in IAB 9/19/79. He explained the purpose of the Act (68GA, ch27) was to provide loans to local development corporations in payment of all or part of the interest on a loan to a local development corporation which is attributable to construction costs of a speculative building. Many communities, ~~that~~ already own land, would like to build speculative industrial buildings, but cannot afford the interest if the building remains empty from one to three years after construction. Tieden questioned if this were the intent of the law, followed by committee discussion of the matter.

Kraft contended the intent of the law was to have buildings ready for development and said that, in the last 4 or 5 years, 80 percent of individual clients inquiring about Iowa have been seeking buildings, not just building sites. At the present time, there is a shortage of these buildings.

In response to Schroeder's question re the source for the guidelines, Kraft advised the Iowa Development Commission has studied this matter for the last seven years and has had input from the National Development Corporation.

Oakley reiterated his position on emergency filing and indicated specific legislative authority to the agency for this procedure would be preferable.

ENVIRON-
MENTAL
QUALITY

Odell McGhee, Hearing Officer, reviewed 19.2(12), municipal sewage treatment grants, Filed, and 22.4, water quality, bacterial monitoring, Notice, published in IAB, 9/19/79 and 9/5/79. McGhee said 19.2(12) outlines recommendations for municipalities to receive state and federal assistance for construction of sewage and treatment works and he presented a list of those municipalities involved in the project.

In re water quality, bacterial monitoring, Clark thought DEQ was requiring too many samples and was pleased the rule was presenting options for communities. McGhee commented the rules are under notice, a public hearing was held and public input will be incorporated. He expressed the department's disappointment in the amount of comment presented at the public hearing.

General discussion of the process of public hearings and publication of notice re those hearings. Tieden expressed his concern that smaller communities are not made aware of DEQ rules.

Dave Long, League of Municipalities, said a number of smaller communities did contact their organization and those comments were included in the statement made at the hearing. Tieden wondered if the League of Municipalities was satisfied that the DEQ rules answered the concerns of smaller communities and Long replied in the affirmative.

Recess
for lunch

Schroeder recessed the Committee for lunch at 12:07 p.m. Committee reconvened at 1:30 p.m. with 5 members present.

CIVIL
RIGHTS

Ed Detlie, Hearings Officer and Louis Martin, Probable Cause Hearing Officer, reviewed the following:

CIVIL RIGHTS COMMISSION[240]

Organization, rules of practice, 1.2(1), 1.18 to 1.20	ARC 0526	N	9/5/79
Sex discrimination, employment policies, 3.9(3), 3.10(2), 3.10(3)	ARC 0528	N	9/5/79
Age discrimination, employment benefits, 5.6(1), 5.6(3)	ARC 0529	N	9/5/79
Age discrimination, retirement, 5.7	ARC 0527	N	9/5/79

Clark questioned the division of the commission staff. Her contention was, if rules are divided by function, groups such as women, races, etc. should be included. Royce suggested combining advocacy and investigation created a conflict of interest.

Detlie discussed the order of investigation stating if a problem arises and is dealt with, the agency becomes an advocate--until that time, the agency maintains an impartial attitude.

The Civil Rights Commission organization was discussed in general. Tieden could see no reason for reorganization and Detlie informed this was in response to Acts of the Sixty-eighth General Assembly, chapter 35. The commission perused regulations in order to comply with chapter 35 searching for out-of-date matters. Also, number changes were made. Possible expansion of the present system concerned Tieden. Martin said the federal government is responsible for the expansion. In response to Tieden's question

CIVIL
RIGHTS
Cont'd

re location of these divisions previously, Martin said the agency, for some time, has had an attorney general's opinion and the agency thought this should be included in the rules.

Oakley suggested, before rules are finalized, obtaining clearance from the attorney general re rule format both as a matter of policy and from a legal standpoint.

Martin noted the commission assumed the assistant attorneys general were merely housed at the Commission and agreed the rule should be rewritten.

3.9, 3.10 Oakley reminded amendments have been filed to these rules and a public hearing is scheduled for November 30, 1979.

3.9(3) Holden questioned "shall include coverage for pregnancy-related conditions" stating it is arbitrary.

Oakley quoted chapter 35, Acts of the Sixty-eighth General Assembly, section 10, unnumbered paragraph 2 as authority. Detlie thought the legislation spoke in the positive and negative. Holden contended the statute did not mention pregnancy-related coverage.

Detlie said the rule contained the language previously. Martin commented the rule is a guide to employers in the area of pregnancy-related coverage.

Detlie quoted from 3.10(2). Holden thought this mandated coverage and wasn't sure that was legislative intention. Tieden preferred rewording with Holden suggesting "if a health insurance program provides coverage for pregnancy-related conditions, the plan may exclude abortions except in cases of threatening the life of the mother."

Both Martin and Detlie said Holden's suggestion changed the meaning of the rule.

Patchett returned.

Priebe in chair - 1:55 p.m.

Martin reminded the rules implement the statute and Detlie cited a case before the Iowa Supreme Court re Davenport Community Schools where the court decreed this was law. He commented the commission would be hesitant to delete items. Detlie continued that 3.9(3) has been the single most discussed issue at public hearings and involved in supreme court litigation. Priebe reminded the rules are under notice. Holden registered his personal objection to the rule.

5.6(3) Clark thought the rule dealt with a bargaining item. Detlie stated parties cannot bargain in this area. This is written under federal guidelines.

CIVIL
RIGHTS
Cont'd

Clark opined 5.6(3)"d" states two diametrically opposed items. Detlie replied the mandatory retirement age was moved from sixty-five years of age to seventy, with minor exceptions. [ch 35, Acts of the Sixty-eighth General Assembly] Oakley commented it addresses a very difficult civil rights matter and he requested the Rules Review Committee read communications from several interested industries. Royce agreed to distribute copies to committee members.

Oakley also noted the Civil Rights Commission had not followed style and form in the rule.

Schroeder returned to chair -- 2:15 p.m.

PHARMACY
EXAMINERS

The following rules were reviewed by Norman Johnson, Executive Secretary and Martha Gelhaus, Administrative Assistant:

PHARMACY EXAMINERS[620]

Medicinal use of marijuana, ch 12, filed emergency after notice	ARC 0547	.....	9/19/79
Internship training, 3.6(5), 3.6(6)	ARC 0550	.....	9/19/79
Minimum standards, 6.2, 6.8(7) rescinded	ARC 0548	.....	9/19/79
Controlled substances, 8.14	ARC 0549	.....	9/19/79

Unethical conduct or practice, 6.5	ARC 0607	.....	10/3/79
Continuing education program attendance, 6.8(1)	ARC 0608	.....	10/3/79
Continuing education, active license, 6.8(7)	ARC 0609	.....	10/3/79

ch 12

General discussion of the medicinal use of marijuana, with Tieden asking about the physician's advisory group and expressing interest in committee membership being balanced. Gelhaus advised the group is very diverse.

Rules 3.6(3), 3.6(6), 6.2, 6.8(7) were acceptable as filed.

6.5

In re ethical conduct or practice, Gelhaus stated the rules had been filed and approved. Holden expressed concern for 6.5(1) unethical conduct and asked if it is illegal to be unethical. Royce cited chapter 258A, Code 1979, which mandates adoption of rules of ethics. Holden preferred the wording to be "unlawful conduct" instead of "unethical" and did not want boards dealing with ethics. General discussion of ethics with Patchett commenting most professions have a code of ethics. Clark suggested language be written in a positive manner, not "It is unethical to...". Holden concurred.

Patchett inquired why pharmacists were refraining from issuing generic drugs, as prescribed by statute. Gelhaus replied that pharmacists are not convinced the non-generic and generic drugs are of equal quality.

Discussion of a possible list containing names of equivalent and non-equivalent drugs. Johnson said the FDA has not distributed a list and the Pharmacy Board doesn't have the expertise. Clark called attention to several omissions of feminine gender and Johnson agreed to correct.

PHARMACY Clarification of continuing education programs, 6.8(1), was
EXAMINERS acceptable as filed under notice of intended action.

Holden, in re section 258A.1(2), Code 1979, called attention to recommendations from Joe Royce, Staff.

REGENTS David Henry, Assistant to the President, Iowa State University, Janet Bacon, Research and Information Analyst, Board of Regents, Wm. Whitman, Director, Physical Plant, ISU, Robert Ferguson, Director, Campus Services Traffic Regulations, ISU, Dr. Richard Seagrave, faculty, ISU, John Herrick, Transportation, ISU, Jim Anderson, student, Traffic Director, Government of the Student Body, ISU, and Steve Axios, student, member, Traffic Committee, ISU, were present for review of the following rules:

REGENTS, BOARD OF[720]

Iowa state university, undergraduate students, veterinary medicine, graduate college, 2.25 to 2.28 ARC 0551/F... 9/19/79

Temporary suspension, 2.36(5) ARC 0609...F..... 10/3/79

Pay on promotion and leave for Olympic competition, 3.39(3), 3.151 ARC 0601.F..... 10/3/79

Traffic and parking at universities, 4.25(2,4,8), 4.28(1), 4.29(1,4,5,8), 4.37, 4.38(4,9), 4.45(1), 4.46(3,5), 4.47, 4.50(2), 4.51(4,6) ARC 0612F..... 10/3/79

The selection process for admittance to the College of Veterinary Medicine, graduate college, ISU, was discussed. In response to Tieden's question re the 120 candidate limitation, the committee was informed numbers are determined basically on laboratory space for courses. Nationwide, 80 percent of candidates are rejected for admission. Tieden also questioned language of 2.27(3) with Bacon stating this is standard in all graduate colleges.

2.36(5) This rule is identical to the University of Iowa rule which was before the committee several months ago.

Henry commented full occupancy at the state universities has been studied and Bacon offered a copy of the study for committee use. Henry said three persons are living in two-person rooms at ISU and noted the university hasn't built dormitories for a long time. Iowa University is at full occupancy while University of Northern Iowa has space as a result of more local students.

Pay on promotion and leave for Olympic competition, 3.39(3), 3.151 was acceptable as filed.

Traffic & Parking Schroeder questioned workability of 4.29(4)"d". Henry explained when a person uses a parking meter, which is jammed, a note is to be left. If a ticket is issued, there is a 7-day period for appeal. ISU handles approximately 1500 appeals every quarter, with a large share being granted.

Steve Axios said it was the consensus, in the event a meter was jammed, the parking space would be left empty.

REGENTS
Cont'd

He said vehicles were being ticketed daily. Department officials informed the committee it was their intention to provide available parking spaces during the day to accommodate high turnover of vehicles.

People have jammed meters in order to park for longer periods of time--one out of ten meters each day. Mention was made of a situation where twenty out of twenty-four meters were jammed. In answer to Schroeder's question if policing action has been implemented, there was difficulty in enforcement; student enforcement officers were used. Much of the jamming was done during the night and in order to correct this problem, a yellow violation notice was placed on meters. The notice has deterred jamming to a great extent.

Discussion of parking fees for students, with Henry saying it is impossible to provide parking for all students attending ISU. The student pays \$6 per quarter for parking space. Schroeder expressed opposition to raising the fine from \$5 to \$25 for failure to display a current ID sticker. Patchett was interested in this change re the collective bargaining legislation.

Henry's response was the change was being made in order for the system to pay for itself, thus avoiding use of state funds to finance parking lots and enforcement.

Axios contended that most tickets are issued to students who are, in effect, financing faculty parking. He referred to a new lot where students are not allowed to park.

Whitman replied the design-center parking lot was paid with non-appropriated funds allocated by the Board of Regents. Parking fines, permit fees and meter revenues are placed in a revolving account which pays for operation and maintenance of parking lots. He said faculty and staff pay \$20 to \$60 a year for parking. Schroeder called attention to the fact students are charged \$2 per day. Whitman said the \$2 per day charge is not for students but for visitor lots. He also reminded not all of the rules are listed in the IAB, just changes to the rules.

4.38(4)

Schroeder questioned the rule and Whitman commented the all-day meter parking is for persons doing business on campus who need to be parked hours.

Jim Anderson, student, advised the idea behind the increase in fines was to have violators pay. If violators keep getting breaks, persons who abide by the rules suffer. Schroeder preferred raising fines for illegal parking over fining for not displaying a current sticker.

REGENTS
Cont'd

In considering the parking rules, Dr. Seagrave said there had been student input and the cost increase was not directed at students. Since students had been involved in decision-making, Patchett could see no reason for the Rules Review Committee objecting. Holden concurred, stating "This is self-government."

Axios' opinion was rule 4.51(6), hearing process, was in conflict with 17A.10 of the Code.

Henry responded that under Administrative Procedures Law, section 262.69 of the Code (traffic statute), does not become viable until the person has had a final decision from the university. He continued that section states judicial review of the decision by the university may be sought in accordance with chapter 17A. The rule is proposed with the intention of reducing the number of court cases. ISU prefers the hearing officer stage between the time of student appeal and going to court and administrative law permits establishment of a settlement procedure prior to the hearing officer process. Appeals, thus far this semester, have been reduced from 1500 to 9. Royce reminded chapter 17A has precedence unless specifically excluded.

RECESS

Chairman Schroeder recessed the committee at 3:35 p.m.

RECONVENED

Rules Review Committee reconvened at 3:50 p.m. Priebe excused.

REVENUE

Darwin Clupper, Hearing Officer, Mel Hickman, Assistant Director, Excise Division and Mike Cox, Property Tax Div., reviewed Dismissal of protests, 7.11(3), gambling, 91.1, 93.5, 93.7, 94.1, 94.9, 95.5, 96.1, 96.2, assessor education commission, 122.2, forms, 8.1(7), real estate transfer tax, chapter 79 and practice and procedure, protest, 7.7.[IAB 9/5/79 and 10/3/79]

Schroeder and Tieden raised question concerning addition to 93.7(99B), defining "bona fide social relationship".

Hickman replied this was based on a 1976 attorney general's opinion defining gambling. Tieden was of the opinion the former attorney general was quite perturbed when the legislature did not pass the gambling law in keeping with the basic guidelines he recommended at that time. Hickman cited an Iowa Supreme Court case, State Ex.Rel. Chwirka v. Audino, Nov. 1977, 260 N.W. 2d 279 as basis for the rule.

In re 95.5, Schroeder questioned reasoning behind language and Hickman cited the court case again.

Assessor education commission, 122.2, and forms, 8.1(7) were acceptable as filed.

Cox reviewed real estate transfers which require declaration of value, being chapter 79. Discussion centered on 79.1(4) which would allow the recorder to request any information necessary to determine a taxable status of a transfer.

REVENUE

It was Royce's opinion that, under the law, the claim of tax exemption is made by either the grantor or the grantee and that the filing of the conveyance is a ministerial duty of the recorder.

DELAY
79.1(4)

Schroeder took the position the department was supplementing the statute. Cox contended the provision would enable the recorder to obtain necessary information to determine if a tax is due. He added that this is the first year declaration of value has been required. He admitted there is a "fine line....". Schroeder suggested making recommendations for statutory changes to the Ways and Means Committees of the legislature. Cox said he would not oppose. Royce opined placing a delay on the rule would meet committee's concerns. There was unanimous consent of the committee to delay rule 79.1(4) for 70 days. Committee agreed the matter should be placed on their November agenda.

REGENTS

Oakley addressed the Committee concerning the Regents termination of notice of intended action on amendments to chapter 9 of their rules which were published in IAB 8/8/79 as ARC 0450. The amendments dealt with payroll deductions for qualified charitable organizations. The board stated for the time being, they had delegated authority to establish uniform rules to implement §79.14 and §79.15 of the Code to the comptroller. However, Oakley alerted the Committee that the question of which payroll system has authority for the rulemaking has not been resolved.

TRANSPOR-
TATION
DEPT.

Darrell Campbell, Highway Division, Dwight Stevens and Charles Sinclair, Assistant Director, Registration Vehicle Office, were present for review of the following:

TRANSPORTATION DEPARTMENT[820]

Rural railroad-highway grade crossings, [06.A] ch 1 ARC 0523 F 9/5/79
Traffic control devices manual, [06.K] 2.1 ARC 0524 9/5/79
Motor vehicle dealers, manufacturers and distributors, [07.D] 10.1(7), 10.1(8), 10.4(1)"e", 10.9 to 10.11 ARC 0544 9/19/79
Vehicle registration and certificate of title, [07.D] 11.1(6), 11.3(5), 11.3(6)"a"(9), 11.3(7), 11.3(8), 11.4(5), 11.6(7), 11.7(1)"e", 11.18, 11.42(3)"a, b, c", 11.50(3), 11.50(4), 11.50(6), 11.50(7) ARC 0543 F 9/19/79
Registration, multipurpose vehicles, motorcycles, [07.D] 11.34, 11.35, 11.37 ARC 0542 F 9/19/79

TRANSPORTATION DEPARTMENT[820]

Highway bridge replacement program, [06.Q] 19.2(2) ARC 0599 F 10/3/79
Motor vehicle lighting devices and other safety equipment, [07.E] 1.2(4), 1.2(14), 1.2(15), 1.2(16)"e", 1.2(17), 1.2(19)"h", "i", 1.2(21)"b", "c", "f", 1.4 ARC 0535 N 9/5/79

ch 1

Campbell explained guidelines for safety evaluation of rural railroad-highway grade crossings, noting a change in 1.3(1) which was implemented by the Iowa Railroad Association the word "shall" to "may". Committee discussion of pros and cons of grooved rumble strips on highways as opposed to raised rumble strips. Schroeder stated a preference for raised strips.

In re Clark's question of 1.3(1)e, Campbell stated the rule wasn't intended to be different--the department had not defined the time period. Tieden was advised a public hearing was not required, but county engineers and railroad association had provided information.

10-9-79

TRANS-
PORTATION
Cont'd

Dwight Stevens commented 2.1 updates the official manual on uniform traffic control devices which affects all cities and counties in the state. Tieden inquired as to the cost involved and was told there would be a net increase of \$69,000.

In response to Schroeder's question of 10.1(8), Sinclair said they have worked in conjunction with the state fire marshal in an attempt to make compliance with building code requirements easier for dealers.

Normal policy relative to vehicle weight, 11.3(5), was questioned by Schroeder with Royce advising the rule is almost verbatim from the Code.

[07,D]ch11

Registration, multipurpose vehicles, was acceptable as filed.

[06,Q]
19.2(2)

Tieden asked the reasoning behind the words "not more than". Richardson said the original rule was written so the amount distributed among counties had to be exactly 40.6 percent. Originally, not enough funds were set aside to fund some large bridges, thus creating hardships on individual counties. Tieden mentioned the fact that most farm to market roads would have large bridges and the remaining counties, by inference, would receive less funds. Clark thought there should be a base. Tieden doubted there could be equitable distribution of the funds under the rule and asked that they peruse the rule and offer a solution. Richardson was reluctant to delay but agreed to do some research and report to the committee on Wednesday.

[07,E]
ch 1

John Kelly, Office of Vehicle Enforcement, discussed rules pertaining to motor vehicle lighting devices and other safety equipment. Schroeder said truckers would not be looking for information about "mud flaps" in a rule entitled "fenders..." and he requested clarification. Kelly was amenable to the addition of "mud flaps" in the catchwords of the rule.

Discussion of the definition of a combine. Royce noted the Code defined it as a "motor vehicle".

RULES
PRIMER

Oakley brought up for discussion his recommendation to publish a revised Style and Form (currently published under General Information in the IAC) for the Iowa Administrative Code. The publication would be guidance to agencies in preparation of rules and would be entitled "Iowa Administrative Rules Primer". Schroeder recommended that standardized forms for petitioning be included in the "Primer". Discussion of format. Oakley preferred an 8½"x 11" size to be retained in the Bulletin binders. Schroeder thought it advisable to also make the information available in replacement pages for the IAC.

Royce expressed importance of having the forms very legible. Clark suggested possible reference to the "Primer" in the IAC. Oakley urged that a motion be made to authorize expenditure for the project. Upon request by Tieden, the Committee agreed to delay the matter until Wednesday.

RECESS

Recessed at 5:40 p.m. to be reconvened Wednesday, October 10, 1979, at 9:00 a.m.

Reconvened Chairman Schroeder reconvened the committee in Senate committee room 24 at 9:07 a.m. All members were present.

Minutes Holden moved to approve minutes of the September meeting as submitted. Carried viva voce.

ENERGY POLICY COUNCIL Douglas True, Deputy Director, Budruddin Z. Karachiwala, Director, Schools and Hospitals Division, and Douglas Gross, Director, Fuel Division, were present for the following:

ENERGY POLICY COUNCIL[380]

Definitions, organization and functions, chs 1 and 2	ARC 0620.....F.....	10/3/79
Class "A" energy auditors, ch 4	ARC 0625.....F.....	10/3/79
Energy measures and energy audits, grant programs, ch 5	ARC 0624..F.....	10/3/79
State petroleum set-aside program, ch 3	ARC 0614,	
also filed emergency	ARC 0613	10/3/79
Energy conservation, federal grants, ch 6, filed emergency after notice	ARC 0619	10/3/79

Gross said chapter 3 enumerates the state petroleum set aside program(rules) which were adopted emergency with identical rules being filed under notice of intended action simultaneously. They are based on existing regulations and list criteria for assignment of the set aside, with federal regulations being the basis for these rules.

Holden questioned how the EPC deals with new users and Gross informed the committee that set aside suppliers are granted on a temporary basis and for users of 20,000 gallons of petroleum, there is authority to assign a permanent supplier. Gross continued that gas supplies are regulated using a base period of use from November 1977 through October 1978.

Problems of farmers faced with early harvest were discussed and Gross commented the EPC has complained to the Department of Energy re supplies. The EPC feels flexibility is needed, but federal rule takes precedence.

In answer to Tieden's question re gasoline quotas for local retailers, Gross said those supplies are subject to a fraction. Tieden mentioned problems of a retailer at Waukon not getting gas supplied all through the summer months. Gross informed both Skelly and Amoco have reduced allocations.

Holden asked if the EPC knew the source of the products. Gross said some retailers pick up "spot fuel" at Houston, Texas. Original projections are based upon what oil companies tell the energy policy council. Holden inquired as to how EPC planned to take care of the supplier who is out and Gross answered, if possible, for each job, they prefer switching brands, but then credit problems exist. Gross discussed the credit and franchise problems and asked for suggestions from the committee for establishing new rules to resolve these problems.

Holden was of the opinion that, when the product is set aside, close control would be beneficial.

ENERGY
POLICY
COUNCIL
Cont'd

10-10-79

In answer to Priebe, Gross stated 170 million gallons of gas and 90 million gallons of middle distillate were available in September. Holden noted "rule" should be substituted for "paragraph" in 3.6(3). Holden asked where application forms mentioned in 3.10 and 3.11 might be obtained and Gross informed him the EPC makes them available to oil jobbers association. Schroeder wondered why the Energy Policy Council had not requested annual usage amounts from oil companies. Council officials were not in a position to respond.

Clark requested deletion of the word "by" in 3.9 and gender changes in 3.11(3), 3.14(2), 3.20, 3.21 and 3.23. She also preferred that a more commonly used word be substituted for "contumacious". She pointed out a superfluous comma in 3.33 and noted the last paragraph of 3.36 was confusing. Gross stated the language was gleaned from an attorney general's opinion. Clark reasoned the rules should be drafted in a manner which would be easily understood by all.

Discussion of overdraw of an allotment by users which, according to Gross, was a common practice. Holden opined we don't really know what the oil companies are doing.

Gross, responding to Tieden, said middle distillate supplies will be available, but gas supplies will be "tight."

Holden asked what could be done with the information that gas supplies will be 7 to 10 percent short and Gross said that as far as the public purpose, it is an attempt to get people to realize there could be problems if consumption is not reduced. Gross added there is a fine line between a further reduction and supply and demand.

Holden referred to requiring forms and indicated a preference that they be distributed among the counties.

Discussion of chapter 4, class "A" energy auditors, with Schroeder quoting from definition in chapters 114 and 118 of the Code "...or a person who has completed educational requirements for a registered engineer or architect but has not yet become registered". He expressed opposition to the qualifications set out in the rules. It was his contention if an individual can pass the test, they should be approved and allowed to work. He could see no purpose for the stringent rules.

True admitted that was a difficult decision for the council but they have a responsibility for the safety and welfare of persons and must be absolutely certain that auditors are totally capable of making right decisions.

4.1(1)"a" Karachiwala stated the committee should read chapter 6 dealing

ENERGY
POLICY
COUNCIL
Cont'd

with qualifications for technical analysts--referring to certified class energy auditors. They are not the only persons who can conduct energy audits--the energy audit portion allows other than registered professional engineers to attend workshops, receive training, etc. This is only for the last phase where a person is recommending changes in the building or its energy using system.

Schroeder thought it would be acceptable if the rule were limited to architects and engineers, but he considered it wrong to all others to take the course, pass the test, and then treat them differently. Priebe agreed with Schroeder. True noted this requirement was necessary because of funds being granted by EPC.

MOTION TO
OBJECT
4.1(1)a

Priebe moved to object to 4.1(1)a.

In answer to Patchett's question, Karachiwala indicated there are 138 registered class "A" energy auditors who have passed the test. He directed Tieden's attention to 5.5 which explains the other types of auditors.

Royce suggested that 4.1(3)a and b be included in the objection.

Karachiwala responded to question by Clark as to whether liability insurance would be needed if applicants were not restricted to engineers and architects by saying it would be necessary to revise 6.8--technical assistance analysts.

Royce commented 4.1 discriminates against a whole class of people who may well be able to function.

Clark questioned the advisability of the objection.

Oakley wondered if when stating the unreasonableness of the rule, the committee should indicate the class of individual or individuals who would meet the criteria to provide guidance for the agency in deciding whether or not the objection was justified. Oakley posed the question as to what legal effect an objection would have. There was brief discussion.

OBJECTION

Priebe restated the motion to object to 4.1(1)a, 4.1(3)a, b and 6.8. Question called on the motion. Short form requested. Objection was voiced. Roll call showed motion lost on a 3 to 3 vote with Schroeder, Priebe and Holden voting aye and Clark, Patchett and Tieden voting no.

BLIND
COMMISSION

John Taylor and Anthony Cobb represented the Blind Commission for the following:

BLIND, COMMISSION FOR[160]

Generally, ch 1, 2, 2.6, 3.2, chs 6 and 9 ARC 0622 F 10/3/79

BLIND
COMM..
Cont'd

Clark called attention to the repetition of a sentence in 3.2 and department officials agreed to delete. The remaining rules were acceptable as filed. Members concurred with Oakley that the Commission had done a commendable job in formulating their rules.

Oakley noted, however, that rules governing appeals as well as personnel and administration policies were not included. Taylor explained they have been reviewing federal regulations and their applicability to the Commission with respect to a merit system. They have also sought guidance from the state merit employment department. No action taken by the committee.

COMPTROLLER Eldon Sperry was present for the following review:

COMPTROLLER, STATE[270]

Payroll deductions "charitable organizations", ch 3, filed emergency after notice ARC 0591..... 10/3/79

He pointed out changes which were made in chapter 3 pertaining to payroll deductions for charitable organizations, after notice and public hearing. The rules were acceptable as published.

RECESS

Chairman Schroeder recessed the committee at 10:40 a.m. and reconvened it at 10:47 a.m.

GOVERNOR
RESCISSION

Oakley apprised the committee that the governor had executed two administrative rules executive orders rescinding agency rules as follows: 1. Credit Union Department, chapter 5, with regard to small employee groups. Oakley noted that this Committee had placed a 70-day delay on those rules. 2. Chiropractic Examiners Board definition of the term "chiropractor" in 141.1(4). Oakley distributed copies of the orders and explained the format.

NATURAL
RESOURCES

James Webb, Director, Mike Smith, Hearing Office and Wayne Eastman, Chief Engineer, were present for review of protected streams, 5.95(2), under Notice of Intended Action. {IAB 10/3/79}

Smith advised the rules provide a petitioning procedure for adding a stream to the list of protected streams and the primary function is to limit channel changes.

In a matter not officially before the committee, Chairman Schroeder recognized Harold Fisher, former Grundy County State Representative. He spoke in behalf of H.D. Osborne, Gladbrook, who has become involved with the natural resources council in a Wolf Creek straightening matter. Fisher referred to resources council order 79-64. He continued even though the council has power of eminent domain under 455A.15 of the Code, they issued this by executive order. Fisher concluded, in his opinion, that easement issued by the council, not by court order, was confiscatory and that the council had overstepped their bounds immeasurably. After the June 28, 1979 order, a modification, order 79-64-M, was issued which superseded the original one.

NATURAL
RESOURCES
Cont'd

The modified order set out that a complaint had been received April 1977 from Larry Stone, Des Moines Register and Tribune, concerning the construction activity on the Osborne property. As a result, Osborne was directed to submit applications and plans for the channel excavated in 1977. Fisher emphasized that no complaints were voiced by landowners up or down stream from Osborne. He made the point the only complaint was from the reporter from the Des Moines Register and Tribune. A packet of information on the matter was offered to committee members. Fisher requested that analysis be made of the orders to determine if the council had exceeded their statutory authority.

Schroeder recommended the matter be referred to the Agriculture Committees of the legislature for review, and that another alternative for Osborne would be to contact the Ombudsman. Priebe suggested that the matter be referred to the Natural Resources Committees as well as the Agriculture Committees. No objections were voiced.

In answer to Patchett, Fisher conceded Osborne had, in fact, started the work before obtaining permission from the natural resources council.

Webb preferred not to discuss the substantive issues since contested case proceedings were pending. He added that the modified order was issued in response to Osborne's first petition for rehearing. Osborne has petitioned for another rehearing and a date has been set for oral argument. At Osborne's request, this has been continued and reset for November. Webb emphasized the council is very much involved with proceedings in the case.

CAMPAIGN
FINANCE
DISCLO-
SURE

Cynthia Eisenhaur, Executive Director, Campaign Finance Disclosure, and Mike Flaherty, Revenue Department, discussed income checkoff markings, 2.1 (IAB 10/3/79) which will allow a third checkoff box on the income tax form. Eisenhaur pointed out the reference to "himself" in 2.1(2) would be revised.

Schroeder raised question as to adequate authorization for three checkoff boxes on the income tax form. No formal action by the Committee.

PUBLIC
SAFETY

Wilbur Johnson, State Fire Marshal, and Connie White, Administration, represented Public Safety for review of the following:

PUBLIC SAFETY DEPARTMENT[680]

Liquefied natural gas, 5.275 ARC 0597 F 10/3/79
Flammable and combustible liquid codes, 5.300, 5.301(6.7), 5.302, 5.304(2)"c"(2),
5.304(3,4), 5.305, 5.350, 5.351, 5.400, 5.450-5.452 ARC 0596 F 10/3/79

Also appearing was Marcia Hellum representing the Northfield

10-10-79

Flying Club and Pioneer Hybrid Company. Discussion of 5.275 which Johnson said would adopt pamphlet 59A of the National Fire Protection Association.

Oakley advised he would be reviewing the possibility of a central depository to provide availability of manuals of this type. Johnson noted the manuals re flammable and combustible liquid codes are mailed to every clerk of court in the state.

Hellum voiced opposition to 5.305(2) with respect to the automatic fire extinguishing system. Northfield Flying Club was of the opinion they would be required to comply with the rule and their entire fueling area would need to be equipped with the automatic system, resulting in a hazard to people using the field. She commented that, in discussion with Brice Oakley, he indicated the Federal Aviation Agency would have jurisdiction. Hellum continued that Northfield Flying Club does not receive federal funds and FAA regulation is significantly less than those fields who do. She could foresee possible problems with 5.305.2b because of leasing equipment.

Another concern was 5.305(2) relative to existing self-service locations. In Hellum's judgment, the provision essentially shifts the burden of proof to the state and she urged development of rules so all can be in full compliance.

Johnson checked the inspection made over the last several years and noted three requests had been received to inspect an aircraft fueling system, always by a city or municipally owned field. Normally, the field would not be required to install the automatic extinguishing system unless there was some specific hazard. He noted that the FAA inspects larger facilities.

With respect to the escape clause, Johnson agreed this was a very difficult area. Discussion of location of filling stations in close proximity to homes. He made mention of the possibility of filling stations utilizing a card system without an attendant and referred to one located at Earlham, where an automatic extinguishing system is provided.

Holden defended self-service stations and was disturbed that the state is responding to efforts of major oil companies to bring self-service stations "into line, price-wise." He continued that to require all self-service stations, because fueling is being done, to install an automatic extinguishing system would be prohibitive. Holden might look more favorably on the rule if it were limited to some very dangerous situation. Johnson replied the rule would be applicable to stations which convert to self-service from this point on. Johnson said the industry would prefer to discontinue all self-service stations.

PUBLIC
SAFETY
Cont'd

Schroeder asked if the department had removed all areas contrary to Iowa law and Johnson replied in the affirmative. Schroeder cited 7--7.4 re hose nozzle valves referred to in 5.300. Johnson referred him to 5.304(3).

Oakley questioned the language "upon impact with a driveway" in 5.304(3) and asked if there were specifications. Johnson replied the desire is to have the nozzle automatically shutoff upon impact with the driveway. He asked the Committee members to peruse the full set of rules.

Schroeder said 5.305(3) creates a problem for the farmer and he was unsure this could be mandated. Johnson agreed to clarify the rule to ensure farmers would be exempt.

Oakley addressed the Committee concerning 5.305(2) re automatic extinguishers and asked why the self-service stations were "grandfathered". It was his opinion the hazard to the public was just as great in the full service station as in the self-service one because of the automatic hose nozzle use. Oakley made the point every station should provide protection. Schroeder suggested authorizing that fire equipment be available, whether or not automatic.

Johnson disagreed with Oakley since self-service stations are virtually unattended in the sense that the attendant often doesn't know the location of the fire extinguisher or the main switch.

Schroeder asked if there were controversial areas in the liquefied natural gas rule and Johnson replied in the negative.

MOTION
TO DELAY
ch 5

Priebe moved to delay for 70 days the effective date of amendments to chapter 5, published as ARC 0596. Motion carried unanimously with 6 ayes.

HEALTH
DEPT.

Peter Fox, Hearing Officer and Janet Dunn, Board of Physical Therapy, were present for review of the following:

HEALTH DEPARTMENT[470]

Chiropractic examiners, ch 141	ARC 0530	F	9/5/79
Physical therapy examiners, ethical conduct, 138.112(7)	ARC 0541	IV	9/5/79
Chiropractic examiners, 141.1(6) rescinded, filed emergency	ARC 0564		9/19/79
Chiropractic examiners, 141.24(4), 141.24(5), 141.41(30), 141.71, filed emergency	ARC 0561		9/19/79
Optometry examiners, diagnostic pharmaceutical agents, 143.7	ARC 0519	N	9/5/79
Health facilities construction review program, 201.1, 201.11(1-10), filed emergency	ARC 0546		9/19/79

There was no further review of chiropractic examiners--chapter 141--in view of the fact that the matter was a special review at the September meeting. [Concerning governor's rescission, see minutes, p. 1037]

Fox stated the law requires the Board of Physical Therapy Examiners to suspend or revoke a license if there has been

10-10-79

HEALTH
DEPT.
Cont'd

unethical conduct by a licensee. Rule 138.112(7) enumerates unethical practices.

Holden questioned what the ultimate result would be. Fox replied suspension and revocation of a license would result if the board determined the unethical conduct to be serious enough to justify it. He added the board is attempting to implement §258A.10 of the Code.

General discussion re duties of physical therapist as opposed to supportive personnel. Dunn indicated it is very difficult to find licensed people willing to work in rural areas and supportive personnel are employed. Holden contended physical therapy treatment could not be delegated to someone other than licensed therapists. Fox noted there are not enough physical therapists to meet the demand, but department officials were willing to modify the rule to overcome committee concern. Holden recommended deleting the first sentence of 138.112(7)d.

LUNCH

Chairman Schroeder recessed the committee for lunch at 12:05 p.m. Committee reconvened at 1:30 p.m. with all members present. Review of Department of Health rules was resumed.

In re 138.112(7)d, Holden requested deletion of the first sentence. Fox was amenable.

Tieden brought up the matter of the rescission of 141.1 by the governor and was advised the Rules Review Committee had no recourse.

Rule 143.7, optometry examiners, was acceptable as published.

201

Layne Lindeback was present for review of health facilities construction review program, ARC 0546, filed emergency. General discussion of the authorization pursuant to PL92-603.1122. In answer to Tieden, the state would have no control over the federal provisions.

AGRICULTURE
10.6

Betty Duncan, Counsel, Agriculture Department, commented that their rule concerning pesticides--10.6--had been in existence since 12-2-63. Ambiguities have been corrected and the term "protection" was defined more explicitly. Duncan advised that they would strike the words "the environment" from the rule.

Responding to question by Schroeder as to how the Department could make a judgment that state standards should exceed those of the federal government, Duncan replied that Chapter 206 of the Code was the authority.

Duncan reported that a public hearing had been scheduled for October 24, 1979, at 1:30 p.m.

AGRI-
CULTURE
DEPT.
Cont'd

There was discussion of the authority of the Department to remove certain pesticides from the market. Priebe and Schroeder requested that the matter be reviewed with the fertilizer industry in an attempt to develop rules which would be acceptable to all factions.

MERIT
EMPLOYMENT

At Holden's request, Ray Wilson, Merit Employment Department, was present for review of overtime, 4.6. Holden inquired as to the meaning of cash overtime payment and Wilson replied it is the time an employee has worked over the stated minimum. The employee, if working X number of hours over the 40 hours, may receive cash or compensatory time.

Holden questioned the method of computing vacation allowance, with Wilson advising the employee receives vacation accrual time on the pay stub. Holden contended the language in the rule is discussing "years" and "weeks" and "days" when it should indicate the twenty-six pay periods for state employees.

Oakley called attention to an amendment to §79.1 of the Code by the 68th GA which was a technical matter which could be corrected.

Holden requested Wilson study the language in merit rule 14.2 and make recommendations. Wilson was amenable.

SOCIAL
SERVICES

Judy Welp, Policy, Research and Analysis, was present for review of the following:

SOCIAL SERVICES[770]

Records, contested administrative cases, 9.3	ARC 0574	F	10/3/79
Riverview release center, visiting, 21.2(1)	ARC 0575	F	10/3/79
ADC, personal services, 41.8(3)"f"	ARC 0576	F	10/3/79
ADC, foster care, transportation, 41.8(5)"c"	ARC 0577	F	10/3/79
ADC, foster care, 44.1(5), 44.3, 44.4	ARC 0578	F	10/3/79
Application and contract agreement for residential care facilities, 54.1, 54.3(15)	ARC 0579	F	10/3/79
Medical assistance, optometric services, 78.6(11)"a", 78.7(5)	ARC 0580	F	10/3/79
Medical assistance, charges for services and supplies, 79.1	ARC 0581	F	10/3/79
Juvenile home, 101.1(3), 101.2, 101.3(5), 101.4-101.6, 101.7(5-7), 101.9 to 101.19	ARC 0582	F	10/3/79
Mitchellville training school, 102.1(1.3), 102.2, 102.3(4-6), 102.4 to 102.19	ARC 0583	F	10/3/79
Eldora training school, 103.1(1.3), 103.2, 103.3(2.5.6), 103.4-103.19	ARC 0584	F	10/3/79
Foster care services, 136.1(1.5.7), 136.4(1.5), 136.6(3), 136.7	ARC 0585	F	10/3/79
Adoption services, amendments to ch 139	ARC 0586	F	10/3/79
Children in need of assistance or delinquent, 141.1 to 141.4	ARC 0587	F	10/3/79
Interstate compact on placement of children, 142.3-142.8	ARC 0588	F	10/3/79
ADC, unborn child, pregnancies, 40.1(3), 40.5, 40.7(4), filed emergency after notice	ARC 0569		10/3/79
ADC, unborn, basic needs, 41.4(1)"e", 41.8(2), filed emergency after notice	ARC 0570		10/3/79
Dependent children of unemployed parents, 42.1, 42.2, 42.4, 42.5, 42.7, filed emergency	ARC 0571	N	10/3/79
Burial benefits, 56.1, 56.3(1)"a", "e", 56.4	ARC 0605	N	10/3/79
Medical services, screening centers, 78.18(1), (3-5) filed emergency after notice	ARC 0572	N	10/3/79
Medical assistance, 79.2	ARC 0606	N	10/3/79
Screening, diagnosis and treatment, 84.4(2), filed emergency after notice	ARC 0573	N	10/3/79
Interstate compact on juveniles, 143.2(1), 143.3(2-4), 143.4, 143.5	ARC 0604	N	10/3/79
Intermediate care facilities, 81.6, 81.10(6)	ARC 0525	N	9/5/79

ARC 0574, ARC 0575, ARC 0576, ARC 0577, ARC 0578 and ARC 0581 were acceptable as published. [9.3, 21.2(1), 41.8(3)f, 41.8(5)c, 44.1(5), 44.3, 44.4, 79.1]

SOCIAL
SERVICES
Cont'd

10-10-79

In the matter of foster care, members asked if the Department has authority to remove a child from a foster care home. Clark expressed concern re appeal process as to the possibility of foster parents having their reputations in jeopardy. It was her understanding when, after one year, parental rights have been terminated, foster parents are given first priority to become adoptive parents. She wondered if an exception was necessary. Welp indicated it was not.

Priebe requested, at some future date, review of the rules pertaining to foster care appeals. Committee concurred.

Clark questioned rule 101.4(3) pertaining to correspondence, and termination of correspondence between a resident of a juvenile home and another person.

Patchett, re 101.4(2), letters and packages, asked the necessity for withholding a letter and it was his opinion just the contents should be withheld. Welp said contraband is defined and she was amenable to Patchett's request for withholding only the contraband. Patchett wondered if there was a right of appeal for citizens and Welp responded this would be referred to the division director.

Discussion of individual freedoms and monitoring of telephone calls, with Schroeder asking if a court order would be needed. Welp replied court orders would supersede the rule, and, in the rules, they have attempted to set out some of the children's rights.

102, 103,
136

ARC 0583, 0584 and 0585 were acceptable as published.

In re 139.5, fees for certified investigators, Schroeder and Priebe stated the fees should be standardized. Oakley pointed out the Department does not have the personnel to evaluate because they are understaffed.

Investigation fees average around \$350 and the Department is cognizant of work investigators are performing. There are about 30 to 35 certified investigators. The Code requires a report of expenditures before an adoption can become final. The only way to accumulate comprehensive data, according to Oakley, is through the Department of Social Services. Oakley thought corrective legislation should be sought.

In re 139.4(2), qualifications of investigator, Oakley noted the sentence "A certificate will not be issued to such employees. had been deleted when the rules were under notice of intended action, and asked Welp if that should be the case in the rule as well. Welp replied it would not be necessary to send

SOCIAL
SERVICES
Cont'd

certificates to all social workers under the language in question.

Amendments to chapter 141 were acceptable as filed.

Amendments to chapter 142 dealing with procedures under the interstate compact for placement of children were discussed. Oakley called attention to 142.6(1) as being discriminatory noting it requires termination of parental rights in the sending state. He recalled the issue had been discussed at great length in the legislature and indicated he would recommend to the governor that the paragraph be deleted.

Welp called on Jane Monical of the Department to respond to Oakley. She explained, because of the distance involved in most cases, if parental rights were not terminated, there would be a high risk for the adopting couple and she pointed out children are placed from all over the United States. If the child isn't legally available when coming into Iowa, the compact would be negated.

It was noted the rules would become effective the day before the November meeting of the Rules Review Committee.

DELAY
142.6(1)

Priebe moved to delay for 70 days the effective date of 142.6(1). Motion carried viva voce.

Welp commented that amendments to chapters 40 and 41 would implement 68GA, H.F. 766.

Priebe expressed opposition to the language in 41.4(1). No action taken.

Amendments to 78.18 and 84.4(2) dealing with early period screening and diagnosis program will provide payment for more screenings to be allowed in the first years of a child's life.

Amendments to chapters 56, 79 and 143 were acceptable as published.

In reviewing burial benefits provided in 56.1, 56.3(1)"a" and 56.4, committee noted the language was somewhat difficult to understand. No recommendations were offered.

Amendment to 79.2 was to implement federal regulations.

No opposition was voiced to proposed amendments to chapter 143 pertaining to juvenile compact.

Patchett referred to §232.19(1)"c" and 232.21(4) and reasoned that language in 143.5(2), (3) was inconsistent with the statute. He continued that the new juvenile code would not allow the practice set out in 143.5(5).

SOCIAL
SERVICES
Cont'd

10-10-79

Schroeder requested the Department to specifically review the compact and see whether or not the time frame as written in the Iowa law could be inserted in these rules.

Amendment to 81.6 and 81.10(6) were acceptable as published.

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

BANKING DEPARTMENT[140]

Small loans, interest rate, 21.8 ARC 0545 *N* 9/19/79

INDUSTRIAL COMMISSIONER[500]

Forms, 3.1(2) to 3.1(4), 3.1(7), filed emergency ARC 0566 9/19/79

MERIT EMPLOYMENT DEPARTMENT[570]

Pay increase eligibility, 4.5(2)"b", "c" ARC 0559 *F* 9/19/79

Overtime, 4.6 ARC 0560 *F* 9/19/79

Appeals, proposed decision, 12.11 ARC 0557 *F* 9/19/79

Appeals, proposed decision, 15.3 ARC 0558 *F* 9/19/79

Certification and selection, ch 7 ARC 0552 *IV* 9/19/79

Appointments, amendments to ch 8 ARC 0553 *N* 9/19/79

Vacation and leave, 14.1 to 14.3 ARC 0568 *IV* 9/19/79

PUBLIC EMPLOYMENT RELATIONS BOARD[660]

Generally, 4.6(1), 4.6(3), 6.3(2), 6.3(3), 6.4, 7.5(8), 7.5(9), 7.6, 9.1 ARC 0602 *F* 10/3/79

Oakley questioned a reference to 148.30 on p. 985 of the minutes. Barry agreed to check the matter.

Special
Business

MOTION

Oakley brought up the matter of publishing an Iowa Administrative Code Primer, about which he had briefed the Committee on Tuesday. He indicated he had been working on the material for over 6 months. Clark moved that Oakley be authorized to take preliminary steps to initiate the primer project with a proof draft to be sent to each committee member for perusal before final action. Schroeder stated, after receipt of the proof, the matter would be placed as a special item of business at a subsequent meeting. Holden suggested sending the proof copy to members as soon as possible. Clark motion was adopted with Schroeder, Patchett, Clark and Holden voting aye and Priebe and Tieden voting no.

In the matter of Tieden's question with the DOT (Tuesday meeting, 10/9/79), he advised DOT had contacted him and the matter was resolved. A letter will be on file with them concerning a minimum amount being available for all counties re building of bridges.

Chairman Schroeder adjourned the meeting at 4:00 p.m. Next regular meeting will be held Tuesday, November 13 and Wednesday, November 14, 1979.

Respectfully submitted,

Phyllis Barry

Phyllis Barry, Secretary
Assistance of Vivian L. Haag

APPROVED