MINUTES OF THE REGULAR MEETING
of the
ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of Meeting: Tuesday and Wednesday June 14 and 15, 1977.

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

Members Present: Senator Berl E. Priebe, Chairman, Senators E. Kevin Kelly and Minnette Doderer; Representative W. R. Monroe, Vice Chairman, Representative Laverne Schroeder. Representative Donald V. Doyle, not present for roll call.
Also present: Joseph Royce, Administrator Co-ordinator for the Committee.

GENERAL SERVICES
Parking

Stanley McCausland, Director of General Services, appeared before the Committee to discuss a letter of objection, pursuant to §17A.7 of the Code, to General Services Rule 10.6, subrule 4 which provides "No vehicle operated by a state employee may display more than one state capitol complex parking decal on the same vehicle."
Discussion centered around the possibility of different colored stickers to grant privileges for parking in more than one lot--limited application only.

McCausland took the position that such a plan would hamper security work and further he doubted the rules would create any great hardship. He pointed out that free parking is a good fringe benefit. When suggestion was made to charge for parking, it was his opinion legislation would be needed.

In answer to question by McCausland as to how the Department should handle parking violations, towing and tickets, Committee did not think it necessary to bring the procedure before them but that it should be posted throughout the complex.

No formal action was taken.

5.10(16)

Amendment to 5.10(16) of the Printing Division which was filed and published in IAC Supplement 6/1/77 was acceptable.

MERIT EMPLOYMENT

W. L. Keating, Merit Employment Director, appeared for review of filed rules as follows:

Separation and disciplinary action, 11.1(3)	5/18/77
Performance evaluation, 13.5	5/18/77

In answer to question by Doderer, Keating said "continuous service" and "approved military duty" would be four years.
No recommendations were made concerning the rules.

BANKING DEPT.

Proposed amendment to 8.2(2)"b" and "c" of the Banking Department, published 5/18/77, was acceptable.

MINUTES — Schroeder moved to dispense with reading of the Minutes of the May meeting and that they stand approved. Carried viva voce.

PUBLIC DEFENSE — Donald Hinman, Public Defense Director, was present for review of filed rules in re disaster services, being Chapters 5 to 8, published 5/18/77.

In response to question by Schroeder, Hinman said that 7.3(5) which provided that local co-ordinators must have "ability to express oneself clearly and concisely, both orally and in writing" was a merit standard.

Doderer expressed the opinion that 7.3--local co-ordinator--was too broad with reference to elected officials--even the weed commissioner would be excluded from service as a co-ordinator.

Hinman quoted from an opinion of the Attorney General as to what constitutes incompatibity of office. The Department was attempting to avoid a test case.

In re continuing education requirements in 7.4, Hinman indicated there are two types of seminars--basic and advance. These are training courses to explain administrative field.

Monroe noted that "disaster" was not defined. Hinman noted th it is defined by statute so they only defined "civil defense" in the rules.
Monroe questioned Hinman as to whether or not they had drafted rules to implement 29C in re insignia, blackouts and warnings. According to Hinman, this information is part of the universal compact set out in the Iowa Emergency Plan defined in 6.1.

11:00 a.m. — Doyle arrived.

Chapter 6 Deferred — Brief review of Chapter 6 and Monroe moved to delay the effective date of Chapter 6 for seventy days to allow the Committee time to review the manuals referred to therein.
Motion carried unanimously.

HEALTH Podiatry — The following rules of the Health Department were before the Committee:

HEALTH[470]		
Podiatry examiners, 139.1(2), (7), (16), 139.2(2), (3)	F	5/18/77
HEALTH[470]		
Cosmetology examiners, license fees, Ch 149, 160.7		6/1/77
Sanitary conditions, cosmetology schools, rescind Ch 150	N	6/1/77
Barber examiners, assistants, license fees, Chs 152, 154, 160.6		6/1/77
Sanitary operations, barber schools and shops, rescind Ch 153		6/1/77

HEALTH Cont'd

Doderer recommended that all rules of the Board of Podiatry Examiners should be neutered. She further noted several areas of concern in rules which were not officially before the Committee. After some discussion Doderer moved that the Board be requested to appear before the Committee at the July 12 meeting for review of all their rules. Motion carried

Motion

Ted Ellis, Director of External Affairs, and Peter Fox, Hearing Officer, represented the Department of Health for review of the barber and cosmetology rules.

Ellis said fees were increased to allow the boards to be self-sustaining. Sanitary rules were not included in those published 6/1/77. The Committee agreed that the Department should give additional notice to the public when sanitary rules are developed. Priebe suggested that the original notice be terminated and that the department start over. Ellis was reluctant to delay those already under Notice.

Doderer voiced opposition to 149.2(3) concerning continuing education requirements. Monroe pointed out that if the Governor signs Senate File 312, the rule would be in order.

Schroeder raised question as to the curriculum -- unassigned 400 hours in 149.1(4).

Doyle noted that the requirement for all cosmetology students to have had "two years high school ..." was not in the statute.

In re equipment kits in 149.5, Monroe was concerned of the possibility of exploitation of students. Committee concurred that the Department should study the matter and add additional language to provide safeguards.

Monroe thought 149.7 which provided that examinees have necessary materials requested by the board was unclear as to what would be required.

Discussion of reciprocity. It was noted the Board has reciprocity agreements with cosmetology boards in fifteen states but none contiguous to Iowa. Ellis distributed copies of a document concerning reciprocity and Doderer recommended that it be included in the rules.

Doderer recommended that 147.47 of the Code be reviewed by the Board and that they make provision for examination without hourly requirements.

It was the consensus of the Committee that the entire rules should be rewritten to avoid objections to them when they are filed.

HEALTH BARBERS — Discussion of rules relating to barber examiners.
Kelly thought 152.5(2) was unclear.
Schroeder asked if tipping would be a violation of 152.5(4) and Ellis answered that it would not be.

Monroe challenged the requirement in 152.3(4) that an applicant for licensing of a proposed school must supply evidence that such school could be operated ".. for a minimum period of twelve months without income." He considered the words "without income" to be very objectionable. Ellis indicated that the Board wanted to ensure the stability of the school to avoid a "fly by night enterprise."

Doyle called attention to variance in the age and education requirements for barbers and cosmetologists. As to the reason for barber fees being higher than those for cosmetologists, Ellis told Doyle there are approximately 25,000 cosmetologists and only 4,000 barbers in Iowa.

RECESS — Chairman Priebe recessed the meeting at 12:20 p.m.
The meeting was reconvened at 1:50 p.m. Kelly not present.

CITY DEVELOPMENT — Larry Tuel, Assistant, explained proposed rules of the City Development Board pertaining to its operations and committee proceedings, being Chapters 1 and 2, published under Notice 5/18/77 in IAC Supp.

Doderer raised question as to the last sentence of 1.1(368) which read: "These rules are subject to modification by the board as provided for by chapter 17A of the Code." Tuel indicated the language was repetitious of the previous rule but he was willing to eliminate it.

In response to question by Schroeder as to whether all information required for drafting of a petition for involuntary boundary change in Rule 1.5 was necessary, Tuel said it was an expansion of Chapter 368 of the Code for clarity to aid the board in rendering equitable decisions. He added that the amount of information needed on a given petition would be determined by the complexity of the proceeding.

No formal action was taken by the Committee concerning the rules.

NATURAL RESOURCES COUNCIL — James Wiggins, Deputy Water Commissioner, represented the Council.
Proposed amendments to 3.1(3) and 3.1(7) relating to permits, withdrawals of water were before the Committee. 5/18/77 Supplement
Doderer questioned use of the word "may" in line 3 of 3.1(3).
Wiggins stated that "shall" was intended.
No formal action by the Committee.

TRANSPORTATION The following rules of the Department of Transportation were acceptable as published:

TRANSPORTATION[820] (continued)	
Highway project planning, [06.B] 1.3, filed emergency	6/1/77
Signing on primary roads, [06.K] 3.1(1), filed emergency to overcome objection	5/18/77
Highway project planning, [06.B] 1.3 N	5/18/77

VOTER REGISTRATION COMMISSION The following persons appeared for review of rules of the Voter Registration Commission: Ralph Brown, Chairman, Dorothy Elliott and Terry Swanson and Marcia Hellum, Attorney representing Iowa Data, Cedar Rapids. The rules were:

VOTER REGISTRATION[845]	
Organization, Ch 1 N	6/1/77
Data processing contracts, 4.3(2), filed emergency	6/1/77
Notice of publication, 4.4, filed emergency	6/1/77
Lists, Ch 3	6/1/77
Data processing service, 4.3, 4.4	6/1/77

Hellum distributed the following prepared statement to Committee members and then reviewed it briefly and pointed out areas of particular concern to her client: Page 3, paragraph (c)--trade secret protection, Page 4, (a)--automated precinct assignment and Page 5, (c)--key verificatio

COMMENTS BY IOWA DATA
AS SUBMITTED TO ADMINISTRATIVE RULES REVIEW COMMITTEE
CONCERNING VOTER REGISTRATION COMMISSION
RULES RELATING TO DATA PROCESSING CONTRACTS

In the March 9, 1977, supplement to the Iowa Administrative Code, the Voter Registration Commission gave notice of its intended action to adopt rules relating to the contracts for election data processing services by and between a county and a data processing service agency, company or bureau; and on May 3, 1977, did adopt such rules as amended.

COMES NOW Iowa Data, a corporation interested in election administration headquartered in Cedar Rapids, Iowa, by and through its attorney, Marcia J. Hellum, of Dreher, Wilson, Adams & Jensen, 200 Stephens Building, Des Moines, Iowa, 50309, to make the following objections and comments to the aforementioned rules adopted by the Voter Registration Commission and as published in the June 1, 1977, supplemental of the Iowa Administrative Code, §§845-4.3, 4.4.

(A) RULE 845-4.3. GENERAL COMMENTS

(1) The model contract fails to apply uniformly to all 99 counties in Iowa. It imposes additional data processing obligations only upon those counties who contract for services with a private vendor. The language expressly exempts the state from these requirements and by omission does not include counties with their own data processing systems. The additional services

required in these rules must be applied to all counties in a non-discriminatory manner. If these functions are not to be required of all counties, they should not be required of any county.

(2) By promulgating by rule the specific terms of a contract, the Voter Registration Commission is taking from Iowa counties their freedom to negotiate the terms of their own contracts. While the rules only require "substantial conformance" with the model contract, in practice the Voter Registration Commission has not allowed deviations other than minor rewording or rephrasing.

(3) The rules effectively prohibit the county from purchasing the level of service which best fits its needs. Certain counties may have no desire or need for services which, under these regulations, they would be required to purchase.

(B) RULE 845-4.3. SPECIFIC COMMENTS

(1) Rule 4.3(1)(a)(1). General Work Statement

(a) This rule requires a contract to meet the requirements imposed by the registrar that are operating at the time the contract goes into effect. The requirements may, as they have in the past, change from the time the bids were let to the time the contract goes into effect. The proper reference would be to the requirements of the state registrar of voters extant at the time the bids were let for this contract. If this language were not changed, the county would have to relet bids if the requirements of the registrar changed. Furthermore, the rule would require service providers to bid on the basis of unknown requirements which may be in effect in the future.

(b) The language does not specify what requirements of the state registrar of voters are to be followed. Only those promulgated by rule? If so, this is sufficiently covered in later language referring to rules. If it refers to requirements which have not been promulgated by rule, then the requirements would relate to internal management, declaratory rulings, staff manuals, et cetera, (see §17A.2(7)) and would not be applicable to the counties, service providers, or other members of the public. Any requirements of the registrar which are statements of general applicability that implement, interpret, or prescribe law or policy, or that describe the organization, procedure, or practice requirements are rules and must be adopted pursuant to Chapter 17A. The rule contains the reference to "rules of the state of Iowa voter registration commission" and, therefore, renders further reference to the requirements of the registrar unnecessary, unless circumvention of the Administrative Procedures Act is intended.

(c) The proposed rule specifies that the vendor have available documentation of all systems and programs associated with those systems. This documentation is proprietary in nature, relates to internal operations of a private enterprise, and is, as such, not a matter of public record. This information, particularly the "software" or programs, is protected under trade secret law since it contains processes used in business which enable the owner to gain competitive advantage. Numerous court decisions have recognized trade secret protection of software. See, e.g., Electronic Data Systems Corp. vs. Kinder, 497 F2d 222 (5th Cir., 1974). In order to maintain this protection, the property for which protection is sought must be kept secret. See, e.g., Smith vs. Dravo, 203 F2d 369 (7th Cir., 1953). To allow the state to have access to Iowa Data's program documentation would most certainly result in the loss of the property's trade secret status. See, e.g., U.S. Plywood Corp. vs. General Plywood Corp., 370 F2d 500 (6th Cir., 1966). While Iowa Data is certainly willing to attest to its ability to perform the functions required by the state, it is unable to allow access to protected property.

(2) Rule 4.3(1)(a)(2). Input To State System. Information to be supplied to the state under this rule should be limited to what is required of all counties under the state specifications. A vendor may collect additional data for a county as an extra service for that particular county or for competitive advantage. All data submitted by or on behalf of the counties should be uniform and would be uniform by applying the same data specifications to all counties. While the state has no need or desire for any additional data other than that required in its specifications, the broad language would allow it to be collected. The state interest in assuring that the voter registration data collected is uniform for all counties would still be protected if the rule was revised to read as follows: "Vendor shall provide the state registrar with a master file of the voter registration list in machine readable form and in

accordance with the registrar's specifications upon demand of the county commissioner of registration."

(3) Rule 4.3(1)(a)(4). Maintenance and Edit Capabilities.

(a) Automated Precinct Assignment. This rule contains two requirements: uniform spelling of street names and automated precinct assignment. The former is required as the first step in performing the latter.

The provision requiring the vendor to assure uniform spellings of street names presents several problems. First, it requires that the computer have a street name table for every city. The counties must first gather the initial information, compile a table, and send it to the vendor. The vendor enters the information into the computer through a special program and tests the table. It is then returned to the county for corrections and retested. This is an expensive and time-consuming process which is of little or no value to the county.

Second, the proposed rule shifts the burden to the vendor to assure the accuracy of the data, specifically the street name. This burden more properly rests on the source of the data. The vendor is in no position to challenge the county nor to alter the data submitted.

Automated precinct assignment would require a more sophisticated file than that used for uniform street name spellings. The file must be set up on a per street segment basis as compared to a per street name basis under the uniform spelling scheme. The county commissioner of elections would, in addition to the above, have to develop a mechanism whereby they would be notified of any new developments, new construction, renumbering, replatting, annexations, and so on, and be able to report the same to the vendor. Inquiry should be made as to whether such a mechanism is available. Iowa Data has checked into this procedure in the past and has concluded that the benefits would not justify the additional expense

of implementation. Additionally, this procedure would be more expensive for the multi-county vendor in that the discs would have to hold all the different city tables or all transactions would have to be sorted by county. Neither procedure is necessary now.

The need for this edit function should be seriously questioned, particularly in light of the expense involved. The need for this function does not derive from statutory requirements nor from county needs, but appears to arise from the campaign needs of the political parties. As such, each county should be able to voluntarily elect whether it desires this service.

(b) Updates. Iowa Data's present work schedule allows transactions received as late as Monday to be included in the update on Thursday (96 hours). This time lag is necessary to assure thorough verification of the accuracy of the work and to prepare employment schedules with a balanced work load. In practice, Iowa Data makes a trial run on the update on Monday, corrects it on Tuesday, finalizes the update on Wednesday, and makes the microfiche on Thursday. The computer "turn-around" is approximately 8 hours - that is, the time it takes the computer to work through the computer program for all 487,000 records. The 48-hour rule would require Iowa Data to add a second shift, would result in additional and unnecessary overtime expense, and would increase the potential for human error. Any transactions during the 96-hour period would be included in the next update only two weeks later.

(c) Key Verifications. Iowa Data enters its data by key punch and under this rule would be required to use key verification. This procedure effectively doubles the cost of data entry while only slightly increasing the accuracy of the data. Iowa Data has used key verification in the past and found that the increase in accuracy of data was less than a one percent improvement from the verification methods built into the Iowa Data

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system. This rule would also preclude the use of sight verification. Because of the immense expense, a variance on this requirement was requested at the June 1, 1977, meeting of the Voter Registration Commission. The Commission suggested that it would be better to seek a rule change rather than their granting a variance.

(4) Rule 4.3(1)(c)(1). Public Records. The newsletters and other election materials developed by the vendor are of a proprietary nature and are furnished only to those counties who contract with Iowa Data for services. To require disclosure of these materials to non-client counties as public records, serves only to diminish the capacity of the vendor to sell that service.

Further, the newsletter and other information developed by Iowa Data for the exclusive use of its clients are protected by common law copyright and that protection is preserved by giving the appropriate notice. 17 USCA §2; see, e.g., White vs. Kimmel, 193 F2d 744, cert. denied, 343 US 957; Continental Casualty vs. Beardsley, 253 F2d 702. These materials may not be copied by any person without the author's express consent.

Lastly, these materials are exempted from the public scrutiny in that, if released, they would give advantage to competitors who could supply the materials to their clients without having to incur the cost of development. §68A.7(6), Iowa Code 1977.

(5) Rule 4.3(2). Additional Services. The additional services provided by Iowa Data such as the newsletter and election consulting are an integral part of its services to client counties and, as such, are incorporated in Iowa Data's contracts for services. These services are available to the counties to assist them in keeping abreast of election laws and administrative requirements and to assure that both parties to the contract comply with Iowa law. The model contract provides for minimum standards and level of service. Counties should not be prevented from contracting for additional services. A task force representing county auditors also recommended that they be allowed to include additional services if the cost is specified and if the county so desires. It avoids their having to execute two contracts.

(6) Rule 4.4. Bid Time Limitations. The time limits imposed on counties in this rule may unduly hamper the bid letting process and create hardship on the county. If bids are let incorrectly, the process must start at the beginning. This runs the risk that the existing contract may expire before the completion of the process and the county may find itself operating without a contract.

VOTER REGISTRATION Cont'd

Further, insufficient time is allowed for the contract to be signed. The Voter Registration Commission may not meet within a given thirty-day period, such as June 1 and July 5 (dates of two commission meetings). If the registrar disapproves a contract, the thirty days may expire before the decision may be appealed. This short period greatly increases the risk to the county that bids must be relet, at no small expense to the county.

Brown responded to the Hellum statement that much time had been devoted to developing the rules. Input was received from county auditors and they find the rules to be quite acceptable for the most part. Brown pointed out there is a legislative mandate to monitor data. It was his opinion that it was not difficult to implement the automated precinct assignment and finally he stressed the importance of the key punch entry being verified.

Kelly questioned the Department as to whether the state has access to software systems. Brown stated that the state registrar is Director of data processing for the state and the policy of the state to allow any governmental agency access to the state's systems or programs. He continued that under the confidential records laws, the State registrar would be required to keep confidential anything he might learn from a given vendor. It appeared to Kelly that the state, on one hand has the right to examine, and on the other hand is a competitor. Brown responded, "This would be presuming we are dealing with trade secrets."

Swanson added that the State doesn't consider itself to be in competition but merely offering a service. He pointed out that the General Assembly had two options when it considered legislation of this subject last year--first, to require uniformity in the ninety-nine counties and the net effect would probably have required the state to handle all counties. Instead, legislation provided: The state could provide services to those counties seeking it; counties with their own systems could continue to use them or a county could contract with an outside vendor. Rules are being formulated to govern counties having their own "in-house data processing services."

Department officials concluded that the state is in compliance with the rules and they didn't believe hardship has been placed on private vendors.

VOTER REGISTRATION

Schroeder questioned the need for an update every two weeks.

Kelly felt "uneasy" about the rules and thought a possible delay would be in order.

Department officials reiterated that the rules had been modified to the satisfaction of most factions.

Monroe commented that the process is purely mechanical but the entire concept is foreign to some auditors, for example, to those where registration was not previously required.

In answer to Doyle, Brown said that private vendors probably serve less than one half the population in Iowa. Iowa Data serves forty-nine counties (approximately 487,000).

In response to Kelly, Brown knew of no problem with the system used by Polk County.

Brown pointed out that only one outside vendor had appeared to protest the rules.

No formal action taken by the Committee.

HOUSING FINANCE

William McNarney, Director, Iowa Housing Finance Authority, was present to answer questions concerning their filed rules on loan programs, being Chapters 1 and 2 published 6/1.

Discussion of who is considered to be "head of a household". McNarney pointed out that legislation is necessary to clarify this issue. House File 602 was introduced in the 1977 Session to deal with this matter and the fact that under present law single persons cannot receive aid.

No formal action taken by the Committee.

CONSERVATION
Waters

Filed rules 27.13(7) and 28.1, 28.19(1)"d" under Notice published 5/18/77 relating to flotation devices and boat registration, respectively, were acceptable.

At the request of the Committee, Conservation officials were present to discuss fishing and swimming restrictions in Iowa's lakes. Committee members took the position that some provision should be made to permit fishing after closing hours of the parks.

Department officials took the position that a fishing licens doesn't provide special privileges but the Director had indicated he would be amenable to extending the closing time of state parks to midnight.

CONSERVATION

Priebe favored a plan that would permit those who desired to be allowed to fish all night. Monroe suggested an after-hour pass as a possible solution.
It was noted that fishing is allowed at all times in natural lakes if there is access to the water other than through the park.

There was brief discussion of swimming. Department officials pointed out that more restrictions are necessary for artificial lakes since swimming in those is more dangerous than in the natural lakes.

Royce, at the request of the Committee, submitted the following memo in re the Iowa food stamp program:

> Social services chapter 65 (IAC) provides that the food stamp program be administered according to 7 code of federal regulations §§271-2-3-4. These regulations establish general guidelines for the program and delegate the administrative authority back to the states (see: 7CFR §270.3(b)). At one time the department had four chapters in the IAC covering the administration of the food stamp program (see attached). The chapters were rescinded in April 1976.
>
> The administrative rules covering the food stamp program are now found in employees manual VII-3. This massive document is an expanded version of the rules originally published in the IAC. The following areas are covered:
>
> 2100 Application Process. Included in this section are definitions, applications processes for various classes of applicants, forms, interview procedures, verification and documentation.
> 2200 Eligibility Standards. Included are residence and citizenship requirements, cooking requirements, work registration requirements and exemptions, earning requirements and extensive requirements covering students and other specific groups.
> 2400 Certification Functions. Includes administration of certification, changes in recipient status, changes in standards, expiration and renewal of certification, and various forms.
> 2500 Fair Hearings. Contains a complete hearing procedure.
>
> The remainder of the manual contains office instructions for the handling, storage and accounting of the stamps.
>
> There are endless methods to compute depreciation. Whichever one is used must accurately reflect the useful life of the equipment and its decline in value.
>
> Rule 75.4, tax situs in Iowa. Two alternate formulas are provided for determining the number of cars in Iowa for tax purposes.
>
> 1) $\frac{\text{TOTAL IOWA MILES}}{\text{Total Miles Traveled}}$
>
> 2) daily average no. of cars loading or unloading in Ia $+\frac{\text{Total Iowa Mileage}}{(\text{average speed} \times 365)}$
>
> The taxpayer is given the option of which formula to use; however, if the tax payer wishes to use the 2nd formula, additional information must be submitted as part of the annual report. Pursuant to 75.2 this annual report must be on file by June 6th, 1977. Since formula #2 was not developed and published until May 18th, it is doubtful may companies will be able to take advantage of it this year.

Recess — The meeting was recessed at 4:05 p.m. to be reconvened at 9:00 a.m. on Wednesday, June 15, 1977.

Reconvened: Meeting was reconvened by Chairman Priebe at 9:05 a.m., June 15. All six Committee members were present. [Senator Kelly arrived at 9:20 a.m.]

COMMERCE — The following matters relating to Commerce were before the Committee:

COMMERCE[250]
Utility rate increase applications, 7.4(6)"*d*" to "*f*", 7.4(10) N 6/1/77
Accounting, 16.1 to 16.5 6/1/77

Review of commerce rules on electric power generating facilities, Ch 24 3/9/77

Representing the Commerce Commission: Pat Cavanaugh, Counsel, Dr. Robert Latham. Also present were William D. Leech, Nuclear Engineer, J. E. Luhring and John C. Cortisio, Jr. representing Iowa Power and Light Company; Robert J. Hoock, Attorny for Iowa-Illinois Gas & Electric, John T. Ward, Attorney representing Iowa Association Electric Cooperatives, Central Iowa Power Cooperatives and Corn Belt Power Cooperative; Gus Skovgard, Iowa Utility Association and David Bach, Hearing Officer for Environmental Quality.

Amendments to Chapter 16 were intended to update the rules on systems of accounts and 7.4 dealt with utility rate increases applicable to rural electirc cooperatives. Cavanaugh said that no public hearing was anticipated on the proposals.
Schroeder expressed an opinion that a hearing would be advisable in re 7.4.
Cavanaugh responded that since hearings are costly and time consuming, the Commission took the position that a hearing would be held only if public interest seemed to warrant it after Notice.

In re 7.4(10), Doyle wondered if it was necessary to have a prima facie case. Cavanaugh indicated a hearing would still be held.

Ch 24 — Discussion of Chapter 24 relating to location and construction of electric power generating facilities and certification procedures.

Definition of "facility" was reviewed--24.2(9).

Luhring distributed copies of a prepared statement by R. B. Miller, representing various utility groups who are opposed to various aspects of the rules. Two areas of concern were the life of unit data required, estimation of conservation effects. These requirments could cause extended delay in proceedings resulting in additional costs and ultimately units will not be available in time of need. He continued the long-time period estimates would be

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Ch 24 Cont'd

merely conjecture and as an analogy he recalled happenings of the last thirty years. He urged the Committee to consider formal objection to 24.4(4) and 24.4(5).
The following is the complete text of the Miller comments:

My name is R. B. Miller. I am Vice President-Operation for Iowa-Illinois Gas and Electric Company. I am authorized to speak on behalf of the Investor-Owned Electric Utilities, the Rural Electric Cooperatives and the Municipal Electric Utilities of the state of Iowa. They include those who have made oral or written presentations before this Committee on April 12, 1977. My comments are directed toward the Iowa State Commerce Commission rules proposed as Chapter 250-24 relating to the location and construction of electric power generating facilities in the state of Iowa.

We fully admit and recognize there is need for a consistent set of rules to prescribe how the Commerce Commission shall provide for the licensing of the construction of electric power generating facilities. The proposed guidelines state as their purpose "to provide a just and reasonable determination of whether the proposed construction satisfies the public interest" and that the proceedings to certify such power plants "should be conducted in a manner that is expeditious and as economical as possible." This is laudable. We recognize further that each applicant must have primary responsibility for providing qualitative and quantitative information to support its application.

There are, however, certain aspects of these rules which cause us great concern. They relate to information that approaches being impossible to provide. Certain of the rules call for information which is not particularly meaningful for the determination of the need for and the location of a generating unit in six to ten years hence. Further, they introduce opportunities detrimental

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to the expeditious and economical handling of an application.

We are particularly concerned at this time because there are in the planning stage three electric generating units that must be licensed in the near future. They are:

1. A planned power plant addition for the city of Ames.
2. A planned power plant addition for the city of Muscatine.
3. An electric generating station known as Louisa being constructed by Iowa-Illinois Gas and Electric Company on behalf of itself and Iowa Power and Light Company, Iowa Public Service Company, Eastern Iowa Light and Power Cooperative and City of Tipton.

These units are scheduled to be in service in 1981, 1982 and 1983 respectively. Timely and expeditious handling of these applications consistent with protection of the public interest is vitally important at this time.

The first concept of great concern to us is the concept of "life of the unit" in connection with a great deal of the information requested in Section 24.4(4) Future Systems Projections. This requirement appears in Section 24.4(4) paragraphs a.(1) and (2) and b.(1). Those provisions call for descriptions of facilities planned and projected and other programs for each year from the date of application through the proposed facility's life. This would reasonably expect to be about 40 years or to the year 2017 (34-year life from 1983).

In Section 24.4(5) Economic Evaluation, economic feasibility, estimates of cash flow, cost of capital, and related

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information are requested for each year from the date of application through the facility's life, again for a minimum of 40 years in the future.

Our concern is that it is impossible to predict that far into the future with any degree of accuracy and it is counterproductive to attempt to do so. Our normal projection time used in the industry is approximately 20 years. This is recognized by the Federal Power Commission which requires load projections each year for 20 years. The last 10-year period of the 20 years is based on annual peak load. Monthly projections are required during the first 10-year period. Since any supplier plans for its additional generation as close as possible to the time it actually expects to need it, most projections need to be as accurate as possible for 10 to 12 years. The additional estimates up to 20 years total are used to give greater support for the 10-year projection.

Going beyond 20 years cannot be substantiated because of all the factors that affect electric load projections. Some of the factors are the economic situation, the costs of fuels, the types of available fuel, developing technology, the effect of conservation and new sources. No one is able to predict any of these factors accurately 30 to 40 years in the future. Any such predictions made are pure conjecture which must be based upon assumptions. Anyone can make logical assumptions which can differ radically from another's logical assumptions. This naturally gives rise to delays, disagreements and other impediments to the hearing process as to information which in reality is not necessary for the determination of the question at hand. That

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is, the need for a given unit at some point in time five to 10 years in the future. The only real hazard is the possibility of electric load not continuing to grow at some rate. Nobody is predicting that. Even with a zero energy growth concept, electric energy and its usage will continue to grow, admittedly at a lower rate. So there can hardly be any question of the need for the unit in the future if the need exists at the time of the proposed installation. Even necessary retirements of older equipment will make replacement units necessary as one looks to the future.

The state of Iowa can ill afford deferral of needed generating capacity. We wish to provide that information which the industry normally uses to make a decision which must be supported by need, the public interest and good economics. This would limit the extent of our projections of need for capacity, economic evaluation, and all the other stated requirements on the basis of 20-year maximum projection, to 1997.

The second point with which we are concerned is Section 24.4(4) b. (1). The proposed rule calls for an identification and description of existing and planned programs designed to conserve energy. The description must include but not be limited to the estimated kilowatt hours saved for each year from the date of application through the proposed facility's life. We contend that the determination of how customers will conserve energy, including electricity, is entirely in the hands of the consumers. They make the determination. It is their money. It is their consciences. It is their evaluations of need and nothing the supplier can legislate or require. Our responsibility is clearly stated. We must provide the capacity and energy for all our

customers if and when they need it. We can encourage with suggestions, recommendations on how to conserve and institute programs designed to conserve energy but to predict the effect of them in terms of kilowatt hours saved for each year for the next 40 years is absolutely impossible. This, too, is subject to more conjecture than fact and offers great opportunities for delay and debate in the hearing process. The ultimate determination of the question at hand is the need for a generating unit within the next six to 10 years.

The third and last concern we wish to discuss here is the consequence of a failure to make a reasonable determination promptly through the development and determination of pertinent information relating to the proposed facility. First is the matter of cost itself. Cost is of paramount concern to us and our customers. Everything we do is intended to be an economic choice based upon all pertinent factors. The difference between economic choices may be entirely eliminated by the added cost of needless delays.

The further and perhaps greater effect of delay, of course, is to prevent having necessary capacity available in the state of Iowa to meet the legitimate needs of the public, when needed. These proposed units mentioned are considered necessary to meet the minimum requirements for the state of Iowa as they are presently projected for the year 1983. If load growth occurs exceeding that which we presently project, we could face serious deficiencies. There is a real possibility that conversion from scarce fuels (gas and oil) to electricity and the effect of conservation of the scarce fuels may indeed reflect itself in

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much greater load increases than we presently project. Real potential exists for greater load growth for these and other factors.

The economy in the state of Iowa is a healthy economy. We have never had the high rates of unemployment seen in other states. We have seen regular load growth and that load growth in the future may well exceed our expectation. There is a direct relationship between economic activity and the use of energy, particularly electric energy, and with the economy as healthy as it is in this state, we should all be concerned about any failure to have adequate electrical capacity when its needed.

The Iowa State Commerce Commission chairman has stated an applicant for a certificate to build a generating station should be required to provide only that information, data and justification that it would use in-house to make its own determination of the need and date for the unit. The Chairman's statements are consistent with the stated purpose and policy in Section 24.1 of the Rules.

In conclusion, we urge you to ask the Commission to limit the time period used in Section 24.4(5) "Economic evaluation and feasibility" and in Section 24.4(4) "Future systems projections" to not more than 20 years instead of the proposed facility's life. Meaningful information beyond 21 years hence is impossible.

We ask that you direct the Commission, in Section 24.4(4) b. (1), to omit that portion which calls for an estimate of the kilowatt hours to be saved each year from the date of application through the proposed facility's life caused by the applicant's planned programs designed to conserve energy. The energy to be conserved is determined by each consumer, not the supplier. The Commission should also be urged to expedite the hearing process. The cost of needless delays and the possibility of inadequate generating capacity in the state of Iowa are real and significant.

COMMERCE Cont'd

Cavanaugh responded that the "heart of the information that the Commission must have is provided in 24.4(4) and (5). He added that the information required to be submitted will enable the Commission to make the kind of determination the legislation intended. He maintained it is not impossible to make long range projections and he referred to an article in the October '28 Electric World written by Charles Whitmore, Illinois Gas & Electric, in 1957 wherein he accurately projected twenty years hence of the existence of the energy plan in Iowa.

Hoock offered the opinion that after twenty years accuracy of predictions becomes more difficult.

Latham commented that the economic feasibility of a plant is not something which is finally resolved in two, three or five years. Determination as to whether a new plant is viable really requires them to consider the plant over its extended life. He concluded there are uncertainties in making future projections, however.

Ward commented that "speculation opens doors for tie-ups for years and his company was concerned as to whether they would be able to meet the needs of industry in Iowa.

Kelly was inclined to be sympathetic with opponents of the 40-year projection requirements. There was discussion as to what basis the Federal uses 20-year projections.

Kelly moved to object to 24.4(4) and 24.4(5) as being unreasonabl in that it deals too far in the future and is vague. A cure could be obtained by providing shorter life span or placing in the rules that the Commission recognizes the severe questionableness of the information.

Discussion followed. Cavanaugh noted that utility companies that are being regulated and not consumers are opponents of the rules.

Monroe reasoned that any number of years in the future is arbitrary but "lifetime becomes more tenuous the further out you get." An automatic 20 years would be "ridiculous" in his opinion

Cavanaugh quoted from the Order which the Commission issued in conjunction with the rules in question.

Kelly maintained this information should be made a part of the rules.

At the request of Monroe Kelly repeated his recommended cure for the objection to be obtained by recognition by the Commission basically that this is a very speculative area or by establishing some kind of burden of proof that rests with the report that has to be overcome--by burden of proof--three percent conference level presumed accurate projection. Someone challenging

COMMERCE Cont'd

this has the burden to overcome.

Committee members agreed the language in the Order would probably be acceptable.
The following objection was prepared by Royce for filing:

The committee objects to subrules 24.4(4) and (5), relating to systems projections and economic feasibility, on the grounds that they are unreasonable. It is the opinion of the committee that requiring system and economic projections throughout the facilities life is excessive and that the information obtained is of dubious value. The objection may be cured by requiring these projections for a shorter period of time, or by incorporating within the subrule a statement acknowledging the speculative nature of the data,or by establishing a rebuttable presumption of validity for the data submitted.

Motion to object was carried.

Kelly thought 24.1(3)a(3) was unclear and questioned the Department as to their authority to delegate to "various state agencies responsibility for issuance of permits..." Cavanaugh pointed to Chapter 28E of the Code. He indicated Notice had been submitted for publication to modify the rule in question.

Bach said he did not interpret the rule to be a delegation since, in his opinion, DEQ has authority to issue their permits directly rather than go through the Commerce Commission. Cavanaugh said any proceeding of another agency such as DEQ or Natural Resources will be incorporated in the Commission proceeding.

Kelly concluded the statute probably needs clarification.

Kelly questioned the one mile requirement in 24.4(1)i. Cavanaugh indicated it was the Commission's position that the 1,000 mile provision in the statute was a minimum. One thousand feet would not include all persons whose interests would be substantially affected by the erection of large plant as 800 to 1,000 megawatts.

Kelly moved the following objection to 24.4(1) i:

The committee objects to the landholder notice requirement imposed by subrule 24.4(1)"i"on the grounds that it is beyond the statutory authority of the commission to modify the notice requirement established by Code section 476A.4(2)"c".

COMMERCE Cont'd

Cavanaugh stated that it was his belief that §12 of the Act provides authority for the rule.

Monroe questioned the limitation of "real property of one acre or more" in 24.4(1)i since it would seem to exclude those less affluent.

The Kelly motion to object to 24.4(1)i was carried by voice vote.

Discussion of 24.7. No recommendations were made.

REVENUE Chs 7 42 71 75

The following was before the Committee for review June 15, 1977:
REVENUE[730] Filed rules
Practice and procedure, amendments to 7.4, 7.5, 7.8, 7.10, 7.11, 7.13 to 7.16, 7.23, published 5/18/77.
Determination of value and tax for freight-line and equipment car companies, published 5/18/77. [Chapter 75]

Special review of Chapter 42 in re adjustments to computed tax

Economic impact statements on Chapters 71 and 75, published 5/4/77 and 4/20/77, respectively.

Kelly out of the room.

Amendments to Chapter 7 were acceptable to the Committee as filed.

Jon Schuster and Donald Nabor were present to answer questions concerning Chapter 42.

Schroeder raised question as to why field audit forms had not been published. Nabor said that audits are made subject to provision of $324.17(11) of the Code. Under $324.64, the Revenue Department may estimate taxable gallonage to which the person incurred liability for fuel taxes and fix the amount of tax, according to Nabor. Nabor continued that Professor Dale Hull, Iowa State University prepared guidelines for forms as a basis for audit.

Schroeder expressed concern as to the number of variables. Nabor indicated the Department plans to publish their chart in rule form.

In response to question by Priebe as to the method of auditing fuel tax refunds, Nabor said the fuel tax division deals only with those holding permit under chapter 324 of the Code.

Schroeder asked what authority and criteria were used for audit of income tax credit claim and was told this is not done as yet. In the future they will follow motor fuel procedure.
It was the consensus of Committee members that both forms should be before the Committee.

10:50 Doderer returned.

Discussion of confidentiality of the forms in question. Priebe suggested that the Attorney General be requested to rule on the matter.

Kelly returned.

REVENUE Michael Cox, Property Tax Division, was present to answer questions concerning the economic impact statement on Chapter 71 in re assessment practices and equalization.
Committee members found the statement to be acceptable. Monroe expressed his appreciation to the Department for their effort.

Ch 75 Gene Eich, Deputy Director of Property Tax, represented the Revenue Department for review of Chapter 75.
Eich summarized the impact study. The Department found that taxing freight line and equipment car companies in a manner similar to that used by other states would not dramatically affect company profits. Competition in the transportation industry would not be affected, that federal tax subsidies would reduce the actual cost to companies and monetary affects to consumers would amount to only 3/10 to 5/10 of one cent increase per bushel of grain shipped and finally the state would gain approximately $2,800,000 per year under the valuation method contained in the new rules.

Eich explained that a study conducted by C. Phillip Baumel, John Miller and Thomas P. Drinka, Iowa State University, on movement of grain in Iowa indicated a tax increase would have to be substantial before trucks would replace the rail system. Information from two companies has shown: One company stated their rate on leasing of cars would increase $35 per car per month for 600 cars, another company showed an increase of $50 per car per month--an increase of $531,000. The estimated tax increase for this company was $505,000 so they only took into consideration approximately 1,000 cars out of 27,000 owned by the company.
Eich continued that the impact applied to electric utility companies could necessitate approximately 12 cents increase per consumer per year.

In answer to Schroeder, Eich said there was no law change to prompt the rule change. However, a study of equipment car tax structure was begun in 1973 or 1974 and it was determined by the Department that the same procedure had been followed for the last forty years or longer and was no longer realistic.
Schroeder asked if the matter had been called to the attention of the appropriate committee in the legislature. Eich responded that the Department took the position they were merely following the law as it existed.
Schroeder maintained the matter should have been submitted to the legislature.

REVENUE Cont'd

Richard Malm, Attorney for North American Car Corporation and North American Car (Canada) Ltd., provided Committee members with the following prepared statement;

STATEMENT AND OBJECTION OF NORTH AMERICAN CAR CORPORATION AND NORTH AMERICAN CAR (CANADA) LTD.

The above-named objectors are engaged in the business of leasing railroad cars, some of which enter the State of Iowa. Accordingly, they are at least nominally subject to the tax which Chapter 435, Code of Iowa (1977) purports to impose. Thus, they are persons interested in the above-referenced rule which concerns such purported tax.

The objectors respectfully request this Committee to object to said rule, and to delay the effective date of said rule and to refer the rule to the Speaker of the House and the President of the Senate, all as is provided in Chapter 17A, Code of Iowa. Each of these things should be done because the rule as proposed fails to establish a lawful system of taxation despite the efforts of these objectors and other taxpayers in the proceedings by which it was formulated and despite efforts of the Department of Revenue.

Initially, a comparison of the rule to the underlying statute shows that they are entirely dissimilar. The rule, rather than being an extension or an interpretation of Chapter 435, purports to create an entirely different scheme which is not in any sense recognizable as an interpretation of Chapter 435. However, the infirmity of the proposed rule lies most basically in the deficiencies of Chapter 435, Code of Iowa, itself. This Chapter, in addition to being subject to a host of uncertainties as to whether it transgresses limitations of the United States Constitution, is subject to many internal conflicts and ambiguities which render it unworkable. For example, in Section 435.7, which lies at the heart of that chapter, the direction is to "value and assess . . . the cars . . ." to determine "actual value", and then the "residue of actual value . . . shall be assessed as provided by Section 441.21", but the later section has nothing to do with assessing the residue of actual value. The direction that of Chapter 435 the tax rate be determined as the "average rate of taxes, state, county, municipal and local levied throughout the state during the previous year" is equally trouble-

REVENUE
Cont'd

some. It is not only unconstitutionally vague, and a taxation without representation, but is also in direct contravention of Article 7, Section 7, of the Iowa Constitution which provides "every law which imposes, continues, or revives a tax, shall distinctly state the tax, and the object to which it is to be applied; and it shall not be sufficient to refer to any other law to fix such tax or object". Thus, it seems apparent that the rule before the Committee does not proceed from any legally defensible statutory foundation.

The tax, although not legally defensible, has survived and been paid for many years only because prior Revenue Department interpretations resulted in a tax which was neither burdensome or unjust. However, the rule before the Committee and the present intentions of the Revenue Department whereby they seek to multiply the level of taxation by a factor of 40 or more, necessarily will call this system of taxation into protacted and expensive litigation. The state would be better served by a reference by this Committee to the General Assembly to cure the underlying statutory defects than by allowance of the Department of Revenue's attempt to legislate what it considers a workable system of taxation out of the shambles of Chapter 435.

Even if there were not the fundamental and underlying legal difficulty of the statute, there would be numerous other specific difficulties with the proposed rule. Not the least of these is the presumption that actual value of the property in question shall be determined by mechanical application of factors which supposedly approximate replacement costs less depreciation. There is no statutory warrant for such system, and in fact if general notions of property tax assessment apply at all to Chapter 435, it is clear that primary reliance must be placed upon determination of an "exchange value" if possible, and otherwise a combination of factors.

A large part of the rule as it now is proposed was developed by the Revenue Department after public hearings, and in apparent response to public comment. However, the changes have not yet been subjected to public scrutiny and comment. The bulk

REVENUE Cont'd

of these changes relate to alternative methods which the Revenue Department says it will allow to taxpayers who show that the presumed methods are for some reason inapplicable. That these changes were hastily done, and may not have been fully considered, and should not become immediately effective is amply demonstrated by Section 75.5 which purports to determine the value which is subject to tax by multiplying the number of cars with tax "situs" in Iowa times the value of each taxpayer's total fleet. This is an obvious error. Although this is apparently a technical oversight, it does demonstrate the difficulty engendered by the Revenue Department's last minute efforts to promulgate a legally supportable rule.

In conclusion, a study of the proposed rule shows that the statute supporting it is legally insufficient, and that in any case, or perhaps because of that, the rules are not consistent with Chapter 435 and other applicable statutory provisions. For these reasons the make-shift system which would be established by the proposal should be rejected by this Committee. The rule should be objected to, its effectiveness delayed so that the matter may be studied, and ultimately the matter should be dealt with by legislation.

Malm introduced the following persons who were also interested in the rules: Tom Feldman, Marketing Manager for Farmers Coop Association of Ralston and Jefferson; Terry Voss, Traffic Manager, United Purchases Association; Phil Rossman, Grain Manager, Farmers Coop Company of Farmville.

Also appearing was Ned Stockdale, Attorney who represented companies owning "rolling stock."

Feldman commented that they estimate their tax increase will be $180 per leased car per year. He disagreed with the Revenue Department that a one half cent per bushel increase would be insignificant. Further, he did not believe the tax break was realistic. Higher lease cost would further aggravate the problem of availability of cars in Iowa, in his opinion.

Eich pointed out that federal income tax would have a bearing on the situation. If increased cost is passed on to the consumer, companies would have more profit.

In answer to Priebe in re distribution of the tax revenue, Eich pointed out that it would go into the general fund as provided in Chapter 435 of the Code. Legislation would be needed in order to apportion revenue to individual counties since cars travel over the entire state. This would be very difficult to administer, in his opinion. He added that Chapter 435 of the Code provides for method of allocation of values. Eich stated that the percent of increase would vary with companies, of course.

REVENUE Cont'd

Schroeder wondered if the rules would be an incentive for trains to detour around Iowa and perhaps result in jobs being eliminated.
Voss cited such an example by American Oil Company.

Malm emphasized the importance of the matter and urged that careful study be given.

Monroe returned and took the Chair. Priebe excused briefly.

Eichman reiterated that a study was began in 1973 and took approximately two years to complete and the Department implemented procedures for the last assessment year. At that time they did not believe the procedure of evaluation would necessitate rules and they implemented it for the year 1976. They sent out notices on the new procedures and a number of law suits was filed.

There was a Montana case on the point and implementation was delayed for one year. Said case prompted the Department to follow the rulemaking process. Assessments for 1976 were due and payable in February 1977 under old procedure.

Schroeder questioned whether companies had sufficient time to prepare the annual report required in 75.2 using necessary data to comply with the revised procedure.

Kelly returned.
Discussion of possible alternatives to be taken by this Committee.

Opponents argued that the Department lacked authority to promulgate the rules.

Harry Greiger, Legal Counsel for Revenue Department, responded by pointing out the unfairness of the old system. He continued that any taxpayer in Iowa could bring a mandamus against the director of Revenue forcing him to tax equipment cars at 100 percent based on denial of equal protection. Under the old system, the maximum value of equipment cars was $640, according to Greiger.

Stockdale commented that under these rules Iowa will be number three, if not number one, in the country on property tax considering the type of traffic that goes through.

Priebe returned and took the Chair.

Stockdale also spoke concerning the alternative methods for allocating cars. In reviewing the Department study which they published 11/2/75 and provided at the public hearing, Stockdale said the second allocation alternative is used in no other state.

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The first alternative is a mileage ratio and is used in many states He continued, "We candidly admit the tax should be higher and we are willing to bring the cars up to actual value if appropriate methodology is provided."

Discussion of 'speed studies.'

Monroe questioned the Department officials as to whether blanks referred to in §435.4(7) had been revised and was told they were changed in 1976.

Stockdale challenged 75.5 which purported to determine the value which is subject to tax by multiplying the number of cars with tax situs in Iowa times the value of each taxpayer's total fleet. He stated that this is an obvious mathematical error which should be corrected. This further supported his recommendation for additional study of the rules.

Motion

Doderer moved that the matter of freight line and equipment car company taxation [Chapter 75 of Revenue] be referred to the President of the Senate and Speaker of House of Representatives with the recommendation that it be forwarded to the Ways and Means Committee for study.
Motion carried with 5 ayes.

Discussion as to how possible delay would affect tax collection.

Eich pointed out a 70-day delay would postpone collection of tax for one year and he could see no reason for it.
Greiger thought Chapter 435 of the Code contained serious defects and needed study since it is difficult to administer. However, he doubted that the Committee could legally delay the rules for further study.

John Donnelly, Des Moines Attorney, expressed an opinion that the rules were arbitrary.

Stockdale suggested that if the Committee chose to delay the rules they should consider the unreasonableness of requiring companies to generate the required data in only twelve working days. The Department has precluded them from utilizing the alternative set forth in their own rules. That alone, in his opinion, would be sufficient reason to delay for further study.

Motion
Delay

Schroeder moved to delay the rules for seventy days to allow time for further study.
Discussion followed.
Review of 75.3--method of determing value and 75.5--valuation and allocation.

12:20 p.m. Doyle returned.

REVENUE Cont'd

Show of hands on the Schroeder motion to delay Chapter 75 showed Monroe, Doderer and Kelly voting "no." Schroeder, Priebe and Doyle voted "aye." Motion failed.

Monroe was critical of 75.4(3) in re determination of number of cars with tax situs in Iowa. The subrule provided in part "In the event that the Iowa allocation factor as described in 75.4(1) does not fairly and reasonably attribute assessed value to Iowa and the provisions of 75.4(2) are not applicable, the director will consider such other factors as will, by the exercise of sound discretion, ascertain such Iowa assessed value."

Eich defended the provision contending that "in allocation or in valuation, there could be a number of special circumstances when the Director would be remiss in his duties if he did not consider them. Greiger quoted from $441.21 of the Code as basis for the rule.

Kelly was of the opinion the annual reporting provisions were unreasonable. Grieger pointed out there are ways to extend the twelve days since the Director has authority to request additional statements.

Recess

Chairman Priebe recessed the meeting at 12:40 p.m. to be reconvened at 1:45 p.m.

Reconvened

Meeting was reconvened at 2:05 p.m. with Priebe in the Chair. Doderer out of the room.

Motion

Delay

Doyle moved to delay the effective date of Chapter 75 of Revenue rules to June 29, 1977. Motion carried with 5 ayes. Doderer not voting.
Discussion of possible recess of this meeting until June 28. [Formal action taken later].

OPP BUILDING CODE

Donald Appel, Building Code Commissioner, was present for further review of amendments to the building code published under Notice 4/20/77 and carried over from the May agenda.
In answer to question by Schroeder, Appel said cities have the option of adopting this code or any other of their choice. This code is mandatory only for state-owned buildings and factory structures. Appel continued that a few areas of the code are applicable statewide, e.g. requirements for accessibility for physically handicapped and energy conservation requirements.

Schroeder recommended that the Building Code Commission initiate legislation to require standardization. Appel pointed out that in 1976, Senate File 1207 passed both houses in slightly different form and the differences were never resolved. It would have set up a uniform building code.

PLANNING & PROGRAMMING Cont'd

No further recommendations were made concerning the building code.

Demetre Vignovich, Office of Economic Opportunity, explained Chapter 9 of their rules proposed and published 6/1/77. The new rules would provide technical assistance to groups concerned with antipoverty programs.
No recommendations were made by the Committee.

The following items on the agenda were acceptable to the Committee as published:

ENVIRONMENTAL QUALITY	22.6(7)	5/18/77
UNIFORM LAWS COMMISSION	Ch 1	5/18/77
PUBLIC INSTRUCTION	Ch 28	5/18/77
HISTORICAL DEPARTMENT	Ch 10	5/18/77

Forms

Kelly asked Royce to contact Professor Bonfield for his opinion and possible recommendations concerning publication of forms of the various agencies.

REVENUE

Discussion of the most expeditious manner to dispose of Revenue rules Chapter 75 within the next week.

Economic Impact Statement

Schroeder moved to request an economic impact statement on the rules of the Barbers and Cosmetologists which were before the Committee today.

Motion Recess

Monroe moved to recess this meeting until June 28, 1977 or until call of the Chair.
Kelly moved to amend the Monroe by adding: "If the meeting is on call of the Chair, all persons concerned with Revenue rules shall be notified of the time and place of such meeting."
Motion as amended carried with 5 ayes. Doderer absent and not voting.

Respectfully submitted,

Phyllis Barry

(Mrs.) Phyllis Barry, Secretary

RECESSED MEETING--CONTINUED

REVENUE

Chairman Priebe reconvened the recessed meeting of the Administrative Rules Review Committee at 1:30 p.m., Tuesday, June 28, 1977 in Senate Committee Room 24, State Capitol. All six members were present.

Ch 75

The purpose for the meeting was to take final action to dispose of filed rules of the Revenue Department, being Chapter 75 relating to a revised method for computing property taxes on railroad cars.

Representing the Revenue Department were: Gerald Bair, Director, Gene Eich, Property Tax, and Kevin Maggio, Assistant Attorney General.

Also appearing were the following attorneys representing clients concerned with the property tax increase: Dean Dutton, Ned Stockdale and John Mackaman.

Discussion of ramifications if the rules were to be delayed beyond July 11, the beginning of the next assessing year. The rules were to have become effective June 22, 1977 but June 15 the Committee voted to delay the effective date of Chapter 75 until June 29, 1977.

Doderer commented on correspondence from the legislative Ways and Means Committees which studied the matter briefly during the Special Session. According to Doderer, the House Committee took the position the rules "fall within the framework of Chapter 435 of the Code and are reasonable. The Senate group by a close vote thought the matter should be studied by the legislature, according to Chairman Priebe.

Kelly was inclined to favor objection over delay. Bair pointed out that formal objection could be very costly to the Department.

In response to question by Monroe, Department officials indicated they would tax under the old procedure, if new rules were not effective in time.

Discussion of method to determine which cars should be taxed in Iowa. In response to question raised by Monroe, Bair said it was unlikely that companies would be able to avoid tax by moving their cars into another state.

Monroe expressed an opinion that truck trailers should be considered personal property and taxed in excess of the present $10.00

REVENUE Cont'd

Schroeder moved to extend the delay of Chapter 75 of Revenue rules to a total of seventy days.

Doderer challenged this procedure and took the position that the first step would be a motion to reconsider since the minutes of June 15 show the identical motion by Schroeder failed to be approved. She suggested that someone on the prevailing side should move to reconsider..

No motion was heard.

Schroeder moved to amend the Doyle motion of June 15 by extending the delay an additional 63 days. Discussion followed and Schroeder withdrew his motion.

Schroeder moved to delay the effective date of Chapter 75 until July 20, 1977 for further study and review.

It was noted this would effectively delay the tax collection for one year.

Kelly wondered what the Committee could effectively study. Schroeder thought the legislature should address the issue by reviewing the law and initiate possible amendments. Priebe pointed out there were no penalties involved.

Monroe quoted from §17A.4 of the Code which, in his opinion, was very clear as to the Committee's authority to delay the effectiveness of rules--delay to further study and examine. He concurred with Doderer that the appropriate procedure at this time would be a motion to reconsider the Schroeder motion of June 15.

Priebe quoted from the Committee's rules of procedure as follows:

> 14. The Committee may at any time review objections filed under 17A.4(4)(a) or deferred effective dates filed under 17A.5. At that time the Committee may modify, rescind or reconsider its earlier action. The appropriate agency will be notified of any changes made by the Committee and those changes will be published in the Iowa Administrative Code in addition to being filed with the Secretary of State.

Schroeder withdrew his motion to delay the rules until July 20.

Schroeder moved to reconsider the vote by which the Doyle motion was approved. Discussion followed.
Priebe pointed outh this approach could possibly allow the rules to become effective June 22.
Schroeder withdrew the motion.

Motion

Schroeder moved to modify the Doyle motion of June 15 by extending it for an additional 63 days making a total delay of 70 days for further study and examination.

REVENUE Cont'd — Doderer expressed the opinion that the Doyle motion merely deferred Committee action until June 29.

Motion Failed — Roll call on the Schroeder motion showed Schroeder, Doyle and Priebe voting "aye" and Kelly, Doderer and Monroe voting "no." Motion failed to receive the necessary votes for approval.

Doyle quoted from a letter from Ways and Means Committee wherein they recognizeda problem area regarding methodology.

Motion to Object — He moved to object to Rule 75.3 as being arbitrary and unreasonable in that it is unclear whether Chapter 75 of Revenue rules accurately reflects Chapter 435 of the Code in the determination of actual value for freight and equipment cars and in the determination of tax situs.

Deferred — Doyle motion deferred by unanimous consent.

Motion — Kelly moved to reconsider the Schroeder motion of June 15 to delay Chapter 75 of Revenue rules for seventy days.
Roll call showed Schroeder, Kelly, Preibe and Doyle voting "aye" and Monroe "no", Doderer "pass." Carried.

Defer Ch 75 — Schroeder moved to delay Chapter 75 of Revenue rules for seventy days from June 22, 1977 for further study and examination.
Roll call showed Schroeder, Kelly, Doyle and Priebe voting "aye". Doderer and Monroe voted "no." Motion carried and Chapter 75 was delayed.

Doyle asked unanimous consent to withdraw his objection to Rule 75.3. No objections were heard.

Stockdale thanked the Committee for their efforts in review of the Revenue rules.

ADJOURN — Schroeder moved to adjourn the meeting at 2:45 p.m. Carried.

Next regular meeting will be held Tuesday, July 12, 1977, 9:00 a.m.

Respectfully submitted,

Phyllis Barry

(Mrs.) Phyllis Barry, Secretary

APPROVED

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Chairman

DATE_____