

MINUTES OF THE REGULAR MEETING
of the
ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of Meeting: Tuesday, October 12, 1976, 9:15 a.m.

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; Representatives W. R. Monroe, Jr., Vice Chairman, Donald V. Doyle and Laverne Schroeder. Also present: Wayne A. Faupel, Code Editor
David Charles, Research Assistant

Minutes: Schroeder moved to dispense with reading of the minutes of the September 20th and 21st meetings and they stand approved. Motion carried

INSURANCE
15.66 Herbert Anderson, Insurance Commissioner, was present for review of 15.66 to 15.73, Ch. 15, 10/6/76 IAC Supplement.

Edwin F. Jackson, representing American Republic Insurance Company, reiterated the objections he voiced in the July meeting, and filed a supplement to the brief previously submitted.

9:20 a.m. Doderer entered.

Schroeder disagreed with the necessity for raising an objection based on the preparation of the pamphlet.

9:50 a.m. Kelly arrived.

Robert Riley, Des Moines attorney, challenged the department's authority to adopt the rules under 507B.4 of the Code.

10:00 a.m. Monroe in chair.

Discussion centered around the buyer's guide prepared by the National Association of Insurance Commissioners. No affirmative action was taken by the committee.

CONSERVATION Robert Barrett, Wild Life Superintendent, represented the Conservation Commission for review of the following rules:

Falcon hunting regulations, Ch 18	9/22/76
Outdoor recreation, elderly, 70.3(3), emergency	9/22/76
Pheasant, quail and partridge hunting season, Ch 103, emergency	9/22/76
Waterfowl, regulations, Ch 105, emergency	9/22/76
Migratory bird hunting, Ch 107, emergency	9/22/76

Schroeder favored removing the age restriction for an apprentice falconer in 18.1(3) if they meet the other criteria.

10:15 a.m. Priebe returned to chair.

CONSERVATION
(Cont'd)

Discussion on the inconsistency in age requirements between the Iowa law and the federal law for duck stamps. No formal action was taken.

Priebe reiterated his disagreement with the lengthy pheasant season in Iowa.

AGRICULTURE

Robert H. Lounsberry, Secretary of Agriculture, and Betty Duncan, Regulatory Division, represented the Department of Agriculture for review of milk testing and sanitation, Chapter 30 (amendments), published under notice 9/22/76; referendum, 2.2, 2.4 [Amends 2.2(3), 2.2(6), 2.4(3)] filed rules published 9/22/76; commercial feed, 6.11, filed rule published 9/22/76.

In re Chapter 30 amendments, Lounsberry pointed out the notice of termination will be published in the 10/20/76 IAC Supplement and there will be a public hearing on 10/13/76. A determination will be made at that time if the rules will be resubmitted.

Lounsberry indicated the rules relating to referendums, 2.2 and 2.4, were rewritten in conformity with S.F. 449, 66th GA.

Duncan stated 6.11 simply includes all U.S.C. sections that pertain to foods and food additives.

Monroe noted that chapter 203A of the Code (Iowa Drug and Cosmetic Act) is enforced by the Pharmacy Board and he expressed concern that with the adoption of 6.11 by the Agriculture Department there could be dual enforcement in re adulterated drugs. However, he had no objections if the two departments had no conflict.

Lounsberry pointed out their only concern is with the misuse of drugs in commercial feeds, and he could see no problem with enforcement.

10:40 a.m.

Monroe in chair.

PUBLIC
EMPLOYMENT
RELATIONS
BOARD

John Loihl, board member, briefly explained their amendments to Chapters 2 to 8 and new chapter 10, published under notice in the 9/22/76 IAC Supplement.

(2.12(3))
Doyle objected to 2.23(3) as going beyond the scope of the law since it allows subpoenas to be served by certified mail, which conflicts with 622.63 of the Code. Loihl indicated they will look into the matter further and redraft the rule, if necessary.

In re 5.2(5)--Absentee ballots--Doderer suggested adding the words "or employee" following the word "employer" in line 4. Monroe indicated the rule was too verbose and thought a period could be inserted following the word "cause" in line 3. The Committee took no formal action.

NURSING
BOARD

Lynne Illes, Executive Director, represented the Nursing Board for review of the following rules:

Administrative hearings, 1.2
Declaratory rulings, 1.1(5), emergency
[Rule delayed in: 6/14/76, 7/20/76 Supp.]
Public meeting and records, 1.1(7), 1.1(8)

10/6/76

10/6/76

9/22/76

The rules were acceptable to the Committee.

SOIL
CONSERVATION

Marvin Ross, Director, Mines and Minerals Division, appeared before the Committee for review of Chapter 4, surface coal mines, published under notice in 10/6/76 IAC Supplement. Also, present were William Greiner, Director, and David Weaver for review of filed rules in the 10/6/76 IAC Supplement, being Chapters 1 to 8, Definitions, organization, committee, district divisions, forms.

In re 4.2(2), Schroeder asked how the registration fee of five dollars per acre with a minimum of one hundred dollars was determined. Ross responded it was an estimated cost and may be revised after they have had more experience on which to base the cost of registration.

Monroe advised the Commission to have their legal staff do further research to determine if there is foundation in law to allow a closed file for a period of five years as stated in 4.2.

Schroeder was of the opinion that the slope steepness and lengths limits in 4.1(3) were unrealistic.

No recommendations were made on Chapters 1 to 8.

VOTER REGIS-
TRATION

No review was made of the following Voter Registration rules published under notice:

Lists, 3.1, emergency, [Amends 3.1(2)]
Specifications and approval procedure for data processing and service
contracts, Ch 4

9/22/76

9/22/76

PUBLIC
SAFETY

Wilbur Johnson, Fire Marshal, was present for review of amendments to Chapter 5, Residential care facilities, published under notice in the 9/22/76 IAC Supplement.

Discussion centered on the requiring of residential care facilities to have one and three-fourths inch bonded solid core wood doors on all rooms.

11:10 a.m. Priebe returned to chair.

Motion
Econ. Imp.
Statement

Schroeder moved the Committee, pursuant to section 1 of Senate File 1288, request the Department of Public Safety to file a statement detailing the economic impact of proposed Item 31, which appears in the September 22, 1976 supplement of the IAC, and amends 5.601(2)"h" of the Department rules. Motion carried.

Objection

Schroeder moved the Committee object to Item 31 on the basis it is arbitrary and capricious. Motion carried. Kelly voted "no."

Objection
Withheld

The Committee agreed to delay filing the objection giving the Department an opportunity to make the necessary amendment before filing the rules.

AUDITOR OF
STATE

Kenneth Wilson represented the Auditor of State for review of amendments to Chapter 1 relating to industrial loans, published under notice 9/22/76 IAC Supplement.

AUDITOR
OF STATE
(Cont'd)

Wilson pointed out the rule changes are proposed to bring the present rules into agreement with the Iowa Consumer Credit Code and with the federal Equal Credit Opportunity Act.

Monroe recommended that 1.8, in regard to dual loans, in the existing rules, be rephrased for clarification.

Motion
1.8

Doderer was of the opinion that 1.8 discriminates on the basis of marital status, and moved that the Department be requested to clarify the rule to eliminate discrimination and that copies of the new rule be sent to Committee members before it is submitted as a filed rule. Motion carried.

Monroe pointed out the Auditor of State is not in compliance with 17A.3, 17A.7 and 17A.9 of the Code.

TRANSPORTA-
TION

Representing the Department for review of the following rules were: Terry Fritz, Director, Public Transit Division, Robert Anderson, Director, Office of Policy Analysis, Planning and Research Division, Rob Forrest, Director, Office of Operating Authority, Motor Vehicle Division and Karen Bellis, Office of Vehicle Registration.

Financial assistance. Ch [09,B] Ch 1	10/6/76
Special identification devices for handicapped persons, Ch [07,D] Ch 1	10/6/76
Interstate registration, truck operators and contract carriers, motor carriers and charter carriers, [07,F] Chs 1, 3, 4 [Amendments]	10/6/76
Functional classification of highways, [08,C] Ch 3 [3.15]	9/22/76

In response to question by Schroeder regarding the \$400 minimum deposit required in 4.5(2), Forrest stated that would be the normal cost for a court reporter in a hearing.

Schroeder requested clarification of the use of the word "published" in 4.5(4) where it is understood to mean "distributed" for the benefit of lay persons reading the rules.

No further recommendations were made by the Committee.

AGING, COM-
MISSION ON

Dick Woods represented the Commission on the Aging. The objections with regard to the rules which were previously deferred for 70 days have been met and were accepted by the Committee.

RECESS

Chairman Priebe recessed the meeting at 12:05 p.m.

RECONVENED

Meeting was reconvened at 1:35 p.m. by the Chairman. Doyle was excused to attend an Administration Committee meeting. Kelly not present.

REVENUE

Elliott Hibbs, Deputy Director of Revenue, and Joe Booth, Director, Cigarette & Tobacco & Gambling Tax Division, were present for review of the following rules published under notice:

Sales and use tax. Chs 11 to 18, 20, 26, 28, 32, 33 [Amendments]	9/22/76
Individual and corporation income tax, Chs 38 to 42, 44, 46, 48, 51 to 54 [Amendments]	9/22/76
Games of skill, chance, bingo and raffles, Chs 91 to 96	10/6/76

REVENUE
(Cont'd)

Discussion of the bonding provisions as to possible discrimination against the small businessman, and a possible loophole in 12.9 regarding penalty for failure to file a tax return.

Schroeder recommended that the rules be revised to provide for bonding of small businesses only after there has been a second delinquency in tax filing.

On a matter not officially before the Committee, Priebe expressed displeasure with the practice followed by the Revenue Department of having agents at county fairs collecting minimal amounts of sales tax on food stands while the real estate transfer tax law is not being enforced. He recommended that agents be transferred to areas where more taxes could be collected.

2:10 p.m.

Kelly entered.

In response to question by Schroeder, Hibbs told the Committee that Chapter 16 has been amended by adding a new rule in regard to fees for participation in games or other amusements as requested by this Committee in July.

Booth presented a brief synopsis of Chapters 91 through 96 and stated the changes were made merely for clarification of procedures already being implemented.

Chairman Priebe recognized R. A. Wingerson, Sr., Iowa Department Commander, AMVETS, Fort Dodge, Iowa, who voiced opposition to the last sentence in 94.1 which states, "Although it is recognized that a bona fide veterans organization is a patriotic organization, said group does not qualify to retain or be the recipient of gambling profits to enhance its property nor to buy equipment for its own use."

The Committee was in agreement that statute change should be initiated to be more definitive as to what is a patriotic organization and what is patriotic use of funds.

Wingerson also objected to salaries being an allowable expense under 94.3 as he feels this rule can be easily circumvented.

94.1 & 94.3
to GA
for
study

Schroeder moved the Committee refer 94.1 and 94.3 to the speaker of the House and the president of the Senate for referral to the appropriate standing committees of the general assembly for further review in accordance with 17A.8(7) of the Code. Motion carried.

2:35 p.m.

Monroe in chair.

November
agenda

Monroe requested the individual and corporate income tax rules be included in the agenda for the November meeting.

ENVIRONMENTAL QUALITY Peter Hamlin, Director, Land Quality Management Division, David Bach, Hearing Officer, and Darrell McAllister, Permit Division, represented the Department of Environmental Quality for review of the following rules published under notice:

Solid Waste Disposal	
Definitions, requirements, permits, landfills, facilities, recycling,	
Chs 25 to 32 [Amends 25.1, Chs 26-31 new, rescinds 32.1(3), 32.3]	9/22/76
Executive Committee	
Organization, 50.3(3) without notice	9/22/76

Schroeder's concerns were that there be a burn area allowed in every landfill site and the salvaging scavenger operation be up to the discretion of the operator of the site.

Bach responded they are looking into the permitting of open burning of any kind of trees, etc., at a particular site and will measure the impact on the air quality around that site, but as yet this has not been implemented.

DEQ
Motion
(vote
deferred)

Schroeder brought up the motion to approve the objections that were proposed in the September meeting. The vote was temporarily deferred.

Bach emphasized that filing of the formal objection could mean any new feedlot would be subject to at least a minimum of 180 day delay before a construction permit is issued and might be subject to a longer delay if an environmental impact statement is required for construction of that facility.

Amendments to 50.3(3) were acceptable as filed.

DENTISTRY BOARD

Peter Fox represented the Dentistry Board for review of dental college faculty permits, 8.2, published under notice in IAC Supplement 10/6/76.

Monroe raised question as to the statutory authority that would allow a member of the faculty of the college of dentistry to practice dentistry without licensure.

Fox will report this to the Board for further research.

Monroe pointed out the Dentistry Board is deficient on rules to implement 17A.3, 17A.5 and 17A.9 which were due July 1, 1975.

HEALTH

John DeBiak, Licensure Division, Jack Menne, chairman, Board of Psychology Examiners and Gary Sliefert, Storm Lake, represented the Health Department for review of the following rules:

Hospitals, dietetic and pharmaceutical service, Ch 51 [51.19, 51.25, rescinds 51.22]	10/6/76
Psychology examiners, Ch 140	9/22/76
Funeral director and embalmer, mandatory disclosure, 147.7	9/22/76

HEALTH
(Cont'd)

In re amendments to chapter 51 regarding pharmacy and dietary services for hospitals, DeBiak indicated they provide that current practices are now set out by rule.

Doderer suggested the rules be neutered before they are finally submitted for filing.

Charles noted in 51.19(2)a there is reference to a "current" publication and recommended this be changed to specify a year certain.

Psychology
Examiners
Board

Menne explained briefly this is the initial set of rules for the Board of Psychology Examiners which is new this year.

3:10 p.m.

Priebe returned to chair.

Brief discussion of 140.8(6) as to how determination is made whether an oral examination is required. Charles would strike "if required" for clarity.

Monroe suggested 140.10(2) refer specifically to the latest edition published.

ENVIRONMENTAL
QUALITY
(cont'd)
Objection

Schroeder called for the question on his motion to file objections to 20.3(1)c, 20.3(2)a, 20.3(3), 20.3(4) and 20.3(5)a and the guideline relating to waste disposal near watercourses in the DEQ rules that were proposed in the September meeting and had been temporarily deferred. Motion carried. Monroe voted "No." [Motion to object to 4.4(6) concerning ferrous foundries at 9/20/76 meeting was not called up today.]

HEALTH
Fun. Dir.

Amendments to 147.7 were acceptable as filed.

NURSING
HOME ADM.

Dwight Fry, representing the Nursing Home Examiners, explained amendments to Chapter 1, Public Information, and Chapter 2, Licensure of Nursing Home Administrators, published under notice in 9/22/76 IAC Supplement, have brought their rules into compliance with the Committee's suggestions

Doderer brought up a matter called to her attention of a Swedish citizen not being eligible to take the test for nursing home administrator. Fry will investigate the complaint and report back to Chairman Priebe.

The following rules were acceptable to the Committee as published:

COMPTROLLER[270]

Deferred compensation program, 4.8, 4.11 (Reviewed under Notice 9/21/76)
[4.8(6), 4.8(7), 4.11(8)]

10/6/76

HEALTH[470]

Hospitals, construction, long term care service, 51.7, 51.34

10/6/76

HISTORICAL DEPARTMENT[490]

Historical marker, 5.26

10/6/76

MERIT[570]

Retaking examinations, 5.8(2)"f", emergency [Rescission of rule 8/9/76 Supp.] 9/22/76

MERIT[570]

Intermittent appointment, 8.5

10/6/76

Appeals, 12.6

10/6/76

Vacation and leave, 14.2"f"

10/6/76

Sick leave, 14.3(1)

10/6/76

Judicial review, 15.4

10/6/76

REAL ESTATE[700]

Brokers and salesmen, Ch 1 [1.13, 1.23(1), 1.25(1), 1.27(1) to 1.27(5)]

9/22/76

Administrative procedure, Ch 2 [2.2(5), 2.2(6), 2.3]

9/22/76

ADJOURNMENT

Chairman Priebe adjourned the regular meeting at 3:45 p.m. to allow time for the committee to interview applicants for the position of administrative coordinator.

Next regular meeting will be held Monday and Tuesday, November 8 and 9, 1976, 9:00 a.m., Room 24.

Respectfully submitted,

Phyllis Barry
(Mrs. Phyllis Barry)
Secretary

Assistance of Joyann Benoit

APPROVED

Chairman

DATE _____