

MINUTES OF THE REGULAR MEETING
OF THE
ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of Meeting: Tuesday and Wednesday, January 8 and 9, 1985.

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

Members Present: Representative James D. O'Kane, Vice Chair; Senators Donald V. Doyle and Dale L. Tieden; Representatives Edward G. Parker and Laverne W. Schroeder. Not present: Senator Berl E. Priebe, Chair, who was on vacation. Also present: Joseph Royce, Committee Counsel; Kathryn Hove, Governor's Coordinator; Phyllis Barry, Deputy Code Editor, and Vivian Haag, Executive Administrator.

Meeting Convened Vice Chair O'Kane convened the meeting at 10:00 a.m., room 116.

HEALTH
DEPARTMENT

Health Department was represented by Mark Wheeler, Dana Petrowsky, John Buckley, John A. Eure, Peter Fox, Irene Howard, Ron Marvelli, and Kenneth Choquette. Also Present: Larry Breeding, Executive Vice President, Iowa Health Care Association, and Harold Templeman, Department of Human Services.

The following agenda was before the Committee:

| HEALTH DEPARTMENT[470] | |
|--|-----------------|
| Barber examiners. 152.5(1), 152.102(3), 152.110(2)rd(4), 152.110(3), 160.6(3), 160.6(9) ARC 5148 | F..... 12/5/84 |
| Cosmetology examiners, school instructors. 149.2(5) ARC 5146 | F..... 12/5/84 |
| Beauty salons and schools of cosmetology, sanitation. 150.9 ARC 5147 | F..... 12/5/84 |
| Speech pathology and audiology, informal settlements. 156.110 ARC 5163 | F..... 12/5/84 |
| Speech pathology and audiology. 156.9(3), filed emergency ARC 5144 | FE..... 12/5/84 |
| Podiatry examiners. 139.1(2), 139.3(6) ARC 5145 | F..... 12/5/84 |
| Psychology examiners. 140.4(3), 140.4(9), 140.8(3), 140.9(1) to 140.9(3), 140.101(6), 140.106, 140.201, 140.10, 140.107 ARC 5169 | F..... 12/5/84 |
| Board of social work examiners, ch 161 ARC 5182 | N..... 12/19/84 |
| Vital records, fees, 96.A, notice ARC 4742 terminated ARC 5205 | NT..... 1/2/85 |
| Definitions, public swimming pools, 10.1(4), ch 15, notice ARC 5050 terminated ARC 5206 | NT..... 1/2/85 |
| Intermediate care facilities, skilled nursing facilities, definitions, residents' rights in general, 68.1, 69.1, 68.2(2), 69.4(2) ARC 5210 | N..... 1/2/85 |

chs 152, 160

Fox explained amendments to chapters 152 and 160, which remained unchanged from the Notice. No public comment had been received.

Tieden asked that the record reflect his opposition to elimination of continuing education correspondence courses in 152.102(3). He declared that this would be an imposition for some elderly licensees who were still barbering in smaller areas. Tieden doubted the need for CE for elderly barbers who do hair cutting only. According to Fox, the correspondence courses were not workable and other CE was available around the state. He added that amendment to Code chapter 258A would be necessary to remove CE requirements. No questions re 149.2(5), 150.9, and 156.110.

149.2 et al

1/8/85

HEALTH
DEPARTMENT
Continued

Tieden questioned the emergency filing of 156.9(3). Fox responded that the Board adopted emergency amendments to accommodate several individuals wishing to reinstate their licenses without payment of past due renewal fees. O'Kane referred to the preamble of the amendment and reasoned it would be an extremely rare circumstance when "notice and public participation would be unnecessary." Fox admitted that, essentially, some revenue would be lost. O'Kane asked Fox to convey to the Board the ARRC opposition to emergency adoption in general. No other comments.

- ch 139 Fox informed Tieden that the change from 15 to 30 days in 139.1(2) would allow time for ordering a national examination which had not been used previously.
- ch 140 Fox explained the fee structure in chapter 140 and Howard added that a \$90 examination fee is paid to the national organization to cover cost of lengthy review of exams.
- ch 161 Fox informed the ARRC that he would be happy to convey their comments on chapter 161 to the Board of Social Work Examiners which was meeting today. Tieden was interested in anticipated increased costs in this matter. Fox saw no need for additional staff but thought the Board would incur some expense. Howard pointed out that when the licensing law was passed, funds were not appropriated. The Board will operate on a deficit until fees are collected to make it self-supporting. She estimated an annual expense of \$12,000. Discussion of 161.6 re "C" level examination which is the highest level and requires a Masters Degree, plus experience.
- 161.4(2)a The ARRC was informed that examinations were first given in November 1972 by the National Association of Social Workers. Tieden wondered who determined mental or physical inability in 161.105. Howard said the licensee completes the form and a health professional signs it with a brief explanation for Board review. No questions re 96.4 and 10.1(4).
- ch 15 According to Eure, proposed rules for public swimming pools were terminated to allow time for the Department to evaluate extensive comments and recommended changes. An ad hoc committee will meet in February to consider the matter and clarifying legislation will be sought. Wheeler said that care facilities amendments to chapters 58 and 59 are intended to implment 1983 Acts, SF 463.
- O'Kane questioned the application to skilled nursing facilities since they already would be equipped to care for residents with histories of dangerous or disturbing behavior. Petrowsky noted that, under the law, intermediate and skilled facilities will be required to develop a program before admitting residents or patients with behavior disorders.
- Royce spoke on behalf of Blaine Donaldson, a nursing home operator in northern Iowa, who was concerned about the

1/8/85

HEALTH
DEPARTMENT
Continued
chs 58, 59

definition of "dangerous behavior." Donaldson reasoned that all care facilities have patients who are potentially dangerous. He cited senility and Alzheimer's disease as examples. Petrowsky emphasized that the Department opposed the legislation since they do not believe that "dangerous people" belong in community nursing homes.

Breeding, who represented 70 percent of the licensed intermediate care facilities in Iowa, suspected the legislation was passed to accommodate Broadlawns West in Polk County. He concurred that people with mental disease do not belong in nursing homes. He contended these homes were not designed to alleviate the state's problem of overcrowding in mental health facilities. Breeding referred to the definition of "history of dangerous or disturbing behavior" and declared that most of the state's elderly clientele would fall within the definition. He took the position that "adjudicated" occurrence would be preferable to "verifiable." Breeding concluded that Iowa needs a separate ICF/MI program with a stricter licensing category, similar to programs in Minnesota and Illinois.

According to Petrowsky, the Departments of Health and Human Services were directed to do a study in this area and report to the Legislature by January 15. Doyle opined that, under the law, facilities could refuse clients unless there were an existing program. Doyle advised that the aging would not normally be "adjudicated." Petrowsky responded that no facility had applied for prior approval because of absence of rules. She thought that Broadlawns West and Linn County Psychiatric would be the only facilities. Doyle saw the problem for ICFs and Skilled Nursing Facilities was deciding whether clients should be removed. Royce was directed to refer the issue to the appropriate legislative committees to alert them of potential problems. No formal action.

Refer to
Legislative
Committees

Fox reviewed the following:

NURSING
HOME
ADMINIS-
TRATORS

| | |
|--|---------|
| NURSING HOME ADMINISTRATORS, BOARD OF EXAMINERS(600) | |
| Licensure, hearings, 2.6(8)a" ARC 5135 .. F..... | 12 5.81 |
| Licensure of nursing home administrators, 2.4(2)g" ARC 5143 ... A..... | 12 5.81 |

Fox said the ARRC suggestion to have the decision rendered in sixty days was incorporated in 2.6(8). Discussion of 2.4(2)g and time limit of one hour for reporting sexual abuse of a care facility resident. Failure to report could result in license suspension.

Doyle preferred inclusion of "reliable" information rather than reliance on hearsay. Tieden concurred and could foresee involvement of personalities. Parker saw importance of ensuring that the information is reliable. Hove suggested "verifiable" information to prevent any loophole for the Administrator to delay reporting. Doyle recommended that the Assistant Attorney General assigned to the Department be consulted.

1/8/85

INSURANCE DEPARTMENT HMOs

Health Department officials in attendance were: John Buckley and Mark Wheeler. The following rule carried over from the December meeting:

INSURANCE DEPARTMENT[510] Health maintenance organization, 40.5(11)^b ARC 5133 (carried over from December meeting) N..... 11/21 84

40.5

At O'Kane's request, Buckley gave a brief overview of 40.5(11)^b which was a joint venture of Insurance and Health Departments for a housekeeping change. HMOs were notified but no one attended the public hearing held December 11 and no correspondence was received.

Another matter in dispute will be addressed at a later time. The Department has denied petition by certain HMOs to delete the requirement that review be done by the professional review organization designated by the federal government. The issue was considered by the Board of Health at a special meeting on December 5 and a special task force was formed to study the substantive request. O'Kane wondered if HMOs approved new language "designated by the Commissioner of Health." Wheeler was unaware of any opposition. No other comments.

11.7(2)^e

Tony Schrader, Attorney for the Insurance Department, presented 11.7(2)^e, filed without notice, ARC 5184, IAB 12/19/84, pertaining to disciplinary action for continuing education providers. Language had been clarified at the suggestion of ARRC. Schrader indicated there were over 700 approved courses and 240 providers for CE. Essentially, the Insurance Community had accepted CE requirements.

HUMAN SERVICES DEPARTMENT

Human Services rules before the Committee were:

| | |
|--|----------|
| HUMAN SERVICES DEPARTMENT[498] | |
| AID, continuing eligibility, 40.7(1) ^f ARC 5197 | 1/2/85 |
| Amount, duration and scope of medical and remedial services, 78.1(2) ^e ARC 5198 | 1/2/85 |
| Interim assistance reimbursement, ch 57 ARC 5158 | 12/5/84 |
| Confidentiality and records of the department, 9.3(3) "f" ARC 5175 | 12/19/84 |
| ADC, granting assistance, 41.7(7) ^x ARC 5156, also filed emergency ARC 5155 | 12/5/84 |
| Food stamp program, administration, 65.17, 65.21 ARC 5176 | 12/19/84 |
| Amount, duration and scope of medical and remedial services, 78.1(2) ^f , 78.2(1) ^d ARC 5177 | 12/19/84 |
| Child care centers, 109.1(12), 109.3(7), 109.3(8), 109.6(3) ^b ARC 5138 | 12/5/84 |
| Payments for foster care, clothing allowance, 156.8(1), filed emergency ARC 5159 | 12/5/84 |
| Payments for foster care, reserve bed days, 156.10(1) ARC 5157 | 12/5/84 |
| Community mental health center standards, 33.5(8), 33.5(11), 33.5(12), 33.5(15), 33.7 ARC 5187 | 1/2/85 |
| Mental health service provider standards, ch 35, notice ARC 4883 terminated ARC 5222 | 1/2/85 |
| Granting assistance, 41.7(7) ^e (6), 41.7(9) ^c (2), 41.8(2) ARC 5200, also filed emergency ARC 5199 | 1/2/85 |
| Unemployed parent, 42.1(1) ^e ARC 5202, also filed emergency ARC 5201 | 1/2/85 |
| Supplementary assistance, eligibility, payment, 51.4(1), 51.4(2), 51.7, 52.1(1), 52.1(2), filed emergency ARC 5195 | 1/2/85 |
| Food stamp program, administration, 65.3, 65.27 ARC 5204, also filed emergency ARC 5203 | 1/2/85 |
| General provisions, eligibility, 130.3(1) ^d (2), filed emergency ARC 5196 | 1/2/85 |

Mary Ann Walker, Donald S. Kearney, Mary Nelson, Jim Krogman, Harold Poore, Joe Mahrenholz, Don Herman, Dan Gilbert, C. S. Ballinger, Cynthia Tracy, M. E. Imlau, Vivian Thompson, Harold Templeman and Suzanne Boyde appeared on behalf of the Department. Also present: Shelly Smith, Coalition for Family and Childrens Services.

40.7

No questiones re 40.7(1)^b. Schroeder requested that Walker contact the Board of Pharmacy as to possible impact of 78.1(2)^c and advise Royce of problems.

1/8/85

HUMAN
SERVICES
continued
ch 57

Interim assistance reimbursement, chapter 57, was explained by Walker. Doyle had received some telephone calls and he was interested in the previous procedure. Walker explained that, under former procedure, counties had no way of recovering their money. Counties will be more willing to subsidize recipients if they can be reimbursed. Walker said that the county relief agency is not required to participate in this reimbursement. There was discussion of length of time between application and receipt of SSI--six months to two years.

9.3(3)f No recommendations were offered for 9.3(3)f, 41.7(7), 65.17 and 65.21.

78.1(2) &
78.2(1) Walker said that amendments to 78.1(2) and 78.2(1) address legislation which resulted from a cost effectiveness study by the Department on nonlegend drugs. Schroeder envisioned possible conflict in the last paragraph of 78.1(2). Walker said if the drug is for maintenance therapy, it can be dispensed in 90-day quantities. Mahrenholz saw no problem. Doyle was curious as to cost. According to Walker, the Department does not anticipate an increase in cost because these will be substitutes for more costly prescription drugs.

ch 109

Amendments to chapter 109 address a petition for rule-making. Copies of child care center standards must be furnished to parents. Also, pasteurized and whole milk will be served as opposed to dry milk. O'Kane was told that consultants from district offices license day-care centers.

Tieden asked if the milk requirement was coordinated with the WIC program which mandates low-fat milk. He favored the provision in 109.6(3)b. O'Kane suggested that the Department check with WIC personnel.

156.8(1) O'Kane observed that the \$250 dollar clothing allowance in 156.8(1) seemed low. Walker explained that amendment to 156.10 clarifies the Department's policy on payment for reserve bed days in foster group care facilities.

Smith, representing providers, voiced opposition to absolute prohibition on payment for shelter care. She favored some flexibility as 3 to 5 days to cover situations of inappropriate placement of foster children. Smith pointed out that caseworkers would be subjected to excessive paperwork under the rules as written. A concern of the Department was to keep beds open for emergencies.

ch 33

Walker described amendments to chapter 33. Templeman stated that the 15-member Mental Health and Mental Retardation Commission was established by law and appointments are by the Governor to represent Boards of Supervisors.

HUMAN
SERVICES
Continued
chs 35, 41

Walker reported that chapter 35 was terminated for lack of staff or resources. In reviewing amendments to chapter 41, Walker advised that federal regulations will require reinstatement of previous provisions. O'Kane was interested in learning how workers' compensation was treated under the ADC program. Walker said a lump sum for a retroactive period would be treated as income. O'Kane viewed it to be prospective, not retroactive. Thompson responded to O'Kane that lump sum compensation benefits for an on-the-job injury would be considered income in the month received and would not be prorated. An auto accident settlement would be treated the same.

Walker indicated the Council was quite upset about the federal change and a response will be drafted to the proposed rates. Also, the policy on gifts will change from an open-ended policy to \$30 a quarter exemption. A definition of gifts will be required.

42.1

In response to a request for judicial review, the Department is changing its policy with respect to method of computation for determining the number of hours of employment for a self-employed ADC unemployed parent. Doyle was told that ADC had not considered barter as income.

chs 51, 52
et al

No recommendations were offered for amendments to chapters 51 and 52, 65.3, 65.27 and 130.3(1)d(2).

Special
Review
Ch 75

O'Kane announced that the Department of Human Services had complied with Committee request to provide information on divesting of resources for SSI-related program eligibility. The request was prompted by rumor that a loophole exists. Walker read from a Department document which provided background of their policy and addressed options for changing current policy. She continued that parents are transferring their homes and farms to their children and then applying for and becoming eligible for Title XIX. This practice often is detected when the Department is paying for nursing care. Walker reminded that SSI program allows states to determine Title XIX eligibility or allows the Social Security Administration to determine both SSI and Title XIX. The Department chose the latter to save administration costs. Iowa legislation, based on federal, was passed in 1981 and rule 75.6 implements it.

Possible viable options include requests to Health Care Financing Administration to revise current policy. Some believe that the Social Security Administration has authority to make current policy for transferring resources more restrictive without changing federal legislation. Iowa's Congressional delegation could be requested to pass additional legislation to add homes or farms to legislation that disqualifies persons from transferring certain assets.

HUMAN SERVICES Continued ch 75

Doyle asked about the farm exemption. Walker replied that the Social Security Administration definition of homestead is land, home and any lands contiguous. They do not consider the state's definition of 40 acres. She added that there is currently a federal and state prohibition on transferring property in order to get Title XIX eligibility. Options are open to the state to make current practice more restrictive. Amend current legislation and draft more restrictive rules--all options would require the state to make their eligibility determination for this population group. This would require additional staff because of all requirements. Computerization cannot keep up with demands on workers.

Survey-- Report

O'Kane agreed there seemed to be a large "loophole." Doyle wondered if Iowa could change the 40-acre requirement without federal permission. Walker advised that Iowa must abide by the federal definition of "homestead" for this group. O'Kane asked the Department to survey surrounding states with respect to their procedure in this matter and report to the Committee in February.

Doyle recalled the law change two years ago where a prospective recipient had to reveal what property had been exchanged or sold within two years before applying. Walker clarified that it is considered a homestead as long as they transfer that property while they are living on it and homestead includes any land that is contiguous. Essentially, the number of acres is not a factor--could be 40 or 400. Doyle saw this as the main problem.

ENERGY POLICY COUNCIL

Sandi Kearnes appeared for review of the following:

ENERGY POLICY COUNCIL(380)
Technical analysis and energy conservation - grant programs for schools and hospitals. 8.6(2)d(3) and "e"(4), 8.6(4)c"
(1) and (2) ARC 5154..... 12 5 84

Kearnes discussed ranking criteria for technical analysis grants and the point system. Schroeder challenged their reason for deleting points for coal and steam in 8.6(2)d(3). General discussion. O'Kane thought the policy was clear but took the position that electricity should be lumped in with the other since it is produced here in Iowa and should be used. He viewed it as a way to encourage conservation by institutions. Points for electricity should be reduced to that of coal.

Parker understood that Iowa coal was not environmentally sound at this time. Kearnes concurred. There was discussion of the high sulphur content of Iowa coal. Tieden expressed frustration at the slow progress in improving Iowa coal and would appreciate any information. Kearnes was not prepared to respond.

Last year, there were 183 applicants for technical analysis grants. The federal portion exceeded \$1 million of a \$2 million dollar program. The maximum that any one institution can receive is 7 percent of their appropriation.

1/8/85

ENERGY
POLICY
COUNCIL
Continued

Kearnes said electricity was changed to be equal to natural and LP gas since some schools and hospitals use electricity as a primary heating source. Hardship criteria will be changed from 4 to 5 percent in an attempt to aid institutions experiencing the greatest need. Four hardship applications were funded last year.

O'Kane questioned use of operating expenditures as basis since there is no consistency between institutions. Kearnes thought the point was well taken.

Recess Committee was recessed for lunch at 12:10 p.m.

Reconvened Reconvened at 1:30 p.m. with O'Kane in the chair.

COMMERCE
COMMISSION

Commerce was represented by Ray Vawter, Jr., Dan Hanson, Dennis Downing and Cindy Dilley. Also present: Don Williams, Northwestern Bell Telephone; Kent Jerome, Iowa Telephone Association; Don Heiderbrecht, United Telephone Company; Robert Krause, Iowa Association of Municipal Utilities.

The following agenda was considered:

| | |
|---|-----------------|
| COMMERCE COMMISSION[250] | |
| Filing requirements, number of copies, 3.2(2), 3.1(3), 3.5(3), 3.6(2), 3.7(2), 4.3(2), 4.1(1), 7.2(8), 7.3(2), 7.4(1)"d"(1), 7.4(5), 7.4(6)"c", 7.5(3), 7.7(12), 7.7(13)"b", 7.7(17), 7.8(2)"a" and "c", 7.9(2), 7.9(3), 24.9(2)"a" and "b", 24.9(5) ARC 5153 | F..... 12 5 81 |
| Public utility advertisements, 16.8 ARC 5152 | F..... 12 5 81 |
| Intrastate access charge elements, 22.14(1)"b", 22.14(3) ARC 5167 | F..... 12 5 81 |
| Extended area service for exchange telephone utilities, 22.1(3) ARC 5149 | N..... 12 5 81 |
| Management efficiency standards, ch 29 ARC 4936 terminated ARC 5151 | NT..... 12 5 81 |
| Management efficiency standards, ch 29 ARC 5150 | N..... 12 5 84 |
| Complaint procedures, 6.3(4) ARC 5226 | N..... 1 2 85 |
| Winter energy assistance, 19.4(15)"h"(6), 20.4(15)"h"(6) ARC 5226 | N..... 1 2 85 |

3.2 et al Downing remarked that miscellaneous amendments in chapter 3 et al update filing requirements to reflect increasing needs of the Commission.

16.8 Downing briefed the Committee re 16.8 and indicated opposition from nonrate-regulated utilities and phone companies. Vawter contended the amendment was statutory but the Commission had not sought an attorney general's opinion.

Krause distributed a written statement of opposition. In summary, he maintained that the amendment exceeded the scope of the title of HF 2068 [84 Acts] and was unconstitutional. He argued that Code section 476.18, to which HF 2068 was added, was restricted to rate-regulated utilities. Krause concluded that the rule precludes many utilities from advertising and he asked the ARRC to object.

O'Kane suggested that an AG's opinion could clear up the matter. Royce estimated that an AG response would take two months.

Motion to Delay 16.8 Tieden moved that a 70-day delay be imposed on 250--16.8, ARC 5152, IAB 12/5/84 to allow time for further study and an AG's opinion. Motion carried.

COMMERCE
COMMISSION
Continued
22.14(1)

In re 22.14(1), Hanson noted two clarifying changes since the Notice. Private systems that interconnect with an exchange may pay a charge of 3¢ per access minute up to \$25 a month instead of a flat \$25 per month charge provided the exchange is furnished actual access minutes. Rules now state there will be no discounted transitional rates--every exchange carrier which uses it pays full cost. GTE, Sprint, MCI and Teleconnect had expressed opinions that an interchange carrier with inferior connection, as compared to AT&T, should have a lower rate.

22.1(3)

The intent of 22.1(3) was to define "extended area service" EAS. Hanson said that an "end user" originates or terminates a call but does not process it or send it out. A person who engages in interexchange service might receive a call and then send it on to another exchange (that person is not an end user). According to Hanson, a number of varying comments had been received. In answer to Parker, Hanson said the definition of EAS was changed because of the access charge rule, which allows 3¢ per access minute for originating, and terminating exchange gets 3¢ per access minute. Some exchanges will not get their access charges since EAS is similar to a local call. EAS service between different companies is used to complete long distance calls and there is a possibility that the proper exchange will not be getting 3¢ per access minute. Parker could envision problems for small communities surrounding Des Moines--with differing companies. Vawter failed to understand how that related to the EAS.

Jerome discussed access by independent telephone companies surrounding Cedar Rapids. O'Kane was told there would be some changes that will be considered before rules are filed. Jerome said the independent companies support the rule-making. Hanson said that Northwestern Bell and Teleconnect had opposed it. Tieden wanted the definition of "end user" clarified.

ch 29

Hanson apprised the Committee that proposed chapter 29 was a third attempt to establish methodology for analyzing utility management efficiency. Several factors will be considered in the evaluation and each factor will be weighted. A system of awards and penalties is proposed. The Commission is considering minor rewording to clarify that municipals are not subject to the rules.

Parker recalled that the Code created the Operations Review Division and he saw a collection of data with no comparison whatsoever. Hanson said the present rule contains more flexibility. Parker stressed that Iowa had been very forward-thinking and ahead of other states in this matter and he hated to see a "step backwards." He added that he was not suggesting eliminating total flexibility but the Commission could arrive at some common denominators.

COMMERCE
COMMISSION
Concluded

Krause planned to make a detailed presentation at the hearing on Wednesday. He discussed the law which he considered to put a "carrot and a stick in management efficiency"--in effect, "de facto. rate regulation."

Commission officials reiterated that they merely copied the statute and used the term "public utilities." There was no intent to include municipals in the coverage. Parker was informed that, under the statute, the Commission does assess public utilities.

6.3(4)
et al

No questions re 6.3(4), 19.4(15)h or 20.4(15)h.

NURSING
BOARD

Ann Mowery and Jeanne Wilson were present for the Board of Nursing rules as follows:

NURSING BOARD OF [590]
Nursing practice for RN/LPN, 6.4(1), 6.5(1)re. 6.5(2) ARC 5137 12/5/81
Continuing education, ch 5 ARC 5215 1/2/85

6.4(1)
et al
ch 5

No questions re 6.4(1) et al.

Discussion centered on chapter 5 which had been in the revision process for 1½ years. Mowery highlighted changes. Hove noted that credit for out-of-state continuing education would be denied unless prior approval was granted. She favored reserving the right to deny that credit. Mowery recalled several problems in that area over the years. Licensees are familiar with the policy which the Board prefers. Mowery continued that licensing approximately 1000 per month places a great deal of pressure on their office to give credit when a course may not be worthy.

Schroeder referenced problems faced by those in border counties and Saturday class when approval would not be possible. O'Kane had found that nurses are very knowledgeable about their licensing requirements. Mowery stated that the Board produces a Newsletter four times a year with pertinent information. Tieden was advised that the Board has no authority over CE costs. However, there are 170 to 175 approved providers--the Board does not approve individual programs. Continuing education can be completed in one year--filing of CE certificates or reports is covered in the \$36 license fee.

LAW
ENFORCE-
MENT
ACADEMY

William J. Callaghan and Ben K. Yarrington appeared for the Law Enforcement Academy to review:

LAW ENFORCEMENT ACADEMY [550]
Definitions, decertification, and other editorial changes, chs 1 to 6 ARC 5227 1/2/85

Yarrington noted that the proposed rules will implement Code §80B.13 as amended by 84 Acts, ch 1246 [HF 123]. The Act provides mandatory revocation of a law enforcement officer's certification for conviction of a felony. In addition, a hiring authority can recommend decertification to the Academy Council.

LAW ENFORCE-
MENT ACADEMY
Continued
1.1

Nonsubstantive changes included consolidation of definitions. Royce questioned the definition of "hearing officer" in 1.1(80B). In his opinion, it should be clarified to be an individual employed through the Merit System and "presiding officer" should be defined. He was willing to work with the Department.

6.2(2)a

Schroeder brought up the reference to definition of moral turpitude in 6.2(2)a. Yarrington pointed out that it was defined at the direction of the ARRC several years ago. Admittedly, there is some discretion. Callaghan stated that all administrative remedies must be exhausted before the LEA would be contacted.

6.4(3)

Doyle questioned statement on rules of evidence in 6.4(3). After brief discussion, O'Kane recommended that the sub-rule be eliminated. Officials agreed to refer the matter to the Council.

PUBLIC
SAFETY
DEPARTMENT

Wilbur R. Johnson, Fire Marshal, Carroll H. Bidler and Connie White were present on behalf of the Department of Public Safety. The following agenda was presented:

PUBLIC SAFETY DEPARTMENT[680]
Private investigation and private security businesses, 2.1037a, filed emergency ARC 5186 ~~FE~~..... 12/19/81
Fire marshal, flammable and combustible liquids, 5.300, 5.301(5), 5.309, 5.310 ARC 5172 ~~N~~..... 12/19/81

Also present: Ed Kistenmacher, Petroleum Marketers of Iowa.

2.4(3)a

No recommendations re 2.4(3)a. There was discussion as to whether or not corrective legislation for 84 Acts, SF 449[ch 1235] should be sponsored by the ARRC or the State Government Committee. Tieden recalled that the Committee had referred the issue to the Legislature.

Motion

Schroeder moved that a bill be prepared and sponsored by the ARRC. Motion carried. Royce questioned whether the bill draft would be limited to registration by corporate executives or broader problems.

Bidler planned to work with state securities officials to resolve the bonding issue. Doyle brought up a gender question which was discussed by the Code Corrections subcommittee with respect to suggestion to change "watchman" to "security guard." It was pointed out there are watchmen who are not required to have security clearance with the Department of Public Safety. Bidler concurred that a license is required if "watching" is under contract or for more than one business. Bidler was willing to review the statute in this area but was of the opinion that it was clear.

ch 5

Johnson reviewed chapter 5 amendments which coincide with current National Fire Protection Association Standards. He called attention to American Petroleum Institute recommendations in Item 3 which exceed national requirements.

1/8/85

PUBLIC SAFETY DEPARTMENT Continued

Kistenmacher spoke in support of the rules on behalf of the petroleum industry which was willing to accept the financial burden because of environmental concerns. Discussion of location and cataloguing of abandoned tanks.

5.309(4)

In re 5.309(4), although Tieden had no opposition, he was curious as to how a "risk" would be located. Johnson cited a tank located next to a store as a high risk-- the fire marshal would make the determination. Committee members inquired as to the exception in 5.304(5). Johnson explained that 8-3.6 was originally in the old pamphlet but the National Fire Protection Association administratively changed its code books this year to make a separate book governing service stations. It is now contained in 30A.

PHARMACY EXAMINERS BOARD

Norman Johnson, Executive Secretary, represented the Pharmacy Board for proposed amendment to 9.2(5) published as ARC 5185 in 12/19/84 IAB. According to Johnson, the amendment clarifies that the Board chairperson has the right to vote in an administrative hearing. When so doing, the chairperson asks the vice chair to preside.

STATE PRESERVES ADVISORY BOARD

Larry Wilson, Director of Conservation Commission, was present for the following:

| | |
|--|--------|
| STATE PRESERVES ADVISORY BOARD[790] | 1/2/85 |
| Organization and operation, ch 1 ARC 5213 | 1/2/85 |
| Management of state preserves, ch 2 ARC 5214 | 1/2/85 |

Wilson reviewed Code chapter 111B, which established the seven-member State Preserves Advisory Board to locate, assist in acquisition of rare and unusual properties-- geological, archaeological, scenic, historical, etc. for preservation. Wilson continued that current Board members are particularly interested in land preservation.

1.5

In 1.5, Tieden questioned advisability of language in the last sentence with respect to the open records statute. Wilson responded that the Board wants to ensure that rare species will not be endangered. O'Kane suggested rewrite of 1.5 to eliminate the negatives. There was general discussion of various designated preserves.

2.1(2)c

Doyle noted possible gender problem in use of "man-made" in 2.1(2)c. Committee members learned that historical preserves date back to 1673.

CONSERVATION COMMISSION

Present for the discussion on behalf of Conservation Commission: Larry J. Wilson, Director; Richard Bishop; Terry Little; Bob Fagerland; Arnie John; Gene Hertel, Forest and Fruit Tree Reservations. Also present: Michael Cox, Revenue Department; Donald Scalise, Beryl and Brad Coulson, Stephen C. Penland, all interested citizens. The agenda follows:

| | |
|--|--------|
| CONSERVATION COMMISSION[290] | 1/2/85 |
| State migratory waterfowl, habitat, and trout stamp design contests, 73.2(1), 73.2(2), 73.2(3)"a" ARC 5193 | 1/2/85 |
| Migratory game bird regulations, 105.3(3) ARC 5194 | 1/2/85 |
| Cost assistance program to promote wildlife habitat on private lands, ch 22 ARC 5191 | 1/2/85 |
| Forest and fruit tree reservations, ch 63 ARC 5192 | 1/2/85 |

1/8/85

CONSER-
VATION
COMMISSION
ch 73

Discussion of chapter 73 amendments. Calls and several letters were received but no one attended the public hearing. Approximately \$40,000 to \$50,000 was derived from the program.

105.3(3)
Steel Shot

Bishop, as spokesman for the Commission, was hopeful that subrule 105.3(3) could now be implemented. The controversial provision will require use of steel shot on all lands and waters under the jurisdiction of the state Conservation Commission, the United States Government, or any county conservation board, with some exclusions for small farm ponds and streams. [See also page 3213]

Penland, owner of a gun shop as a hobby, expressed his strong opposition to the rules and cited excessive costs and unavailability of reloading components. Bishop declared that steel shot could be purchased in Oregon and that two dealers in Des Moines were carrying compatible components. Tieden was interested in the safety element. Bishop maintained there would be safety problems with any type of reloading. Penland argued that steel shot would definitely damage a shotgun.

Bishop had no problem with steel shot and knew of others who had no grooving of their barrels with it. He admitted that gun damage occurs but it was difficult to prove that steel shot was responsible. Penland contended that Federal Corporation and Winchester had quit displaying all their steel loads and a warning as to potential damage to some guns is placed on every box of steel shot.

O'Kane was excited about the prospects of improved ballistics and the other advantages of steel shot. Penland disagreed that ballistics would improve. He insisted that the crippling factor doubled with steel shot simply because hunters don't know how to shoot it. He referenced the film shown by Conservation Commission.

Beryl Coulson reiterated his opposition to the prohibition of lead shot use within 150 yards of certain areas and on ponds two acres or smaller. He spoke of reloading problems and reported that ten states have discontinued steel shot. Coulson contended that the Commission had failed to prove that Iowa is a problem area and called attention to the fact that sightings of eagles had increased. He mentioned the controversy over the Lacasine study and supported the study which revealed a higher crippling rate with steel shot.

Coulson expressed his frustration with the hearing process followed in developing the subrule and the unfair treatment of steel shot opponents in general. He recalled his anger at being accused of "statistical chicanery" by a Commission official. Coulson asked the ARRC to delay the effective date of 105.3(3). Brad Coulson concurred with Beryl's position.

1/8/85

CONSERVATION
COMMISSION

Scalise, a gun dealer, quoted statistics to support his opposition to steel shot. He was doubtful that public input had any impact on the Commission decision.

Wilson challenged Coulson with respect to allegations against the Commission. He admitted use of steel shot would take adjustment on the part of the individual hunter. However, it is a proven fact that lead shot contaminates and this problem can be addressed. Wilson had heard from hunters. Basically, sportsmen who are interested in perpetuation of wildlife will use steel shot. Wilson denied there was lack of leadership in the United States Fish and Wildlife Service.

Schroeder recommended that opponents of the subrule contact their legislators and request rescission of the subrule by law. He reviewed the Committee alternatives regarding 105.3(3). O'Kane added that the Committee determines whether or not an agency has statutory authority for the rule. It was obvious that Conservation has authority.

Bishop concluded that they had listened to all factions but Commission's responsibility was to represent the resource, by and large. The fewest mallards ever have come down the flyway this year and this was not totally due to weather. No committee action.

ch 22

In re 22.5(5), Tieden noted use of "atrazine" and asked Department officials to be sure other chemicals were not excluded. Tieden suggested use of "acceptable chemical" or "environmentally acceptable."

ch 53

Hertel and Cox offered background on changes in forest reservation law by 84 Acts, HF 2481 [ch 1222]. The Revenue Department has promulgated a rule to implement that law as well.

Tieden voiced the opinion that mandatory inspection of the areas the first year has placed a heavy burden on assessors in his area since there are so many reservations. Hertel said County Conservation Boards will help the assessors with the workload. Without inspection, the taxpayer will not receive the benefit. No action.

Recess

Committee was in recess at 4:55 p.m. to be reconvened at 9:00 a.m. Wednesday, January 9, 1985.

1/9/85

Reconvened Vice Chair O'Kane reconvened the Committee Wednesday, January 9, 1985, at 9:10 a.m. in Committee Room 116 with a quorum and staff present.

MERIT
EMPLOYMENT
DEPARTMENT

Clint Davis appeared for Merit to review:

MERIT EMPLOYMENT DEPARTMENT[570] 12/19/84
Holiday pay. 14.1065) ARC 5183 N

No recommendations were offered.

CIVIL
RIGHTS
COMMISSION

Artis Reis and Ta-Yu Yang represented the Civil Rights Commission for rules of practice, 1.4(3)a, filed, IAB 12/19/84 as ARC 5164.

According to Reis, the amendment will affect a number of their cases. Screening was attempted in order to process as many cases as resources would permit--caseload has increased while resources have not. There are over 200 cases backlogged. The Commission decided that a backlog was preferable to denial of claims. Reis assured Royce that "frivolous cases" would still be screened.

Royce envisioned possible liability for the Commission if small cases with obvious merit were delayed until it was too late for claimants to pursue other remedy. Reis admitted Royce had a valid point. Yang spoke in defense of the Civil Rights Commissioners and contended there was no perfect solution. Reis indicated that more resources had been requested. O'Kane spoke in support of the amendment.

EMPLOYMENT
SECURITY

James Hunsaker III, Joseph Bervid and Paul Moran were present for Job Service to review:

EMPLOYMENT SECURITY[370]
Voter registration. 1.7 ARC 5139 N 12 5 81
Employers' contribution and charges. 3.17(10) ARC 5168 N 12 5 81

1.7(2)e

O'Kane expressed opposition to 1.7(2)e and questioned the necessity of it. Bervid said the criteria was established by federal regulations to ensure that business at the counter would not be impeded. O'Kane was of the opinion that "h" would suffice for the whole rule.

3.17(10)

Bervid explained that 3.17(10) provides alternative methods by which a group may choose to assess various members for charges for unemployment benefits. Bervid cited a group of counties as an example. The Department will then bill the manager of that group for the total charges. This allows some flexibility in apportioning the cost as long as there is compliance with 96.7(13).

Schroeder returned to discussion of 1.7(2)g and recommended use of "shall" instead of "may." He questioned the manager's discretion in 1.7(2)f. Bervid was willing to provide Royce a copy of the U. S. District Judge's [Victor] ruling on the subject of 1.7

BOARD OF
REGENTS

1/9/85

Don Volm and Deborah Hunt appeared on behalf of the Board of Regents. Personnel administration, 3.39, 3.39(5), 3.89, ARC 5173, Notice, IAB 12/19/84 was before the Committee.

Volm explained that an employee who had permanent status and was promoted to a professional position could be reinstated in a vacant merit position without competing against outsiders on the register. However, a person on layoff would have precedence. Some Committee opposition was expressed. Volm insisted that individuals who had already competed to enter the Merit system should be spared a second competition. It appeared to O'Kane that the Merit system was being extended to a class of employees not in the system. Volm viewed the provisions as advantageous to both the employee and the institution involved. The Committee saw no problem with the second competition to enter the Merit system. O'Kane asked Volm to provide documentation when the adopted version is before the Committee. Volm was amenable.

No questions re 3.39.

GENERAL
SERVICES

Jack Walters and Jack Pitzer represented General Services for review of parking, amendments to chapter 10, ARC 5136, IAB 12/5/84. Also present: Maryjo Welch, state employee.

Walters explained the two changes since the Notice. O'Kane reiterated his position that the rules were excessive. Walters recalled that the rules had been expanded at the request of the ARRC. Tieden was told that parking tickets were issued by capitol security only.

Welch cited a problem with prohibition of more than one parking decal on a car when two members of a family work for the state. She suggested exceptions for those situations. Department officials took the position that this would compound parking problems. Committee members contended that General Services was forcing families to bring two cars when they might bring one. Walters declared the system cannot satisfy everybody's unique personal problems. Discussion of the fining process--\$7,000 parking fines were collected in 1984.

10.8(7)
10.10(3)

Tieden inquired as to method followed to determine the number of parking spaces for handicapped. Walters was unsure except that employees make application for the spaces. Schroeder suggested that 10.8(7) and 10.10(3) should contain a statement as to when the action would be initiated. Walters said employees were "callously ignoring the whole parking system." O'Kane thought a qualifier for parking tickets under appeal should be included in 10.8(7).

Doyle questioned 10.1(18) defining "capitol complex" with respect to "within 2000 feet of the capitol building." preferred "owned by the state of Iowa."

1/9/85

GENERAL SERVICES Continued

After further discussion, it was pointed out that the rules had become effective at midnight. Schroeder in the chair. Doyle advised Welch that she could petition the Department for a rule change.

FAMILY FARM AUTHORITY

William Greiner appeared for review of beginning farmer loan program, 2.3(1), ARC 5170, Notice, IAB 12/5/84. He reviewed brief history of the rule. Greiner said that 396 loans had been closed amounting to approximately \$31 million.

In answer to Parker, Greiner said there had been few defaults. Doyle questioned use of "permanent" resident in 2.3(1) and Greiner was willing to delete it. With respect to "beginning" farmer, Greiner stated that the focus was not on the age of applicants. No formal action. O'Kane resumed the chair.

BOARD OF DENTAL EXAMINERS

Constance Price appeared for the Dental Examiners Board to review the following:

| | |
|--|-------------------------|
| DENTAL EXAMINERS, BOARD OF[320] | |
| Advertising and professional notices, rescinds chs 26 and 27, filed emergency | ARC 5181 12/19/84 |
| Definitions, organization, 1.8, 1.9, 5.2(1), 5.2(4), 5.3 to 5.5, 6.1 to 6.4, 7.1(4), 10.2(1), 10.2(2), 13.1(2), 13.2(4), 14.2, 51.1(1) | ARC 5212 1/2/85 |
| Applications, 11.1, 11.2(2), 11.3(2), 11.4, 11.5(2), 11.6 | ARC 5211 1/2/85 |

chs 26, 27

Price told the Committee that chapters 26 and 27 were rescinded when it became apparent that the Board might be in violation of the Federal Trade Commission Act. The Board is working with both the Federal Trade Commission and the Attorney General's office in rewriting the rules. O'Kane thought there was a lag between the emergency filing and the adoption of rules. Enforcement of advertising practices will still be possible under the AG's Consumer Protection rules.

1.8 et al

Definitions and organization amendments were not changed from the Notice. In re 5.2(1), Doyle was told that Board officers do not have to be sworn in to assume duties following election. In response to Doyle, Price knew of no problems with "phony college degrees." She continued that foreign schools are not recognized and that certification from the school is required.

Price described the central regional testing service and the testing process. The cost for each state to administer its own examination would be prohibitive. Price said that thirty hours of continuing education were required for dentists and hygienists.

INDUSTRIAL COMMISSIONER

Robert C. Landess and Mary Weibel represented the office of Industrial Commissioner. Agenda was as follows:

| | |
|-----------------------------------|-----------------------|
| INDUSTRIAL COMMISSIONER[500] | |
| Contested cases, 4.2, 4.14, 4.17 | ARC 5208 1/2/85 |
| Settlements and commutations, 6.1 | ARC 5209 1/2/85 |

In an attempt to save costs to their agency and to Records Management, the Commission proposed to eliminate unnecessary filings in contested case proceedings.

1/9/85

INDUSTRIAL
COMMISSIONER
Concluded

O'Kane wondered if adequate documentation would be available if courts want to review a case, e. g., a twenty-year old medical services matter. According to Landess, it would not be the agency's responsibility to prove or disprove a claim--only to adjudicate whether or not the claim is there. In response to O'Kane, Landess thought it unnecessary for his agency to retain the evidence one way or the other.

Tieden questioned statutory authority and O'Kane suggested that Royce peruse it carefully.

4.17

Doyle noted that dentists were not listed under 4.17 and wondered if they were covered under all practitioners. Landess checked Code §85.27--although they rarely have a dental involvement, he admitted the point was well taken. No other questions.

PUBLIC
INSTRUCTION
DEPARTMENT
27.4

Charles Moench was present for review of the industrial start-up training program, 27.4(1), 27.4(3), ARC 5224, Notice, IAB 1/2/85. DPI would like to limit the scope to smaller industries in the state. The rules are intended to provide incentive for smaller industries to locate in Iowa.

O'Kane wanted assurance that Code authority existed and he questioned the preamble statement that "no public hearing is anticipated." Moench said that all interested parties had been contacted and were supportive--the Department did not anticipate that a hearing would be requested.

Info
Request

Tieden questioned authority for the limit in 27.4(1). O'Kane asked Moench to supply information with respect to the history of program preceding the \$75,000 appropriation.

REVENUE
DEPARTMENT

Carl Castelda, Ben Brown, Clair Cramer and Michael Cox were present for the Revenue Department. The following agenda was reviewed:

REVENUE DEPARTMENT[730]

| | | | |
|---|----------|-------|----------|
| Taxable sales, taxable and exempt sales determined by method of transaction or usage, sales and use tax on services, 16.27, 16.30, 18.34(1)"b," 18.34(2)"c," 18.34(3)"g," 18.36(2), 18.36(5), 26.38 | ARC 5180 | | 12/19/84 |
| Games of skill, chance, bingo and raffles, 7.2(1), 91.4, 91.5, 91.5(13), 91.6(1)"i," 92.3, 94.1, 94.5 | ARC 5178 | | 12/19/84 |
| Sales and use tax on construction activities, 19.13(1) | ARC 5165 | | 12/5/84 |
| Determination of net income, social security and railroad retirement benefits, 40.23 | ARC 5179 | | 12/19/84 |
| Inheritance tax 86.3(5), 86.2(10) to 86.2(16), 86.2(18), 86.3(3), 86.3(5), 86.5(7), 86.12(5)"b" | ARC 5166 | | 12/5/84 |
| Interest, calendar year 1985, 10.2(4) | ARC 5219 | | 1/2/85 |
| Taxable and exempt sales determined by method of transaction or usage, communication services, 18.20 | ARC 5220 | | 1/2/85 |
| Property tax credits and exemptions, 80.1(4)"a," 80.2(2)"c," 80.2(2)"m," 80.2(3)"b," 80.3(1), 80.3(4), 80.3(6), 80.3(7), 80.4, 80.5(1), 80.8 | ARC 5221 | | 1/2/85 |
| Penalty and interest, 44.3(5), example (j) | ARC 5218 | | |

Also present: Don Williams, Northwestern Bell Telephone Company; Kent Jerome, Iowa Telephone Association.

At O'Kane's request, Castelda reviewed the first set of amendments item by item. These rules were withdrawn earlier from a larger package of rules at ARRC request.

1/9/85

REVENUE
DEPARTMENT

Senate File 2330 [1984 Acts, ch 1305] was the vehicle for change in commercial amusement enterprises, no longer subject to tax. Rental, as well as the sale of tangible, personal property produced by or consumed in data processing, is subject to tax. Another amendment relates to taxation of executive search agencies. They do not enjoy the same exemption as private employment agencies for the placement of persons outside the state. A misplaced comma in the law limits that particular exemption. Although the error was not made in the Department's bill draft, Castelda was willing to seek corrective legislation to provide identical application of the law to both organizations. Tieden was told that the change would result in a small loss of revenue to the state.

- 18.34(2)c O'Kane referred to 18.34(2)c as needing clarification with respect to taped programming being considered as tangible personal property. Castelda noted that other issues associated with rental of tangible personal property--motion picture rental film and broadcasting tapes--will be addressed in a separate filing. Castelda added that the Department maintains its original position that rentals of video tapes, movies to movie theaters and canned programs to broadcasting stations are subject to tax. A request for concise statement had been received and the Department had responded.
- 7.2 et al Amendments to 7.2 et al resulted from a task force committee process last year. An appeal process will be available when the Department denies an application for license.
- 91.6(1)i Doyle noted that "location" was defined in 91.6(1)i. He posed question re a Sioux City group that wanted to rent a building for bingo on a particular day while others would rent it for bingo on different days. Cramer and Castelda indicated the license application would need to be checked since there are restrictions.
- 91.4(1) O'Kane questioned time frame in 91.4(1), second paragraph. He preferred flexibility and wondered if date could be changed rather than deny application. Castelda replied that the law precludes conducting of bingo until the applicant actually has the license and the Department needs thirty days to review applications. In most instances, if the applicant wants a license but has no planned event, application could be filed and the Department could change the date. For a general two-year license, with no event change, this can be corrected by telephone or letter.

O'Kane was unconvinced that new language in 91.4(1) provided that flexibility but Castelda thought "may" allowed discretion.

Responding to Schroeder, Castelda said the word "location" was found in the Act--the definition was not.

1/9/85

REVENUE
DEPARTMENT
Continued

The matter of closed locations is being litigated. It has been the Department's experience that different organizations will involve some of the same people.

19.13(1)

Castelda gave history on subrule 19.13(1) and explained that the amendments were only clarifying. However, Iowa Sheet Metal Contractors have voiced opposition to the rule.

40.23
ch 86

No recommendations for 40.23 and Castelda said that amendments to chapter 86 reflect legislative changes. Interest rate for the 1985 calendar year has been determined by the director to be ten percent, up one percent from last year. Monthly computation, as required by statute, will be the same.

10.2(4)

18.20

Discussion of rule 18.20 which was basically unchanged from the Notice. Since communications services can be between machines as well as people, the rule is being updated to reflect that concept. Industry has asked the Department's position on taxing burglar alarms and smoke detectors which are tied into the telephone switchboard. It was the Department's opinion that a statutory definition of communication was needed.

Jerome said that the Iowa Telephone Association would probably file another petition for declaratory ruling as to which services are taxable. They were of the opinion that call forwarding would not be two-way communications and would not be subject to tax. Parker asked how much money was involved and a Northwestern Bell representative estimated over \$200,000 a month. Castelda emphasized that the definition of communication did not change--it has always been two-way.

18.20(3)

Re 18.20(3)e, the Department and industry saw no problem. Castelda said that the statute of limitation on tax refunds was five years.

No questions re amendments to chapter 80 and 44.3(5).

Minutes

Doyle moved approval of the December minutes. Motion carried.

Lunch

Committee was in recess at 12:05 p.m.

Reconvened

Vice Chair O'Kane reconvened the meeting at 1:40 p.m. with a quorum present.

AGRICULTURE
DEPARTMENT

Agriculture Department was represented by Bette Duncan, J. D. Hook, John R. Whipple, Galen Robertson, and John Hinshaw. The agenda follows.

Registration of Iowa-foaled horses and Iowa-whelped dogs, 14.1, 14.2(1) ARC 5217, also filed emergency ARC 5216 ~~1/2/85~~ 1/2/85
Hotels, toilet and lavatory facilities, 39.4 ARC 5189, also filed emergency ARC 5188 ~~1/2/85~~ 1/2/85
Fertilizer and soil conditioners, 8.5, 8.21 to 8.24, 8.6 ARC 5140 ~~1/2/85~~ 1/2/85
Food establishments, 38.8(2), 38.8(3) ARC 5171 ~~1/2/85~~ 12/19/84

1/9/85

AGRICULTURE
DEPARTMENT
continued
14.1, 14.2

The Committee learned that Hinshaw will administer rules pertaining to horse and dog breeders funds. Amendments to 14.1 and 14.2 provide compliance with U. S. Trotting Association and Quarterhorse Association rules. In re registration of Iowa-foaled thoroughbred horses, Duncan said the January 1 deadline would be temporarily waived to January 18 through public administrative policy and announcement. Hinshaw indicated that most registration was completed.

39.4

Duncan introduced Robertson who provided background on rule 39.4 which will eliminate the recommendation that hotels have toilet facilities available to the public. This will benefit smaller hotels and motels. Schroeder opposed the change but it was pointed out that most of the small motels/hotels had no facilities. O'Kane declared the Department was diminishing a public benefit by a filed emergency rule which prohibits public input. Duncan reminded ARRC that the amendment was also under Notice.

Doyle was informed that the Salvation Army and gospel missions were not considered as hotels. Duncan was willing to clarify that "...every guest room shall have toilet and lavatory facilities equipped with hot and cold running water."

8.5 et al

Hook explained chapter 8 amendments which establish rules relative to information needed for evaluation of commercial fertilizers and soil conditioners for registration. Tieden excused.

Under current law, only scientific data is accepted-- testimonials are not adequate for the product to be registered by the Department. Hook continued that most available data relates to commodities which are not grown in Iowa, e.g., cotton and peanuts. The Department has attempted to provide a tool where, if a company can establish a beneficial effect with their product in Iowa, or can submit data from other states relating to Iowa products, that would be acceptable. A public hearing resulted in positive comments on the proposed rules.

Robertson advised O'Kane that the Advisory Committee established by the 68th General Assembly [Code §206.23] makes recommendations to the Secretary of Agriculture but does not grant registration.

Schoeder took the position that use of "appears" in 8.5 provided much latitude. He preferred the old language. Duncan pointed out that some of the language was taken from Code Chapter 200. She explained that registration of a product is permanent and can be revoked only through a hearing process. Another aspect of the rules will allow the Department, for probable cause, to call in a "gray area" product and grant a provisional registration while the company provides additional data to prove the product's worth.

1/9/85

AGRICULTURE
DEPARTMENT
Continued

Duncan referred to Code §200.5 which is reflected in the rule. O'Kane could foresee the rule creating possible jeopardy for previously registered products. Duncan stressed that the Department had not expanded previous powers--only created minimal standards for industries seeking registration. Hook contended that, under the provisional registration portion of the rules, companies with "old registered products" would have an opportunity to demonstrate the effectiveness of their product. Responding to Schroeder's concern, Hook said anhydrous ammonia installations existing in 1968 were grandfathered in and not affected by rule. At that time, new distance standards were created. Hook pointed out that requisitions would have to be made for new or additional storage. Schroeder preferred a date certain for the grandfather provisions.

8.5

Duncan recalled that this "grandfathering" had been questioned by some cities. She continued that although Code §200.14 does not specifically grandfather these installations, the Department has always taken the position that it was legislative intent. Distance requirements in 8.6 were taken from the new ANSI standards. Schroeder reiterated recommendations to eliminate "appears" or define it--8.5.

38.8

Robertson gave background on changes in 38.8(2) and 38.8(3). Favorable comments were received from the industry; convenience stores, small grocery stores. Schroeder questioned whether hot water temperature should be 170° F. in 38.8(3). Robertson said the provision was taken from the FDA manual for retail food. O'Kane suggested a range or minimum of 160° F. or more. Duncan was amenable. No other questions.

PLANNING &
PROGRAMMING

Lane Palmer was present on behalf of the Office of Planning and Programming to review community development block grant nonentitlement program, 23.1, filed emergency, ARC 5174, IAB 12/19/84.

Palmer said the emergency amendment would remove an inadvertent restriction to cash only as a local resource. Parker asked for an example under the revision and Palmer cited land for a community center, water tower, etc. Schroeder was told there were 310 applications of which 55 to 60 would receive grants. There is roughly \$5.8 million in applications with a \$3.6 million set aside. Only \$1.2 million is available this quarter. Palmer responded to Parker that awarding on a quarterly basis was preferable to an on-demand basis.

AGING
COMMISSION

The Committee reviewed the 70-day delay imposed on the following rules:

Miscellaneous amendments. 2.1(2), 2.5(4)"u," 6.9(1)"g," 6.9(2), 7.3(1)"n," 8.42(2), 9.22(2) ARC 5083 (Delay published IAB 12/19/84) F..... 11/7/84

1/9/85

AGING
COMMISSION

Ron Beane was informed that no action would be taken to shorten the delay. [70 days from December 12, 1984]

SECRETARY
OF STATE

Mike Burdette and Louise Whitcome presented the following:

U.C.C. forms, rules of practice, 1.311(c) 1.4, 1.5(1), 1.6, 1.7, 4.5, 7.3, 7.4 ARC 5207 1/2/85
Election forms and instructions. 11.3 ARC 5142, also filed emergency ARC 5141 12/5/84

Burdette briefly explained action re the filed rule--to provide billing procedure for Uniform Commercial Code and clear up some minor problems with corporations laws. In response to recommendation by Schroeder, Burdette was amenable to clarifying 7.3(6) in future rulemaking. Burdette indicated they had no problem in accommodating the private sector in copying records. One person from Iowa Public Service copies UCC documents and microfilms them with their own equipment. The state furnishes one desk and chair for public use.

Whitcome told the Committee that 11.3 provides a time after which absentee ballots received after election will not be counted--if no date can be read on either the return carrier envelope or the affidavit envelope. She pointed out that, in the last election, the postal service did not always postmark. Although legislation would be preferable, the Department sought the rule as a temporary solution.

Doyle was concerned that the last sentence of 11.3 could preclude counting of ballots which were hand-carried to the Auditor. Whitcome said the rule was applicable only to ballots received after the election. The statutory provisions were perused. Doyle contended a literal interpretation did not reveal this and he suggested clarification. After discussion, Doyle recommended that the Secretary of State suggest corrective legislation to the State Government Committees.

ATTORNEY
GENERAL

Earl Willits, Deputy Attorney General, appeared for adopted Chapter 1, entitled "General Provisions," published in IAB 1/2/85 as ARC 5223. Royce, speaking for Hove who was in another meeting, questioned whether grounds to decline an opinion request were appropriate in 1.5(3)c or d. Willits said this was a codification of past practice. He emphasized that questions they address must be those of general public policy not involved with specific factual cases.

1.5(3)

O'Kane maintained that the question of law may be "buried in a factual situation." In those instances, Willits said the AG would address only that question. He compared their opinions with declaratory rulings that a court may get. Discussion of time frame for rendering opinions. O'Kane explained the ARRC options for formal action on rules and urged expediency in responding to ARRC opinion requests.

1/9/85

MEDICAL EXAMINERS

James Krusor, Executive Secretary, Board of Medical Examiners, appeared before the Committee. Also present: Katy Gammack, Ed Friedmann and Roy Case, Iowa Physicians Assistants Society.

136.7
Motion to
Lift Delay

Krusor reported that the Board was willing to amend rule 136.7--peer review committee--by substituting "shall" for "may" in the first sentence. Chair entertained a motion to lift the delay. [70 days from November 14, 1984] Doyle so moved and Parker seconded. Carried.

135.206,
135.207,
135.208

Doyle also moved to lift the 70-day delay from rules 135.206, 135.207 and 135.208 [70 days from December 12, 1984] Carried.

O'Kane thanked Representative Schroeder for his many years of service to the Committee and the Legislature and wished him good luck in future endeavors.

NO AGENCY REPS

No agency representatives were requested to appear for the following:

- CORRECTIONS, DEPARTMENT OF[291]
Board of parole interviews, 20.13, filed emergency ARC 5162 ... *EA* 12/5/84
- TRANSPORTATION, DEPARTMENT OF[820]
Signing manual, (06.K)2.1 ARC 5160 12 5 84
- TRANSPORTATION, DEPARTMENT OF[820]
Vehicle registration and certificate of title, (07.D) 11.2(11)"a"(3) ARC 5190, FILED EMERGENCY 1/2/85

Adjourned

Parker moved for adjournment at 3:24 p.m. Carried.

Next Meeting

Next meeting was scheduled for Tuesday and Wednesday, February 12 and 13 at 7:00 a.m.

Respectfully submitted,

Phyllis Barry

Phyllis Barry, Secretary
Assisted by Vivian Haag

APPROVED:

Burl E. Piel

CHAIR