

MINUTES OF THE REGULAR MEETING
of the
ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of Meeting: Tuesday, March 8, 1977, 7:45 a.m.

Place of Meeting: Senate Committee Room 322, Statehouse, Des Moines, Iowa.

Members Present: Senator Berl E. Priebe, Chairman, Senators E. Kevin Kelly and Minnette Doderer, Representatives Donald V. Doyle, Laverne Schroeder and W. R. Monroe, Jr., Vice Chairman. Priebe excused to attend another meeting, Kelly took Chair.

SOCIAL SERVICES Judith Welp, Income Maintenance, and Stephen Robinson, Assistant Attorney General, represented the Department for review of the following:

Medical assistance, 75.1(4)	2/23/77
ADC, 41.6(1), 41.6(5)	2/23/77
Child care in foster homes, 41.8(5)	2/23/77
Subsidized adoptions, 138.1, 138.3(2)	2/23/77
Children in need of assistance, ch 141	2/23/77

Welp said the amendment to 75.1(4) was made at the recommendation of the legislative committee which studied the Medicaid system during the interim.

Discussion of Chapter 141 which set forth hearing procedures for children who violate parole from one of Iowa's children's institutions. Said rules were put into effect under emergency provisions 12/17/76 to expire 6/15/77, followed by the Notice before the Committee today. Welp said the rules under Notice had been modified in 141.3(2) to provide that if a hearing is required it be held within fifteen calendar days of the date from which a youth is held. The emergency rules provided for ten days.

Doderer expressed opposition to 141.3(2) as being unclear as to whether the provision would be applicable to children in need of assistance as well as to delinquents. She wanted assurance that the rule would apply only to delinquents.

Doderer moved to object to 141.3(2) as going beyond the law, in particular the clause: "the youth may be held in a children's institution or other appropriate facility pending a hearing or informal settlement of the matter."

Department officials indicated the rules were not intended to apply to nondelinquents but agreed to redraft the rules to clarify the matter before filing them.

Doderer withdrew her motion to object.

SOCIAL
SERVICES
Cont'd

Welp said amendments to 41.6 were merely clarifying.

Discussion of 41.8(5). Schroeder thought the allowance for foster care children during home visits should be \$5.00 per diem regardless of the number of days involved. The rule provided \$5.00 for the first nine days and \$3.00 for those in excess of nine.

Welp pointed out it is handled by postpayment procedure but the department would review the matter.

No recommendations were made for 138.1 and 138.3.

ENVIRONMENTAL
QUALITY
Ch 16

David Bach, Hearing Officer, explained proposed amendments to Chapter 16 of rules of the Water Quality Commission. Bach stated that the Department first adopted water quality standards in March 1966. The federal Water Pollution Control Act mandates that state standards be reviewed every three years and the amendments before the Committee were as a result of such a review.

8:15 a.m. Monroe arrived.

Schroeder expressed concern as to Item 6 amending 16.2(2)--antidegradation policy--that discrimination could exist in application of the rule.

Monroe took the Chair.

HEALTH

Rick Middleton and Peter Fox represented the Health Department for review of the following rules:

Health care facilities, without notice, chs 57 to 59	2/23/77
Chiropractic board of examiners, without notice, 141.6, 141.8	2/23/77
Speech pathology and audiology, ch 155	2/23/77
Termination of pregnancy reports, ch 7	2/9/77
Code of ethics rescinded (Embalmers) 147.6	2/9/77
Mentally retarded, care facilities, ch 64	2/23/77
Mentally retarded, resident facilities, ch 63	2/23/77
Optometry examiners, license fees, 160.4(3)	2/23/77
Optometry examiners, license renewal, chs 143, 144	2/23/77

Discussion of amendments to Chapter 57, Item 3.

Middleton indicated that the Department would revise the new subrule 57.17(10) since opposition had been voiced by various care facility operators. The subrule provided: "No nonambulatory resident shall be admitted or retained in a residential care facility." Opponents contended the rule would preclude persons in wheelchairs from being in a residential care facility. Doderer moved to delay the rule for further study.

Middleton indicated they would amend 57.17(10) to conform with requirements in 58.35(7) of their rules governing intermediate care facilities.

HEALTH
Cont'd
Chiroprac-
tors

Doderer withdrew her motion to defer Item 3.

Dr. Ronald Masters, Chairman of the Board of Chiropractic Examiners, appeared for review of amendments to their rules which were filed without Notice and published 2/23/77. Items 1, 3 to 5 were recommendations of the Administrative Rules Review Committee. Masters summarized previous action taken concerning the rules and amendments thereto.

Schroeder suggested that the Committee proceed with other business since the subject of chiropractic had been well covered at previous meetings.

In response to question by Dr. Russell Brown, Monroe stated that the matter in 141.6(3)d was referred to the legislature to act as an "alert mechanism in that a problem exists."

Brown reiterated his opposition to "physical therapy being practiced by chiropractors."

Nolden Gentry, Des Moines Attorney, noted that the matter will be before the Supreme Court in April.

Committee members were in agreement that Items 1, 3, 4 and 5 would overcome their objections to the rules. Royce pointed out that the Board's language in Item 1 varied slightly from that proposed by this Committee.

Schroeder moved to accept the language in Item 1 to overcome the objection. Carried.

The objection to 141.6(3)d [Item 2] would remain.

MINUTES

Moved by Doyle to dispense with reading of minutes of the February meeting and that they stand approved. Carried viva voce.

Pathology

Neal Verhoof, Chairman, Board of Pathology and Audiology, explained the two changes in their rules. [Ch 155] No recommendations were made by the Committee.

Abortion

Dr. Alvin Bostrum, Medical Consultant to the Department, explained proposed 7.1 relating to induced termination of pregnancy reports, pursuant to authority of §135.40 of the Code.

Doderer questioned authority for the rule.

Bostrum said that data collected from the reports would enable the Department to determine the abortion rate in relation to the birth rate and learn the reasons for abortions. They also would be co-operating with the national reporting program. He emphasized that patients' names would not be revealed.

HEALTH
Cont'd

Fox quoted from §135.40 of the Code.

Doderer contended that the rule exceeded the scope of the law since the law uses "may provide information ..." and the rule by use of "shall" makes the reporting mandatory.

Fox indicated the Board would probably consider changing "shall" to "may" in the rule since most physicians would co-operate regardless.

Doderer noted that another statute requires the reporting of all deaths and the causes which would include induced abortions. Bostrum stated that many deaths resulting from abortions are not reported as such. Doderer contended that the Department could require that death from induced abortion be reported under the mandatory death reporting statute but not under the permissive section 135.40.

Motion Doderer moved to object to 7.1 on the grounds that it was beyond the statutory authority granted in 135.40.

Motion Kelly moved to amend the Doderer motion by adding the sentence, "The objection may be overcome by striking "shall" and inserting "may" in lines 1 and 4 of the rule."

Doderer voiced opposition. She questioned whether this was correct procedure. Further, she pointed out that the Department, by its own admission, did not enforce mandatory reporting of communicable diseases. She could foresee that the proposed amendment would result in distorted reporting of abortions.

Discussion of the number of votes which would be required for approval of the amendment. Chairman Monroe ruled that 3 ayes would be sufficient.

Monroe questioned use of the words "termination of pregnancy" in 7.1. He noted that use of drugs which induce labor to accelerate delivery would result in a "termination of pregnancy" and this should be reported under the rule as drafted.

Doderer pointed out that "termination of pregnancy" is not defined in the Code. She recommended that the Department use "abortion" which is defined.

The Kelly amendment to the Doderer motion was approved with 3 ayes. Doderer voted "no."

Objection The motion to object was approved as amended by voice vote.

HEALTH
Cont'd

Claude Nichols, Chairman Board of Optometry, explained proposed amendments to 160.4(3) and Chapters 143 and 144. Renewal fees would be reduced from \$40 to \$35.

Discussion of 144.1 relating to optometric study compliance. Monroe raised question as to authority for 144.1(1) and Nichols cited §154.6 of the Code.

Doyle recommended that the word "more" be substituted for "all" in line 1 of 144.1(3).

Kelly expressed opposition to 144.1(3)d which provided that meetings or seminars for continuing education be approved in advance by the Board. He recommended that such approval be discretionary -- before or after the program.

Priebe returned to meeting but asked Monroe to continue in Chair.

Nichols commented that the rule on continuing education had been in effect since 1936 but agreed to review it further.

PUBLIC
SAFETY
3.13

Mike Rehberg represented Public Safety for review of proposed 3.13(3) and filed 3.13(1), (2) published 2/9/77 relating to breath and urine collections for the purpose of determining alcohol or drug content of person's blood.

Monroe commended the department for being so thorough in setting out the procedure to be followed by peace officers.

Schroeder thought 3.13(3)c could be further clarified.

Question was raised as to use of "empty" in 3.13(3)e.

REGENTS
Ch 3

Donald Volm, Merit Division, appeared for the Regents Board to explain proposed amendments to Chapter 3 of their rules relating to employees. 2/23/77 Supplement

He indicated the amendments were basically for clarification.

In response to Schroeder, Volm said 3.39(5) was clarified in re payment to reinstated employee.

Substantive changes included revision of rules in re intermittent appointments to comply with S.F. 1285 [66GA, cn 1066].

The disqualification of applicants who are within one year of retirement was changed to apply only to those who have reached retirement age. When merit increase is deferred, a new date is established.

Committee made no recommendations.

TRANSPORTA-
TION DEPT.

The following rules of Department of Transportation were before the Committee:

TRANSPORTATION [820]

Primary road access, [06.C] 1.1, 1.2, 1.10—1.14

Railroad crossings, [06.C] ch 3

Inspection handbook, [07.E] 21.13

2/9/77

2/23/77

2/23/77

TRANSPORTATION Larry Hintz told the Committee that recommendations of this
Cont'd Committee had been incorporated in [06,C] chs 1 and 3.

Monroe was critical of [06,C]1.1(3) which provided that "the commission shall at all times reserve the right to make exceptions to any and all rules where the exercise of sound and reasonable judgment indicates that the literal enforcement ... would effect undue hardship on any interested party ..."

Chapter 3 was acceptable as published.

Shirley Robinson, Motor Vehicle Division, explained [07,E] 21.13 in re inspection fee increases. The amounts set out in the schedule in 21.13(4) would be reduced four cents in each category which was published under Notice. In response to question by Monroe, Robinson said inspection station owners and dealer associations were pleased with the proposed increase. She added that the public would have an opportunity to present their view 4/5/77. Schroeder was concerned that the general public would not be aware of the changes. It was consensus of the Committee that the public should be apprised of the changes by some method in addition to the IAC.

Recess Chair recessed the meeting at 9:55 and reconvened it at 10:00 a.m.

AGRICULTURE Persons representing Agriculture included Betty Duncan, Legal Counsel, Dr. Elliot Butler, Richard Dennler and Myron VanCleave. The following rules were before the Committee:

Egg production, 35.1	2/9/77
Weights & measures, 55.29, 55.33, 55.43	2/9/77
Livestock identification, filed emergency 18.4(10)	2/9/77
Rule changes, 1.4, 1.5	2/23/77
Test for abnormal milk, 30.20, 34.5	2/23/77
Milk samples, 30.12	2/23/77
Private applicators emergency certification, 10.28	2/23/77
Livestock exhibition health certificate, 16.18	2/23/77

Amendment to 35.1 was proposed in accordance to federal stature according to Butler.

Amendments to Chapter 55 had no response from the public. Committee had no recommendations.

Amendment to 18.4(10) was intended for clarification and had been suggested by this Committee.

Public hearings were yet to be held on the remaining five proposals.

AGRICULTURE
Cont'd

Schroeder wondered why 30.20(5) limited to two the number of additional sample tests of herd milk.

Duncan pointed out that 30.12 would be corrected to change "should" to "shall" in line 1.

Discussion of 10.28 in re certificates to private applicators for single purchase/single use of restricted pesticides in situations declared to be emergency the the Department.

Priebe took the position the rule was too restrictive. Duncan indicated it was patterned from a South Dakota rule.

Winton Etchen, Iowa Fertilizer and Chemical Association, suggested that the individual sign the affidavit and purchase once and then agree to become certified.

Duncan explained that the form is filled out after the individual makes the purchase and reads the label. This would ensure that a person purchasing restricted pesticides had read and understood labeling.

In re 16.18 concerning pseudo rabies testing for livestock intended for exhibition at fairs, Butler said no opposition had been voiced by fair officials.

Doyle recommended that "shall" be substituted for "must" in 16.19(3). He also noted the omission of cats from 16.19(3). Butler responded that not many cats are shown at county fairs but had no opposition to including them in the rule.

Monroe questioned the Department's authority to regulate county fairs. Duncan cited Code Chapters dealing with disease and control thereof, e.g. 166A, 166B.

Monroe took the position the rules should be of general application--not singling out a specific gathering such as county fairs.

No formal action was taken by the Committee on Agriculture proposed rules.

VOTER
REGISTRATION
4.3, 4.4

No comments were voiced by the Committee concerning 4.3 and 4.4 relating to data process contract specifications proposed by the Voter Registration Commission.

CONSERVATION

The following rules of Conservation Commission were acceptable:

CONSERVATION COMMISSION [290]
Fishing season, ch 108
Inland commercial fishing, ch 110

2/23/77
2/23/77

CONSERVATION COMMISSION [290] N
Safety equipment, 27.13(7)

2/9/77

3-8-77

RECORDS MANAGEMENT COMMISSION

Christine Badeke, State Records Administrator, explained Commission proposed rules relating to organization and responsibility, being Chapters 1 and 2, published in IAC Supplement 2/9/77. Basically, their Records Management Manual would be adopted as their program.

Monroe requested the Department to bring substantive material in Chapter 2 before the Committee during the interim. He also raised question concerning the last sentence of 2.4 which read: "The records management division will charge a fee as necessary to recover costs of the binder, contents, printing and mailing costs." He suggested the fee be set out in the rule.

REVENUE

Gene Eich appeared in behalf of the Revenue Department for review of the following rules of Revenue:

REVENUE [730]

Freight line and equipment cars, ch 75, emergency after notice

2/23/77

REVENUE [730]

Appeals, 2.4—2.6

Freight line and equipment car tax, ch 75 (See also filed)

2/9/77
2/23/77

Eich said the rules which were filed under emergency as well as normal rulemaking procedures were intended to implement Chapter 435 of the Code on valuation and taxation of freight lines and equipment car companies. The rules set out the method to be followed by the director in taxing these companies as well as providing information concerning required reports for said companies.

Ned Stockdale, representing General American Transportation Corporation, distributed a written statement to Committee members wherein he set out reasons for opposition to the rules. Five other persons representing railway equipment car companies concurred in views expressed in the statement. Opponents thought the rules exceeded statutory authority granted in §435.7. They interpreted the rules to increase tax as much as 3000 to 7000 percent in some instances. They also objected to rules being promulgated on the emergency basis.

Harry Greiger, Assistant Attorney General, briefly explained the reasons for filing under emergency provisions.

Monroe moved the following objection to filed emergency rules Chapter 75 of Revenue:

REVENUE
Objection

The Committee objects to chapter 75 of the revenue rules on the grounds that by promulgating the chapter as an emergency rule goes beyond the statutory authority granted by §§17A.4 and 17A.5 of the Iowa Code. The Committee believes that in fact no real emergency exists and that by its use of the emergency provisions of Chapter 17A of the Code the department is merely attempting to avoid the public participation and waiting requirements of the normal rule-making procedures. The Committee further notes that the department has had ample time to prepare and adopt rules under the normal procedures.

Motion to object carried unanimously.

Economic
Impact
Ch 75

Kelly moved that the Department of Revenue be requested to prepare an economic impact statement on the filed emergency rules. Motion carried unanimously.

There was no discussion of Chapter 75 of Revenue rules published under Notice.

Rules 2.4 to 2.6 in re appeals to state Board of Tax Review were acceptable.

LIBRARY
DEPARTMENT

James Gritton, Law Librarian, appeared before the Committee for review of Chapter 1 of Library rules, published 2/9/77.

Discussion centered on the Law Library Division.

Monroe raised question as to what were "court officers" referred to in 1.21(2). He took the position the rule which related to loan provisions was discriminatory since only a limited class of persons would be permitted to borrow books.

Motion

Monroe moved to object to 1.21(2) as follows:

The Committee objects to filed library rule 1.21(2) on the grounds that the rule is arbitrary and unreasonable in that it does not allow the general public to check materials out of the state law library.

Deferred

Vote on the motion was temporarily deferred.

Gritton commented that the library is not equipped to withstand pressure from large numbers of law students.

GENERAL
SERVICES
Ch 10

Stanley McCausland, Director of General Services, and Jack Linge, Legal Counsel, were present to answer questions concerning parking rules, being Chapter 10 published 2/9/77.

There was discussion of a petition to the Department for adoption of a rule to permit multiple decals for a vehicle whereby the vehicle could be parked in various lots.

McCausland pointed out that the present system is working well but allowing vehicles to show multiple decals could "get out of hand." Too many "flosters" from lot to lot could create

GENERAL
SERVICES
Cont'd

a situation whereby some lots would be unable to accommodate the vehicles normally assigned there.

Monroe expressed opposition to 10.6(4) which read: No vehicle operated by a state employee may display more than one state capitol complex parking decal on the same vehicle."

Doderer brought up the problem of husband and wife who are working in different buildings but sharing one vehicle. McCausland responded that it would be impossible to respond to individual requests but he did not think undue hardship would be imposed on anyone. He emphasized the purpose of the decal was to identify state employee vehicles so space can be provided for public parking, as well.

Motion

Monroe moved the following objection:

Objection
10.6(4)

The Committee objects to filed general services 10.6(4) on the grounds that it places unreasonable restrictions on employee parking privileges. The Committee notes that the rule may cause hardship to couples or groups who work in different parts of the capitol complex and yet may display only one decal on their vehicle.

McCausland indicated that two persons in a vehicle could be considered a "pool" and they have a choice of one lot.

Monroe motion to object carried viva voce.

Doyle raised question in 10.6(2) as to the limitation of two days for an employee to have a vehicle registered. McCausland agreed the rule should be clarified.

Monroe questioned McCausland as to the authority for use of portable stop signs at the entrance to the capitol lot. McCausland responded that it was his opinion this could be done in carrying out the duty of regulating parking.

Noon Recess

Chairman Priebe recessed the meeting at 11:15 to be reconvened at 12:45.

Reconvened at 1:15 with Priebe in the Chair.

LIBRARY
DEPARTMENT

The Monroe objection to the Law Library rules was taken up. Vote on the motion showed 4 ayes. Kelly and Doyle voted "no." Objection carried.

The following rules were acceptable to the Committee:

3-8-77

MERIT
NURSING BOARD
PUBLIC INSTRUCTION

MERIT EMPLOYMENT [570]
Notice amended, separations 11.1(3)

2/23/77

Reduction in force layoff, 11.1(3) (Carried over)
Appeals, 12.9 (Carried over from Feb. meeting)

1/12/77
1/12/77

NURSING BOARD [590]
Notice of license suspension, 1.2(1)

2/9/77

PUBLIC INSTRUCTION [670]
Standards for common carriers, 22.43

2/9/77

COMMERCE

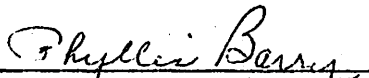
Michael May, Commerce Counsel, explained reasons for termination of notice concerning 22.4. The Department had been petitioned to promulgate the rule in regard to telephone utility customers. The Commission published the petitioner's suggestion and after considering the proposal determined that, if adopted, it would not be administratively feasible and would unreasonably discriminate between classes of customers.

May provided copies of the order terminating the rulemaking proceeding, being Docket No. RMU-76-1.

It was suggested that this Committee delay for one week the May meeting. It would be held on May 17 instead of May 10.

Chairman Priebe adjourned the meeting at 2:40 p.m. Next regular meeting to be held Tuesday, April 12, 1977 at 7:15 a.m. Committee Room 322.

Respectfully submitted,


(Mrs.) Phyllis Barry
Secretary

APPROVED

Chairman

DATE _____