

MINUTES OF THE REGULAR MEETING
of the
ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of Meeting: Tuesday, December 13, 1977, 9:30 a.m.

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

Members Present: Senator Berl E. Priebe, Chairman; Representatives Laverne Schroeder and Donald V. Doyle, Senators E. Kevin Kelly and Minnette Doderer, Representative W. R. Monroe, Jr., Vice Chairman.

Also Present: Joseph Royce, Administrative Co-ordinator.

PLANNING AND
PROGRAMMING

Representing Planning and Programming, Don Appell appeared to present the following filed rules to the Committee:

Building code—mobile home, energy efficiency standards, 5.630, 5.635, 5.800 11/30/77

Appell reviewed the rules pertaining to mobile home anchorage and support systems which will go into effect on January 1, 1978. He also reviewed the state building code thermal and lighting efficiency standards, however, objections to this section of the rules (630-5.800) were made by the Energy Policy Council at the meeting in November therefore the Building Code Council at their January meeting is going to review and reconsider this proposal.

MOTION TO
CHANGE AGENDA

Schroeder moved to change the agenda as afternoon commitments by committee members could present a conflict with the scheduled time for the Health Department's presentation on immunization. Doderer moved, after discussion, to delay voting on Schroeder's motion to delay until the Committee had more time to see if the agenda was running on schedule or not. Doderer's motion carried unanimously.

MOTION TO
DELAY

DEPARTMENT OF
ENVIRONMENTAL
QUALITY

Dave Bach appeared before the Committee to discuss the following filed rules:

Anaerobic lagoon, effective date of amend. to 1.2, filed without notice 11/16/77

Permits, effective date of amend. to 3.1, filed without notice 11/16/77

Incinerators, odorous substances, effective date of amend. to :
4.4 and 4.5, filed without notice 11/16/77

Odor permits for anaerobic lagoons, 1.2, 3.1, 4.5 , filed without notice 11/16/77

Bach stated that the department delayed the effective date to modify the rules on permits for anaerobic lagoons to 7-1-78. In answer to a question by Schroeder, Bach stated that those permits which would be processed before the effective date would be handled according to the rules in force as of that date. Bach stated that hearings were scheduled for January 18.

Bach summarized the rules on incinerators and odor standards and in response to a question by Doyle, covering material not strictly adhering to the agenda,

DEQ
(continued)

Bach stated that in instances where a permit is requested for land in a disputed border area the department is as pragmatic as possible and rules on the question on that which is in Iowa.

Schroeder inquired about open burning exceptions to the odor standards which might be applied to the proper disposal of diseased stock at rendering plants, etc. Bach stated that this activity is not considered open burning and that the odor regulations, as long as odor is not a nuisance to the public, is dealt with in the standards for rendering plants.

SPECIAL REVIEW
AGRICULTURE
DEPARTMENT

Secretary of Agriculture Robert Lounsberry and Legal Counsel Betty Duncan appeared for a special review of Chapter 16 of the agriculture rules, at the request of the Committee.

In response to inquiry by Schroeder to Lounsberry as to why rules in Chapter 16 dealing with Aujeszky's disease were filed emergency, Lounsberry directed Duncan to look up the history of the rule filings. Duncan said that the emergency filing was to implement change of omitting affidavits only for these rules (16.150, 16.151 & 16.152)

Lounsberry discussed the legislative history surrounding the rule making as it related to Aujeszky's disease and stated that HF 444 mandated that the department handle control & immunization of the disease at the earliest possible date. Lounsberry stated that proper procedures were followed in that formal and informal hearings were held state-wide. Lounsberry cited the disease case history as reason for the concern and final method of implementing rules dealing with disease control and immunization. Schroeder expressed the view that the department had such authority with all diseases under its jurisdiction and yet dealt only with Aujeszky's in this fashion. Lounsberry cited the wording of the law as passed by the Legislature as the key difference between this disease and others with which the department has had to deal.

Schroeder said that the rules as written were enticing the scalper and that swine markets were in a turmoil because of testing and vaccination procedures. Lounsberry said that part of this problem would be alleviated when the department got into their new building as there would be laboratory facilities to enable them to split blood samples and test for both Pseudorabies and Brucellosis.

Priebe said that the rules discriminated against the Iowa farmer because they can only move pigs once and out-of-state dealers can move pigs twice. Lounsberry said that the department would consider using the 48 hour time limit on movement of such livestock for both interstate and intrastate transactions or determine a time limit and hold it consistently for both transactions.

10:15 a.m.
SPECIAL REVIEW
AGRICULTURE
DEPARTMENT
(continued)

Monroe arrived.
Priebe and Lounsberry discussed the rules pertaining to vaccination and the ability of the swine dealers to obtain vaccine, and its use and abuse.

OBJECTION

Schroeder moved to object to rules 16.150, 16.151 and 16.152 of the Agriculture Department filed emergency on the basis that the rules are arbitrary in that the treatment of Aujeszky's disease differs dramatically from the treatment of other diseases i.e. bloody scours.

MOTION TO DELAY

see Economic
Impact p. 481

Doderer moved to delay Schroeder objection as Duncan, Royce and Schroeder were continuing discussion outside meeting chambers. Motion passed unanimously.

CAMPAIGN FINANCE DISCLOSURE

The following rules of the Campaign Finance Disclosure Commission were acceptable as published and presented by Steve Johnson. Election campaign fund, 2.2, 2.3, 5.4 11/30/77

PHARMACY

Paul Crews introduced his replacement Norman Johnson to the Committee. Sue Lutz presented the following filed rules:

Standards for evaluating practical experience, 3.3, 3.5, 3.6

11/30/77

Continuing education, 6.8

11/30/77

Depressants, 8.14(4)

11/30/77

Lutz stated that Pharmacy rules pertaining to continuing education, 6.8, were being changed according to the wishes of the Committee that requirements for furnishing social security numbers be dropped. Said amendment to notice rules will appear in the IAC Supplement next published.

OBJECTION

Lutz stated that section on Depressants, 8.14(4) was in agreement with federal regulations on depressants. Doderer moved to object to rule 8.14(4) on the basis that the Iowa Legislature did not include the drug Darvon on its list of controlled substances and that the Committee had filed an objection to the notice rule. Doderer renews the motion to object as follows:

The Committee objects to filed rule 8.14(4) on the grounds that it is arbitrary, capricious and unreasonable to put the drug Darvon on the list of controlled substances. In view of the penalties which attach to possession of schedule IV drugs, it is the opinion of the Committee that Darvon does not pose such a threat to warrant it being included as a controlled substance.

The motion to object carried on a vote of 5 ayes to 1 no, with Monroe dissenting.

Crews mentioned that rules on depressants come up for review January 1 before Doderer's committee.

ARCHAEOLOGISTS

The following filed rules were presented to the Committee by Duane Anderson:

ARCHAEOLOGISTS
(continued)

Procedures for administration, Chs. 1-9 11/16/77

Duane stated that these filed rules were as amended as the Historical Department had expressed objections to the notice rules. However, these rules reflected the implementation of 305A of the Code which gives the Archaeologists jurisdiction over certain functions.

Dr. Adrian Anderson of the Historical Department spoke to the conflict in the Code between Chapters 303 and 305 and said that there was an unresolved conflict in the law which has precipitated this interagency dispute. The question is whether one agency is to guide the development of the states historic preservation efforts or is it to be distributed among agencies.

Dr. Anderson stated that 1) rule 70-1.1(1) is incongruous with Chapter 305A of the Code, 2) 70-5.1(1) authorizes the OSA to act as the appropriate authority for such divergent matters as highway usage and placement, 3) 70-6.3 authorizes denial of public information, and 4) Dr. Anderson objects to all of these aspects of the rules and in addition thereto he objects to an agency being placed in the position of being a sole source contractor.

OBJECTION

Kelly moved to object to rule 6.3 filed by the Archaeologists on the basis that it exceeds statutory authority under Chapter 68A of the Code. Duane stated that the department's legal counsel had cited 17A as their authority to promulgate this rule and that the ultimate test would have to be of 17A, and that the department felt that it was imperative to protect site records. Kelly's motion carried unanimously.

Duane stated that Dr. Anderson's objections should be directed to the law itself as these rules were implementing Chapter 305A of the Code.

MOTION TO DELAY

Kelly moved to delay for seventy days rules of the archaeologist [from 12-21-77 to 3-1-78] since the two agencies were not in agreement the delay would allow the Committee time to study and examine the rules in more detail.

Doderer voiced opposition and proposed that the motion exclude Committee study and examination.

Kelly moved as a substitute that the rules be delayed seventy days to enable Royce to review the statutes as to possible conflict and meet with both agencies to resolve the problem. Motion carried unanimously. Royce was instructed to confer with Professor Bonfili and report to the Committee his findings.

Duane reminded the Committee that the function of the Department of Archaeology involves more than just

**ARCHAEOLOGISTS
(continued)**

historical pursuits as they are involved in scientific research as well and this function shouldn't be relegated to one division of the Historical Department.

**EMPLOYMENT AGENCY
LICENSING**

Walter Johnson, Deputy Commissioner of Labor, presented the following notice rules for the commission:

Functions, declaratory rulings, license, fees, Chs 1-10

11/30/77

Johnson outlined the purpose and function of the commission along with licensing and fee rules. Schroeder pointed out that 4.7, 1-3 gave the commission too much latitude in dealing with fraud and goes beyond the scope of 94.7 of the Code. Johnson said the commission would consider the problem.

Doyle asked pursuant to 4.2 if the Secretary of State's office accepts corporation name & issues a certificate on this basis, how could this commission deny name usage. Johnson said that the commission would look into this question also.

Kelly requested that the rules also include procedural operations, quorums, number of affirmative votes to pass a measure (Committee prefers a majority of members to pass substantive matters), and public notification of meetings. Johnson said that this issue would be considered by the commission.

**ARCHITECTURAL
EXAMINERS**

James Lynch presented to the Committee the following rules on notice:

Mailing address, examinations, 1.2, 2.1-2.4

11/30/77

Lynch presented the rules for examination as amended, rules of conduct as amended which are necessary because of the broad scope of duties and the number of subjects with which the board has to deal.

Priebe stated that in his opinion 2.3(2) a (4) contained language which is too broad. A discussion followed and Schroeder said that if the rule is filed unchanged, the Committee will object and that the board should be aware of this.

Monroe congratulated the board for 2.3(2) c. disclosure section but warned that the board was perhaps getting into a "bag of worms" as one cannot exempt oneself from liability. Section 2.3(2) e professional conduct should clarify placing of responsibility for work done personally or contracted, and "nominal value" gifts should be more defined or dropped from rules. Doyle commented that the last sentence under 2.3(2)e was unclear (Mrs. Barry determined that this was a printer's error and would be corrected editorially).

Doderer requested that the rules also include procedural operations, quorums, number of affirmative votes to pass a measure (Committee prefers a majority of members to pass substantive matters). Lynch said that the board would consider this request.

ARCHITECTURAL
EXAMINERS
(continued)

Monroe questioned continuing education provisions for license renewal, Lynch said that the rules comply with federal regulations and that their fiscal year ends in July.

AGENDA

Priebe led a discussion of the delay in the agenda and the Committee decided to continue the agenda through the Department of Transportation, Junkyard control, and recess at this time for lunch to reconvene at 1:30 p.m.

12:15 p.m.

Kelly left.

REVENUE

J. Elliott Hibbs, Deputy Director, Revenue Department presented the following rules to the Committee:

Chain store tax, Chs 97-101	N	11/30/77
Tax liens, Ch 9	F	11/30/77
Income tax, adoption expenses, child care credits, 41.4, 42.2	F	11/16/77

Hibbs reported that the chainstore tax rules on notice had two interpretive sections and dealt with statute requirements on limitations for assessments and record-keeping. Doderer and Schroeder questioned the use of "village" in the rules and asked for its definition, however, Hibbs and Monroe pointed out that this wording had not been eliminated from 354.9 of the Code.

Hibbs presented the filed rules on chapter 9, tax liens; and in answer to a question on how to collect delinquent taxes from defunct corporations, Hibbs said that the department had proposed legislation drawn up for consideration during the next session which would enable the department to hold corporations liable for sales/use tax.

Filed rules on adoption expenses comply with HF 614 & SF 32 as expenses taken on income tax as adoption expenses cannot be taken elsewhere on the return.

TRANSPORTATION

[06,0] Ch 7
11/16/77 Supp

Junkyard control, chapter 7, was presented to the Committee by Jim Graham who introduced Bill Hays with whom the responsibility of junkyard control lies.

Schroeder questioned the classification of auto repair shop where there are abandoned cars. Graham said that there must be a screen but enforcement cannot conflict with city or other applicable ordinances or create other hazards, such as snow removal problems, etc. Schroeder questioned determination of junk car. Graham said that the department relies on title status. Hays said that if car decimated to point where it is not recognizable, the title is automatically surrendered. Graham stated that enforcement is most apt to occur if the yard is recognized as a public nuisance. Schroeder suggested that the department reevaluate force requirements for the screens. Graham said the department would check these requirements.

NOON RECESS

Chairman Priebe recessed the meeting at 12:35 p.m.

RECONVENED

Meeting was reconvened at 1:35 p.m. with Kelly being absent.

PUBLIC SAFETY

Rules of Public Safety, 2.300-2.305 on weapons, filed were acceptable with no discussion.

TRANSPORTATION

Michael Hern, Bob Schelquist, and Charles Sinclair presented the following rules to the Committee:
Kelly returned.

Highway and bridge construction, [06,G], Ch 1	11/16/77
Safer-off-system roads program, urban systems, [06,P], Ch 5	11/30/77
Safer-off-system roads program, secondary roads, [06,Q], Ch 18	11/30/77
Motor vehicle leasing licenses, [07,D], Ch 9	11/16/77
Motor vehicle dealers, manufacturers, [07,D], Ch 10	11/16/77
Personalized registration plates, [07,D], 11.42	11/30/77

Basically, the changes in the Iowa Administrative Code reflect the new standard specifications and new contract changes. Schroeder and Schelquist discussed right of way requirements as the secondary road systems apply to the counties, federally funded. Schroeder and Sinclair discussed the hauling of vehicles to salvage--not covered under motor vehicle leasing licenses but Attorney General's opinion of "last ride doctrine" of a few years ago permits hauling of this type without the necessity of licensing.

MOTION TO OBJECT

Schroeder moved to object to section 10.1(4) of rules on the basis that it goes beyond the scope of the law. However through further discussion, it was decided that the objection could be overcome by changing the last sentence in this section to read, "Any person selling at retail six or more motor vehicles during a twelve-month period may be presumed to be engaged in the business." Schroeder therefore withdrew his objection.

OBJECTION
WITHDRAWN

Doyle conducted the discussion on personalized registration plates.

PUBLIC EMPLOYMENT
RELATIONS BOARD

John Ayers, Hearings Officer, was present to submit the following rules to the Committee:

Operation and procedures, amendments to Chs 2-7	11/16/77
Impasse procedures for state employees, 7.6, emergency after notice	11/16/77

Ayers said that 7.6 was revised because the board changed promulgation mid-stream and this revision was merely to bring the rule in line with revised date. Chapters 2 through 7 were acceptable to the Committee with no recommendations.

HEALTH

Pete Fox and Rick Middleton presented the following rules to the Committee:

Podiatrist continuing education, 139.100-139.109	11/16/77
Barber continuing education, 152.100-152.109	11/30/77
Health facilities construction review program, Ch 201	11/30/77
(see also filed emergency)	11/30/77
Hospital licenses, 51.3(1)	

Monroe mentioned that licensing renewals should be handled separately from continuing education requirements, however the rules presented were acceptable to the Committee with no further recommendations.

HEALTH
(continued)
Chapter 7
Immunization

Priebe led a discussion on the procedure the Committee was to follow on the presentation of the rules filed on Chapter 7, immunization. It was decided to limit public participation to Chapter 7 and the petition presented to the department by Schroeder (a copy of which is attached) only. As Priebe was committed to attend another meeting, Monroe was appointed acting Chairperson. The Committee recessed in order to move the meeting to the Senate Chamber.

RECESS

RECONVENE

Monroe called the Committee to order at 2:30 p.m. in the Senate Chamber and as acting Chairperson reviewed for those present the rules for this public discussion of Chapter 7, Health Department rules on immunization. The Health Department represented by Gary Hogelin would make the initial presentation followed by 30 minutes of presentation of those against the immunization proposal and 30 minutes of presentation of those for the immunization proposal.

Hogelin presented the statistics on immunization and presented the rules promulgated as changed pursuant to public hearings.

Gene Cretsinger, Secretary-Treasurer of the Chiropractic Society, began the presentation for those against immunization by asking permission of those opponents to allow selected speakers to present this viewpoint - this was agreeable to those present. Cretsinger urged the Committee to rescind the immunization proposal on the basis that there was no great urgency, citing the lack of cases of diseases. He questioned the constitutionality of the law and urged postponement of implementation of the law until September 1, 1978 so that this group could work for a conscience clause amendment. He cited those whose personal religious tenets and practices opposed immunization but the law does not allow for a person to address himself to any variations and limits exclusion on the basis of specified religious groups. Cretsinger also spoke to the ease with which parents could verify immunization and to claim the religious exemption, one had to be notarized. The immunization plan also does not allow for a parent to choose the type of vaccine which the child is to receive.

Dr. Eugene Swela addressed himself to the question of immunization rules prohibiting free exercise of religion and thereby abridging first amendment rights under the Constitution. Swela also spoke to the inconsistencies of the immunization rules prohibiting school attendance for failure to comply and the requirement of school attendance until the age of 16.

Robert Dotson, attorney for the Chiropractic Society, questions whether Jan. 1 implementation date allows time to test children for natural immunities. Dotson wished for delay to allow time to draft new legislation or amend/define old legislation with conscience clause. Dotson believed delay would minimize civil litigation.

Dr. Anthony Morris, former federal employee with HEW,

HEALTH
(continued)
Chapter 7
Immunization

and noted micro-biologist and virologist, questioned the safety of the vaccine and stated that the Health Department has no justification for their apparent degree of certainty.

Dr. Chris Kent, of Palmer College, submitted a list of amendments to the rules (see attached) and spoke to the issue of liability in the matter of those people who had adverse effects as a result of the administering of the vaccine.

Dr. Bruce Hagen, Chiropractor, spoke to the desirability of postponement of implementation date until Sept. 1, 1978.

Cretsinger presented petitions of opponents to the Committee.

3:00 p.m.

Priebe arrived, Monroe retains Chair, and calls for discussion of those in favor of immunization rules.

Dr. Martin Meyers of the Academy of Pediatrics and virologist, said that the question of the Constitutionality of the rules should be decided in the courts. He stressed the urgency of implementation stating that these contagious diseases are health hazards to children in the schools. Meyers gave figures on absences and incidences of cases— Said that rules implement intent of HF 163 and should go into effect Jan. 1.

The following people urged no delay in implementation of Chapter 7 rules: Mrs. Ayers, Women's Clubs Federation; Donna Graham, State PTA representative on health; Rosemary Fee, Director of Nursing Program, Red Cross-Iowa Division; Marliss Houghton, Federated Women's Clubs. Ms. Shirshan, Children's Services, presented written testimony to the Committee.

Dave Clark, Iowa JC's, spoke of the interest in the health of the child and the welfare of the community, said that the rules were not to be implemented with the intent of violating anyone's rights.

Monroe allowed rebuttal of 30 minutes for each side.

The following people spoke in favor of delaying implementation date of the rules: Joan Hefner, Caseworker; Dan Hines, Rev. Lockwood, Daniel Grotsinger, Edwin Dickens, Dotson, Robert Hicks, Craig Henderson, Robert Dilly, W.D. Martin, Cretsinger, Carol Sass, Louis Carr, Hal Mallory.

Dr. Meyers, Mrs. Ayers and Donna Graham spoke in favor of implementing immunization deadline of Jan. 1, Dr. Morris stated that the only means of determining whether or not a child has had measles is to administer serologist test, verification could not be obtained from physician only.

Bruce Hagen spoke of the possibility of a lawsuit on religious grounds similar to the reverse discrimination

HEALTH
(continued)
Chapter 7
Immunization

suit, the ~~Bakke~~ case.

Norman Pawlewski, Commissioner of Public Health, presented a summary of the department's position. The department's prerogative was to implement the law and that it was the intention of proceeding with the Jan. 1 implementation date. Pawlewski discussed various surveys conducted by the department and others and the studies which aided the department in determining their course of action. He said that the department lent no credence to the conscience clause as it was debated and defeated in the legislature. Pawlewski said that the department answered Schroeder's petition within the time allowed, but that the department's decision was to deny the petition and stand behind the rules.

Priebe thanked Monroe for chairing the meeting while other obligations kept Priebe elsewhere, he lauded the fairness of the Committee and spoke to the gathering of the mail that he received when this immunization bill was being discussed in the legislature. He thanked the public for their participation, but admonished those who did not present their views at the public hearings which were held while this bill was before the legislature.

OBJECTION

Schroeder moved to object to Chapter 7, Immunization, of the Health Department rules on the basis that the department exceeded its statutory authority when it promulgated these rules, and on the basis that wording "enroll" should be interpreted to mean the beginning of the school year, therefore, implementation should be delayed until September 1, 1978. Doderer said that the rule did not exceed the statutory authority of the department. Monroe, while supporting efforts for a conscience clause, could not vote to delay implementation as the law went into effect in August of 1977 and delay had been granted until January to enable compliance to be accomplished; delay would be contrary to the intent of the law. Schroeder's motion was defeated five "no" to one "aye." Schroeder voting "aye," and Doyle changing "pass" to "no" for final count.

RECESS

Chairman Priebe recessed the meeting at 4:55 p.m. to reconvene Wed., 12-14-77 at 9:00 a.m. in Senate Committee room 24.

RECONVENE

The Rules Review Committee reconvened Wed. 12-14-77 at 9:20 a.m. in Senate Committee Room 24, 5 Committee members were present, Rep. Donald Doyle, being not present.

BEER AND LIQUOR

Rolland Gallagher, Director, introduced Robert Rhudy, Mary Kay Endicott, Harry Bevington and George Price - staff members to the Committee. Gallagher presented the following notice rules to the Committee:

Procurement and leasing of liquor stores, Ch 11

11/16/77

Priebe questioned the usage of "maximum practicable extent" in second sentence of 11.2 as giving too much

BEER AND LIQUOR

leeway to the department. Priebe also questioned the third sentence in 11.2, usage of "formal request for bids process" why not mention bidding process only. Priebe also wanted wording to allow for opening up of bidding process. Gallagher represented the department view of not necessarily wanting to take the low bid particularly if proposed site is poor. Monroe said that specifications should take care of location difficulties.

9:45 a.m.

Schroeder wants department to specify time limit 11.4(3) 48-72 hours, or if notified in weekly publication so specified with week limitation. Monroe suggested that this could be handled with contract wording to the individual lessors. Doderer left.

Monroe suggested that sections 11.11(2) and 11.12(1)b - too exclusive, section 11.13(1) a-is superfluous and that the time limit in 11.16 was too tight to allow for assurance of receipt of information. 11.13(1) b-may cause difficulty for new location. Gallagher indicated that the department could alter wording to comply with the suggestions of the Committee.

Schroeder questioned 11.12(1) e; however, Kelly and Monroe said that this section is in compliance with Ch. 601A of the Code.

Monroe also suggested to the department that they might want to include rules on renegotiation of lease agreements.

Gallagher said that for the most part rentals for the department run below 3% of total sales per square foot of rent.

HOUSING FINANCE
AUTHORITY

Rules on notice, Chapter 11-Iowa Homesteading Program, were presented to the Committee by Bill McNarney were acceptable with no discussion.

SOCIAL SERVICES

Judith Welp, Methods and Procedures, presented the following rules to the Committee:

Aid to dependent children, referral, 42.3	11/16/77
Medical assistance, nondiscrimination of handicap, 79.5	11/16/77
Intermediate care facilities, amendments to Ch 81	11/16/77
Billing procedures, 82.15(2) rescinded	11/16/77
Family services, 130.4(2)	11/16/77
Social security Act—Title XX, 131.1, 131.2	11/16/77
Rural rehabilitation student loan and grant program, 146.1, 146.3, 146.11	11/16/77
In-home health related care, provider agreement, 148.9(3)	11/16/77
Adult day care, Ch 151	11/16/77
Riverview release center, visiting, 21.2	11/30/77
Medical assistance, dentists, 78.4(3)	11/30/77
Provider participation agreement, 79.5	11/30/77
Abuse of children, reports, amendments to Ch 135	11/30/77
Homemaker-home health aide, 144.4	11/30/77
Purchase of services, 145.11	11/30/77

Welp discussed each section, or Chapter, briefly and the Committee accepted the rules as discussed.

MINUTES

Kelly moved for the adoption of the minutes of the October 18, 1977 and November 8, 1977 meetings, the motion carried unanimously.

DISPOSITION OF
MOTION

Schroeder asked for clarification on the disposition of his motion to object to section 10.1(4) of the rules of the Department of Transportation. The department had agreed to amend this section to comply with the request of the Committee so there is no need to delay all the rules filed.

ECONOMIC IMPACT
AGRICULTURE RULES
16.150, 16.151 &
16.152

Schroeder moved that the Department of Agriculture be requested to prepare an economic impact statement on the rules dealing with pseudorabies immunization and the movement of swine, under the provisions of § 17A.4(1) "c" of the Code (Agriculture rules 16.150, 16.151 & 16.152). The motion carried unanimously.

REGENTS, SECRETARY
OF STATE, GENERAL
SERVICES

The following rules were acceptable to the Committee as published:

REGENTS[720] *F Emerg. No rep*

Minors attending concerts, 12.7(10)

11/30/77

SECRETARY OF STATE[750] *No rep*

Forms of annual agricultural reports, amendments to Ch 12 N
(see also filed emergency)

11/16/77

GENERAL SERVICES[450] *No rep*

Acquisition of data processing equipment or software, 4.3, filed without notice

11/16/77

The Committee requested that the Iowa Development Commission be first on the agenda for the next regularly scheduled Committee meeting.

The next Committee meeting will be held on Tues. Jan. 3, 1978 in Senate Committee Meeting Room 24, at 10:00 a.m.

SOCIAL SERVICES
CORRESPONDENCE

Priebe called to the attention of the Committee, a letter from Joe Baker of the Social Services Department. The Department was concerned as to delay between the rulemaking and administration procedures and the necessity to have certain administration privileges available so that quick action could be taken. Committee members agreed that Baker should be urged to draft legislation to accomplish Dept. goals and that he would be welcome to appear before the Committee

IOWA ADMINISTRATIVE
BULLETIN

There was discussion of the Royce questionnaire prepared for the Committee wherein he covered several alternatives for the proposed Iowa Administrative Bulletin. Monroe indicated that as a courtesy, he would clear the general proposal with the Governor's Office in view of the proposed legislation to change the responsibility of the Code Editor's Office.

It was agreed that the present format for Part I of the biweekly Supplement would be replaced with an 8½ x 11 inch, perforated, punched and stapled booklet. Administrative agencies would be requested to prepare rules following Session Laws style--underscoring and strikeouts.

ADMINISTRATIVE
BULLETIN Cont'd

In addition to rules, the Committee discussed the possibility of including other information in the Bulletin. There was discussion of the following with pros and cons of each considered by the Committee and Secretary:

- a. Text of all executive orders.
- b. Notices of government meetings, if voluntarily submitted.
- c. Notices of appointment of public officials.
- d. Opinions of Attorney General.
- e. Opinions of the Supreme Court.

Priebe favored including "a" "c" and "d".

Motion

Kelly moved to accept "a" and to strike "b" and "c" from consideration. After brief discussion,

Substitute
Motion

Monroe moved as a substitute motion, that the Committee accept "a," "d" and "e". Motion carried unanimously.

In order to clarify the position of the Committee and that they take full responsibility for the decision to publish an Iowa Administrative Bulletin,

Motion

Monroe moved that the Administrative Rules Review Committee staff (Royce) be directed to compile the necessary information in order to publish "a," "d" and "e" and submit said information to the Code Editor. The motion passed unanimously.

Monroe

Monroe moved to direct the Code Editor's Office representative acting as Secretary to the Committee, as authorized by Code, to publish said information as provided by the Administrative Rules Staff in the Iowa Administrative Bulletin with publishing to begin as soon as practicable.

Motion carried unanimously.

ADJOURNMENT

Chairman Priebe adjourned the meeting at 10:55 a.m. to be reconvened at a special meeting, January 3, 1978 at 10:00 a.m., Senate Committee Room 24.

Respectfully submitted,

Phyllis Barry

(Mrs.) Phyllis Barry, Secretary
Assistance of Mary Applegate

APPROVED

Chairman

DATE _____

BEFORE THE IOWA STATE DEPARTMENT OF HEALTH
LUCAS STATE OFFICE BUILDING
DES MOINES, IOWA

IN RE LAVERNE SCHROEDER'S)	PETITION FOR
REQUEST TO RESCIND (470))	RULEMAKING
IAC 7.10, EFFECTIVE DATE)	DOCKET NO. _____
FOR COMPULSORY IMMUNIZATION)	

Petitioner States:

1. That Petitioner is LaVerne Schroeder and Petitioner's address is State Capitol Building, Des Moines, Iowa 50319.

2. That Petitioner is a member of the Administrative Rules Review Committee and is a member of the General Assembly and as such has a real and direct interest in the promulgation of all administrative rules.

3. That rule 7.10 provides that no person shall be admitted into school after January 4, 1978 unless that person has been immunized, granted provisional enrollment or has been granted an exemption; that such a provision is in direct conflict with Section 2 of House File 163 which specifically states:

2. No person shall be enrolled in any licensed child care center, elementary or secondary school in Iowa without evidence of adequate immunization against diphtheria, pertussis, tetanus, poliomyelitis, rubeola, and rubella, except as provided in subsections three (3) and four (4) of this section.

That "enrollment" normally occurs only in the fall term and therefore rule 7.10 cannot be legally enforced against persons who were properly enrolled in the fall term and that any attempt to do so is beyond the scope of the authority delegated to the department.

THEREFORE: Petitioner requests the department to rescind, pursuant to the emergency procedures of sections 17A.4(2) and 17A.5 of the 1977 Code, rule (470) IAC 7.10, and establish as the effective date the fall, 1978 term.

LaVerne Schroeder

LaVerne Schroeder
State Representative

PROPOSED AMENDMENTS - Dr. Kent

HEALTH
Immunization

Rule 7.1(3), Page 2. Change the proposed definition to read:
"Doctor" means a physician as defined by Code of Iowa 135.1.

Rule 7.3(2), Page 3. Change the proposed paragraph to read:
A religious exemption shall be granted to an applicant whose religious beliefs conflict with immunizations. A certificate of exemption for religious reasons shall include a statement that the required immunizations conflict with the religious beliefs of the applicant. Such certificate shall be signed by the applicant, or if a minor, by the parent, guardian, or legally authorized representative. The certificate of immunization exemption for religious reasons must be notarized. No provision of these rules shall be construed to require or compel any person whose religious convictions are as described to take or follow a course of immunization prescribed by law or a physician. However, such person may be subject to isolation during times of emergency declared by the commissioner of public health.

Rationale: Rule 7.1(3). The legislature, when drafting the definitions of Title VII, defines "physician" to include doctors licensed to practice medicine, osteopathy, or chiropractic. Failure to include any person so defined as a physician could be considered a violation of the equal protection clause of the 14th Amendment of the United States Constitution.

Rule 7.3(2). The rule proposed appears to be in violation of the establishment clause and free exercise clause relating to religion. The proposed amendment would be more consistent with the provisions of the First Amendment to the United States Constitution.

ADMINISTRATIVE RULES REVIEW COMMITTEE
Annual Report
1977

In the 1977 calendar year administrative agencies filed with the secretary of state 406 adopted rule changes. These changes involved well over 1200 rule adoptions, amendments or repealers. The filings are as follows:

Agriculture	35	Insurance Dept.	3
Appeal Board	2	Iowa Development	1
Archaeologist	1	Labor	3
Attorney General	1	Landscape Architecture	2
Arts Council	2	Library Dept.	1
Banking Dept	6	Livestock Health	1
Campaign Finance	3	Mental Health Auth.	1
Citizens Aide	1	Merit Employment	6
City Development Bd.	1	Natural Resources	2
Commerce Commission	8	Nursing Board	10
Comptroller	2	Occupational Safety	1
Conservation Commission	34	Pharmacy Examiners	3
Crime Commission	1	Planning & Programming	10
Dentistry Board	2	Public Defense	1
Drug Abuse Authority	1	PERB	3
Educational Radio & TV	1	Public Instruction	7
Employment Security	8	Public Safety	8
Energy Policy	1	Records Commission	1
Engineering Examiners	2	Regents	8
Environmental Quality	39	Revenue	17
Fair Board	2	Secretary of State	2
General Services	9	Social Services	78
Health Dept	32	Transportation	24
Higher Education Facil.	1	Treasurer	1
Historical Dept	2	Uniform State Laws	1
Housing Finance	1	Vocational Education	1
Industrial Commissioner	1	Voter Registration	11

35 of the items contained in these 406 adopted rule changes were objected to by the Administrative Rules Review Committee and one by the Attorney General. Of these 36 objections, five were procedural, i.e., that the rule adoption constituted an abuse of the emergency rulemaking power of Code sections 17A.4 and 5. Of these procedural objections four were corrected by filing under the normal rulemaking procedures and one objection was sustained in the district court. The remaining 31 objections were substantive, i.e., that the rule itself was either arbitrary, capricious, unreasonable, or beyond the statutory authority of the agency. Only 8 of the substantive objections have been cured. The rules objected to and the final disposition is as follows:

Agriculture. Rules 11.1(1)-(3) and 11.2(2) delegated to the Iowa Poultry Association certain agency authority. Objection was based on the grounds that it was beyond the scope of authority to delegate state functions to a private group. CORRECTED.

Archaeologist. Rule 6.3 provided the archaeologist would keep certain information secret from the public. Objection based on the grounds that the rule violated the public records law, chapter 68A. CORRECTED.

Commerce Commission. Rules 24.4(4) and (5) dealt with systems projections and economic feasibility for power plant siting. Objection based on the grounds that the requirements were unreasonable. NOT CORRECTED.

Rule 24.2(1)i contained a landowner notice requirement. Objection based on the grounds that the requirement was beyond the statutory authority in that the rule differed from the statutory notice. CORRECTED.

Conservation Commission. Chapter 101 was filed 'emergency' Objection by the attorney general based on the grounds there was no statutory authority to authorize dove hunting. Rule overturned in court.

Dentistry. Rule 8.2 set up a 'faculty license' for dentistry. Objection based on the grounds the rule was beyond the statutory authority. Objection was cured by statutory change.

Employment Security

1) Rule 6.2(5)a dealt with the admission of evidence in a contested case. Objection based on the grounds that the rule was unreasonable. NOT CORRECTED.

2) Rule 3.6(1) was objected to as an abuse of the emergency rule-making procedures. CORRECTED.

Environmental Quality

1) Rule 16.3(1)b forbade the discharge of certain materials into streams. Objection based on the grounds the rule was unreasonably restrictive. NOT CORRECTED

2) Rule 4.2(4) banned leaf burning in three Iowa Cities. Objection based on the grounds the rule was arbitrary. NOT CORRECTED.

Health Dept.

1) Rule 153.4 established a square footage requirement for barber shops. Objection based on the grounds that the requirement was beyond the statutory authority. CORRECTED.

2) Rule 153.3 required a separate outside entrance. Objection based on the grounds the requirement was beyond the statutory authority. NOT CORRECTED.

3) Rule 150.2 established a square footage requirement for cosmetology establishments. Objection based on the grounds the requirement was beyond the authority. NOT CORRECTED.

4) Rule 150.3 required a separate outside entrance. Objection based on the grounds that the requirement was beyond the statutory authority. NOT CORRECTED

5) Rule 149.7(4) required out of state applicants to hold a license from that state. Objection based on the grounds that the rule was unreasonable. NOT CORRECTED.

6) Chapter 7 required physicians report abortions. Objection based on the grounds that the chapter was beyond the statutory authority. NOT CORRECTED.

7) Rules 57.24, 58.27(4)&(5), 59.32(4)&(5) limited the authority of the care review committee. Objection based on the grounds that the limitation was beyond the authority. NOT CORRECTED.

8) Rule 58.31 banned scatter rugs in care facilities. Objection based on the grounds that the restriction was unreasonable. NOT CORRECTED.

Higher Education Facilities Commission

- 1) Rule 2.1(1) established application requirements for scholarships. Objection based on the grounds that the requirement was arbitrary. NOT CORRECTED.
- 2) Rule 2.1(4)a established criteria for awards. Objection based on the grounds the criteria were unreasonable. NOT CORRECTED.

General Services

- 1) Rule 10.6(4) established procedures for employee parking. Objection based on the grounds the procedure was unreasonable. NOT CORRECTED.
- 2) Rule 5.4(5) specified the cost of xerox copies. Objection based on the grounds that the rule was arbitrary. CORRECTED.

Library. Rule 1.21(2) forbade the public to check books out of the law library. Objection based on the grounds that the rule was arbitrary and unreasonable. NOT CORRECTED.

Pharmacy.

- 1) Rule 8.14(4) established darvon as a controlled drug. Objection based on the grounds that the rule was arbitrary. NOT CORRECTED.

Revenue. Chapter 75, equipment car tax, was filed emergency. Objection based on the grounds that such a filing was an abuse of the emergency procedures of Chapter 17A. CORRECTED.

Social Services

- 1) Rule 9.3(3) dealt with the use of evidence provided by unidentified 3rd parties. Objection on the grounds use of such evidence was arbitrary, capricious and unreasonable. NOT CORRECTED.
- 2) 78.9 dealt with home health agencies, filed emergency. Objection on the grounds that the filing abused the emergency procedures. CORRECTED.
- 3) Rule 141.3(2) allowed children in need of assistance to be placed in Eldora or Mitchellville. Objection on the grounds such a placement was unreasonable. NOT CORRECTED.
- 4) Rule 26.4(1)b banned the use of weapons by all parolees. Objection based on the grounds such a restriction was unreasonable. NOT CORRECTED.
- 5) Rule 78.1 was a rule adoption and rescission on abortions, both filed emergency. Struck down in court as an abuse of emergency procedures.
- 6) Rule 139.2(3)a & b established education requirements for a child placement investigator. Objection based on the grounds that the requirements were unreasonable. NOT CORRECTED.
- 7) Chapter 141 established a hearing procedure for children violating placement contract (parole). Objection based on the grounds that the hearing unreasonable lacked all procedural safeguards. NOT CORRECTED.
- 8) Rule 25.2 established an advisory panel for corrections Objection based on the grounds that there was no statutory authority to establish such a panel. NOT CORRECTED.
- 9) Rule 81.10(6) established payments for out of state nursing care. Objection based on the grounds that the requirements were beyond the authority, arbitrary and capricious. NOT CORRECTED.

Transportation. Rule 3.1(1)^{IV}c(3) referred to the state transportation map. Objection on the grounds that the map did not have a date certain. CORRECTED,

Voter Registration. Rule 4.3(4) was filed emergency. Objection based on the grounds this was an abuse of the emergency procedures. CORRECTED.

Synopsis

Rules Objected to in 1977

- 1) procedural objections
- 2) substantive objections

36

5 (all corrected or struck in court)
31 (8 corrected or overcome
by statute)