

MINUTES OF THE SPECIAL MEETING
of the
ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of Meeting: Tuesday, November 30, 1982 and Wednesday, December 1, 1982, 10:00 a.m., in lieu of statutory date of 12/8

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

Members Present: Representative Laverne Schroeder, Chairman; Senator Berl E. Priebe, Vice Chairman; Senators Edgar Holden and Dale L. Tieden and Representatives Betty J. Clark and Ned F. Chiodo.
Also present: Joseph Royce, Committee Counsel, Brice Oakley, Governor's Rules Coordinator, Phyllis Barry, Deputy Code Editor, Vivian Haag, Administrative Assistant.

Convened Chairman Schroeder convened the Committee at 10:00 a.m. in room 116. Public Safety Department rules to be reviewed were as follows:

PUBLIC SAFETY DEPARTMENT[589]
Fire marshal, buildings— exits and fire escapes, 5.50 to 5.65, 5.100 to 5.105 ARC 3391 *E*..... 11/24/82
Fire safety, child foster care facilities, 5.503 to 5.517, notice ARC 2532 *terminated* ARC 3372 *N*..... 11/24/82
Crime victim reparation, ch 17 ARC 3390 *N*..... 11/24/82

The Department was represented by Wilbur R. Johnson, Fire Marshal, Carroll Bidler, Director of Administration, Jen Worthington, Peter Green, John Schaffner, Public Affairs Manager, and Greg Thomas, Program Administrator of Victim Reparation. Also present: J. A. Hilsabeck, Marshalltown, and R. Dean Wright, interested citizen.

chapter 5

Schroeder referenced a letter from Marshalltown with respect to amendments to chapter 5. Johnson responded with a statement that he had visited with the attorney general, who also suggested changes. As a result, the Department intends to revise subrules 5.50(1), 5.100(4), 5.52(6), 5.53(4), 5.52(1) and table 5A. Johnson advised ARRC that the AG recommendation was to proceed with implementation of rules while revisions were in process. The Committee expressed opposition to that approach.

Holden requested rewording of 5.50(2) for clarity and deletion of "new and existing" in 5.50(3), line 1.

There was discussion of 5.53(7) concerning revolving doors. Johnson assured Schroeder that the rule pertains to new construction--under the Building Code, the doors are unacceptable.

After further discussion, Johnson agreed to rescind the amendments to chapter 5 under emergency provision of chapter 17A.

Schroeder brought up the matter of kerosene heater safety. He mentioned that, in the Uniform Building Code, it is not unlawful to sell the heaters, but their use is illegal in certain cities in the state--an un-

PUBLIC SAFETY
DEPARTMENT
Cont'd

11-30-82

fortunate situation, in his opinion. Johnson agreed to refer the kerosene heater matter to the Building Code Department. Green pointed out that the Uniform Code was not a state Code--it is adopted by various governmental subdivisions. General discussion.

ch 17

Johnson had received information from the Consumer Protection Division in Washington, D. C. that all ventless LP heaters had been recalled. Thomas explained amendments to chapter 17. Clark referred to 17.3(1) and 17.10 with respect to "claimants" and recommended that 17.10 be amended to reference the definition in 17.3(1). She preferred definition in 17.10.

In 17.3(2), Clark and Schroeder suggested additional language pertaining to crime which causes or terminates "pregnancy." Clark, in re 17.9(1)e, asked about emergency situations and was advised that emergency medical exams would be valid. In Clark's opinion, 17.13(2) was a duplication of 17.11. Thomas said that a further explanation was intended. He agreed to remove redundant language in 17.15. Re 17.14, Schroeder thought there should be an option with respect to which income tax returns should be submitted. He favored averaging the income over a 3- or 5-year period.

Oakley interjected there was a basic question as to Department's authority to request that information. He had grave concerns about confidentiality of the tax reports and was uncertain as to what was meant by "certified" copy. He preferred allowing a statement with regard to loss of income. Thomas was willing to work toward a resolution.

Tieden referred to lack of description of the various CVR forms enumerated in 17.8. Oakley offered to aid the Department in drafting appropriate additions to the rules. There was discussion as to whether reparation could be allowed for legal fees. Bidler pointed out that section 10 of the Act [69 GA, ch 1258] specifies four areas of loss for which reparation can be made.

17.15(1)

Suggestion was made for a more definitive explanation of funeral expenses in 17.15(1). Clark preferred simplification of the last paragraph of 17.17. In addition, she opined the inclusion of "...or some other provision of law" in 17.16 opened the rule for possible abuse. Discussion of subrogation portion of the statute [§16]. Oakley suspected a fair amount of complicated bookkeeping and tracking would be involved. Thomas said that, philosophically, the Department's position was that reparation should be paid quickly with available funds. If money is to be recovered from the offender, then subrogation would be the method to follow although it would be a lengthy process. Schroeder and Oakley thought the policy should be included in the rules. No formal action.

Responding to Tieden, Thomas estimated \$80,000 monthly would meet the level of need for reparation.

CONSERVATION COMMISSION Lester Fleming, Superintendent, Grants-in-Aid, and Richard A. Bishop, Wildlife Section, were present for Conservation to review the following:

CONSERVATION COMMISSION[290]

Wildlife habitat stamp revenue cost-sharing with local entities. 23.4, 23.10 ARC 3382 *F*..... 11/24/82
 Certification of land as native prairie or wildlife habitat, ch 25 ARC 3383 *F*..... 11/24/82
 Land and water conservation fund grants-in-aid for local entities, outdoor recreation projects, 72.2(2), 72.3, 72.4, 72.5(2), 72.6(3) to 72.6(5), 72.7, 72.8 ARC 3384 *F*..... 11/24/82
 Wild turkey spring hunting, 111.1, 111.2, 111.4 ARC 3385 *F*..... 11/24/82
 Use of firearms, restrictions, 8.1(3) ARC 3381 *N*..... 11/24/82

23.4, 23.10 No questions were posed re 23.4 and 23.10. According to
 ch 25 Bishop, chapter 25 provides incentive to certify certain lands as native prairie or wildlife habitat, thus making them tax exempt.

Royce wondered if abandoned buildings could serve as shelter for the wildlife. Bishop said Conservation's intent was to avoid economic gain for certain landowners. General discussion.

72.2 (2) In re 72.2(2), local share, Priebe questioned the 5 percent contingency fund which was not a change from previous rule. Fleming explained that it permits Conservation to fund cost overruns on projects already approved--generally, a very small amount. All projects are not billed on contract.

Priebe asked if there were a pattern that the same counties would have cost overruns. Fleming knew of none. Chiodo raised question regarding the allocation of funds other than on a per capita basis which he considered to be on an unequal basis. [72.6(3)a] Fleming explained that it was not a change in the original rule--not a change in the way funds are appropriated or allotted. He cited example of a city with 500 population--appropriation on a strict per capita basis--that allotment would be \$200.

Fleming continued that the procedure was not new and, from a practical standpoint, it would not be feasible to allocate funds on a per capita basis. Small communities would be unable to have meaningful projects. Chiodo contended there should not be an upper limit per capita but a minimum should be established.

Chiodo argued that large communities could be precluded from projects that entitled them to more than their share per capita while small communities would be allowed that option and flexibility. He concluded that, if the project warrants it, flexibility in per capita share should be available regardless of the population.

Schroeder recommended the possibility of an escape clause for a project that might exceed these guidelines--such as a special review. Priebe asked the reason for the change from "quarter" to "review period" in 72.7. Fleming stated that Congress had not appropriated funds for FY 1982. Iowa could possibly receive approximately \$675,000, with half for the local share in 1983. The Department favored annual review where all applications would be considered, leaving less chance for errors. Priebe was dubious about that concept.

CONSERVATION Priebe inquired as to removal of "Heritage Conservation and
COMMISSION Recreation Service" in 72.8 and Fleming pointed out that the
Continued name changes frequently and it was time consuming and costly
to reflect that in the rules.

Motion to Chiodo moved to delay chapter 72 of Conservation Commission
Delay - ch rules 70 days beyond its effective date. Oakley supported
72 the program, saying, "It has worked well and your county
has gotten its share of money." There was verbal exchange
between Chiodo and Oakley as to the impact of the rules.
At Priebe's request, Fleming agreed to report Committee con-
cerns to the Commission and return to the February meeting
of the ARRC for further discussion. Chiodo withdrew his
Motion Withdrawn motion to delay the rules for 70 days.

8.1(3) While reviewing 8.1(3), Clark questioned reason for firearms
restriction in the McIntosh Wildlife Area in Cerro Gordo
County. Bishop advised that the area is located across from
a church camp.

ch 111 No questions raised with respect to wild turkey hunting.

EMPLOYMENT Present for review of Employment Security amendments were:
SECURITY James A. Hunsaker, III, Paul Moran and Joseph Bervid. The
(Job Ser- following rules were on the agenda:
vice)

EMPLOYMENT OF SECURITY[370]

Date of actual receipt — documents, appeals and payments, 2.16(1), 3.12(2), 4.2(2)"a", 6.4(1)"b" ARC 3370...*AY*..... 11/24/82
Benefit eligibility conditions, 4.22(1)"c"(2) and (3), 4.22(1)"g", 4.22(1)"z" and "aa", filed emergency ARC 3369...*FA*..... 11/24/82

2.16(1) Discussion centered on 2.16(1) which would establish the
date of actual receipt by the Department as the date used
to determine timeliness for all documents. Clark favored
retention of the "postmark" concept. Bervid responded by
discussing a Supreme Court Case addressing "timely appeal"
at the hearing officer level which was the date the appeal
was received in that section. Other levels used different
criteria but the Department considered it important to ad-
here to one standard. Although there was no proof, the De-
partment suspected that some large firms and unemployment
tax agencies that represent employers were using their pri-
vate postal meters to manipulate time frame for appeal.
Pros and cons of certified special delivery were considered
with the conclusion that it would not be possible.

Schroeder and Holden recommended Job Service outlaw the pre-
stamped meter use. Bervid claimed there would be a problem
with time lapse under federal standards and the adjudication
of claims. Holden was inclined toward placing an objection
on what he considered to be very controversial rules. The
Chair interceded in the discussion due to a special Committee
luncheon. He asked Job Service officials to return at 1:30
Recess for lunch p.m. Committee was in recess at 11:47 a.m.

Reconvened Chairman Schroeder reconvened the Committee at 1:35 p.m.
Review of Job Service rules was resumed.

Bervid indicated the Department was willingly to redraft
2.16(1). It was noted a public hearing was scheduled for
December 15. - 1853 -

EMPLOYMENT
SECURITY
Continued
4.22

Schroeder called up ARC 3369 for review. According to Bervid, the rule involves two changes brought to their attention by the Labor Department with regard to extended benefit and federal supplemental compensation programs, both federally funded.

The Labor Department maintains, under those programs, that simply contacting a union hiring hall to which an individual belongs is not a satisfactory work search. For this moment, Job Service acquiesced to the request. The other areas would allow claimants to use contact of private employment agency as one of their employer contacts while they are on claim for benefits. Job Service may also be used as a contact.

In response to Oakley, Bervid said Job Service has questioned federal authorities. Unpublished District Court cases were sent to Job Service with regard to interpretative rule.

Oakley questioned justification for emergency filing of 4.22(1). Bervid explained that Job Service made the decision to expand upon that issue. It was not a federal requirement and he agreed that the subrule probably should not have been filed emergency. Tieden asked that 4.22(1)g be simplified.

COLLEGE AID
COMMISSION
6.1

Gary Nichols and Willis Ann Wolff appeared on behalf of College Aid Commission for review of advisory council, 6.1, ARC 3377, Notice, IAB 11/24/82. Nichols informed Tieden that the Advisory Council was a group of individuals from colleges and universities around the state appointed to provide technical information and expertise to Commission staff members and to provide additional opportunity to obtain input from the public. Nichols said the six additional members appointed by the governor were authorized by the statute.

In a matter not officially before the Committee, Schroeder opined that when the 4.6 budget cut was implemented one year ago, a policy was adopted that if a student changed schools after September 20, they would not receive the first 6 months' tuition grant. Schroeder spoke of his daughter's situation as well as several others who had not received the grant after transferring colleges. In his opinion, that policy should be changed and a rule adopted.

Wolff defended the Commission's position. There are more applicants than funds and, at the earliest possible date, the Commission needs to know if students are going to accept awards, which schools they will attend, and whether the grant has to be withdrawn.

Priebe thought there should be some way that students could transfer and the Commission should allow the transfer if the student can show good cause and obtain the grant. Wolff thought the situation was covered by existing rule, but the Commission had intentionally omitted the date.

11-30-82

COLLEGE AID Priebe called attention to the fact that ARRC prefers in-
COMMISSION clusion of a date certain. Schroeder also requested the
Continued Commission to provide in the rules a policy of allowing 7
days to rectify information before a student's grant is
canceled.

Tieden returned to discussion of the Advisory Council and
contended it was not statutory. Department officials agreed
to research the Code and provide the correct citation to
Tieden.

Nichols emphasized that the function of the Commission was
to help students, not deprive them. He was confident that
funds were administered in a most efficient and equitable
manner with help from the Advisory Board. It was noted their
budget hearing was scheduled for next week.

AUDITOR OF Auditor of State was represented by Edwin L. McQuown and the
STATE following rules were reviewed:

AUDITOR OF STATE[130]

Savings and loan division, incorporation and organization, 2.2, 2.5, 2.6, 2.8 ARC 3388 *F*..... 11/24/82
Savings liability, 3.1: mutual deposits, 4.1(2), 4.2(2), filed emergency after notice ARC 3389 *F.F.A.N.*..... 11/24/82

According to McQuown, amendments to chapter 2 were in com-
pliance with the statute. Discussion of 2.2(1) which lowers
eligibility requirements from 3 years to 1. McQuown said the
emergency adoption was made due to the implementation of a
new account which the federal government would offer in mid-
December. Tieden was advised that 80 percent of the associa-
tions in Iowa are mutuals.

CIVIL
RIGHTS
COMMISSION

Louis Martin, Compliance Director, explained that findings
and order, 1.15, ARC 3378, Notice, IAB 11/24/82 contains cor-
rective and procedural rules which the Commission on Civil
Rights thought were needed. Tieden inquired about caseload
and was told there are 1020 cases pending. Tieden wondered
if the changes would serve to lengthen the procedure. Martin
indicated the Commission did not believe so. Oral argument
applies only to the 6 percent of cases which go on to public
hearing.

1.15(5) Priebe raised question re 1.15(5), response of parties, and
opined that requirement to file notice 3 days before Com-
mission meeting did not seem adequate. Martin responded that,
normally, no more than two cases are reviewed at one meeting.

COMMERCE
COMMISSION

Commissioner Andrew Varley, Bill Haas, Dave Conn and Lex
Wodtke appeared on behalf of the Commerce Commission for
review of:

COMMERCE COMMISSION[250]

Utilities, interest on customer deposits, 19.4(3), 20.4(4), 21.4(2)"b", 22.4(2)"b" ARC 3344 *F*..... 11/10/82
Bonded warehouses, amendments to ch 12: grain dealers, amendments to ch 13 ARC 3355 *N*..... 11/10/82

Varley advised Tieden that the Commission had considered use
of a fluctuating interest rate but a disadvantage was ac-
counting problems. Rates collected under bond vary quarterly
with the market.

COMMERCE
COMMISSION
Continued
ch 12

Discussion of amendments to chapter 12, which were intended to clarify bonded warehouse and grain dealer procedures and to remove the arbitrary nature of inspections. Varley spoke of the improvement in the law which forces elevator operators to keep their liquid assets in order to pay for the grain. Tieden favored tight rules and suspected a loophole could be found in grading of grain--12.19(6). He was informed there are approximately 500 bonded warehouses in the state but positions for additional inspectors will not be requested. No formal action taken.

Recess

Chairman Schroeder called for a 15-minute break at 3:00 p.m. Committee was reconvened at 3:20 p.m.

AGRICULTURE
DEPARTMENT

Elizabeth Duncan, Legal Counsel, Dr. Merle H. Lang, State Veterinarian, James Meimann, Harold W. Behnke, and Earl Revell were present for Agriculture Department review of:

AGRICULTURE DEPARTMENT[30]

Agricultural seeds, ch 5 ARC 3392/X..... 11/24/82
Advertisement of the price of liquid petroleum products, 55.48(3)"c" ARC 3373. /X..... 11/24/82

Referendum procedures, ch 2 ARC 3324/X..... 10/27/82
Aujeszky's disease, 16.149, 16.151(3), 16.153 ARC 3325...../X..... 10/27/82
Food establishments, 38.1, 38.2 ARC 3326...../X..... 10/27/82

Also present: Ed Kistenmacher, Iowa Independent Oil Jobbers Association, Ted Yanacek, Iowa Farm Bureau, John Davis, Vickers Refining.

At Department's request, review of chapter 5 was temporarily deferred.

55.48(3)c

Davis said oil jobbers had petitioned the Department for the amendment to 55.48(3)c. Kistenmacher commented that the "oil men" will have two options for displaying cash and credit prices. Tieden questioned necessity for the change. Priebe and Chiodo were uncomfortable with optional provision. There was general discussion.

Duncan noted the Department lacks authority to promulgate rules relative to cash credit. Schroeder and Priebe suggested possible legislation was needed.

ch 2

No questions were posed on chapter 2.

ch 16

Dr. Lang reviewed the history of the pseudorabies eradication program and the fact that the Pork Producers had preferred pilot projects be conducted at various sites around the country. If, and when, federal funds become available, those projects will be carried out. Dr. Lang assured Priebe that starlings are not carriers of the disease.

38.1, 38.2

Schroeder referred to 38.1 and observed that "eye level" could have various interpretations. However, Duncan recalled the expression was not new. Also, no comments had been received from food establishments.

Chiodo failed to understand the importance of height requirement for posting of a license. Holden suspected it

AGRICULTURE was for the inspector's convenience. Duncan saw no problem
DEPARTMENT in changing "eye level" to read "plain view." She reminded
Continued Chiodo that these rules address grocery stores--not res-
taurants. Federal standards have not been adopted for grocery
stores. If such standards become available, they would be
very definitive.

Revell discussed the fact that requirement of a hand-washing facility within the food preparation area was designed to cut down on cross-contamination. In response to Chiodo, Duncan said they would consider defining food preparation areas. However, Revell contended that would be almost impossible. There was discussion of Code definition of food establishment in section 171.2 and of food prepared for on- and off-premise consumption. Examples of food service establishments include restaurants, taverns, etc.

Duncan noted that Iowa Code section 170.16 states that "food establishments shall provide toilet facilities and lavatory facilities in accordance with rules adopted by the Department pursuant to chapter 17A." Rules were rescinded in anticipation of federal guidelines which have not yet been established. About 6 months ago, some of the provisions were reimplemented minus the toilet and lavatory rules. Duncan envisioned the main impact would be on new "quick-type" service stations which sell pop, potato chips, bread, etc. They oppose having to supply hot and cold running water, particularly hot water. Holden interjected the Department was assuming that every item sold would be packaged. Revell did not anticipate resistance from Iowa Food Dealers Association. Schroeder favored reinstatement of former rules. Duncan pointed out that under the old Code, no distinction was made between grocery stores and restaurants.

Duncan concurred with Kistenmacher's position that hot water was unnecessary where only packaged items are sold. Food for on-premise consumption would be governed by chapter 170A. No formal recommendation was offered.

ch 5

Duncan introduced Behnke, who had worked closely with the Seed Advisory Council in drafting chapter 5 to conform to revised law on agricultural seeds. Priebe brought up the matter of breeder seed in 5.6(1). Behnke explained that the definitions in 5.6(1) were excerpted from the federal seed Act. Priebe could foresee problems for a small seed company. He recommended adding a statement that would provide "once seed is sold, the originating or sponsoring plant has no control." Royce said, "If the seed is not controlled by the originating plant, it is not breeder seed." Duncan agreed to research the issue and report to Royce.

Schroeder recommended careful perusal of 5.12 concerning re-labeling. Priebe inquired about tables in 5.13(3). Behnke indicated the information was a direct quote from federal law and applies to seed in hermetically sealed containers. Duncan agreed to check out the fact that corn and bean

AGRICULTURE seeds were not included under agricultural seeds. Priebe
DEPARTMENT wanted assurance the higher percentage for moisture would
Continued be allowed. Germination standards for vegetable seeds was
reviewed briefly. Duncan admitted that certain segments
would not be applicable in Iowa but it was decided to adopt
the federal standards.

Royce pointed out possible need for statutory revision
re the definition of "registered seed technologist." Priebe
asked for a reminder to pursue the matter during the next
General Assembly. No formal action.

BOARD OF Tom Hanson, Attorney, and Bruce Hopkins were present on be-
ENGINEERING half of the Board of Engineering Examiners to review buildings,
EXAMINERS structures, mechanical and electrical systems requiring pro-
fessional services, chapter 5, ARC 3366, Notice, IAB 11/10/82.
Also present: Bill Wimmer and James Cooper, Iowa Home Builders
Association.

Hanson commented the rules concern the Board's interpretation
of applicability of Code Chapter 114 to certain standardized
building structures and systems requiring services for a pro-
fessional engineer. Department representatives cited sections
114.24 and 114.25. Hanson claimed farm buildings, precon-
structed, standardized and pole buildings would be exempt.

ch 5 Chairman Schroeder opened the discussion to people who wished
to comment. Wimmer called attention to what the Iowa Home
Builders Association considered to be lack of definition
of professional services. He opined the rules were vague and
needed clarification as to whether they would be applied to
the home building industry.

5.2(2) Cooper had problems with the next to the last sentence in
5.1(114) "Further.....general rule.....allowed." He urged
clarification. Cooper also expressed concern for 5.2(2)
relative to structures with total height greater than 35 feet
requiring professional services. He pointed out that many
single-family dwellings would exceed 35 feet.

5.4 In re 5.4(114), standard designs, Schroeder opposed the re-
quirement that standard designs be certified by a registered
professional engineer or architect.

Holden asked if specific problems triggered the rulemaking.
Cooper knew of none in particular. However, Hanson contended
building officials lack guidance once the buildings are con-
structed. Clark saw the basic problem as lack of authority
for the rules.

Hanson interpreted the statute (in place since 1924) to limit
the practice of professional engineering to registered en-
gineers. The Board is attempting to develop reasonable rules
to protect the public. They were willing to discuss exceptions
such as individual homes, farm buildings, etc. Chiodo men-
tioned the possibility of need for statutory change.

11/30/82, 12/1/82

BOARD OF ENGINEERING EXAMINERS Continued
Priebe pondered the advantage of an economic impact request. Royce advised that this would be a major project and he wondered about possible involvement of the fiscal bureau.

Motion - Economic Impact
Priebe moved to request an economic impact statement on chapter 5 of the Board of Engineering Examiners rules. Holden recalled that routinely economic impact statements have been of little value.

After discussion, the Committee decided against any formal action at this time. The issue would be reviewed again after the December 16 public hearing.

Motion Withdrawn
Priebe withdrew his motion for an economic impact statement on chapter 5.

Recess
Chairman Schroeder recessed the Committee at 5:00 p.m. to be reconvened Wednesday, December 1, 1982.

Reconvened Wednesday
Chairman Schroeder reconvened the Committee at 9:40 a.m. in Committee Room 116. All members present. Public Employment Relations Board rules to be reviewed were:

PUBLIC EMPLOYMENT RELATIONS BOARD
PUBLIC EMPLOYMENT RELATIONS BOARD[660]
Practice and hearing procedures, 2.13, 2.15(1)"d" ARC 3356...F..... 11/10/82
Elections, certification of results, 5.4(1) ARC 3357...F..... 11/10/82
Acceptance of proposed agreement, 6.4 ARC 3358...F..... 11/10/82
Impasse procedures, fees of neutrals, 7.2 ARC 3359...F..... 11/10/82

John E. Beamer appeared on behalf of the Board and he reported that no changes had been made in 2.13, 2.15(1)d, 5.4(1) and 6.4 since the Notice.

7.2(20)
In re 7.2 (20), Tieden questioned the 20 percent increase in fees for neutral adjudicators since he was aware that many schools were being asked to "hold the line" on pay increases. Beamer defended the change explaining that PERB was working to develop a list of Iowa arbitrators. Priebe also opposed the increase because state employees were also being asked to "hold the line." Beamer stressed that it was imperative to maintain the high quality of arbitration.

Tieden referenced a situation in some of his school districts where arbitration was held and the teachers settled with the district having the most funds--then all other districts followed suit at that higher level.

Motion to Delay
After discussion, Priebe moved that 660-7.2(20) fees of neutrals, be delayed 45 days into the next General Assembly. Beamer, for the record, said the PERBoard would not oppose a delay.

Vote
Motion carried with Chiodo asking to be recorded as voting "no". Oakley declared that the Committee action was an inappropriate use of the 45-day delay.

12-1-82

IOWA FAMILY
FARM DEVELOP-
MENT AUTHORITY

George Cosson, Attorney, represented the Authority on behalf of William Greiner, who was ill. The following was before the Committee:

IOWA FAMILY FARM DEVELOPMENT AUTHORITY[523]

Soil conservation loan program, ch 4 ARC 3345 F 11/10/82

4.3

In re 4.3, Oakley reiterated his opposition to approval of finances on plans which have been approved by the Soil Conservation District. His office considers that to be a limitation, and he noted that this was an area for possible abuse. In the future, he would prefer independent review of applications. Cosson said the point was well taken but pointed out additional staff would be needed to do the review.

No further comments.

HOUSING
FINANCE
AUTHORITY

The following Housing Finance Authority rules were reviewed out of order:

HOUSING FINANCE AUTHORITY[495]

Contested case proceedings, ch 7 ARC 3367 N 11/10/82

ch 7

According to Cosson, chapter 7 further explains the agency approach in contested case proceedings. Clark called attention to redundant language in last sentence of 7.7. Royce opined that the Authority might need a more complicated contested case proceeding. Cosson responded that people will not necessarily be represented by lawyers. Royce requested Cosson to review Code section 17A.17 with respect to ex parte communications--ensuring impartial tribunal. Oakley interjected this might be an area where the AG's office could provide model rules for all agencies.

REVENUE
DEPARTMENT

Cynthia Eisenhauer, Don Cooper, Gene Eich and John Christensen were present from Revenue Department for review of:

REVENUE DEPARTMENT[730]

Filing returns and payment of tax, 39.2(2), 39.5(3) ARC 3348 F 11/10/82

Individual and corporation income tax, franchise tax, 39.5(7), 39.6, 39.7, 40.6, 40.9, 40.10(3), 40.11, 40.14, 40.17(3),

41.5(3), 43.3, 43.4, 52.5, 53.2(3), 53.7, 53.8, 58.5, 59.2(3), 59.7 ARC 3349 F 11/10/82

Cigarettes, manufacturer's samples, 82.10 ARC 3350 F 11/10/82

Games of skill, chance, bingo and raffles, 91.4, 91.5(2), 91.6(1), 92.8, 94.8, also notice ARC 3156 terminated ARC 3351 11/10/82

Interest, calendar year of 1983, 10.2(2) ARC 3347 N 11/10/82

Allocation and apportionment, 54.3(1), filed emergency ARC 3368 F.E. 11/10/82

82.10(3)

No questions were posed re amendments to chapters 39, 40, 41, 43, 53, 58 and 59. Eisenhauer explained that 82.10(3) was in response to manufacturers' request for a change in the information required on promotional cigarette packages--the need for a special stamp was eliminated.

Schroeder expressed opposition to the change, commenting that the Iowa emblem should be required on samples. Eisenhauer did not envision a problem. Responding to Clark, Eisenhauer opined that, historically, manufacturers and distributors disagree.

No formal action was taken.

Games of
Skill & Chance

In the matter of games of skill and chance, ARC 3351, Eisenhauer noted the rules had not changed since they were Noticed.

12/1/82

REVENUE
DEPARTMENT
10.2(2)

Eich, in discussing 10.2(2), called attention to a change in charge for outstanding taxes from 1.4 percent to 1.2 percent per month. He reminded ARRC members that the rate was set in accordance with 1982 taxes and concluded that if interest rates continue to decline, rates would be further reduced. No formal action taken.

PLANNING &
PROGRAMMING
ch 22

Bruce Ray, Office of Planning and Programming, reviewed community services block grant program, amendments to chapter 22, ARC 3343, Notice, IAB 11/10/82. No questions or comments had been received.

Recess

Chairman Schroeder recessed the Committee for 15 minutes.

SOCIAL
SERVICES
DEPT.

Social Services Department representatives present were Judith Welp, Rules and Manual Specialist, Broxann Keigley, Administrative Assistant, John Stralow, Childrens Services, Bob Schoene, Adult Services, Bette Murray, Dan Gilbert, Medical Service, and Carol Vanderpol. Also present: Kathy Schuster, Senate Staff. The following agenda was reviewed:

SOCIAL SERVICES DEPARTMENT[770]

Organization and procedures, 1.1, 1.3, 1.4 ARC 3396 ..F..... 11/24/82
Federal surplus food program, ch 73 ARC 3397F..... 11/24/82
Medical assistance, recipient lock-in, 76.9 ARC 3398F..... 11/24/82
Transportation to receive medical care, 73.13 ARC 3399F..... 11/24/82
Child care centers, 109.1(3), 109.1(8), 109.2(2) to 109.2(6), 109.3(6), 109.5(4), 109.5(8), 109.6(3), 109.6(5),
109.7(3), 109.9 ARC 3400F..... 11/24/82
Social services block grant, advisory committee, 131.7 ARC 3401F..... 11/24/82
Foster care services, 136.1 ARC 3402F..... 11/24/82
Child abuse prevention program, ch 146 ARC 3403F..... 11/24/82
Dependent adult abuse, ch 156 ARC 3404F..... 11/24/82
GARNISHMENT of Unemployment funds for child support - SPECIAL REVIEW
Adult correctional institutions, visitors, 16.3(9) ARC 3353N..... 11/10/82
Adult correctional institutions, publications, 16.6(4)"b", filed emergency ARC 3376 ..FE..... 11/24/82
ADC, eligibility, 41.7(9)"b"(2), filed emergency ARC 3374FE..... 11/24/82
ADC, payment for special needs, 41.7(9)"j", filed emergency ARC 3375FE..... 11/24/82
Medical assistance, physicians - auxiliary personnel, 78.1(12) ARC 3354N..... 11/10/82
Homemaker-home health aide services, chore service, rescinds chs 144 and 149, filed emergency ARC 3394 ..FE..... 11/24/82

ch 1

With respect to amendments to chapter 1, Welp was unsure that responsibilities of the Commissioner were statutory.

In discussing adult correctional institutions, Welp assured Priebe she would convey his concern that reduction of employees at the Clarinda Mental Health Institute had not been commensurate with the reduced number of patients.

ch 73

Chapter 73, federal surplus food program, was before the Committee--members referenced purchase of used trucks for distribution of cheese and butter. Income requirements were questioned and Welp informed ARRC that a change from net to gross income had been made due to problems with computing net. She reminded members that the program is managed by volunteers.

73.3b

Schroeder raised question re use of 12-month average[73.3b] to compute adjusted gross income for self-employed individuals. He and Priebe preferred use of the previous year's adjusted gross income. Welp did not envision problems, however, she declared the Department was willing to make changes in answer to problems that might arise. She continued that a retired individual who is without income for a period of time would be eligible for the program. No other questions with respect to the surplus food program.

12/1/82

SOCIAL
SERVICES
DEPARTMENT
Continued

Schuster appeared before the Committee to present comments about chapter 78. She claimed that 78.13 would not reduce paperwork and recommended quarterly or semiannual submission of the medical transportation claim.

ch 78

Schuster pointed out that 78.13(7) allows a recipient to be reimbursed for transportation, meals, lodging after the fact, under the same procedure used for state employees. Under federal regulations, medical transportation is intended to allow a recipient to secure medical treatment. In Schuster's opinion, some provision should be made for those with no cash. Priebe requested a provision be made for possible voucher payment. Holden pointed out an inconsistency in that some state employees receive payment in advance. Welp agreed to reword the rule when it is before the Committee again. There was general discussion of constitutionality of advance payments. Welp declared that in the Iowa Constitution, medical transportation does not meet the criteria for public purpose as stated by the Supreme Court. Department's legal advisers interpreted "public purpose" to mean conducting the state's business. Schuster called attention to the fact that the Court opinion dealt with school district employees. Also, fifty-six percent of the funds for this complicated program are derived from the federal government.

AG opinion
requested

It was noted that this might be an area in which to request an AG opinion. At Priebe's suggestion, Royce was directed by the ARRC to request an opinion concerning the constitutionality of advance payments for medical transportation.

ch 76
ch 109

No questions were offered re amendments to chapter 76. In re chapter 109, changes in licensing standards for child care centers were made in response to ARRC request. Welp admitted that the Department had not made some of the requested changes; denial of revocation area, ceiling height, bunk beds.

131.7,
136.1
ch 156
146.2

No questions were posed with respect to 131.7, 136.1 and chapter 156. Holden, in re 146.2, pointed out possible problem with the language. Welp assumed that, after the first year of operation, changes could be made. Oakley observed there would be problems with implementation and administration.

Garnishment of unemployment funds for child support, special review, had been resolved and that matter was removed from the agenda.

16.3(9)

There was discussion of 16.3(9), electronic device alarms, and inherent problems with them. Holden called attention to use of "undetected" in the 4th line. It was his opinion that should be changed to "hidden" or "disclosed" and that "will" should be "shall." Also, the sentence "The request for search....in an inconspicuous manner." is unclear. Welp responded that it is the request that shall be made in an inconspicuous manner.

No questions were forthcoming re 41.7(9), 78.1(13), and chapters 144 and 149. No further discussion.

12/1/82

COMMITTEE Barry called attention to obsolete rules of the Mental Health
BUSINESS Authority and, by unanimous consent, was authorized to remove
them from the Iowa Administrative Code.

AGING Ron Beane, Director, Operations Division, Carl M. McPherson,
COMMISSION Nursing Home Ombudsman, Lois R. Haecker, Staff Rules Repre-
sentative, and Candy Morgan, Assistant Attorney General, ap-
4.2 peared on behalf of the Commission on the Aging for review
of the long term care ombudsman program, 4.2, ARC 3393, IAB
11/24/82. Also present: Larry Breeding, Vice President, Iowa
Health Care Association.

Beane reported that, as a result of comments received with
regard to nursing home ombudsman and nutrition program rules,
they were removed from the general provisions and introduced
separately. This rule is the result of four hearings held
around the state in August--nutrition rules will be before
ARRC in the near future. Beane continued, "The long-term care
ombudsman program was initiated by the federal Commission on
the Aging."

Clark called attention to the fact that when Care Review Com-
mittees are under the auspices of the Health Department, there
is a statutory problem and, possibly, a statute change would
be needed.

Beane explained that the Commission is allowed to contract out
the function of the Ombudsman, but not to the Health Department.
Clark opined the Care Review Committees should be transferred
from the Health Department control to the Aging Commission.
Beane indicated the Health Department would be favorable, since
Aging Commission had been working with Care Review Committees
for the last several years--an informal delegation of the
Health Department. Although there had been no substantial
problems, Beane agreed the matter should be "in line" with
the statute.

Motion to
Object
4.2

After further discussion, Holden moved that ARRC object to 20--
4.2(249B) on the basis that it exceeds the statute. It was
Oakley's opinion that the Commission on Aging was within their
legal authority to use federal law. However, he had problems
with the continued inclusion of supervision of the Care Review
Committee and he would like that to be more definitive. Oakley
concluded the provision is clearly illegal and he will recommend
veto by the Governor.

There was discussion of the proposed legislation from the
Older Iowans Legislature.

Breeding reviewed the federal language in the rules and it was
his contention that Iowa is the only state to mandate consumer
advisers in nursing homes. Facilities are "caught in the mid-
dle" between Commission on Aging and Care Review Committees.
Also, health care costs are elevated because of Commission on
Aging.

His cogent argument was that the Older Iowans Legislature pro-

12/1/82

AGING posed a bill identical to these rules before the Committee.
COMMISSION He could see no need for an Ombudsman in the Aging Commission
Continued when the state already has one.

Beane insisted the Aging Commission had a responsibility to have the program. Mention was made of the cost to print a Care Review Committee notebook. In Breeding's opinion, the book contains detailed information in direct violation of federal laws--an attempt by the Commission to expand their "bureaucratic authority into nursing homes via the Ombudsman." McPherson defended the Commission claiming the information was not intended to create an adverse relationship.

4.2 Holden interjected that ARRC staff should peruse the Policy
Motion to book. Clark pointed out that if the ARRC were to place an
Delay objection, the rules would become effective. She moved a
substitute motion to place a 70-day delay on 20--4.2 (249B).
Holden was amenable to Clark's motion.

Vote Schroeder restated the substitute motion, "Clark moves to delay
20-4.2 (249B), ARC 3393, for 70 days to allow time for further
study." Motion carried with 4 aye votes.

Beane reviewed the Commission's agenda for the next meeting with Oakley. Oakley thought Commission should consult with their legal counsel as to legality of Aging Commission representatives on Care Review Committees.

Morgan stated the AG's office had advised Commission on Aging that the selection process would be an additional topic for rulemaking. It was Oakley's opinion that appointment of a statutorily created position could not be delegated to anyone else by the agency in authority.

McPherson called attention to the fact that the statute provides 30 days for Commission to make appointments although it meets every 60 days. The rule implies that the Commission refers to the agency, not the policymaking body, which meets every 60 days. There was general discussion. Clark quoted from Code section 249B.1.

Lunch Chairman Schroeder recessed the Committee at 12:35 p.m. to be reconvened at 1:30 p.m.

Reconvened The Committee was reconvened at 1:30 p.m. with the Health Department rules as follows:

HEALTH DEPARTMENT (470)

Advanced emergency medical technicians and paramedics, 132.3 ARC 3371 F..... 11/24/82
Medical examiners, fees, 135.102(1), 135.105(1) ARC 3387 F..... 11/24/82
Funeral directors, mandatory disclosure, 147.7, 147.200(3) ARC 3364 F..... 11/10/82
Speech pathologists and audiologists, licensure, 155.3(1), 155.3(4), 155.6, 155.7(1), 155.7(2), 155.2(4), 156.4(1)"b", 156.6, 156.9(2)"b" ARC 3365 F..... 11/10/82
Physical and occupational therapist, disciplinary action, 128.112(5), 128.112(10), 138.206(4), 138.209(2), 138.209(3)"a", 138.212(5), 138.212(11) ARC 3379 N..... 11/24/82
Psychologists, disciplinary action, 140.212(5) ARC 3360 N..... 11/10/82
Optometrists, examinations, 143.5(4) ARC 3361 N..... 11/10/82
Optometrists, notice of address, 143.8, 144.112(2) ARC 3362 N..... 11/10/82
Premortuary college educational requirements, 147.113) ARC 3363 N..... 11/10/82
Speech pathologists and audiologists, 155.3(3)"d" ARC 3360 N..... 11/24/82

Peter Fox and James Krusor appeared on behalf of the Department.

12/1/82

HEALTH DEPARTMENT Continued 132.3 Krusor reviewed 132.3 which establishes fees for examination and renewal of certificates for advanced EMT's and paramedics who receive compensation. Schroeder opposed the fees and was skeptical of the program. Krusor explained that the fees would partially offset the \$35,000 annual administration cost. Tieden noted that the rule follows the statute.

ch 135 There was review of chapter 135 which increases fees for medical license examinations from \$150 to \$250. Krusor commented about lack of appropriate facilities for administering the test. He assured Priebe he had investigated all available space for less costly rent.

147.7 In re 147.7, mandatory disclosure, Fox said he had presented the ARRC suggestion to add "or designee" to the requirement for a signed statement re funeral services, but the Board of Mortuary Science decided that was the responsibility of the funeral director. Priebe questioned use of "rendering." In his opinion, it was a poor choice of words. General discussion of funeral arrangements.

No questions were raised with respect to ARC 3365, 3380, 3379, 3361, 3360, 3362 and 3363.

No Agency Representative- Any of the following:

Called CITY FINANCE COMMITTEE[230]
Budget amendments and fund transfers, ch 2, notice ARC 3122 terminated ARC 3342...*N*..... 11/10/82

CITIZENS' AIDE[210]
Procedures, confidentiality, 2.3(2)"a" and "b", 5.2(3), 5.3, 5.4(2) ARC 3336...*E*..... 11/24/82

ENVIRONMENTAL QUALITY DEPARTMENT[400]
Waste water construction and operation permits, 15.1(22), 19.6(6) ARC 3352...*N*..... 11/10/82

COMMITTEE BUSINESS Representative Chiodo distributed copies of proposed legislation pertaining to ARRC standing committee status.

Adjourned Chairman Schroeder adjourned the Committee at 2:45 p.m. The next meeting will be held January 4 and 5, 1983 in lieu of the statutory date of January 11 and 12.

Respectfully submitted,

Phyllis Barry
Phyllis Barry, Secretary
Assisted by Vivian Haag

DATED

Lawrence Schroeder
CHAIRMAN