

MINUTES OF THE SPECIAL MEETING  
of the  
ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of Meeting: Tuesday, May 18, 1976, 7:10 a.m.--the special meeting being held in lieu of the regular meeting of May 11.

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

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

Also present: Wayne A. Faupel, Code Editor  
David Charles, Research Assistant

CAMPAIGN FINANCE     Barbara Snethen, Executive Director, Campaign Finance  
DISCLOSURE COMM.     Disclosure Commission, appeared before the Committee to  
1.1, 3.3,             explain filed emergency amendments to 1.1 and 3.3 and  
4.14                   also filed rule 4.14, published in IAC Supplement 4/19/76.

In re Rule 1.1, Snethen said that §56.3(4) of the Code required all political committee treasurers to preserve records for a period of one year from the date of election so CFD rewrote their statute of limitations rule for filing a complaint based on the Code section.

Rule 3.3 would be amended to provide that pink form CFDC/SR-rev. 3/76 be substituted for yellow form (same No.). Years were omitted from the new form to allow it to be used as a multiyear form and also it would include space for the ballot issue committees.

In re the disposition of improper filings made with the Commission, Schroeder expressed concern about the documents reaching the proper destination a few days late--4.14. He thought some provision should be made in the rule for CFD to stamp the document that it had been timely filed.

Monroe pointed out the statute does not provide for this and he didn't see it as a problem.  
No action taken by the Committee.

SECRETARY OF  
STATE  
Ch 5

Louise Whitcome, Director of Elections, explained that Chapter 5 of rules of the Secretary of State were rescinded and new rules on the subject of registration by mail were adopted to implement changes made by 66 GA, HF 1010, §2. Revision was published in IAC Supplement 4/19/76, filed as emergency rules.

CONSERVATION  
COMMISSION  
Ch 61

Stanley Kuhn, Administration Division, explained Conservation rules pertaining to declaratory rulings, being Chapter 61, filed and published in IAC Supplement 5/3/76. No written comments were received when the rules were under Notice and no one from the public attended the public hearing.

Charles called attention to 61.2(2)d which stated one reason for not issuing a declaratory rule would be if it were not "in the public interest." He could see no reason for the provision.

Kuhn thought the language was an excerpt from Professor Bonfield's treatise on the subject.

Motion

Moved by Schroeder that the following objection be filed:

The Committee objects to 61.2(2)d on the grounds that the Department exceeded its authority. One of the reasons for providing for declaratory rulings in §17A.9 of the Code is the theory that it is always in the public interest to advise an individual of the potential applicability of a particular rule. Therefore, in providing that the director may decline to issue a declaratory ruling on the basis that it is not in the public interest exceeds the authority delegated to the agency in relation to declaratory rulings. The decision not to issue a declaratory ruling should be based on lack of information or something of that nature which makes it difficult to analyze the situation.

The objection could be overcome by deleting paragraph d.

REGENTS  
Ch 12

Donald Volm, Merit Co-ordinator, Board of Regents, told the Committee that new filed rules 12.9 to 12.11, published in IAC Supplement 4/19/76, were initiated by the University of Iowa in accordance with Regent merit rules setting out institutional grievance procedure. The rules have been approved by the Regents Merit Employment Director.

Monroe called attention to possible ambiguity in 12.10(2) as to the two representatives allowed the aggrieved employee. No recommendations were made.

Priebe questioned Volm as to the reason for the first sentence of 12.10(4). Volm indicated the same language appears in state merit rules and it is intended to help the aggrieved employee to get a dispute settled.

Doyle recommended that 12.10(3), line 3, be amended by substituting "shall make" for "makes".

Howard Sokol, Assistant to the Vice President, University of Iowa, was present for review of Regents filed subrule 12.7(16) relating to university sponsored productions. The subrule was developed following a problem which arose last fall concerning a university sponsored show wherein there was to be a nude scene. The question as to whether

REGENTS Cont'd to allow the performance was referred to the Vice President for Student Services in charge of Hancher performances. Since advance ticket sales had been made and there was question under Chapter 725 of the Code whether or not the performance might be considered obscene, a decision was made that it might be offensive to some. However, at that time there was no rule to govern this type of situation. Sokol continued that a policy was adopted and 12.7(16) incorporates this policy.

In response to question by Priebe as to definition of "head" as used in 12.7(16)b, Sokol answered that the President of the University is ultimately responsible for all affairs at the University.

CONSERVATION Kenneth Kakac, Superintendent of Law Enforcement, Conservation  
Fish and Game Commission, explained amendments to Chapter 110 of their  
Ch. 110 rules on Inland Commercial Fishing, published as filed emergency rules in 5/3/76 IAC Supplement. Formerly, the rules were submitted twice annually--covering summer and winter seasons. Under a new plan the rules need only be modified slightly to make the transition. Roberts Creek-Lake would not be open for commercial fishing during summer season. Special provisions would govern Red Rock Reservoir from May 28 to September 6. Night fishing only is intended to prevent conflict between fishing and boating.

Schroeder asked how many commercial fishermen there were in Iowa and was told approximately 175 permits were issued and about thirty-five thousand licenses are issued annually. Kakac added that Iowa has had commercial fishing for one hundred years...

Rules were acceptable as filed.

SOCIAL Judith Welp, Office of Procedures Administrator, and Judith  
SERVICES Kemmerer, Family Planning Specialist, explained Social Serv-  
Ch 140 ices rule 140.6, published IAC Supplement 4/19/76.

Welp pointed out that 140.6 was modified after Notice to comply with recommendations of this Committee.

Discussion of 140.1(3) defining clinical care services to "include those services which assist a client in obtaining contraceptive devices and supplies from health practitioner resource persons such as physicians, nurse clinician, health clinic or family planning center." Monroe recommended that "pharmacies" be added to the subrule.

Welp indicated that the Department would redraft the provision.

SOCIAL SERVICES Monroe voiced objection to 140.4 concerning availability of family planning services as to the age restrictions. Cont'd  
Department officials pointed out the ages were mandated in the federal guidelines. Monroe quoted from §234.21 of the Iowa Code and maintained the rule was more restrictive than Iowa law.

Motion  
Objection  
140.4

Schroeder moved the following objection be filed.:

We object to 140.4(234) relating to direct referrals for family planning services as making an arbitrary distinction without an apparent rational basis for limiting the availability of information to clients between the ages of 15 and 44 years. The Committee notes that §234.21 of the Code provides that the services be offered to "every person who is an eligible applicant ..."

The objection could be overcome by eliminating the specific age group.

Motion carried unanimously.

BANKING DEPT.  
1.4, 26.3

Howard Hall, Deputy, and Marlin Reed, Supervisor of Credit Union Examiners, represented the Banking Department for review of filed amendments to 1.4 and new rule 26.3, published in IAC Supplement 5/3/76. The rules are intended to implement 66GA, Chapter 241, which granted additional powers to existing credit unions with respect to small employee groups.

The Committee made no recommendations.

Schroeder out of the room.

AGRICULTURE

James Harlan, Administrative Assistant, represented the Department of Agriculture for review of the following rules:

Fertilizers, license to sell, 8.7	5/3/76
Livestock importation, health certificate, 17.2(4)	5/3/76
Livestock movement, permits, inspection, 18.1(3), 18.4(10)	5/3/76
Apiarist, diseases, Ch 24	5/3/76
Entomologist, out-of-state nurserymen, 26.9	5/3/76
Meat and poultry, plant requirements, 43.7	5/3/76
Meat and poultry, inspections, 43.13	5/3/76
Motor vehicle antifreeze, 55.4	5/3/76
Weighing devices, moisture testing, 55.14(4), 55.44--55.46	5/3/76
Weights and measures, federal regulations, 55.43	5/3/76

The Committee made no recommendation concerning 8.7 which would require a license to sell "specialty fertilizer."

Discussion of how county fairs would be affected by 17.2(4). Harlan indicated the Department would quarantine horses until they could be tested and a valid health certificate obtained. No Committee recommendation.

AGRICULTURE  
Cont'd

Discussion of 18.1(3) in re fee schedule for livestock movement. Priebe took the position fees should be negotiated rather than set out by rule. He said that the cattle association favors elimination of the fee schedule.

Kelly raised question as to the last paragraph of 18.1(3) providing that the Secretary of Agriculture may adopt by reference federal standards which he deems appropriate. With this approach, there would be no assurance the Department would incorporate such rules under Chapter 17A.

18.1(3) temporarily deferred to await Schroeder's return.

Rules 24.1 and 26.9 were acceptable to the Committee as filed.

Harlan indicated that 43.7, implementing 189A.6 of the Code sets out by rule the policy which has been followed by the Department. A public hearing on the rule was held March 4 but no objections were received from any locker operators.

Rule 43.13, updating federal references concerning meat and poultry, was acceptable as filed.

In re testing of motor vehicle antifreeze--Rule 55.4(208A) sets out the standard the Department has always followed, being American Society for Testing and Materials (ASTM). Kelly questioned the inclusion of the words "and such other methods shall be used as may be necessary to determine whether the product complies with the law." He thought the rule was vague and suggested that all methods used in testing be outlined in the rule so long as they were within the statute.

Schroeder returned.

Harlan indicated a willingness to amend the rule to confine testing methods to those provided in the Code.

Doderer out of the room.

Discussion of amendments to Chapter 55.

Priebe and Schroeder voiced objection to 55.45(215) concerning weighing of highway vehicles.

Objection  
55.45

Schroeder moved the following objection to be filed:

The Committee objects to 55.45(215) regarding weighing of highway vehicles. As this rule was explained to them, it would require each highway vehicle to be weighed as a single unit. It is the Committee's understanding that the rule would be contrary to the practice followed by highway weigh stations and would, in effect, render these stations illegal. Therefore, the Committee believes the rule as drafted by the Department is unreasonable and arbitrary.

Motion to object carried.



AGRICULTURE  
Cont'd

Priebe and Schroeder took the position that requirements for testing high moisture grain were unreasonable [Rule 55.46]. Said rule provided that each sample be tested six times adding the six measurements thus obtained and dividing the total by six to obtain an average which would be deemed to be the moisture content of such sample. Schroeder suggested a provision for "three or more probes of a load to be taken and commingled for an accurate test."

Motion  
Objection  
55.46

Schroeder moved that the following objection be filed:

The Committee objects to 55.46 (215)--testing high moisture grain--on the grounds that the Department acted arbitrarily in providing that the grain be sampled six times. This will greatly increase the work of the individuals involved in the testing procedures and place an unreasonable burden on all involved.

The Committee recommends that the Department re-evaluate the number of tests necessary to get an accurate measurement of moisture content.

Motion carried.

Harlan stated that 55.43 (215) was a new rule adopting old policy of the Department.

Discussion of 18.1(3) was resumed.

Schroeder was opposed to increased fee from one dollar to one dollar and fifty cents per head.

Harlan pointed out that veterinarians take the position that one dollar is insufficient.

Doderer returned.

Motion  
Objection  
18.1(3)

Schroeder moved the following objection which was approved. (Monroe "pass")

The Committee objects to 18.1(3) relating to fee schedule as being unreasonable in providing a fifty per cent increase in fees plus a trip charge of ten dollars without demonstrating a valid reason to the Committee for the increase.

Discussion of 18.4(10) which provided that an "S" brand be placed on all exposed cattle moving from a livestock market to slaughter.

Schroeder preferred a more humane method of identification and suggested ear tagging or notching.

Harlan cited instances when tags have been removed making identification impossible.

Priebe recommended that the rule be redrafted to provide that "cattle must be positively identified". This would place the burden on the owner.

AGRICULTURE Schroeder moved that the following objection be filed:  
Cont'd

The Committee objects to 18.4(10) relating to branding of cattle moving to slaughter. It is their opinion the brand requirement is arbitrary on the part of the department. In this enlightened age, the use of cruel branding methods on animals being sent to slaughter should be discarded in favor of more humane processes, e.g., ear tagging and ear notching. The Committee takes the position that the latter procedures would be more reasonable.

Motion was carried.

INSURANCE William Huff, III, Insurance Commissioner, was present for  
15.60 to review of filed rules 15.60 to 15.64, published in IAC Supplement  
15.64 5/3/76.

Complaints Said rules are intended to prescribe information required to be maintained by insurance companies with respect to complaints. Format for complaint records is also provided. Such records will be useful to insurance examiners when following up a problem area.

Huff told the Committee that a public hearing was held concerning the rules and as a result they omitted a requirement for companies to submit copies of complaints to the Insurance Department as well as maintain records in the firm. Approximately 1200 companies would be affected by the rules.

The Committee made no recommendations.

EXECUTIVE Jack Linge, Hearing Officer, Public Safety Department,  
COUNCIL represented the Executive Council for review of filed Chapter  
Ch 10 10 relating to employee dismissal appeal which were published  
in IAC Supplement 5/3/76.

Linge explained that §80.15 of the Code provides that any nonprobationary peace officer dismissed by the Public Safety Department has the right of appeal to the Executive Council. The rules set forth the procedure before the Council intended to give officers the type of hearing provided under Chapter 17A of the Code. The rules will be applicable to any dismissals occurring from now on.

In answer to question by Doderer, Linge said the rules would cover liquor enforcement officers.

Schroeder took the position that the requirement for all documents filed with the Council to be typewritten was too stringent [10.5].

## EXECUTIVE

COUNCIL Cont'd Doderer expressed the opinion that the requirement of seven copies of every pleading ... be filed could become a hardship in some instances. [10.5(4)]. She suggested the Council furnish the extra copies.

Linge was sure an appeal would never be denied on the basis of insufficient copies. However, he was willing to amend the rules to incorporate both the Schroeder and Doderer recommendations.

Doderer raised question as to conduct of hearings in 10.301, wherein the seventh item provided that one duty of the hearing officer would be to "close the hearing."

Linge responded that it was not their intent that the hearing would be a closed one. He agreed that a more appropriate word for "close" would be "adjourn."

Discussion of 10.401 in re standards of conduct which stated "All persons appearing in any proceeding before the council in a representative capacity shall conform to the standards of ethical conduct required of attorneys before the courts of Iowa. If any such person does not conform to such standards, the council may decline to permit such a person to appear in a representative capacity in any future proceeding before the council."

Doderer asked which standard from the Code of Ethics was being referenced in the rule. Linge was uncertain but agreed to study the matter and report his finding to Doderer.

Committee members concurred that they would be amenable to the Department filing amendments to clarify the rules under emergency provisions of Chapter 17A.

## PUBLIC SAFETY

4.5

Michael Rehberg, Director of Criminalistics Laboratory, and Jack Linge explained filed rule 4.5(17A, 749A) governing the criminalistics laboratory.

Doyle noted that in 4.5(6) the medical examiner had been omitted from the list of those to receive laboratory reports. He recommended that it be added to be consistent with Chapter 749A of the Code.

Department officials stated that it is routine procedure to furnish all reports to the medical examiner. They agreed, however, to file an emergency amendment to remove any doubt as to the procedure followed.



ENVIRONMENTAL  
QUALITY  
14.6 (6)

David Bach, Hearing Officer, Department of Environmental Quality, explained filed subrule 14.6 (6), published in IAC Supplement 5/3/76. The amendment was filed without Notice to incorporate a recommendation of the Committee.

Feedlots

Schroeder questioned Bach as to the status of the Water Quality Commission rules governing feedlot operations. Notice of intended action to revise rules on the subject was published in IAC Supplements dated 3/22/76 and 5/3/76.

Bach reported that a hearing had been scheduled for May 26 and drafts of the proposal had been forwarded to many persons affected by the rules, including the Cattlemen's Association, Farm Bureau members and anyone who requested a copy.

MINUTES

Moved by Schroeder to dispense with reading of minutes of the April 13 meeting and that they stand approved. Carried viva voce.

ADJOURNMENT

Chairman Priebe adjourned the meeting at 9:15 a.m. Next regular meeting will be held Tuesday, June 8, 1976, at 10:00 a.m., Senate Room 24.

Respectfully submitted,

*Phyllis Barry*  
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(Mrs.) Phyllis Barry  
Secretary

APPROVED

\_\_\_\_\_  
Chairman

DATE \_\_\_\_\_