

MINUTES OF THE REGULAR MEETING  
OF THE  
ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of Meeting: Wednesday, August 10, 1977, 9:25 a.m.

Place of Meeting: House Committee Room 1, Statehouse, Des Moines, Iowa

Members Present: Representative W. R. Monroe, Jr., Acting Chairman; Senator E. Kevin Kelly; Representative Donald Doyle; Representative Laverne Schroeder. Not present for roll call, Senator Minnette Doderer, Senator Berl E. Priebe.  
Also present: Joseph Royce, Administrative Co-ordinator.

MINUTES

Moved by Schroeder to dispense with the reading of minutes of the July 12 meeting and that they stand approved. Carried.

Rep. Monroe requested Joe Royce to add to the agenda a list of rules which will not be discussed.

AGRICULTURE

Betty Duncan, Consultant for the Department of Agriculture, discussed Aujesky's disease, and advised the committee that public meetings are scheduled on this subject. The Agriculture Department had proposed amendments and Ms. Duncan presented copies of these to the Rules Committee.

There will be a change in that vaccinated animals may be moved provided a permit is requested from the Agriculture Department. Also, the definition of movement would be changed and animals may be moved twice, instead of once, within a 72 hour period. In answer to a question by Rep. Schroeder, Dr. Butler stated this would be under emergency situations wherein a farmer runs out of corn to feed, then he can move the pigs. Pigs cannot be sold to another neighbor.

Chairman Monroe noted that the above discussion is under notice and will be discussed at a later time.

Rep. Schroeder asked that any proposed further changes be mailed to Senator Priebe or himself. Ms. Duncan stated she had mailed them to Senator Priebe.

Betty Duncan discussed importation of equine, 17.8. They are recommending changing the prior rule re time period from six to 12 months.

Ms. Duncan advised the committee that three out of five packaged cottage cheese samples will be required to not exceed 10 coliform per gram. Rep. Monroe expressed a concern for the two samples which would not be checked and questioned if they would be of unlimited content. Mr. Dengler commented that one or two facilities make ungraded cottage cheese.

AGRICULTURE  
(continued)

Rep. Monroe stated he would prefer consecutive samples be taken and set a maximum for all five samples. Duncan replied the Agriculture Dept. would give some thought to that.

Rep. Schroeder discussed federal standards for grain elevators' hopper scales. He advised that in old elevators, the scales are high in the building and questioned how this operation could be completed. Mr. Dengler stated these have not been checked in the past. Rep. Schroeder asked the Ag. Dept. to propose something as an alternate to testing. He suggested implementing this as an emergency rule and has a concern that some of the scales will be closed when harvest season is on.

CONSERVATION  
Ch. 19

Dean Roosa of the Commission advised the committee that the Conservation Commission is having public hearings on August 22 and there are new amendments filed to the rules. The endangered species is the only category that has any legal impact. In reply to a question by Sen. Doderer as to what happens to people when they do something to an endangered species, he advised that anyone taking or destroying an endangered species may be fined \$100 or spend 30 days in jail. There was a general discussion of animals and plants listed on the endangered species.

Rep. Schroeder questioned if a landowner purchased a place which contained wild prairie and did not know of its existence, then destroyed the wild prairie, what would happen. He asked Mr. Roosa to have the Conservation Commission pursue this area. Mr. Roosa advised the committee that many persons from the State Universities have had input into the items on the list.

CORESC program. Mr. Les Fleming stated they had filed an emergency amendment to chapter 70 governing the green thumb program. The General Assembly funded the program in the amount of \$225,000 to get the program going. Monroe pointed out that the rule did not expire within 180 as required by 17A.4(2) and suggested this be corrected.

Rep. Schroeder took the chair.

Deer Hunting, ch. 106. Senator Doderer asked if the dates had been changed from last year. She was advised the number of days are the same and it will begin one week later.

Rep. Schroeder expressed a concern with regard to individual landowners' licenses. He would like this checked a little further and was told that landowners are allowed one permit per unit. Rep. Schroeder would like the Commission to make a suggested change to the Legislature or make this a little more clear. Mr. Farris agreed to make a note and check on this.

Senator Doderer objected to the phrase "sole agency"

CONSERVATION  
(continued)

in that it implied that the Rules Review Committee had no authority to review the decisions.

Waterfowl hunting, ch. 14. The federal requirement was for steel shot shells smaller than 12 gauge. This requirement has been limited strictly to 12 gauge.

Vessel registration, 28.1, 28.19. General comments, no recommendations. Senator Doderer requested a change in boat registration expiration dates from April 1. Mr. Farris advised they had more problems when the expiration date was July 1. In reply to a question by Rep. Monroe, the committee was advised the penalty is \$2 for every six months.

Rep. Monroe returned to the chair.

HEALTH DEPARTMENT

Peter Fox, hearings officer, and Jan Dunn, Board of Examiners, appeared. Kelly questioned the need for notarization of out-of-state licenses for physical therapy examiners. Ms. Dunn stated that that was a more adequate method of verification. Senator Kelly commented this was a needless expense. Rep. Monroe noted that approval by the American Physical Therapy Association required in 137.2(2) should be limited to a date certain. Discussion on the meaning of standard deviation.

Rep. Doyle left 10:20 a.m.

Cosmetology examiners sanitary rules, ch 150. General discussion on the cosmetology rules adopted by the Board of Examiners. Mrs. Grace West, Executive Director, appeared for the Board. Senator Kelly moved the following objection:

The committee objects to subrule 150.2, specifying a square footage requirement for beauty salons; and subrule 150.3, requiring a separate outside entrance for a beauty salon; on the grounds that these requirements exceed the statutory authority of Code section 157.6.

4 Ayes. Motion carried.

Rep. Monroe requested a rule stating practitioners must post licenses and asked them to put that in before the rule is filed.

OBJECTION

OBJECTION

Barbers examiners sanitary rules, ch 153. Mr. Keith Rankin appeared on behalf of the barbers. Discussion about several objections the Rules Review Committee has to proposed rules in chapter 150 of the health department rules. Rep. Schroeder moved the following objection:

The committee objects to proposed rule 153.4, requiring a separate outside entrance to a barber shop; proposed rule 153.3, imposing a square footage

HEALTH DEPT.  
(continued)

requirement on newly established barber shops and 'grandfathering' in already existing barber shops; and rule 153.5 requiring a partition between a joint barber/cosmetology establishment; on the grounds that these requirements are beyond the statutory authority granted in Code section 158.5. The Committee objects to the phrase 'seeing eye dogs' in rule 153.15 on the grounds that the term is unreasonable. The objection may be overcome by substituting the proper term 'guide dog'.

Rep. Doyle returned, 11:05 a.m.

5 Ayes, Motion carried.

Rep. Monroe commented he did not find rules re carpet and lineoleum and stated he thought there should be a rule relating to non-porous floors.

PLANNING AND  
PROGRAMMING

Crisis intervention, ch 5. Delores Abels, Secretary to the Director, advised the state had received \$4.2 million to help with the fuel and energy crisis and Mr. Pickett is the co-ordinator. Mr. Pickett stated that none of the bills had been paid as yet.

Building Code, ch 5. Mr. Don Appel stated that amendments updating the building code are being prepared. They are required by statute to do this. General discussion about the handicapped section and the tie-down for mobile home section.

SOCIAL SERVICES

Medical assistance, 75.1. Judy Welp advised they are making rule improvements.

SPANISH-SPEAKING  
PEOPLES

Hector Sanchez appeared and stated he was presenting his first draft to the Rules Review Committee. A general discussion and exchange between Mr. Sanchez and the committee in order to work out some misunderstandings. He was asked to make minor corrections.

Rep. Schroeder out of the room.

Mr. Sanchez was asked to review the rules of the Voter Registration and Agriculture and to submit a simpler form of rules of organization and operation.

Rep. Schroeder returned.

CITY DEVELOPMENT

Operation, Ch 1, 2. Mr. Larry Tule advised they are reviewing their rules. Discussion concerning the City Development rules. No action taken.

COMMERCE

Pipelines, ch 5. General review of the rules. No action taken. Mr. Dan Fry represented Commerce.

FAIR BOARD

Functions, 1.9. Mr. Jim Taylor, Secretary to the Iowa State Fair Board, appeared before the committee to discuss some items previously discussed with the Rules committee.

Senator Doderer left at noon.

Senator Doderer returned 12:10 p.m.

LIVESTOCK HEALTH  
ADVISORY COUNCIL

Recommendations, Ch 1. Mark Truesdale, attorney, represented this council. General discussion of pseudo-rabies disease.

Senator Kelly left.

Representative Schroeder brought up a letter from the Department of Social Services relative to an individual's claim against the state for damages done by a child under the care and custody of Social Services. Mr. Schroeder objected to the delays by the Tort Claims Division of the Attorney General's office in processing this claim. The committee agreed to take up the matter at the September meeting.

NATURAL RESOURCES

Mr. Louis Gisky, State Water Commissioner, appeared and discussed the Dakota Sandstone, located in the NW 15 counties of the state. He advised the committee of 3 water reservoirs located on private land in the state which are built over waterfalls. The Soil Conservation District has an easement on these and has prohibited landowners from using the water in these 3 reservoirs.

PUBLIC INSTRUCTION

Common carrier, 22.43. Mr. Dwight Carlson stated the rules are intended to establish standards for common carrier type vehicles used as school busses. Rep. Monroe with regard to rule 22.41, report of inspection, would like clarification as to whom the report should be made.

TRANSPORTATION

Highway project planning, ch 1. Mr. Del Despersen advised the original action was adopted in 1973. Now, the DOT would make provisions for right of way actions without public hearings. This reflects what federal highway administration has done with their rules. Adopted because of bridges being built and the emergency expires August 1. Doyle and Schroeder left. Mr. Ron Eklund, with the DOT, presented discussion about amendments to Chapter 8 of the Code, Relocation Assistance. In most cases, they are editorial changes. Senator Doderer requested the rules be desexed.

Mr. Rob Forest, DOT, spoke re change of escort qualifications--mostly commonly used in front of or behind movement of mobile homes. No action taken.

PUBLIC SAFETY

Mr. Wilbur Johnson, Fire Marshall, said an objection was on record and the changes had been made and the last time he appeared, the changes were the way the Rules Committee wanted. Rep. Monroe asked to clarify the statement on the ramps. Mr. Johnson will try to

get a more definite answer to this.  
Schroeder returned.

VOTER REGISTRATION Ms. Dorothy Elliott stated ch. 1 deals with the organization of the commission and the department. This has been presented to the auditor's committee and they have approved it the way it is.

Ms. Elliott advised they had looked over the rules dealing with the Historical Society and they would like a chance to visit with them about some election procedures.

DRUG ABUSE  
AUTHORITY

Application Review, 2.6. Marion Martinez stated the rules or amendments to chapter 2 are basically to clarify what they are doing and amendments to ch 3 were to clarify the standards more clearly.

Rep. Monroe asked what would happen to these rules the first of the year as he believed the passage of H.F. 594 abolishes 224.

ENVIRONMENTAL  
QUALITY

Mr. Dave Bach explained what they had done in the definitions. In chapter 16, some editorial changes were made. Name of a creek is wrong. In Water Quality, he advised the department goes into this every three years to review and revise them.

OBJECTION

Rep. Schroeder moved the following objection:

The committee objects to rule 16.3(1)"b" on the grounds that it imposes unreasonably restrictive requirements against the discharge of materials into surface waters resulting from wastewater discharges and agricultural practices. The committee feels that adequate safeguards may be provided against such discharges without effecting a total ban.

Mr. Bach stated they had public participation into the formation of these rules and distributed drafts. In 16.3(1), he stated some members of the public claim these establish zero tolerances. The DEQ disagrees. He stated agricultural practices have been governed since 1964.

Mr. Thatcher Johnson, Department of Agriculture, stated they had two areas of concern: 1 -- 16.3(1)"b" under Debris the wording is not acceptable. Also, under c, d and e, make this much more clear.

Mr. Hubert Tait, Lucas County, spoke of concerns of so many people over the fact that lay people will interpret "shall be free". He feels the acceptable levels will depend upon the substances at the time. He feels priority has to be placed on what is most important--making a living or recreation. He stated making a living should be first.

Action on the objection was deferred.

Doyle returned.

# HISTORICAL

Mr. Adrian Anderson, director of the Division of Historic Preservation, discussed an introductory rule in ch 10 making a description of the role of the historic division in the State Historical Dept. Mr. Bill Farrell, University of Iowa, presented a letter and gave copies to committee members -- the letter outlined some of the history of the State Archaeological Society in Iowa. He commented he has two concerns with the proposed rules. In chapter 10.1, the role of the division of historic preservation-- they prefer that the rule be revised to indicate that the division of historic preservation does have responsibility for cooperating with other agencies. With respect to 10.3, he would like the description of the chief of state archaeological survey. Also, a concern with the word "sole" responsibility. He felt this could mean that such an officer has the "sole" responsibility within the state. They would like the ambiguity removed there.

Senator Kelly commented he would like to find out what the department's intention is at this point-- language is misleading. He also stated he was very disgusted at the tension between these two agencies.

Rep. Monroe asked that the department strike the word "sole".

The division of historic preservation agreed to drop the word "sole" from 10.3(4) and the division agreed to discuss with the state archaeologist possible amendments to clarify the division's role in archaeological matters.

Mr. Steve McGuire, Assistant City Attorney for the City of Des Moines, spoke briefly about some problems the city has with Chapter 303 of the 1977 Code. He was advised that the Rules Review Committee does not deal directly with the Code of Iowa, only with Departmental Rules and Senator Doderer made the following motion:

## MOTION

The Rules Review Committee should submit the conflict between Chapter 303 and Chapter 412 of the Code to the General Assembly for their consideration.

Motion carried unanimously.

Senator Doderer further requested that Steve McGuire prepare a letter stating the position of the City of Des Moines and submit it to Royce for inclusion with the motion.

Ms. Dorothy Elliott, Voter Registration, stated that Chapter 303 speaks several times to the method of

HISTORICAL  
(continued)

conducting an election and it also defines who is eligible to vote in the lining up of the district. She specifically referred to 12.2(2), Definition of the Commission. Mr. Anderson responded that these rules were taken out of Chapter 303, which probably makes it unconstitutional. Discussion centered around the definition.

Ms. Elliott also mentioned 12.3(1)b, a typed or written list of qualified eligible electors. She stated the words "qualified" and "eligible" do not work together and felt they should be one or the other.

Discussion of "c", accuracy of the list must be ascertained--she felt this would be difficult if you are working with the word "eligible". In 12.3(4), speaking to publishing in a newspaper with the largest daily publication, she felt the words should be "with the largest general circulation".

Under 12.3(4)"a", providing a list of all property owners and other persons residing in the district and it speaks against the property owners in 12.3(5). She asked if a rewrite of this section is done, the Voter Registration Department would like to work with them.

Mr. Anderson agreed that their department would go ahead and get the rules cleaned up.

MOTION

The pending motion on DEQ was deferred in order to act upon approving Mr. Royce's attendance at the National Conference of State Legislatures held in Detroit, Michigan. Senator Doderer so moved and the "ayes" were unanimous.

ENVIRONMENTAL  
QUALITY  
MOTION

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Motion adopted unanimously.

Effluent standards. Mr. Bach stated chapter 17 is a complete rewrite -- struck previous chapter. Most of the chapter takes up adoption by federal standards.

Senator Doderer left.

In chapter 18, effluent program, he stated the first seven subrules are largely unchanged. In 18.9, 10, 11, 12, 13, 14 and 15--through 13, they have adopted new requirement. These set up minimum monitoring schedules based upon the type of operation.



ENVIRONMENTAL  
QUALITY  
(continued)

Waste water construction, ch 19. He advised they had just filed some corrections--all other chapters are on notice.

Water supplies, ch 22. An amendment to drinking water recommendations contains requirements on radio activity. The rule was changed to allow them to take hourly samples.

REVENUE

Assessment, ch 71. Rules are basically three things; 1, implements the new equalization procedures that were passed in 1976. 2, is in response to the Rules Committee request for rules on assessment practices. 71.1(4) Rep. Monroe stated this seems to preclude condominiums and asked if that was the intent. He was advised this was not the intent. Rep. Monroe stated 71.1(5) has the same problem and asked if the department would agree to correct this. They agreed to make the correction.

Sales and use tax, ch 12. no comments.

Mobile home tax, ch 74. These rules were filed some time ago and the 180 days ran out, so they are being filed now. These pertain to the reduced rates for the low income elderly and disabled. Tax rates.

HEALTH

Care facilities, ch 60. Residential construction standards were discussed at the May meeting. Rep. Schroeder questioned limiting the number of residents in a room to 4 (see page 4). He was advised that ch 60 deals with physical standards and has been required in new construction since 1972. In 60.3(2), you have all the exceptions--three were made. Mr. Wiley advised in exception 2, a rule does not pertain to facilities licensed before 1977. Rep. Monroe requested the date to be changed and read correct. Rep. Schroeder commented that possibly the committee should file an objection and was advised this change would be made.

Rep. Schroeder, under Division F, page 5, room area, questioned requirement for windows being openable. Mr. Wiley feels this is an important rule for health care facilities. Variances are granted and he stated they are getting homes covering several areas of care under one rule where they were under three rules before.

Rep. Schroeder also asked about requirement for rule of each room having a door. Wiley feels this is an esthetic thing. Curtains do not provide security and residents sometimes complain about theft. Schroeder stated they are requiring almost what is required of a hospital. Rep. Monroe commented there seemed to be little change in these rules.

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HEALTH DEPT.

Mr. Royce Jones advised that HEW has now amended federal rules. He advised they are now making residential rules more stringent than what is required on intermediate care. Mr. Wiley stated the state will have stronger standards than federals on this.

Schroeder questioned the need for two elevators in a building and was advised that this is a requirement for new construction and not many facilities will build that large. Mr. Wiley stated that in a 4 or 5 story building containing around 200 residents, one elevator would not be adequate to handle the load.

General discussion about ventilation systems and also about the number of facilities which an administrator may head.

Senator Doderer returned.

Senator Kelly asked how long a variance was good and was informed it could be for an unlimited time or a specific time period.

Rep. Monroe questioned why a submitted floor plan was required on paper 8 1/2 by 11" and stated he felt if plans were good and on larger paper, they should be allowed. He was told the department has a problem with filing plans larger than that size.

Monroe asked what a statutory fee for a resident care facility was and Mr. Wiley advised him the fee is a license fee as required in 135C of the Code.

In 635.5(3), Monroe said he did not see the word "alterations" defined. He was informed this meant "structural changes". Monroe requested they add the word "structural" and they said they would make this addition.

Page 7--3.5(5), Monroe questioned that there was not a time limit there and requested a time limit be included. Wiley agreed to include the time limit.

On page 16, under "e" general discussion about some of the problems of getting written authorization from mental retards. Committee was advised there are many forms of mental retardation and many people can give authorization for themselves. Also, discussion of disposal of records without being checked.

Page 21, dental services performed only on the request of the resident. Rules Review Committee was informed that a dentist had gone into one facility and checked teeth of all residents and submitted one large bill--the facility could not afford to pay this. Rep. Monroe

HEALTH DEPT.  
(continued)

questioned making this a rule.

Page 25, 63.18(1)"b", Rep. Monroe made the point that he would prefer the rules not be such that a facility would be required to buy an expensive two-door locked cabinet to house drugs. General discussion about how drugs could be kept under lock.

On page 24, Senator Kelly questioned the statutory authority under 17.3"c" for keeping records confidential. Mr. Wiley stated that must be under old rules since he could not find the authority.

On page 26, 63.18(2), Monroe felt that the wording re standard containers should be such that facilities would not be required to buy expensive containers.

On page 27, under "i", Monroe recommends in the last sentence, change the wording in order to protect the patient. He feels the patient should receive credit for returned medication. Mr. Wiley stated this could raise the cost of the medications.

On page 46, under "g", Schroeder wanted to know why this was being requested and was told because many people have walked through glass doors and a decal or something will be required to avoid any further walking through glass doors.

PUBLIC DEFENSE  
OFFICE OF DISASTER  
SERVICES

OBJECTION

Rep. Monroe moved the following objection:

The committee objects to rule 6.2, the state resources management plan, on the grounds that the plan is beyond the scope of the authority delegated by chapter 29C of the Code. The committee feels that the 1966 plan is now badly out of date and does not meet the requirements of section 29C.8.

Motion carried unanimously.

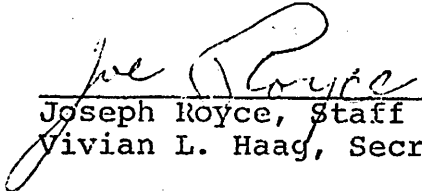
MOTION

Senator Doderer moved to defer review of Health Department rules on Health Care Facilities for the Mentally Retarded. Adopted unanimously.

ADJOURNMENT

Rep. Schroeder moved the committee adjourn at 6:00 p.m.

Respectfully submitted,

  
Joseph Royce, Staff  
Vivian L. Haag, Secretary

APPROVED

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Chairman