

MINUTES OF THE REGULAR MEETING
of the
ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of Meeting: August 12, 1975, 9:15 a.m.

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

Members Present: Senators Berl E. Priebe, Chairman, Minnette Doderer, E. Kevin Kelly; Representatives W. R. (Bill) Monroe, Jr., Vice Chairman, Donald V. Doyle, Laverne Schroeder. Also present: Wayne A. Faupel, Code Editor. David Charles, Legal Counsel to Committee.

Minutes: Moved by Doderer to dispense with reading of minutes of the June 10, 25 and 26 and July 8 meetings and that they stand approved. Carried viva voce.

CIVIL RIGHTS
Age Discrimination Ch 6
Proposed amendment to Chapter 6--Age Discrimination-- of rules of the Civil Rights Commission was before the Committee, having been deferred at the July meeting.

Motion
Moved by Senator Doderer to defer said amendment until the September 9 meeting. She requested Mr. Charles to research the matter as to the authority the Committee would have in filing objection to a rule carried over under the old Chapter 17A of the Code. Carried. Rule deferred.

ACCOUNTANCY
Certificate of CPA
Leo Burger, Chairman of the Board of Accountancy, appeared before the Committee for further review of Chapter 3 of their rules which were deferred at the July meeting to permit the Board to consider suggested amendments by the Committee. Said rules were initiated prior to July 1.

Mr. Burger said that Chapter 3 was rewritten to incorporate changes proposed by the Committee at the July meeting. Also the Chapter was "neutered."

Motion
Moved by Schroeder to approve Chapter 3. Seconded by Doderer. Carried with 5 ayes.

CITY DEVELOPMENT BOARD
Chs 1, 2
William McNarney, Chief of Community Services, Municipal Affairs under OPP, was present to discuss proposed rules of the City Development Board which were published under Notice in the 7/14/75 IAC Supplement.

He explained that the Board was created by the "Home Rule" Act and its general purpose is to establish "centralized and uniform influence on involuntary boundary changes in municipalities and counties." To date, the Board has handled one petition with respect to annexation and severance, being the city of Ayrshire, Iowa.

CITY DEVELOPMENT
Cont'd

Schroeder raised question in 1.4(1) concerning map requirements in drafting of petition for incorporation, discontinuance or boundary adjustment. He took the position there should be a written format to determine the scale to be followed.

McNarney pointed out the scale would be different in each case but emphasized the importance of readable map with each petition.

In re 1.4(2)--tax information, "assessed valuation, by parcel, of all platted or unplatted land..." Charles pointed out that §368.11 of the Code makes no provision for "parcel" basis.

McNarney indicated assessment on parcel basis would enable them to make a fair decision.

Schroeder thought this would be time consuming and unworkable as presented. He moved that an objection be filed with respect to use of the word "parcel" in 1.4(2) as going beyond the authority in §368.11(3) of the Code. No vote taken.

Discussion of 1.4 continued. Question was raised as to the statutory authority for 1.4(6)--"Plans for disposal of assets and assumption of liabilities must be included. Substance and format of such plans shall be subject to approval of the board."

Charles said it was his opinion there are limited reasons for dismissal of petition and provisions in the last sentence would seem to be justification for dismissal but is not provided in the statute.

It was suggested that 1.7 in re dismissal of a petition be clarified by substituting the words "parties or facts" for "parties of facts" in line 2.

Charles pointed out that provisions in 1.10(1), relating to remaining claims after termination of a city, may exceed §368.21 of the Code.

McNarney indicated he would confer with the Attorney General on that matter.

Doyle wondered if "remaining claims" meant any "unpaid allowed claims"--those that creditors failed to file for during the six-month period. The Committee recommended

CITY DEVELOPMENT
Cont'd

that the words "unpaid allowed" be substituted for the word "remaining" where it precedes the word "claims" in 1.10(1).

Doderer suggested that recommendations of the Committee concerning proposed rules of the City Development Board be submitted to the Board for their consideration; that the Secretary of this Committee be instructed to observe whether said recommendations are incorporated into the final draft. If the Board fails to comply, the matter shall be brought to the attention of the Committee by the Secretary at a subsequent meeting where formal objection would be initiated.

Discussion of Chapter 1 continued. Doderer recommended that 1.11 be amended to read: "The Board shall develop and maintain statewide data on development actions taken under chapter 368 of the Code." The word "data" would be substituted for "database".

Kelly commended the Board for its efforts in preparing a concise but conservative annual report.

10:10 a.m.

Representative Monroe arrived.

Kelly moved that the Secretary be instructed to submit to the Board the suggested amendments by the Committee and to advise them if the Board fails to adopt the amendments so formal objection can be made.

Review of Chapter 2--Committee Proceedings.
Schroeder thought five working days limitation for filing briefs--2.10--might be short notice in some instances and suggested provision for extension of time should be made.

Doderer recommended that 2.10, line 1, be amended by inserting before "five" the words "at least".

Doyle noted that the word "must" in 2.10, line 3, should be changed to "shall".

For compliance with the statute, the following recommendations were made by Charles:

2.9 in re issuance of subpoenas, line 2, substitute "shall" for "may".

2.12 in re application for rehearing, line 1, strike "ten" before "working days" and insert "twenty". [§17A.16 allows twenty days]

CITY DEVELOPMENT
Cont'd

In the matter of appeal to a decision of the board ... in 2.13, Charles pointed out that judicial review would be under §17A.19, not §368.22 as provided in the proposed rule.

Doyle suggested that throughout the rules the word "must" be changed to "shall".

McNarney agreed to provide the Committee copies of a letter received by the Board from Iowa Data concerning elections, if a petition or plan is approved. In addition, copies of the Board's response would be included.

Monroe advised the Board to contact the Secretary of State who is State Commissioner of Elections prior to responding to Iowa Data.

ARTS COUNCIL
Ch 1

Dwight Keller, Fiscal Officer, was present to answer any questions concerning proposed rules of the Arts Council, published in IAC Supplement 7/28/75, being Chapter 1 entitled "Policies and Procedures".

Keller explained that funding of the Council is basically from federal funds and therefore the rules were patterned from federal guidelines.

Charles pointed out that Chapter 304A of the Code delegates administrative authority to the Director and the Council has the duty of advising the Director and reviewing programs. However, the rules were drafted in a manner which would imply the Council is the decision-making body. This could be very misleading to the public.

After some discussion, it was the consensus of the Committee that additional rules should be drafted to set out the director's duties. They were willing to withhold objection to allow the agency time to rewrite the rules.

Doyle recommended that 1.2(2)e be amended by striking from the end the words "and abroad".

Question was raised as to use of the acronym ISAC in 1.1 before it had been defined.

SECRETARY OF
STATE
Registration
by Mail
Elections

Melvin Synhorst, Secretary of State and Commissioner of Elections, appeared before the Committee in re rules of the department prescribing a uniform registration of voters by mail form pursuant to authority of 66GA, HF 700, §42. Notice of intended action was published in IAC Supp 7/28/75

SEC. OF STATE
Cont'd

in Part I and in Part II of the same publication, the full context of the rules were printed. They had been filed under emergency provisions of Chapter 17A, as well.

Charles raised questions as to whether the necessary steps had been followed by the Department in filing the emergency rules. He continued that it was his interpretation of the law that two distinct steps are required to do what the Department attempted to do:

1. Propose a rule for which there is normally a 35-day waiting period before it can be adopted.
2. Wait 35 days after adoption until it becomes effective. There are emergency provisions in both steps.

In the first step, as required in §17A.4, an agency finds that public participation is unnecessary or impractical. That section further requires the agency to state that it has made such a finding before they can adopt the rule immediately without the 35-day published notice. There is still a 35-day waiting period before the rule can become effective [17A.5] unless a second finding is made. That second finding is that the rule confers a benefit or removes a restriction on the public or because of imminent peril to the public health, safety or welfare the rule is necessary.

Charles took the position the intent statement was deficient in that it should have contained a statement that the rule was being adopted without 35-day notice because the agency found that public participation was impractical and a second statement that the rule would become effective immediately upon filing because it confers a benefit. He agreed to assist the Department in preparing the necessary amendment which would tend to remove any doubt as to the proper procedure being followed.

MERIT EMPLOY-
MENT DEPARTMENT

Ray Pratt, Employee Services Administrator, represented the Merit Employment Department for brief review of proposed rules under Notice appearing in IAC Supplement 7/28/75, being amendments to Chapter 1--Definitions; Chapter 4--Pay Plan; Chapter 8--Appointments; Chapter 14--Vacation and Leave

Doderer doubted the amendment to 14.2(1) would be beneficial to many employees and, in fact, she concluded it might be capricious.

The Committee recommended that the third sentence from the end of 14.2(1) be amended to read: "This designation shall

MERIT Cont'd

be made 60 days in advance of the intended date." and that the last two sentences be stricken. They were as follows: "The appointing authority may have the right to adjust this date, at the time of request, by thirty days so as to limit interference with the agency's operation the least. Vacation need not be taken in periods of one week or more." They also recommended that the word "the" be substituted for "his" in line 5 of the proposed rule.

REGENTS BOARD
UNI
Ch 14

Robert McMurray, Administrative Assistant, and Dr. James Martin, Vice President Provost, University of Northern Iowa, were present for review of Notice of intent to adopt rules relating to UNI organization [Ch 14], published in the IAC Supp 7/28/75. Said rules would implement §17A.3.

No recommendations were made by the Committee.

HEALTH DEPT.
Ophthalmia
Prophylactic

Ch 2

Peter Fox, Hearing Officer, and Dr. Ron Eckoff, Assistant Commissioner of Medical Affairs, represented the Health Department for review of proposed Notice of intent to amend Chapter 2---Ophthalmia Prophylactic, published in IAC Supp 7/28/75. The revised rule would provide that the Department approve only a one percent solution of silver nitrate from single-dose unopened wax ampules in each conjunctival sac as an ophthalmia prophylactic for newborn infants' eyes. Previously, other antibiotics, such as penicillin were also approved.

Monroe took the position the limitation was a "step backward" since silver nitrate can cause damage to the eyes.

Hearing Aid
Dealers
Ch 145

James Faust, Director of Licensing, and Ed Chamberlain, Chairman, Hearing Aid Board of Examiners, explained proposed rules of the Health Department, published in IAC Supplement 7/28/75, relating to the board of examiners for the licensing and regulation of hearing aid dealers, being Chapter 145.

Senator Priebe pointed out that it might be advisable to substitute the words "Monday to Friday" for "weekday" in 145.1(1) to avoid any misunderstanding.

Discussion of 145.4 in re temporary permits as to possible clarification being needed. It was suggested that "must" be stricken and the word "shall" inserted in lieu thereof in said rule.

It was pointed out the Department has authority to issue a temporary permit for one year to entitle an applicant to engage in fitting and sale of hearing aids under supervision of a person holding a valid license. Said permit is not renewable and cannot be reissued.

HEALTH Cont'd
Hearing Aids

In re 145.6--continuing education provisions, question was raised as to statutory authority for the rule.

Committee members took the position that 145.7(1), relating to office personnel performing certain services with respect to hearing aids, also was beyond the scope of authority in Chapter 154A of the Code. Monroe suggested setting out functions that are to be construed to require licensed person. Doyle recommended that 145.2(2) be amended by striking "postal" before "money order" in line 2.

Doyle raised question concerning 145.10--filing and investigation of charges as to whether it was intended the charge would be indictable. Mr. Fox indicated the word "alleged" should be inserted before "violations".

Doderer voiced objection to 145.8(5) which provided "where a temporary permit holder is separated from the employment of his employer for any cause, he shall surrender the temporary permit to his employer for return to the board of examiners for the licensing and regulation of hearing aid dealers. Upon application of the new employer, a new temporary permit will be issued to the temporary permit holder subject to review by the board of examiners for the licensing and regulation of hearing aid dealers. No additional fee will be charged for the temporary permit."

Brief discussion of mail orders of hearing aids and possible regulation of those dealers.

Members agreed to allow time for the Department and the Board to review the rules and make necessary changes before formal objection would be filed.

Recess
Reconvened

Chairman Priebe recessed the meeting at 12:05 p.m. Reconvened at 1:35 p.m. with Kelly not present.

Dean Powell, Hearings Officer, and David Bach, represented the Environmental Quality Department. They distributed to Committee members copies of the first draft of rules of which summary was published under Notice of intent in 7/14/75 IAC Supplement.

It was noted that hearing on the proposed rules had not been held and members thought it advisable to postpone review until the September meeting.

Doyle questioned Department representatives as to whether rules governing the handling of radioactive waste were being developed. No information was available.

ENVIRONMENTAL
QUALITY Cont'd

Moved by Monroe to defer rules of DEQ no later than thirty-five days after they are filed with the Secretary of State.

Members were willing to attend a special meeting for the purpose of reviewing said rules if necessary.

Monroe motion carried unanimously.

CIVIL RIGHTS
COMMISSION
Ch 3

Michael Murray, Legal Counsel, and Leo Cairn, Liaison Officer, Civil Rights Commission, were present to answer questions concerning notices of intended action to amend Chapter 3--Procedure; Chapter 9--Rulemaking and Declaratory Rulings. Said notices were published in IAC Supplement 7/28/75.

Senator Preibe excused. Representative Monroe took the Chair.

No objections were voiced on either set of proposed rules.

TRANSPORTATION
DEPARTMENT
Motorcycle
Safety Equip-
ment
Contested
Cases

The following persons appeared for review of proposed rules of the Department of Transportation:
William Armstrong, Management Review; Dennis Ehlert, Motor Vehicle Division--Office Enforcement Director; Lowell Shelly, Inspection Section, Robert Tangeman, Assistant Attorney General; Steve Burch, Executive Director, Iowa Motorcycle Dealers Association.

Rules governing contested cases [Division 01, Article B, Chapter 3] and motorcyclists' safety equipment [Division 07, Article E, Chapter 6] were filed July 16, 1975 under emergency provisions in Chapter 17A of the Code because of imminent application of the law. Both sets of rules were also published under notice to allow time for interested persons to make written comments or oral presentation. If hearing results in changes in the rules, appropriate amendments will be filed, according to Department officials. Notices appeared in Part I and full text of the rules appeared in Part II of IAC Supplement 7/28/75.

Chapter 6 is intended to implement H.F. 421 [66GA, ch 183] which will become effective September 1, 1975.

Charles had reservations about dealing with the same rule in different procedures

Discussion centered on 6.3 pertaining to approved equipment lists which provided "Motorcyclist helmets and eye protecto which have been tested by an American Association of Motor Vehicle Administrators approved laboratory and shown to be

DOT Cont'd

in compliance with federal motor vehicle safety standard 218 or American National Standards Institute Standard Z90.1 for helmets and Vehicle Equipment Safety Commission regulation VESC-8 for eye protectors are approved as satisfying the requirements of House File 421 of the 66th General Assembly Lists of approved helmets and eye protectors may be obtained at the following locations either in person or by mail:..."

Priebe took the Chair.

Burch told the Committee that dealers of motorcycle equipment do not trade directly with manufacturers but with distributors. Many dealers have inventories of equipment which will meet both the helmet and eye protector standards but the manufacturer has not filed for approval through the AAMVA lab. The equipment carries the manufacturer's statement that it meets or exceeds the standards of both Z90.1 and VESC-8. However, there are only about four manufacturers appearing on the state's list at this time.

It was noted eye protectors being sold do not show a manufacturers mark and the rule will be difficult to enforce.

Mr. Ehlert commented it is beneficial to the state to have AAMVA do the testing to ensure that this safety equipment meets required standards.

Monroe voiced objection to reference to "goggles" in the "Approved List" of the state when the law refers to "eye protective devices."

Ehlert pointed out eye protectors are not required if the machine is equipped with a windshield.

Monroe moved that objection be filed to 6.3 as being arbitrary and going beyond the scope of law in rendering merchandise meeting the same standards as unsaleable in Iowa.

Schroeder indicated he could accept the rule six months from now but expressed concern there was insufficient time for all companies to get their equipment certified prior to the September 1 effective date of the rules.

Priebe suggested possible incorporation of the AAMVA standards into the rules or rewriting them to require that equipment meets such standards, resulting in the burden being placed on the manufacturer not on the buyer.

It was pointed out the Director must approve the trademark.

DOT Cont'd

Kelly offered as a substitute motion that the Secretary of this Committee be instructed to schedule rules of the Department of Transportation [Chapter 6] for the Committee meeting subsequent to the filing of them for final review in the IAC Biweekly Supplement.

In response to Mr. Birch, Committee members agreed that after September 1, 1975, any dealer selling eye protectors not on lists approved by the Department of Transportation will be in violation of the rule.

It was determined the Kelly motion would not resolve the problem of dealers being placed in jeopardy for sixty days. He withdrew the motion.

Monroe explained his motion would shift the burden to the Department and he asked that the motion be restated to read: "We object to Chapter 6 as being arbitrary, capricious and on the basis that the rules go beyond the scope of House File 421, specifically with respect to eye protective devices." Motion carried. Doderer out of the room.

Contested
Cases

No objections were voiced concerning proposed rules on Contested Cases.

GEOLOGICAL
SURVEY

Orville Van Eck was present to review proposed Rule 1.1 relating to functions and information of the Geological Survey. No objections were voiced. Notice of intended action to adopt the rule was published in 7/14/75 IAC Supplement.

Doderer returned to the meeting.

Notices

William Armstrong asked for discussion of the two paragraphs set in boldface type at the beginning of each Notice of Intended Action. The notes:

Twenty-five Interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand a public hearing hereon as provided in §17A.4(1)"b" of the Code.

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under §17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Armstrong took the position the notes conflict with their notices inasmuch as their requirements are more liberal than required by statute. He requested that the first note be omitted from Notices of DOT.

Schroeder commented that the Department notice provision applies during formulation of rules. Editorial notes are

Notices
Cont'd intended to set out provision for input after rules are formalized and both are workable, he concluded.

Members concurred that the Code Editor should continue to publish both notes in question.

COMMERCE
Notice Michael May, Commerce Counsel, appeared before the Committee and distributed the first draft of Commission rules on Organization and Operation, Forms, Rulemaking and Declaratory Rulings. Notice was published in IAC Supp 7/14/75.

Committee agreed time would be needed to study the rules and discussion should be postponed until the September 9 meeting.

Social
Services The Secretary was instructed to request officials from the Social Services and Health Departments to appear at a future meeting for the purpose of discussing with the Committee the progress being made in drafting in rule form the material contained in various handbooks of the Departments.

Health
Department

Bonfield
Invited The Secretary was also instructed to invite Arthur Bonfield, University of Iowa law professor and authority on administrative procedures law to meet with the Committee during the morning session of the September 9 meeting to review questions concerning the Administrative Procedures Act.

AM. REV.
BICENTENNIAL
COMMISSION Monroe moved to object to rules of the American Revolution Bicentennial Commission as follows:
"We object to Chapter 1 of rules entitled 'Functions and Information,' appearing in the July 14, 1975 Iowa Administrative Code Supplement, inasmuch as the Commission appears to have exceeded their authority under Chapter 17A of the Code in filing the rules without notice of intended action or emergency justification."
Motion carried.

ADJOURNMENT Chairman Priebe adjourned the meeting at 3:50 p.m. Next regular meeting to be held Tuesday, September 9, 1975, 9:00 a.m., Room 24.

Respectfully submitted,



(Mrs.) Phyllis Barry, Secretary

APPROVED

Chairman

DATE _____