

MINUTES OF THE REGULAR MEETING
of the
ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of Meeting: Tuesday, December 14, 1976, 9:25 a.m.

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

Members Present: Representative W. R. Monroe, Jr., Vice Chairman.
Representatives Donald V. Doyle and Laverne Schroeder;
Senators Minnette F. Doderer and E. Kevin Kelly.
Not present: Senator Berl E. Priebe, Chairman
Also present: David Charles, Research Assistant, Senate
Joseph Royce, Administrative Co-ordinator

PUBLIC
EMPLOYMENT
RELATIONS
BOARD

John Loihl, board member, was present for review of filed rules relating to Operations and Procedures, chapters 2 through 8 and 10, published in IAC Supplement 11/17/76. He indicated they had incorporated the suggestions made by this committee at the October 12, 1976 meeting in the areas of absentee ballots [5.2(5)] and service of subpoenas [2.12(3)]. No further recommendations were made by the committee.

HEALTH

John DeBiak, Licensure Division, represented the department for review of filed amendments to Chapter 51, and Richard Mark, Emmetsburg funeral home owner and member of the funeral directing and embalming examining board, was present for review of filed rule 147.7, published in the 12/1/76 IAC Supplement. DeBiak explained that at the committee's request a publication date certain had been inserted in 51.19(2)"a" and references to individuals in the pharmacy section had been neutered.

Charles noted that in 51.19(2)"a", line 3, with the inclusion of a date certain, the word "current" is superfluous and suggested it be removed at a later date.

Question was raised by Schroeder as to whether the food service regulations were going to cause any problems. DeBiak responded that he can't foresee any difficulty with them at this time inasmuch as the food service rules are essentially those used by Medicare and certified by the federal government and are, also, the same ones used by other food service establishments.

In re 147.7, Mandatory disclosure, Mark noted a series of hearings have been held over the United States with the FTC and this is the general consensus of what is needed. He stated 90% of the funeral homes in Iowa presently follow this procedure, and this rule will bring the other 10% into compliance.

Schroeder asked if this has any bearing on the advertising of funeral homes, and Mark replied that it does not.

HEALTH
Cont'd

On a matter not officially before the committee, Kelly called attention to 147.6, Code of ethics, and asked if they were making their code of ethics a part of the rules and regulations which regulate their profession in the state? It appeared to the committee that by the inclusion of 147.6 in the rules, there is some doubt on whether this Code of Ethics is the law and should be enforced.

Mark indicated there would be no problem with the removal of 147.6 and it is the committee's understanding that the department will delete 147.6 at a later date.

Recess

Chairman Monroe recessed the meeting temporarily at 9:35 a.m. to be reconvened at 9:45 a.m.

Reconvened

Chairman Monroe reconvened the meeting at 9:45 a.m.

COMPTROLLER

Eldon Sperry, Accounting Division, represented the Comptroller's office for review of amendments to 1.1 and 1.6, published in IAC Supplement 11/17/76, and 1/6(2), filed without notice, IAC Supplement 11/17/76.

Sperry stated the basic change is an increase in the in-state maximum limit on travel reimbursement expense when state employees are traveling within the state going from \$20.00 to \$22.00 per day, effective January 1, 1977. Also, there is a slight modification covering people who are not away overnight where there would be an increase of twenty-five cents for breakfast and another twenty-five cents in the lunch reimbursement.

Sperry also advised the committee that they have developed an internal procedures manual to be distributed to all departments which will give departments a better guideline as to what they feel is reasonable and necessary in preauditing the claims under Chapter 8.

Schroeder inquired where is their authority to establish the dollar limits for a meal or even the minimums or maximums? Sperry responded that 8.14(5) of the Code indicates that they shall determine that the charges are reasonable, proper, and correct and through the years they have always had some limits on in-state travel. Also, if a department head has a more conservative policy than what these rules are, they would go along with the internal policies of that department.

Doyle raised a question with regard to 1.1(5), second paragraph, where reference is made to "all additional rules" as to whether they mean "in-house" rules or rules that must come before the Administrative Rules Review Committee? Sperry stated these would be rules they could modify from time to time as the need arises without coming before this committee each time and would be included in the procedures manual containing internal guidelines for consistency between departments for reimbursement to employees of departments covered by Chapter 8 of the Code.

COMPTROLLER
Cont'd

Charles suggested that one of the points Representative Doyle may have been making was that Professor Bonfield has made the argument by defining something as a rule it automatically comes within Chapter 17A, so that Sperry may wish to rephrase that part of the explanation by saying "all additional guidelines".

Doyle inquired as a matter of policy if the comptroller's office gives an employee a breakdown at the end of the year between taxable and nontaxable meals. Sperry explained that a detailed breakdown is available to each employee if he needs it.

There was brief discussion concerning the designating of procedures as "rules" or "guidelines". Kelly noted the question is who is a person's public and who is an employee and, further, when the comptroller goes outside his own office, isn't everyone in state government, in effect, his public? He continued, if the procedures apply only to the comptroller's staff and office -- that is internal -- but, once he steps outside of his staff and his office, he feels you now deal with his public.

Charles observed that 17A refers to "the" public -- which he assumes to be the citizens of Iowa -- as opposed to "individual publics within it."

Sperry felt another question that possibly could be coming up is under collective bargaining some of the expense allowance modifications could be an item of negotiation, and once that happens do these rules have to be a part of the administrative rules? Doderer suggested it might be advisable for the committee to meet with the attorney general with regard to the collective bargaining law.

PUBLIC SAFETY

Michael Rehberg, Assistant Director, BCI, and Calvin Rayburn (in charge of the breath testing program) were present for review of 3.13 published under notice in IAC Supplement of 11/17/76. Rehberg stated these were minor procedural changes in the rules governing breath testing for OMVUI purposes. General discussion of breath testing devices and methods to test blood for alcohol followed.

Kelly pointed out the Code requires the department to state the devices they have approved for breath testing and they are not so stated in the rules. Rehberg stated it has been their interpretation that they did not have to publish such a list and that it is their responsibility to approve such machines.

After some discussion, Schroeder suggested the department publish in the rules the types of devices used for testing blood for alcohol or drug content.

REGENTS

Dwight Wolf, Regents, was present for review of 13.1 to 13.5 and 13.7(7) published under notice in IAC Supplement 11/17/76, dealing with Iowa State University.

Charles pointed out under 13.4, opportunity for oral presentation, the rule provides that not less than ten days' notice shall be given and S.F. 1288 requires that at least twenty days' notice be given, and suggested they may want to rephrase the rule accordingly.

Charles called attention to 13.3, second paragraph, and said a number of agencies provide guides under which a declaratory ruling will be held inappropriate, i.e., insufficient facts or not within your jurisdiction. He suggested rewording it to indicate a very specific reason so that if an individual is turned down, he will know why.

In re 13.5(7) (Contested cases, alternate procedures), Charles pointed out reference is made in 13.5(7) "a" to the university office procedure guide and provides under "b" and "c" the types of cases where you would refer to this guide; "a" and "b" appear to apply only to students or staff, but under "c" Charles asked would a member of the public have a claim against a university employee that would be covered under the office procedure guide and, if so, would not this guide have to be published as a rule? Wolf will do further research on this question.

Charles called attention to responding to declaratory rulings in 13.3 where provision is made for notification of the disposition of the petition within 60 days, but 17A.19 does provide that after 30 days if no response is received to request that the individual may then go to court. He suggested this is something Wolf may want to consider as to whether or not he wants to respond before an individual can go to court.

In re 13.7(7), which prohibits smoking in certain rooms, Schroeder requested the removal of the abbreviation "e.g." from line 2 in order to be more specific. Wolf was agreeable to this. The committee discussed the possibility of including language in the rule which would require the posting of "no smoking" signs in the specific areas. However, no recommendation was made.

GENERAL
SERVICES

Vernon Lundquist, Superintendent of Printing, was present for review of amendments to Chapter 22, published under notice 11/17/76 IAC Supplement.

Monroe called attention to rule 5.4(18) which states "No state printing equipment shall be used for private or political purposes." Lundquist replied that it was an oversight and will be reworded so that others can use the copy center and be charged for the service.

There was brief discussion concerning the amount of the performance bond which a bidder must deposit with the printing division. Schroeder suggested that for the session laws, Code of Iowa, or vital statistics of the state, that a higher percentage performance bond be required.

CAMPAIGN
FINANCE
DISCLOSURE

The Campaign Finance Disclosure Commission was represented by the following: Richard E. Connolly, Jr., Executive Director, Commissioner Jolene Stevens and Deputy Fran Fleck. They offered amendments to Chapter 4, published under notice IAC Supplement 12/1/76.

Fleck stated the changes in the forms were mandated by S.F. 1346.

Monroe took the position that 4.16(56) (Disclosure report) was superfluous since the matter seemed to be covered in 4.1. The commission expressed a willingness to omit 4.16(56) when filing.

No further recommendations were made.

TRANSPORTATION Larry Heintz and Dennis Peperkorn represented the department for review of amendments to [06,C] Ch 1, primary road access control and [08,C] Ch 3, functional classification of highways.

In discussing [06,C] Ch 1, Heintz indicated the rules basically spell out the policy that the department has been utilizing for acquiring access rights.

Schroeder raised question as to the policy on the acquisition of access rights in areas where cities might expand along the highway [06,C]1.10(306A).

In re [06,C]1.1(306A) Statement of policy, it was Doyle's opinion that 1.1(3) was contrary to due process. Monroe took the position that the first paragraph of 1.1 would jeopardize the rules and suggested that it be deleted leaving only the catchwords. He further recommended that 1.1(1) and 1.1(2) be restructured.

Discussion of [06,C] 1.12(3) relating to sight distance. It was the consensus of the committee that the department should be realistic and update the speed limit requirements and pointed out there is no differential between daytime and night-time speed limits.

In response to a question by Schroeder regarding 1.14(4) modification of entrances, Heintz indicated the rule has been applied only once in five years.

The committee made no recommendations regarding amendments to [08,C], chapter 3, published IAC Supplement 12/1/76.

VOTER
REGISTRATION
(Ch 3 & 4)

The commission was represented by Dale Nelson and Terry Swanson for review of rules filed and published 12/1/76 IAC Supplement, and amendments to chapter 3 published under notice 12/1/76.

Nelson explained the amendments to 3.1 were made as a result of recommendations by this committee.

VOTER
REGISTRATION
(cont'd)

In re 4.3(3), Schroeder raised a question as to whether the reference to "service bureau" should be clarified and it was decided that the words "data processing" should be added before said words at some future date.

The commission agreed to making this change.

SOCIAL
SERVICES

Judith Welp, Administrator, Office of Procedures, represented the Department of Social Services for review of the following rules:

Community based corrections, advisory panel, 25.2	12/1/76
Dependent children of unemployed fathers, rescinds 42.3, emergency	12/1/76
Medical assistance, 75.1(4)	12/1/76
Providers of medical and remedial care, 79.1 (subrules added)	12/1/76

Discussion centered around authority for establishing the Advisory Panel and the paying of per diems. The committee wasn't quarreling with the concept but they could not see where there was any statutory authority for establishing the panel and paying a per diem.

Mary Louise Conley, representing the Catholic Council of Social Concern and Bishop Dingman, expressed concern that the Advisory Panel they are proposing is basically formed by people who already have the ear of the commissioner and are more representative of corrections rather than community corrections. Also, she feels there is no statewide representation from the judicial districts around the state and the local communities. She feels strongly that community corrections should have local community input.

The Department agreed to respond to the questions raised before the rule is filed.

Kelly recommended further study be given by the Department to the matter of collection of fees by a physician's estate. The Department expressed a willingness to co-operate.

AGING
COMMISSION &
CONSERVATION
COMMISSION

Filed rules of the Conservation Commission, published 12/1/76, and Aging Commission rules published under notice 11/17/76 IAC Supplement, were acceptable to the committee.

RECESS

Chairman Monroe recessed the meeting at 11:50 a.m. to be reconvened at 1:00 p.m.

RECONVENED

Meeting was reconvened by the Chairman at 1:15 p.m. Kelly out of room.

Minutes:

Schroeder moved to dispense with reading of the minutes of the November 8th and 9th meetings and that they stand approved.

Discussion was called for by Chairman Monroe.

1:20 p.m.

Kelly entered.

HEALTH
Chiropractic
Examiners

Dr. Ronald Masters, Chairman of the Board of Chiropractic Examiners; Nolden Gentry, Attorney, Larry Blumberg, Assistant Attorney General, and Janet Dunn, physical therapist, were present for further review of rules of the chiropractic examiners which were on the 11/9 agenda [published 10/20/76].

Due to a clerical error, the objections as originally filed and published in the 12/1/76 IAC Supplement were incorrect. A corrected version was later filed and published in the 12/15/76 IAC Supplement.

Masters distributed the following proposed amendments to overcome the objections:

Item 1. Amend 141.6(2) line 3 by inserting after thereof, "existing as of July 1, 1976."

Item 2. 141.6(3) "d." by striking everything after include, and insert, "all electives of said National Board."

Item 3. 141.6. (4) Amended by striking all after the word abilities, inserting in lieu thereof, "in the practice of chiropractic".

Item 4. Amend 141.8(1) Insert in line 3 after the word 1976, "or one that meets equivalent standards thereof".

Item 5. 141.8(2) Amend by inserting after education, on the third line, "existing as of July 1, 1976".

Monroe stated it is the understanding of the chair that language with respect specifically to 141.6(3) "d" shows not in the tape, shows not elsewhere, except in recollections, [Subrules 141.6(3) and 141.6(4) reproduced below]

141.6(3) All applicants must file a completed application with the board at least fifteen days prior to the examination, along with a fee of one hundred dollars and the following documents:

- a. A copy of chiropractic diploma (no larger than 8½ x 11 inches).
- b. A copy of high school diploma (no larger than 8½ x 11 inches).
- c. Official transcript of grades of the National Board.
- d. The applicant shall have achieved diplomat status with the National Board of Chiropractic Examiners after July 1, 1973, or a Basic Science Certificate issued prior to July 1, 1973 and which after August 1, 1976 shall include the para-chiropractic therapeutic section of said National Board.
- e. Each applicant shall attach three written character references to the application. Said references shall not be from members of the chiropractic profession.

141.6(4) The board shall examine the applicant's practical, clinical and technical abilities, including such areas as adjusting musculoskeletal structures, palpation, physical examination, para-chiropractic therapeutic application of heat, cold, exercise and supports, principles and practice, symptomatology and diagnosis, x-ray: All as taught in approved chiropractic colleges accredited by the Council on Chiropractic Education.

Minutes:

Schroeder called for the question on the motion to approve the minutes as presented and the motion carried.

Motion

Schroeder moved that the changes that were filed by the Board be accepted as removing the objections of the committee. [Mrs. Barry pointed out the amendments were not filed with the Secretary of State, but submitted to the office of Code Editor.]

HEALTH
Cont'd

Discussion followed concerning the effect of H.F. 299 [Ch. 151, Code of Iowa] and its interpretation in the light of a recent district court decision. Blumberg commented that the decision of the court is binding upon the board and an attempt by the committee to require a different standard would put the board in an intolerable position.

Motion

Kelly moved to amend the Schroeder motion by excepting Item 2 of the board's proposal. Discussion followed.

Masters asked Kelly for appropriate language for 141.6(3) "d" which would enable the board to implement the state law.

Kelly recommended placing a period after "August 1, 1976."

Blumberg referred to the relationship between 141.6(4) and 141.6(3) "d" and, in his opinion, no amendment is necessary.

Motion

Schroeder moved a substitute motion to Kelly's motion to add a date certain -- July 1, 1976 -- at the end of Item 2 of the board's proposal. Roll call on the motion showed Schroeder, Doderer and Kelly voting "aye" and Monroe voting "no". Motion carried.

Kelly called for division on the Board's proposed amendments. Items 1, 3, 4 and 5 would become Division 1 and Item 2 would become Division 2.

Short form vote showed Division 1 carried unanimously.

Schroeder called for the question on Division 2. Roll call on the motion showed Schroeder and Doyle voting "aye" and Doderer, Kelly and Monroe voting "no". Motion failed.

Doderer was uncertain whether the terminology used in 141.6(4) -- "para-chiropractic therapeutic" -- was broader than the language used in the Code.

Janet Dunn, physical therapist, was concerned that by allowing for the testing of things other than the application of heat, cold, exercise and supports, then you get into the same situation as the rationale of H.F. 299 -- in her opinion that of legalizing what some chiropractors are practicing anyway rather than policing it.

Recess

Chairman Monroe recessed the meeting at 2:20 p.m. for ten minutes.

Reconvened

Meeting was reconvened by the Chairman at 2:40 p.m. Kelly out of room.

Motion

Doderer moved that the Committee submit this disagreement on Division 2 to the Speaker of the House and President of the Senate for referral to the appropriate standing committees of the General Assembly for their consideration.

HEALTH
Cont'd

Schroeder called for the question on the Doderer motion. Short form requested. Schroeder was recorded as voting "no". Kelly absent. Motion carried.

Kelly returned.

Motion

Doderer moved to reconsider the vote by which her motion passed. Carried viva voce. Schroeder voting "no."

Motion
Reconsidered

Doderer moved that the Committee submit this disagreement on Division 2 to the Speaker of the House and President of the Senate for referral to the appropriate standing committees of the General Assembly for their consideration. Motion carried viva voce. Doderer voting "no."

COMMITTEE
RULES

Discussion of possible amendment to this Committee's rules of procedure. Schroeder suggested that referrals to appropriate standing committees should require a majority vote of the members.

Defer

Doyle moved to defer the matter until the January meeting.

ENVIRONMENTAL
QUALITY
Ch 22

David Bach and Dennis Alt represented the Department for review of amendments to Chapter 22 in re water supplies-- Notice 11/17/76.

Schroeder asked for unanimous consent to take up the next order of business. No objection.

PUBLIC
SAFETY
Child
Care
Centers

Wilbur Johnson, Fire Marshal and Reynold Hentges, Assistant, explained filed rules 5.500 to 5.502 in re fire safety requirements for child care centers--IAC Supplement 12/1/76.

Schroeder recommended that a date certain be added to 5.500(3) and the Department was willing to make the addition when the rules need further change.

Professor Jean Dixon spoke in favor of the rules, generally. She raised question in 5.502(5)"c" (9) and "e" (3) concerning detection systems--automatic and manual.

Discussion of "e"(3) in re extension of system (manual fire alarms). Monroe recommended that language similar to the following should probably be added: "and these shall be the minimum standards unless superseded by local code in which circumstances, the marshal shall require said alarm system." Department officials were willing to review the matter further.

Discussion of 5.502(2) in re types of exits. Doyle noted that "smoke towers" ["c" (6)] was not defined in the rules. Johnson responded it is unlikely those would ever be used in child care centers.

Schroeder asked for unanimous consent to move to the next item of business. No objection.

12-14-76

PUBLIC SAFETY Economic Impact The Committee reviewed briefly the rough draft of an economic impact statement which was being prepared by the Fire Marshal concerning doors in residential care facilities. Monroe quoted from Chapter 17A and noted the statement did not reflect the impact on the agency itself.

AUDITOR OF STATE Filed rules of the industrial loan division [Chapter 1] published 11/17/76 were before the Committee. No recommendations were offered by the Committee.

REVENUE Sales & Use Tax No recommendations were offered for filed rules of the Revenue Department in re sales and use tax [Amendments to Chapters 11 to 18, 20, 26, 28, 32 and 33.]

SOCIAL SERVICES The Kelly motion to defer Chapter 139 [Adoption rules] of rules of the Social Services Department which was carried over from the November meeting was before the Committee. Kelly asked unanimous consent to withdraw his motion. No objection.

SPECIAL MEETING Chairman Monroe called a special meeting of the Committee to be held Tuesday, January 4, 1977 at 10:00 a.m.

ADJOURNED Chairman Monroe adjourned the meeting at 4:25 p.m.

Respectfully submitted,

Phyllis Barry

(Mrs.) Phyllis Barry, Secretary
Assistance of Joyann Benoit