

MINUTES OF THE REGULAR MEETING
of the
ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of Meeting: Tuesday, July 8, 1975, 10:15 a.m.

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

Members Present: Senators Minnette Doderer, E. Kevin Kelly, Berl E. Priebe; Representatives Donald V. Doyle, W. R. "Bill" Monroe, Jr. and Laverne W. Schroeder. All members were appointed for four-year terms, retroactive to May 1, 1975.
Also present: Wayne A. Faupel, Code Editor.
David Charles, Legal Counsel to Committee.

Review of APA Senator Kelly, Acting as Chairman, reviewed with members some highlights of his telephone conversation with Arthur Bonfield, Professor of Law, University of Iowa. The professor was unable to attend today's meeting because of prior commitments but had expressed a willingness to work with the Committee later in the fall. He made available a telephone number where he could be reached. On the question of unfinished business of the Departmental Rules Review Committee, the Professor advised that this could be disposed of by the new Committee [Administrative Rules Review] and they could reorganize.

Notice of Intended Action Under the new Administrative Procedures Act, agencies publish notice of intended action in the Supplement to the Administrative Code and there are 35 days after such publication when oral or written submissions can be made by anyone prior to any rule being filed as permanent.

The professor urged the Committee to delegate to each member the responsibility of requesting an agency to hold a public hearing on behalf of the Committee. This would be aside from the hearing or review before the Committee on a regular meeting date.

Objections by Comm. Senator Kelly reiterated the three bases for filing objection to rules:

1. If the rule goes beyond the scope of legislative intent;
2. If the rule is unreasonable; or
3. If the rule is arbitrary and capricious.

Any objection by the Committee must be stated in one of the above forms.

Senator Kelly emphasized that the Committee can no longer approve rules contingent upon the agency agreeing to amendment. Instead, the procedure will be to object

APA Review
Cont'd

for one of the three stated reasons which can be "cured" by amendment. A certified copy of the Committee objection shall be filed with the Secretary of State. When an agency adopts the amendment, the objection is overcome. If an agency files rules without overcoming Committee objection, the burden of proof is on the agency.

Senator Kelly continued that it would be important for the Committee to be reasonable in their findings.

Senator Doderer suggested that Mr. Charles study proposed rules for scope prior to the Committee review. It was pointed out that all proposals must cite specific authority for rule making.

Senator Priebe asked Mr. Charles to prepare a summary concerning Committee duties.

Discussion of the manner in which members would determine which rules to selectively review and time limits for filing objections, as well as form to be used for filing objections.

All Rules
Reviewed

Committee members unanimously agreed to review all intended actions of agencies appearing in the Biweekly IAC Supplements in August, September and October. At the November meeting this procedure for review would be discussed further. Supplements will be published every other Monday, beginning July 14, 1975.

All meeting dates and agenda shall be published in the Biweekly Supplements.

Senator Doderer announced vacation plans for August which would prevent attendance at the August 12 meeting.

REORGANIZATION OF COMMITTEE Senator Kelly called for nominations for Chairman of the Administrative Rules Review Committee.

Senator Doderer placed in nomination the Senator from Kossuth, Berl E. Priebe, for a one-year term--July 1, 1975 to July 1, 1976.

Representative Schroeder questioned the one-year term. Senator Doderer took the position it is difficult for a new Chairman to assume legislative duties as well as chairmanship of this Committee in January.

It was pointed out that terms of members of this Committee ordinarily expire April 30 of odd-numbered years and the reorganization is held the following May.

- REORGANIZATION Cont'd
- Chairman Selected Senator Doderer offered as a substitute for the nomination that Berl Priebe be nominated as Chairman of this Committee. Representative Schroeder moved that nominations cease. Senator Priebe selected as Chairman. He asked Senator Kelly to continue in the Chair for the remainder of reorganization.
- Vice Chairman Selected Senator Kelly called for nominations for Vice Chairman. Senator Priebe nominated Representative Monroe for Vice Chairman. Representative Doyle moved that nominations cease. Representative Monroe selected for Vice Chairman.
- Motion Moved by Schroeder, seconded by Priebe that the Code Editor continue to serve as Secretary to the Committee. Carried.
- Procedure for Meetings Rules of procedure for conducting Committee meetings were adopted as follows:
1. A quorum of the Committee shall consist of four members.
 2. A majority of the members present may object to all or any portion of a proposed rule or transact other business.
 3. The Chair may call special meetings and shall give at least four days' notice of such meeting.
 4. The Chair shall call a special meeting on written request of two or more members.
 5. Each department shall be notified when its rules will be reviewed by the Committee and that department shall have a representative in attendance to answer questions that may arise.
 6. Rules of the Committee can be amended by a minimum of four votes of members present.
 7. The Chair or Vice Chair shall sign the certified copy of the document to be filed with the Secretary of State.
 8. Any member on behalf of the Committee may request a public hearing.
 9. Motions shall not require seconds.
 10. In cases not covered by these rules, Mason's Manual of Legislative Procedure shall govern.

Recess Meeting was recessed at 12:15 p.m.
 Reconvened Reconvened by Chairman Priebe at 1:30 p.m. Senators Doderer and Kelly out.

BONUS BOARD Ray Kaufmann, Executive Secretary, appeared before the Committee
 Chs 1-8 with revised rules of the Bonus Board which were carried over from the June meeting.

It was noted the rules contained many forms which would be difficult to reproduce in readable print for the Iowa Administrative Code. After some discussion, unanimous consent was granted to amend the rules where reference is made to specific forms by striking the words "in the following manner" after the form number. It would not be necessary then to print these forms in the IAC.

1:45 p.m. Senator Doderer returned.

Discussion of Chapter 4 in re war orphans educational aid, pursuant to authority of section 35.6 of the Code. It was noted that H.F. 411, 66GA amended section 35.6 and this should be reflected in the authority clause. Unanimous consent was granted to amend the authority clause by inserting the reference to H.F. 411.

Unanimous consent was granted to amend 4.10(3) by striking "will" and inserting "shall".

Unanimous consent was granted to substitute the word "shall" for "must" wherever appropriate throughout the rules.

Motion Moved by Schroeder to approve Chapters 1 to 8 of rules of the Bonus Board when amended as suggested by the Committee.
 Carried with 5 ayes. Senator Kelly not voting.

ACCOUNTANCY BOARD Leo Brugger and Roger Cloutier represented the Accountancy Board and submitted 14 chapters of rules carried over from the June 26 meeting of the IDR Committee as follows:
 Chs 1 - 14 Chapter 1--Definitions; Chapter 2--Organization and Administration; Chapter 3--Certificate of Certified Public Accountant; Chapter 4--License of Accounting Practitioner; Chapter 5--Foreign Licenses; Chapter 6--Registration and Renewal of Certificates and Licenses; Chapter 7--Registration of Offices; Chapter 8--Registration of Partnerships and Corporations; Chapter 9--Permits to Practice; Chapter 10--Continuing Education; Chapter 11--Rules of Professional Conduct; Chapter 12--Procedure for Enforcement; Chapter 13--Specified Forms; Chapter 14--Fees

ACCOUNTANCY
Cont'd

Mr. Brugger said the rules are intended to implement an entirely new law which went into effect July 1, 1975. The new law made no provision for carryover of the right to practice in this state by qualified certified public accountants, public accountants, or firms of certified public accountants or public accountants. On June 30, 1974, there were approximately 2,000 such qualified persons registered with the Board and rules are urgently needed so the Board can carry out their duties imposed by law.

Senator Kelly returned.

Senator Doderer objected to 3.3(2) which provided "No credit shall be allowed for part-time experience."

Mr. Houdae, President of the National State Board of Accountancy, explained you are classified as a "junior" accountant as long as you work only part time.

Motion Moved by Doderer to amend 3.3(2) to read: "Credit may be allowed for part-time experience at the discretion of the board."

Motion Discussion followed. Doderer moved to as a substitute that 3.3(2) be amended to read: "Credit may be allowed for part-time experience. Carried viva voce.

The matter of "desexing" the rules was discussed.

Motion // Moved by Monroe to strike 1.2 which provided "Masculine terms shall include the feminine, and when context requires, include partnerships and professional corporations." Carried.

Motion Moved by Monroe to approve Chapter 1 when amended. Carried with 6 ayes.

Objection was raised by Monroe to 2.2(3) as being an expansion of the membership of the board without statutory authority. Board members responded that the matter had been reviewed with the Attorney General's office and they saw no problem.

Motion Moved by Monroe to amend 2.2(1) by striking from lines 3 and 4 "or other certified public accountants or accounting practitioners in good standing in the state,". Carried.

Motion Moved by Monroe to strike all of 2.2(3) pertaining to members of an administrative committee. Carried viva voce.

Question was raised by Monroe as to the two weeks' notice requirement for other meetings in addition to the annual meeting of the board. He took the position provision should be made for emergency meetings and moved to insert the words "if practicable"

ACCOUNTANCY after the words "notice shall be given" in line 4 of 2.4.
Cont'd

Schroeder suggested striking "two weeks' notice" and inserting "one week's notice".

Motion Doderer moved as a substitute motion that 2.4, last sentence, be amended to read: "One week's notice shall be given for such meetings and the notice must designate the time and place of said meeting."

Motion Monroe moved to amend the first line of 2.7(1) to read: "The secretary shall cause complete records to be kept of all applications for". Carried viva voce.

Doderer moved that all rules of Accountancy be "desexed." Carried viva voce.

Members doubted there was statutory authority for disclosure of confidential information provisions in 2.10. After discussion, they recommended that clarifying legislation be drafted.

Motion Moved by Monroe to strike all of 2.10. Carried.

Motion Monroe moved approval of Chapter 2 when amended. Carried with 4 ayes. Schroeder and Kelly out of the room.

Monroe objected to the last sentence of 3.1 which provided: "The board will recognize other educational institutions if they have been accredited by a regional accrediting association recognized by the National Commission on Accrediting." He suggested that a specific list of recognized institutions be submitted to comply with the APA. Board members considered this to be an unrealistic approach.

Schroeder suggested adopting a specific publication, of a specific date and the publisher's name.

Monroe was of the opinion that 3.6(1) in re examination for certification as a CPA would be in violation of §116.16(2) of the Code.

Motion to Defer Ch 3 Schroeder moved to defer Chapter 3 of Accountancy rules until August 12 to allow time for additional study. Carried.

Discussion of Chapter 4 centered on 4.14--\$25 fee for review of examination papers.

Monroe moved to amend 4.14 by striking therefrom the words: "A fee of \$25 is charged for arranging such a review. This rule comprehends review by a candidate of his own papers only, for his educational benefit, and is not to be construed as providing a basis for seeking regrading."

ACCOUNTANCY Doderer moved to amend 4.3--acceptable experience for license--
 Cont'd by striking from the end the words: "No credit shall be
 Motion given" and inserting "Credit may be given" for part time
 experience. Seconded by Schroeder. Carried.

Motion Moved by Monroe to approve Chapter 4 when amended. Carried
 with 6 ayes.

Motion Moved by Kelly, seconded by Doderer to approve Chapter 5
 when properly neutered. Carried with 6 ayes.

Motion Moved by Doderer to approve Chapter 6 as submitted. Carried
 with 6 ayes.

Motion Moved by Kelly to approve Chapter 7 as submitted. Carried with
 6 ayes.

Motion Moved by Kelly to approve Chapter 8 as submitted. Carried with
 6 ayes.

Motion In reviewing Chapter 9, Monroe doubted there was statutory
 authority for 9.5(2) which provided "Retired partners or
 shareholders, not actively engaged in practice in this state,
 will not be required to have a permit." He moved to strike
 the provision.

Kelly objected contending the permit is required to practice,
 not to own a business.

Monroe insisted on the amendment and it was seconded by
 Schroeder. Roll call on the motion showed 4 ayes, being
 Schroeder, Doderer Doyle and Monroe. Those voting "no" were
 Kelly and Priebe. Carried.

Board members expressed opposition to the amendment.

Motion Moved by Monroe to approve Chapter 9 when amended. Carried
 with 5 ayes. Kelly voted "no." Rules approved.

Motion Moved by Doderer to approve Chapter 10 as submitted.

Motion Moved by Monroe to amend 11.1(7), line 4, by striking "used
 by the board" and inserting "adopted by the board". Carried.

Motion Moved by Monroe to approve Chapter 11 when amended. Carried
 Discussion of contingent fees in 11.5(2). No action.

- ACCOUNTANCY Doyle raised question in 11.7(2) which provided "A CPA, PA or
Cont'd Accounting Practitioner shall not seek to obtain clients by solicitation. Advertising is a form of solicitation and is prohibited."
- Motion Schroeder moved to strike subrule 11.7(2).
- Motion Kelly expressed an opinion that the general public will be unable to differentiate between CPA's and PA's and ethics would prevent most CPA's from advertising.
lost He moved a substitute motion to amend the last sentence of 11.7(2) to read: "Advertising is not a form of solicitation."
Motion lost.
- Motion Doderer moved as a substitute motion for the Schroeder motion to strike from the catchwords of 11.7(2) the words "and advertising" and strike all of the last sentence. Carried 3 to 2.
- Kelly moved the previous question on the amendment as amended.
No action.
- Senator Doderer asked that Chapter 11 be temporarily deferred to allow time to refer to a dictionary for the definition of "solicitation". No objections.
- Motion Kelly moved approval of Chapter 12 as submitted. Carried with 5 ayes.
- Motion Kelly moved approval of Chapter 13 as submitted. Carried with 4 ayes.
- Motion Brief discussion of Chapter 14. Kelly moved to amend 14.1--required fees-- by striking the following: "\$25 fee for review of examination papers." Carried viva voce.
- Motion Kelly moved approval of Chapter 14 when amended. Carried with 4 ayes. Monroe and Doderer out of the room and not voting on Chapters 13 and 14.
- Review of Chapter 11 was resumed. Monroe moved to amend 11.7(4) --incompatible occupations--by striking from the end the words "or serves as a feeder to his practice". Carried.
- When it became apparent that Chapter 11 would not be approved Doderer moved to reconsider the vote by which her substitute motion was approved. Carried with 4 ayes and 1 "no".
Doderer withdrew the substitute motion to the Schroeder motion.
- The Schroeder motion to strike all of 11.7(2) was before the Committee and approved by voice vote. Kelly voted "no."

ACCOUNTANCY The Monroe motion to approve Chapter 11 when amended carried with 4 ayes. Senator Kelly voted "no."

CIVIL RIGHTS Written request from the Civil Rights Commission to defer
Ch 6 action on pending amendment to Chapter 6 of their rules was before the Committee.

Motion Moved by Schroeder to defer said amendment until the August 12 meeting.
Doderer asked that consideration be given at the August meeting to further defer the amendment until September.
Motion carried. Rule deferred until August 12.
Doderer and Monroe left the meeting temporarily.

COMMERCE Maurice VanNostrand, Commissioner, Donald Uthus, Commerce Counsel
COMMISSION and Philip Malter, Assistant Counsel, were present to continue
Ch 16 review of proposed amendments to Chapter 16--Accounting--
Accounting Commerce Commission. Said rules were deferred at the June 26 meeting of the IDR Committee.

Mr. Uthus reiterated that the purpose of the proposed amendments is to revise the Commission's existing systems of accounts such as to require certain advertising expenses to be accounted for "above-the line" and other advertising expenses to be accounted for "below-the-line" for rate-making purposes.

He stated that Chapter 490A of the Code gives the Commission authority to administer such a recordkeeping system and much time and effort was devoted to the complex matter.

The Commission concluded it was appropriate to exclude "load factor" advertising as an "above-the-line" account for gas utilities because, unlike electric service, gas supplies are limited.

Opponents of the proposals objected to the requirement that gas companies load-factor advertising expense be accounted for "below-the-line" as a cost of service.

Mr. Arnold R. Madigan, Attorney, Northern Natural Gas Company contended the rules were discriminatory. He took the position that advertising to maintain a base load the year around, as opposed to a peak heating load in winter, is necessary for gas companies to maintain an efficient use of their systems to avoid increased rates for consumers. He declared the basis for such discrimination against gas companies is not valid. The effect would assist electric utilities to maintain their financial strength and position at the partial expense of gas utility customers, ratepayers and stockholders.

COMMERCE
Cont'd
Recess

Representative Doyle asked for a short recess to await full membership of the Committee before continuing the discussion. So ordered by Chairman Priebe at 4:00 p.m.

Reconvened Reconvened the meeting at 4:15 p.m., Monroe out.

Representative Schroeder asked if the Commission had redrafted the rules to provide for equitable treatment of gas and electric utilities.

Mr. Uthus indicated the Commission preferred to proceed with the original submission.

Mr. Van Nostrand pointed out that many hearings were held concerning the rules with participation of various utility companies. Problems of gas shortages were always in the forefront of discussion.

He maintained that advertising of gas should be limited because of the shortage. It is important that customers are made aware of load factor in use of electricity.

Senator Kelly thought the rules were deficient in not providing a "pure account basis for the valleys in terms of advertising load factors in the summer, e.g. air conditioning." He disagreed with the gas companies position on maintenance advertising in terms of load factor because, primarily, this was water heaters, stoves and dryers which are in addition to winterloads.

Mr. Van Nostrand emphasized, "If the time comes when it is demonstrated to us that gas companies have gas to sell and no buyers because of the rules, we will be happy to reconsider them." Mr. Uthus added, "It is not uncommon for 'below-the-line' accounts to be moved 'above-the-line' with sufficient justification."

In response to question by Kelly, David was of the opinion the Commission had authority for the accounting rules.

Senator Kelly declared he could not vote in favor of the rules at this time since there were too many questions which needed further study. He thought it might be a legislative matter to base rates strictly on conservation purpose. He opposed discrimination between two competing energy sources without sufficient reason. The consumer will be the ultimate loser. Further, something must be done to keep down summer cost.

COMMERCE
Cont'd

Doderer failed to see how consumers of electricity can benefit from advertising either and favored "below-the-line" accounting for electric utilities, also. As a consumer, she objected to paying for promotional advertising. She indicated she would vote for the rules but urged the Commission to hold hearings for electric utilities and draft amendments comparable to those affecting gas utilities.

Mr. Madigan commented that curtailment of large volume interruptibles will eventually affect rates to consumers and any erosion of business is an economic factor to the consumer.

4:45

Monroe returned to the meeting.

Doderer moved approval of the rules as submitted.

Roll call showed the following voting "aye": Schroeder, Doyle Doderer and Monroe; Kelly and Priebe voting "no."

Rules approved.

Notice of
Intended Action

Discussion of form of "Intended Notice" to be used by agencies in rulemaking. The following language was agreed upon to be inserted by the Code Editor, in 6-point boldface type, at the beginning of every notice published in the IAC Supplement:

"Notice is 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 or proposed rule hereafter offered by the agency. See Committee agenda."

Discussion of which portions of proposed rules could be omitted from the Administrative Code under §17A.6(2), the matter having been called to the attention of the Committee by Judy Welp, Social Services Department.

Committee Business
Omission
from IAC

Committee members adopted the following policy:

"No omission from the Administrative Code will be allowed except material referenced by specific federal law or the federal register without express approval of the Committee."

It was noted that rules of the Transportation Department filed July 1 which were being published in the IAC were not yet available from the printer. The secretary agreed to furnish copies of pressproof to all members as soon as they are available.

ADJOURNMENT

Chairman Priebe adjourned the meeting at 5:15 p.m. Next regular meeting to be held Tuesday, August 12, 1975, 9:00 a.m.

Respectfully submitted,

Phyllis Barry
(Mrs.) Phyllis Barry,
Secretary

APPROVED