

MINUTES OF THE REGULAR MEETING
of the
ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of Meeting: Tuesday, November 11, 1975, 9:15 a.m.
Place of Meeting: Room 24, State Capitol Building, Des Moines, Iowa.
Members Present: Senator Berl E. Priebe, Chairman, W. R. (Bill) Monroe, Jr.,
Vice Chairman, Senators Minnette Doderer, Kevin Kelly,
Representatives Donald Doyle and Laverne Schroeder.
Also Present: Wayne A. Faupel, Code Editor. ^{P.B.}
David Charles, Senate Research Assistant.
Joseph O'Hern, House Research Assistant.

Minutes: Moved by Kelly to dispense with reading of minutes of the
October 14 meeting and that they stand approved. Carried.

AGING, COMMISSION Robert Rhudy, Attorney, represented the Commission on the
Aging. At the September meeting of the Rules Review Com-
mittee, members recommended that emergency rules of the
Commission which were published in IAC Supplement 8/11/75
be rewritten. Rhudy reported that the Commission is
in the process of drafting new rules to be presented at
the January meeting of the Rules Committee.

Motion Moved by Monroe that the presiding officers of each legis-
lative body be apprised of this Committee's position that
temporary rules of the Commission on the Aging are defective
and the Commission has noted this and agreed to submit
new rules by January 1976. In the event the Commission
fails to act, this Committee recommends legislative atten-
tion to the matter. Carried viva voce.

CITIZENS' AIDE Thomas Mayer, Citizens' Aide, appeared before the Committee
Chs 1 to 6 for review of proposed rules published in 10/20/75 IAC
Supp., being Chapters 1 to 6 pursuant to authority of
§601G.9 of the Code. Mayer explained briefly the basic
objectives of the citizens' aide office.

Doderer questioned Mayer concerning 1.2(8)b--"The citizens'
aide, generally does not have the power to criticize the
grounds or wisdom of a decision based on valid discretion."
It was her contention the word "generally" rendered the
provision meaningless.
Mayer agreed to strike the entire subrule 1.2(8) and to
neuter the rules as well.

9:30 a.m. Schroeder and Doyle arrived.

Charles thought a literal interpretation of 2.1(2)b(1)
would seem to indicate that complaints against licensed
professionals would be handled by the citizens' aide.

11-11-75

CITIZENS' AIDE
Cont'd

Doderer asked who would make the referral to the Civil Rights Commission in re employment discrimination [2.2(1)d] and Mayer indicated the manner of referral would depend on the circumstances.

Schroeder suggested clarification of 3.6(1)c which defined "counsel" as follows: "Any member of the Iowa Bar. Others may be permitted to act as counsel at the discretion of the Citizens' Aide."

Mayer pointed out it was their intent not to exclude situations when a lawyer would not be available but someone, such as a corrections officer, could counsel. He added that Social Security and Veterans Administration permit this. Monroe suggested the rule include the following: "Other authorized persons may also consult with the complainant."

In re classification of inquiries as jurisdictional and non-jurisdictional [3.2], Doderer thought "jurisdictional" should be defined.

Monroe considered 3.2(2)a to be nebulous. It provided: "The complainant has available to him another remedy or channel of complaint which he could reasonably be expected to use." He suggested that the agency specify examples rather than merely repeat the statute.

Monroe also suggested that that 3.5 concerning reporting be expanded to include reference to §601G.19--disciplinary action against public officials--since this is an obligation of the Citizens' Aide.

Question was raised by Monroe as to statutory authority for the first sentence of 3.6(2)--"No one has a right to a hearing before the citizens' aide."

Mayer quoted §601G.8 as authority for the rule. It provides "... the citizens' aide may conduct private hearings."

Charles recommended corrective legislation be drafted to amend §601G.8 to provide exception to Chapter 17A in regard to hearings.

Mayer agreed to strike the first sentence of 3.6(2).

Discussion of 3.6(5) in re hearings and the provision in paragraph b as follows: "Objections shall become part of the record, but the witness shall answer all questions including those objected to." Monroe took the position that §601G.21 would not authorize this. Charles pointed out that a witness would have the same privileges they are given in a court of law and the rule conflicts with statute.

CITIZENS' AIDE
Cont'd
3.6(5)b

Monroe indicated he would move formal objection if 3.6(5)b is not amended in the final draft.

In re 3.6(9) requirement that a witness give his "...name and position," Mayer agreed to amend the subrule by inserting after "position" the words "when relevant to the controversy".

In re notification of complainant if decision is made not to investigate [3.3(2)a], Charles pointed out such notification must be made in writing but the rule provided for telephone or personal visit as well. It was noted the statute should probably be amended.

Discussion of 3.2--Classification of inquiries and 3.3--Evaluation of complaints. Doderer suggested the two rules should be combined. Question was raised as to use of the word "inquiries" and suggestion was made to substitute the word "complaints." Charles pointed out the statute recognizes only complaints. However, it was his opinion that both rules would come under the definition of complaints regardless of their labels.

Charles called attention to possible conflict in 3.6(12) and §17A.12 concerning preservation of records. The subrule provided "... tapes shall be preserved for at least sixty days." The statute requires records to be kept for five years. Mayer responded that their hearings are not contested cases since the office of Citizens' Aide is not the only channel of regress.

Discussion of Chapter 4--Specialists. Doderer suggested clarification of the rules since they appear to shift the responsibility of investigating complaints to someone other than the Citizens' Aide. Mayer agreed to review the matter.

Committee members were of the consensus that Chapter 5 pertaining to immunities, testimony and review of action should be rewritten for clarity with particular emphasis on the immunities section.

In re the subpoena form [6.3], Charles recommended inclusion of the subject matter of the controversy about which the individual would be expected to testify.

In re the witness statement form [6.2], Monroe suggested that a notary be permitted to witness the statement. The rule provided only the Citizens' Aide. He objected^{to} the following sentence in the form:

CITIZENS' AIDE
Cont'd

"I understand the foregoing, and I waive the right to be accompanied and advised by counsel while being questioned." Several alternatives were considered but the most acceptable was offered by O'Hern--insert at the beginning of the sentence in question: "For purposes of this statement".

Mayer expressed a willingness to review the six chapters of proposed rules and redraft them to incorporate necessary amendments.

AGRICULTURE
Hair
Restraints

Amendment to Agriculture Rule 37.2(170), relating to hair restraints for persons preparing food in food establishments, was before the Committee, being 37.2(3) under Notice 10/20/75. Thatcher Johnson, Deputy Secretary of Agriculture, James Harlan, Hearings Officer and Earl Revell, Director of Food Division, were present for review of the proposal:

"37.2(3) Bandanas or head scarves, as well as hairnets, are acceptable hair restraints. Employees with short hair (above the ear lobes) may wear caps, head bands, or hair spray as long as the hair is effectively covered and properly restrained. Wigs must be covered with a cap, hairnet, bandana, or head scarf, or other suitable hair restraint approved by the department. Employees with long hair (below the ear lobes) must confine their hair behind their necks and cover it with a cap, hairnet, bandana, or head scarf, or other suitable hair restraint approved by the department. Employers, as well as employees, shall be held responsible if this rule is violated."

The subrule is intended to implement §170.19(6) as amended by SF 167, 66GA.

Thatcher indicated "employee" would be defined in a future rule.

Monroe thought the phrase "or other suitable hair restraint" had the "capability of becoming arbitrary." Charles suggested the word "similar" might be more appropriate than the word "suitable".

Discussion of applicability of the rule to persons with wigs.

Doderer object to requiring that hair below the ear lobes be confined "behind their necks" and suggested the words "behind their necks" be stricken.

Priebe doubted the rule was necessary since the statute would prevail. To avoid confusion, he suggested a rule be drafted to merely require that "anyone preparing or serving food shall have the hair covered."

Referendum
Chapter 2

It was noted that filed rules of the Agriculture Department relating to referendum would be effective prior to the December meeting of this Committee and any objections should be filed prior to that time.

AGRICULTURE
Cont'd

Monroe called for discussion of 2.4(2)"b" which provided: "Mail ballot procedures must be approved by the secretary of agriculture." He wondered if the provision meant that the commodity group must follow the rules as so stated or that permission to use the ballot must be obtained.

Thatcher commented it would be difficult to write rules applicable to all commodity groups. All such groups have the option of using the mail ballot. However, it would not be desirable for those "in and out of production", e. g., beef or corn producers.

Monroe read the definition of "rule" in Chapter 17A and it was his contention that the mail ballot procedure approved by the Secretary of Agriculture must be set out in rule form rather than being simply a relegation of wuthority

Harlan commented that the Department co-operates with industry to arrive at a desirable plan for conducting a referendum through "designated polling places" and mail ballots.

Schroeder was concerned there was no alternative for groups who disliked the plan.

Priebe raised question as to how mailing lists are formed and expenses paid.

O'Hern suggested that a public hearing be held to develop a procedure for conducting a referendum and this procedure could be filed as a rule when it has been approved by the particular commodity group. He could foresee a different plan for each group.

Charles suggested that a rule be drafted to set out general information, e.g., when mail ballots will be mailed, ie, 30 days ahead of the referendum, when mail ballots are to be used. publish in a newspaper of general circulation notices advising all producers that a mail ballot procedure is to be considered. This would benefit those who do not belong to a commodity group.

Priebe commented that producers active in commodity groups usually favor a referendum. His concern was ensuring opposing factions in the minority an opportunity to vote.

Motion

The Committee voted unanimously to file the following objection to the referendum rules filed October 21, 1975 and published in IAC Supplement 11/3/75:

AGRICULTURE
Referendum
Objection

"The Agriculture administrative rules allow the Secretary of Agriculture unlimited discretion in determining procedure in a mail ballot referendum while at the same time setting forth definite guidelines for referendum held at designated polling places. The Committee objects to these provisions in 2.4(1) and 2.4(2)"b" allowing the Secretary unlimited discretion when mail ballots are used on the ground that an arbitrary distinction has been drawn between the two referendum procedures. In addition, the Committee takes the position that it is unreasonable to allow the Secretary unlimited discretion in the one case while providing guidelines in the other.

These objections can be overcome if the Department will provide guidelines to protect the rights of all interested persons when the mail ballot referendum is employed."

Department officials indicated they would study the matter and draft amendments to the rules.

BANKING
8.7

Thomas Huston, Superintendent of Banking, and Howard Hall, Deputy, were present for review of proposed amendment to 8.7(524) published in IAC Supplement 10/6/75. Huston said the rule would reduce the cash reserve requirement for state chartered banks by deleting the subtraction of one day's remittances from the cash and due from banks balances. The check clearing process is handled with greater speed and efficiency so that the banks can return to the system used prior to 1970.

In response to question by Doderer, Huston said they had no knowledge of objections to the proposed rules. Some letters of support were received. Committee took no action.

CITY FINANCE
COMMITTEE
2.5(5)

No further action was taken concerning filed rule 2.5(5) of the City Finance Committee published 10/20/75 IAC Supplement. To date the agency had not amended the rule to overcome the objection of the Administrative Rules Review Committee filed September 17, 1975.

CIVIL RIGHTS
COMMISSION

Committee took no further action on filed rules of the Civil Rights Commission, being Chapters 3 and 9, 10/6/75 IAC Supp.

PLANNING AND
PROGRAMMING
Ch 15

Filed Rules of the Office of Planning and Programming relating to winterization program (Ch 15) published 10/6/75 IAC Supplement were acceptable to the Committee.

NATURAL
RESOURCES
Chs 1-12

There was no further discussion of filed rules of the Natural Resources Council (Chapters 1 to 12) which were published in 10/20/75 IAC Supplement.

REGENTS
8.6(3)

Dwight Wolf represented the Board of Regents. He explained the minor changes made in 8.6(3)--bid security and in the last sentence of 16.1(1)--slow learner in school for the deaf.

REGENTS
Cont'd

The rules were filed October 2, 1975 and published in 10/20/75 IAC Supplement. Committee found no objection.

INSURANCE
Advertising

Tony L. Schrader, Insurance Department, was present for review of proposed rules published under Notice in 10/6/75 IAC Supp. as follows:

Advertisements--accident and health, 15.13 to 15.30; life Insurance, 15.40 to 15.49; sex discrimination 15.50 to 15.54 Rules 15.8 to 15.28 appearing in Iowa Administrative Code would be rescinded.

Review of life insurance division. Schrader said 15.44(16) would be modified before the rules were filed to ensure that advertising figures used by a company could be substantiated.

In re accident and health division, Schrader indicated 15.18(1) paragraph "e" would be revised to prohibit an insurance company from overemphasizing maximum benefits payable.

Charles called attention to the short period of time allowed the public to make comments on the proposed rules. He thought question could be raised as to the adequacy of the Notice. Schrader pointed out they did not adhere strictly to the dates in the Notice but added they would endeavor to correct this situation in the future. Information concerning the rules was mailed to certain industries and universities two weeks prior to the IAC publication. Approximately 25 persons were in attendance at the hearings.

Responding to question by Doderer, Schrader said no one from the general public attended the hearing.

Schrader continued that as a result of the hearing the sex discrimination portion of the rules would be revised. He distributed the drafts of 15.50 to 15.54 in amended form. Discussion followed.

A new paragraph added to 15.52 pertaining to applicability and scope would provide: "This regulation shall not affect the right of fraternal benefit societies to determine eligibility requirements for membership."

Doderer doubted the need for the paragraph if sales are not affected and she moved to object to it as being arbitrary in that it provides an exemption for a type of insurance company that does not require such exemption.

Discussion of motion. Doderer asked if there was conflict between the new paragraph and the purpose stated in the first paragraph of 15.52. Schrader responded that the amendment was suggested by fraternal groups.

Charles took the position the amendment was superfluous.

INSURANCE Roll call on the Doderer motion to object to 15.52(2) showed unanimous approval.
Insurance deferred temporarily.

CRIME Officials from the Crime Commission were questioned briefly
COMMISSION concerning Chapters 1 and 2 of their rules published under the emergency provisions of Chapter 17A in 10/20/75 IAC Supplement.

Amend Chairman Priebe spoke of his concern that agencies are filing
Ch 17A rules under the emergency statute without justification.
It was the consensus of the Committee that legislation should be enacted to restrict such rules to ninety days.

Defer The Committee urged the Crime Commission to submit their rules
Rules under the normal rulemaking provisions but agreed to review the emergency ones at the December meeting.

INSURANCE Review of Insurance rules continued.
Cont'd Monroe called for discussion of 15.18(1)h which related to advertisements of benefits payable, losses covered or premiums payable:

h. An advertisement of a direct response insurance product shall not imply that because "no insurance agent will call and no commissions will be paid to agents" that it is "a low cost plan", or use other similar words or phrases because the cost of advertising and servicing such policies is a substantial cost in the marketing of a direct response insurance product.

He asked, "Is paragraph h a philosophy or a rule?" Schrader said, "It is a statement of fact..." Monroe recommended that the rule be restructured to the effect that unless such company can demonstrate statistically to the insurance commissioner and prove their rates are cheaper, the insurance department has to make an assumption.

In re 15.23--disparaging comparisons and statements, Monroe wondered if an insurance advertisement may refer to another insurer without risking being disparaging or unfair.
Schrader cited §507B.4(3) as authority for the rule.

Noon Chairman Priebe recessed the meeting at 12:15 p.m. to be reconvened at 1:30 p.m.

Reconvene Meeting was reconvened at 1:30 p.m. Monroe out of the room.

COMMERCE Michael May, Assistant Commerce Counsel, requested that proposed amendments to gas, electric and telephone utilities published 10/6/75 IAC Supplement be deferred until the December meeting. There were no objections. So ordered by Chairman Priebe.

Brief discussion of filed rules of the Commerce Commission published 10/20/75 IAC Supplement--amendment to Chapters 1, 2, 14 and 15. No objections were heard.

INSURANCE Discussion resumed on insurance rules relating to advertising.
Cont'd

INSURANCE
Cont'd

Schrader read the revised version of 15.53--availability requirements which provided:

510--15.53(507B) Availability requirements. Availability of a contract shall not be denied to an insured or prospective insured on the basis of sex or marital status of the insured or prospective insured. The amount of benefits payable, or any term, condition or type of coverage shall not be restricted, modified, excluded, or reduced on the basis of the sex or marital status of the insured or prospective insured except to the extent the amount of benefits, terms, conditions or type of coverage vary as a result of the application of rate differentials permitted under the Iowa Insurance Code. However, nothing in this regulation shall prohibit an insurer from taking marital status into account for the purpose of defining individuals eligible for dependents' benefits. Specific examples of practices prohibited by this regulation include but are not limited to the following:

The rule had been rewritten beginning with "except" in line 7. Schrader explained this was done to take note of the fact that certain rate differentials are permitted under the Iowa Insurance Code.

Motion

Doderer suggested the differentials should be set out in rule form. Further, it was her opinion the rule had been modified to the extent that a new public hearing should be held. Doderer moved that the Insurance Department hold a new public hearing concerning the four changes made in the sex discrimination rules as originally published: Addition to 15.52 (see 51 herein); revised 15.53 (above); and 15.53 c which would provide "Denying a policy under which maternity coverage is available to an unmarried female when that same policy is available to a married female." The fourth change which was in 15.54, line 6, changing the comma to the word "or" so the rule would read:

510--15.54(507B) Rates. When rates are differentiated on the basis of sex, the person must, upon the request of the commissioner of insurance, justify in writing to the satisfaction of the commissioner the rate differential. All rates shall be based on sound actuarial principles or a valid classification system and actual experience statistics.

The Doderer motion carried with 5 ayes. Monroe out of the room and not voting.

Objection
Withdrawn

Doderer asked to withdraw the objection to 15.52(2). There were no objections.

REGENTS

Walter Tucker represented the Board of Regents concerning Notice to amend the merit rules of the Board, being Chapter 3, published in 10/6/75 IAC Supplement.

REGENTS Doderer recommended that Item 1, line 7, be amended by substituting the word "the" for "his". No other comments were made.

Cont'd

PUBLIC

INSTRUCTION Dr. Orrin Nearhoof distributed drafts of rules which were summarized under Notice in 10/6/75 IAC Supplement. Said rules, being Chapters 13 to 19, related to teacher education and certification. It was decided to defer review until the December meeting.

Chs 13-19

Deferred

Athletics Dr. Richard Smith, Deputy Superintendent of Public Instruction, appeared before the Committee for review of proposed amendment to athletic eligibility rule 9.15(6), published under Notice 10/20/75 IAC Supplement, and 23.3, relating to school buses for activity trips, published 10/6/75 IAC Supplement.

Buses

Discussion of Item 1 published in IAC Supplement 10/20/75:

ITEM 1. Amend 9.15(6), by inserting the following paragraph after paragraph one: "A student who completes the ninth grade in a public or nonpublic junior high school that is organized to include grades seven through nine may change from a public school system to a nonpublic school system or from a nonpublic school system to a public school system and be eligible upon entering the tenth grade."

Dr. Smith stated that in addition to the IAC publication, copies of the proposal were circulated to all public and nonpublic school administrators. As a result, the Department received 105 pieces of mail plus a number of telephone calls and personal contacts. The Department had planned to submit the proposal to the State Board at its November 13 meeting, but because of many requests, a public hearing will be held in the House Chamber at 10:00 a.m., December 11, 1975.

Dr. Smith added that opponents of the rule take the position it will discriminate against public schools. Others believe it will create recruiting problems and cause dissention between public and private schools.

No action was taken by the Committee.

2:00 p.m. Monroe returned to the meeting and took the Chair.

School Discussion of proposed amendment to 23.3 of DPI rules regarding construction of school buses used solely for activity trips. Said amendment was pursuant to authority of §285.8 of the Code. Doderer expressed the opinion that use of the word "solely" made the rules too restrictive.

Buses

Schroeder expressed opposition to to the variances with respect to recliner type seats and luggage rack provisions. He asked that additional study be given the rule and that the matter be placed on the agenda for the December meeting of this Committee. So ordered by Chairman.

CAMPAIGN
FINANCE
DISCLOSURE
Forms

Larry Scalice, Vice Chairman and Barbara Snethen, Executive Director, appeared in behalf of the Campaign Finance Disclosure in response to a resolution adopted by the Administrative Rules Review Committee at its October 14 meeting. Also present was Joseph Coleman, Assistant Attorney General.

Snethen reported on their progress in drafting rules to implement H.F. 431, 66GA. Copies of the Notice as well as filed rules which will appear in the 11/17/75 IAC Supplement were provided to Committee members.

Monroe was opposed to the form of Schedule B regarding placement of "fair market value for free or reduced rate advertising" (§56.14). He thought a more appropriate place for the information would be in the "In-kind Schedule" which is Schedule F. He suggested that "fair market value" should be defined by rule. It was noted the term is defined in the tax statutes and the courts have defined it in different interpretations.

Monroe pointed out that although it was probably inadvertent, HF 431 provided that forms be approved by this Committee prior to the adoption of them by the CFD Commission.

Charles interpreted the section in question--a definition one--to mean simply that by following the APA this Committee is given authority to object to a rule indicating disapproval and that would not require affirmative approval. He concluded serious Constitutional questions could be raised if this Committee took such affirmative action.

Monroe questioned Commission representatives as to their position if this Committee were to file an objection.

Snethen was doubtful the matter would ever go to court but in the event this happened, the court would probably find that candidates have an affirmative duty to file disclosure information, including all which is delineated in the law regardless of whether a form has been provided.

Monroe reiterated his displeasure by the delay of the Commission in developing the necessary disclosure forms.

Snethen responded that HF 431 was not effective until August 15, 1975 and because of some question as to its constitutionality, it was not until August 29, that the Commission directed the staff to proceed. Scalise added that a great deal of time was devoted to the Sheriff Clemens investigation.

Monroe asked if the rule summarized in Item 5 of Notice published 8/25/75 had been drafted. (Implementing §10 of HF431)

CFD Cont'd Snethen referred to 4.1 as it would appear in 11/17/75 Supplement:

190-4.1(56) Report form. The commission may require committees to submit information not specifically delineated in chapter 56 of the Code on their disclosure report where the approved report form asks and leaves space for information not specified in chapter 56. The disclosure report form shall include a space for the committee's standard identification number. However, a committee's failure to include the number on a statement, report or notice shall not be deemed an error. The standard identification number is a series of numbers and characters assigned by the commission to a committee when it files an initial statement of organization or disclosure report.

Monroe indicated 4.1 was different from what he had understood it would be. Snethen said that identification numbers had not been assigned. Monroe expressed opposition to characters and numbers combinations. He was willing to accept sequential numbering so long as the failure to include the number would not invalidate the report.

Monroe thought the "Where to file" provisions should be placed on the instruction sheet for the "Statement of Organization" form. Snethen said the Commission felt the more appropriate place was on the "General Instructions" sheet as the ninth item.

Monroe continued that the bookkeeping system was supposed to be designed to accommodate the candidate. He recommended that the layout of DR 1 (Statement of Organization) be rearranged to conform with discussion he had with the Commission previous to today's meeting.

In response to question by Snethen, Monroe conceded Chapter 5 should be amended to repeal the requirement that Commission disclosure forms be approved by this Committee. He offered to assist the Commission in any way possible in developing the required forms.

Priebe took the Chair.

SECRETARY
OF STATE

Hermann Schwieker, Deputy, explained proposed rule 11.1 pertaining to election forms and instructions. Revision of the forms was mandated by H.F. 700 66GA. No objections were voiced to said rule which was published under Notice 10/20/75 IAC Supplement.

INDUSTRIAL
COMMISSIONER

Alan Gardner, Hearings Officer, represented the Industrial Commissioner for review of Chapters 1 to 7 of their rules which were basically procedural. There was brief discussion of the rules which were published under Notice and also filed under emergency provisions in 10/6/75 IAC Supplement.

ENVIRONMENT-
AL QUALITY

David Bach, Hearings Officer, explained proposed rules of the Environmental Quality Department published under Notice in IAC Supplement 10/6/65.

The Water Quality Commission intends to adopt rules of practice including hearing procedures

DEQ Cont'd The Executive Committee proposes to add a new rule to Chapter 55, being 55.12--disclosure of information on violations and alleged violations.

Bach said no adverse comments were made at the hearing held concerning the proposed rules.

Priebe questioned Bach briefly concerning 55.12(2)a and 55.12(5). No recommendations were offered.

EMPLOYMENT SECURITY Ross Williams, Employment Security Commission, explained rules of the Commission proposed under Notice in IAC Supplement 10/6/75. Said rules relate to employment service and forms used by the general public when applying for work or unemployment benefits, being Chapters 7 and 10, respectively.

TRANSPORTA- TION DEPT. The Department of Transportation was represented by William Armstrong, Management Review, Delano Jespersen, Secondary Roads Engineer, and Lowell Shelley, Motor Vehicle Division. The following items of business were considered:
Farm-to-market road projects 06,Q Ch 15--Notice 10/6/75
Off-system roads program 06,Q Ch 17--Notice 10/6/75
Mud and snow tires 07, E 1.3--Filed emergency 10/20/75
Motorcycle safety equipment 07,E Ch 6--Filed 10/6/75
Records Management 03, E Ch 1--Filed 10/6/75.

In answer to Schroeder, Jespersen indicated the federal government had not relaxed the "sloping and shoulder grade requirements" on the the farm-to-market roads. Schroeder expressed concern that this greatly increases the construction costs.

In reply to O'Hern and Doyle, Jespersen said the off-system federal aid is a new program appropriated for the fiscal year 1976 only and the formula for road use tax distribution was used to compute the allocation to each county--rule 17.6.

Discussion of 1.3 defining mud and snow passenger tires which was filed under emergency provisions of Chapter 17A of the Code.

Armstrong told the Committee the definition was written by rubber manufacturers and industry at the request of several states. In their definition, radial tires were excluded.

Question was raised as to the authority for emergency rule.

Monroe considered the expression "aggressive tread pattern" to be nebulous.

DOT Cont'd
Snow Tires

Monroe and Schroeder took the position that 1.3(2) was unreasonable in that it would prevent the sale of many tires normally considered acceptable for mud and snow. The subrule provided: "On at least one side of the tread design, the shoulder lugs protrude at least $\frac{1}{2}$ " in a direction generally perpendicular to the direction of travel."

Armstrong indicated the rule could probably be clarified but the definition would remain the same.

Doderer recalled that when the Department had sought to ban studded tires, they left the impression with the legislature that radial tires would be acceptable for snow.

Schroeder moved the following objection to 07,E 1.3(321):

"The Committee objects to [07,E] 1.3(321) on the basis that the Department of Transportation exceeded its authority in relying on the emergency provisions of Chapter 17A of the Code. House File 50 became effective July 1, 1975. There has been sufficient time to employ the normal rulemaking procedures and the Committee finds that in a rule of this nature, public participation would be practical, necessary and in the public interest. A department that procrastinates should not be allowed to rely on its own negligence to preclude public participation in the rulemaking process. Further, the Committee finds 1.3(2), which provides 'on at least one side of the tread design, the shoulder lugs protrude at least $\frac{1}{2}$ " in a direction generally perpendicular to the direction of travel', is unreasonable in that it would preclude from sale a large number of tires commonly considered to be for snow and mud.

The objection can be overcome by utilization of the normal rulemaking process and providing a definition more in accord with the common concept of mud and snow tires."

The motion to object carried unanimously.

The Committee made no recommendations for 07, E, Chapter 6 or 03, E, Chapter 1.

SOCIAL
SERVICES

The following persons represented the Department of Social Services for review of 10 sets of rules: Judith Welp, Methods and Procedures, Howard Seeley, Bureau of Income Maintenance and John Walton, Bureau of Community Corrections.

The following rules were to be considered:

ADC, Rules 41.13, 41.14--Filed emergency 10/6/75 IAC Supp.
ADC, 41.1(5), Notice 10/6/75

SOCIAL
SERVICES
Cont'd

Boarding homes, Rescind 106.8--Notice 10/6/75 IAC Supplement.
Medical assistance, Ch 78--Notice "
Parole and probation, Ch 26--Notice "
Payment of foster care, Ch 106--Notice "
Small Claims, Ch 8--Filed Emergency "
Petition for rules; declaratory ruling--Filed 10/6/75 Chs 4,5
Organization, Ch 1--Filed "
Reimbursement, Ch 136--Notice 10/6/75
Relief for Indians, Ch 64--Notice 10/6/75

ADC
41.13 and
41.14

Discussion of Chapter 41. Welp explained the rules are intended to implement Title IV D of the Social Security Act which provides child-support and S.F. 518, 66GA which set up the child-support recovery unit in the Department of Social Services. The Iowa law was effective August 15, 1975 and the federal law became effective August 31 and therefore, the rules were filed under emergency provisions. Welp commented that the rules follow federal guidelines and any comments or suggestions would be moot.

O'Hern questioned the meaning of "cooperate" as used in 41.13(3) and Welp said that anyone who provides the necessary information to the best of their ability would be considered cooperative.

No recommendations were made by the Committee.

Parole and
Probation

Discussion of parole or probation agreement--26.4.
Charles raised question as to what is a "written report as required"--26.4(1)d. Walton said since there are varying degrees of supervision, the rule will allow for flexibility.

Committee members voiced objection to 26.4(1)f which stated: "Parole/probationer shall not own, possess, or use firearms or other dangerous weapons." They urged revision to permit the probation officer some discretion and to provide a variance with respect to "ownership"

Motion

Several possible amendments were offered and the following was moved by Schroeder:
Add at the end of 26.4(1)f the words "without prior written approval of the supervising parole officer in charge".
Motion carried unanimously.

Motion

Moved by Schroeder that formal objection be filed to 26.4(1)f in the event the Department fails to amend said rule as suggested. Carried unanimously.

Doyle recommended that the word "domicile" be substituted for "residence" throughout the rules.

Kelly raised question in 26.8(2)--categories of offenses--as to "assaultive behavior" in paragraph f.

SOCIAL
SERVICES
Ch 26
Cont'd

He pointed out that the rule did not recognize varying degrees of assault. Walton agreed to reword the paragraph in question.

Priebe raised question as to 26.8(2)d--abuse of alcohol or drugs--a violation which must be reported in writing to the Board of Parole.

Committee members were not convinced "abuse" was the proper terminology but were unable to reach a decision for a substitute. Monroe recommended: "Intoxication by liquor or illegal use or drugs."

O'Hern suggested, "Repetitious use of alcohol or drugs in a pattern deemed to endanger the parolee's successful completion of parole."

Department officials indicated the Parole Board would not be willing to omit the language in question. They agreed to study the matter, however.

Doyle raised question in 26.11(2)e in re application for discharge to include "Restitution accomplished by the parolee or probationer when appropriate or when ordered by the board of parole or the district court." He pointed out "restitution" can not be granted by the parole board and suggested clarification.

No objections were voiced in re rescission of 106.8 relating to federal funds in the payment of foster care or to rescission of Chapter 136--reimbursement.

Discussion of proposed rule 78.13--transportation to receive medical care. Welp explained funding will be transferred from the ADC program to the medical assistance program. ADC grants will no longer include specials, i.e. transportation and property repair. There will be flat grant in one amount depending upon the family size.

Charles suggested clarification of the last sentence which read: "Transportation costs may include lodging when necessary and meals when lodging is required." He recommended substituting "shall" for "may".

It was noted the word "town" should be deleted from the rules since it is no longer defined by statute.

Schroeder took the position the rule was discriminatory in that recipients living within city limits would not receive transportation costs. He moved to file the following objection:

11-11-75

SOCIAL
SERVICES
objection

"The Committee objects specifically to 78.13(1) on the basis that an arbitrary and unreasonable distinction is drawn between recipients living in a rural area and those living within the city limits since the cost of traveling may be incurred regardless of an individual's place of residence.

This objection can be overcome if the Department provides reimbursement for transportation expenses incurred regardless of the place of residence of the recipient."

The Schroeder motion carried unanimously.

Kelly brought up a matter not directly related to rules. He described a new type of ambulance service being offered in his area. Patients in wheelchairs can be lifted into a van-type vehicle and transported for a great savings from regular ambulance service--\$12.00 as opposed to \$75.00.

He knew of only one such operation at this time, but thought the concept was worthy of consideration as being economical and more practical in many ways.

Small
Claims

Review of Chapter 8 pertaining to payment of small claims to social services employees. Said rules were filed under the emergency provisions of Chapter 17A. The Comptroller will not pay claims under the law which became effective July 1, 1975 until rules have been promulgated. Funds for payment of the claims are deducted from the department's appropriation. No objections were voiced concerning the proposed rules.

No discussion called for on filed rules Chapters 4 and 5 and proposed Chapter 64.

Filed
Rules
Chs 17-20

Charles reminded Committee members that filed rules (Chapters 17 to 20) of the Social Services Department which were published 11/3/75 would become effective prior to the December meeting. He called attention to the following language which had been added to each of the Chapters after they were reviewed under Notice by the Committee:

"The institution will not be liable for injury to guests or visitors nor responsible for loss of personal property."

The sentence in question appeared as 17.2(16), 18.2(6), 19.2(15), and 20.2(6). and contrary to statutory provisions of Chapter 25A

Charles thought the effect of the rule would be to discourage persons from trying to recover and that it would be contrary to provisions of Chapter 25A of the Code.

SOCIAL
SERVICES
Institutions

Schroeder moved to object to the subrules in question as follows:

"The Committee objects to subrules 17.2(16), 18.2(6), 19.2(15) and 20.2(6) which provide: 'The institution will not be liable for injury to guests or visitors nor responsible for loss of personal property.' Chapter 25A of the Code provides for claims against the state. The Committee takes the position that the Social Services Department exceeded its authority in drafting subrules that restrict a right granted by this statute. The effect of these subrules is apparently to discourage individuals from exercising this statutory right.

This objection can be overcome by rescinding the subrules in question."

The motion carried with 5 ayes. Kelly voted "present."

PROFESSIONAL
TEACHING

Filed rules of the Professional Teaching Practices Commission were acceptable to the Committee.

Motion
Committee
Procedure

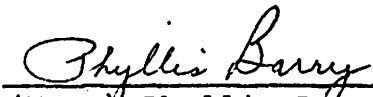
Moved by Doderer that this Committee review their rules of procedure at the December 9 meeting. Carried.

Kelly reported that he would not be present at the December meeting.

ADJOURNMENT

Chairman Priebe adjourned the meeting at 5:35 p.m. ~~11-11-75~~
Next regular meeting will be held Tuesday, December 9, 1975, 9:00 a.m., Senate Committee Room 24, Statehouse.

Respectfully submitted,


(Mrs.) Phyllis Barry, Secretary

APPROVED

Chairman

DATE _____