

MINUTES OF THE REGULAR MEETING  
OF THE  
ADMINISTRATIVE RULES REVIEW COMMITTEE

TIME OF MEETING: Tuesday, September 13, 1977, 10:30 a.m.

PLACE OF MEETING: Senate Committee Room 22, Statehouse, Des Moines, Iowa.

MEMBERS PRESENT: Representative W. R. Monroe, Jr., Acting Chairman; Senator E. Kevin Kelly, Representative Laverne Schroeder, and Representative Donald Doyle. Not present for roll call, Senator Berl E. Priebe, Senator Minnette Doderer.

MINUTES

Rep. Schroeder moved to dispense with the reading of the minutes of the last two meetings, August 10 and August 23, and that they stand approved. Representatives Monroe and Doyle objected on the basis that corrections were to have been made to the minutes and this had not been done. Rep. Schroeder moved to delay the approval of the minutes to allow for Mr. Royce to obtain copies of the corrected minutes.

Care facilities, Chs 57, 58, 59, 61

9/7/77

HEALTH DEPT.

Ms. Dana Petrosky discussed general changes in rules filed. Representative Doyle questioned the definition of an alcoholic and she informed the committee that the definition has been used since 1972, and it would not include a person who was not currently in a state of alcoholism. Rep. Doyle stated that a person is always an alcoholic as stated by the Alcoholics ANONYMOUS rules. Ms. Petrosky replied it is only someone who is not in control.

Rep. Doyle questioned the use of the statement, "physical dependency" and Mr. Middleton commented that he thought that was a typographical error and that particular language was taken from the Iowa Code and Ms. Petrosky agreed to correct the word to "disability".

Rep. Doyle asked about 57.6(2), emergency closings, and what the procedure would be. Ms. Petrosky stated this is a disaster plan to allow for actions if and when a facility would be destroyed by fire, tornado, etc. and placing residents in a temporary location, such as school building, until new placement can be made.

In 57.7, Hearings, Rep. Doyle stated this doesn't have anything to do with hearings, only with witness' fees. He feels this should at least refer to another section of the Code. Ms. Petrosky stated that the Administrative Procedures Act is the applicable section of the Code. Mr. Middleton and Ms. Petrosky agreed to make the language more clear.

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Representative Doyle asked the department to make the necessary changes on the word "his" in 57.15(6) and 57.16(1). The department agreed to correct this error.

In 57.16(5)"b", Representative Doyle asked if the employee has a right to review his or her own records. Ms. Petrosky commented that this would be up to the discretion of the individual department and there was nothing allowing it or precluding the employee from doing so.

✓ Representative Monroe asked the department to make the proper change in 57.19(3)"c" to allow a diabetic patient to designate someone other than a registered nurse to inject insulin. Ms. Petrosky agreed to make the change.

General discussion of protective devices used to contain residents, 57.25(4)"a" initiated by Representative Doyle and Ms. Petrosky advised these measures were taken to protect residents. Rep. Schroeder asked about meeting fire standards with regard to divided doors and Mr. Middleton advised there had never been a problem with the fire marshall.

General discussion about rule 57.28(5) pertaining to stain-free bed linens. Ms. Petrosky advised the committee that some stains get onto linens and they are impossible to wash out and the sheet has to be thrown away.

Representative Monroe reminded the committee that on November 17, 1976, the Rules Review Committee did file an objection to 57.24(4), 58.27(4) and 58.27(5) and several others, and that with the adoption of these Health Department Rules, the objection would be nullified.

Representative Schroeder questioned Ms. Petrosky about 57.29(3) pertaining to containers and stated he thought that the way hospitals are using plastic liners in waste-baskets and throwing them away each time the basket is emptied is wasteful. Ms. Petrosky advised that the rule applied to dumpsters and garbage cans and Mr. Middleton stated there is no requirement that the facility has to use plastic liners. They choose to do so. Mr. Schroeder stated that this should say it applies to those containers on the outside of the building area, or the storage area and feels this could cause a problem.

Senator Priebe arrived and assumed the chairmanship of the committee.

OBJECTION

Representative Monroe moved the following objection:

The Committee objects to the provisions in 57.24(4), 57.24(5), 58.27(4), 58.27(5), 59.32(4) and 59.32(5) that require the Care Review Committee to notify the department before proceeding with a complaint on the grounds that this requirement is beyond the statutory

HEALTH DEPARTMENT  
(continued)

OBJECTION

authority granted the department by Code sections 135C.37 and 38. These sections contemplate a Care Review Committee that could and would act independently of the department if it so desired. The above subrules reduce the Care Review Committee to a subservient role. The objection may be cured by removing the prior notice provisions.

The motion carried unanimously.

Representative Schroeder requested the department to add the words "when not in use" to 58.21(1)"c" after the words "drug storage cabinet shall be kept locked". The department agreed to make the change.

Senator Kelly questioned how the department defined "scatter rugs" in 58.31(10) and Ms. Petrosky replied they would be a loose type rug of around the size of two by three feet. Senator Kelly cited an incident in Sioux City whereby a resident was forced to remove a beautiful Persian rug. Ms. Petrosky stated that variances were allowed within this rule and Senator Kelly stated that very few residents would have knowledge of such a variance.

Advantages and disadvantages of having throw rugs was discussed.

OBJECTION

Senator Kelly moved the following objection:

The committee objects the provision of 58.31(10) which prohibits throw or scatter rugs from a care facility, on the grounds that such a restriction is an unreasonable and arbitrary infringement upon the rights of the patient. The Committee feels that only the smaller of these rugs pose any hazard to the safety of the patient. The objection may be cured by adding to the subrule a definition of throw or scatter rugs limited to rugs of smaller size.

The motion was adopted unanimously.

Mr. Middleton commented the department would work on the definition of throw or scatter rugs in order to remove the above objection.

The committee also discussed the fire resistance of rugs.

Senator Kelly questioned the requirement for covered hampers for picking up soiled linens as required in 58.33(1). He advised that hospitals use open hampers. General discussion of the problems with odors in the Health Care Facilities and the methods of picking up soiled linens and whether or not they are in closed hampers. No action taken.

HEALTH DEPT.  
(continued)

Senator Priebe commented about room size requirements as stated in 58.35(1)"a" with regard to usable space and cited a case in a home where men might be moved out of a room because of a stairwell going up through a room. He asked whether or not the department would allow the men to remain in the particular room and Ms. Petrosky said they would if it was usable floor space. Senator Priebe stated the space was 78 feet usable and she said that would be acceptable.

Senator Priebe also discussed requirements for multi-purpose rooms with regard to spacing and the height of card tables used in facilities and wanted to know if they were going to define heights of card tables. Ms. Petrosky advised there are institutional tables that will allow a wheel chair under. Senator Priebe questioned the necessity for the requirement in 58.35(4) stating that 75% of the beds shall have a spring with adjustable head and foot section. Ms. Petrosky stated they felt that it was necessary because 40% of the people in their facilities are incapable of ambulating independently. Senator Priebe dislikes the 75% figure. Ms. Petrosky stated this figure was a compromise, as they would have preferred the figure to read 100%.

He asked what the definition of comfortable pillow was in 58.35(4)"b" and she replied that it was one that is not lumpy. Discussion of definition of pillow and the word "comfortable". Senator Priebe stated he would like to take the word "comfortable" out. He feels clean pillows of average size would be sufficient. Mr. Middleton asked if the patient should be allowed to make this determination. No action taken.

Discussion of placing beds in front of windows and variances requested to accomplish some of these actions.

MOTION

Rep. Schroeder moved to drop discussion of Health Rules as the committee was getting behind and he requested the committee move on to discussion of Employment Security. Motion adopted.

EMPLOYMENT  
SECURITY

EMPLOYMENT SECURITY(370)	Filed	
Employers contributions to unemployment compensation fund, Ch 3		8/10/77
IPERS, Ch 8, notice amended		8/10/77
Employers records, Ch 2		8/24/77
Contributions and charges, 3.10(1)		8/24/77
Claims and benefits, Ch 4		8/24/77
Appeals and procedures, 6.4		8/24/77
Forms, 10.4		8/24/77

Mr. Harold Keenan, Legal Counsel, Iowa Department of Job Services, commented that these rules were to update the present rules and to comply with new legislation. At the request of the chairman, Mr. Keenan perused some of the changes. In chapter 2 and 3, the changes were in words which have no meaning effect. In chapter 4, "earnest and actively seeking work, item 6" was rewritten (22.1"c"). In chapter 3.8(3), he stated they defined "reasonable assurance" and would like to

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EMPLOYMENT  
SECURITY  
(continued)

withdraw rule 4. Mr. Keenan was advised that these were still under notice and this could be taken care of through that process.

Representative Schroeder discussed the number of years required to be eligible for coverage under IPERS and was informed that four complete years are required.

Mr. Keenan advised that the appeal board had a change on rule 6.4(3), oral statements before them on appeals, they took out "shall" and inserted "may"

COMPTROLLER

Mr. Eldon Sperry appeared for the Comptroller's Office and informed the committee that the rules before them were changes recommended by Governor Ray to the last session of the legislature and some of the changes in travel expenses were being extended to non-contract people. Basically, this is language that was in most of the collective bargaining contracts negotiated, effective July 1. On travel, a change would be going to \$10 a day plus reasonable lodging. He stated they did leave the option of \$22 a day for lodging because in some instances, taking into consideration that average rates of motels vary from city to city. Most departments encourage employees to find the most reasonable rates.

Representative Doyle inquired if the procedure for duplicate paychecks had been changed and he was told that a person could receive a duplicate check within one or two days.

PERB[660] NOTICE  
Elections, 5.2, 5.3, 5.4, filed emergency

8/10/77

PUBLIC EMPLOYMENT  
RELATIONS BOARD

Mr. John Ayers, Lawyer for the PER Board, commented they had filed an emergency rule on July 22 under the Administrative Procedures Act and the reason for filing was because S.F. 393 was signed into law July 13 and pursuant to chapter 3, section 7 of the Code, the bill became law on August 15. There was no time to promulgate the rule. This provided for a change in the way representation elections are conducted by the PER board where such elections have been petitioned for by an employee organization. The two principal parts of the bill provided for (1) that the ballot be changed from a two question ballot to a one question ballot and (2) and the majority vote count be changed from a majority of those eligible to a majority of those voting.

EMPLOYMENT OF  
THE HANDICAPPED

EMPLOYMENT OF THE HANDICAPPED[360] NOTICE  
Organization, Ch 1

8/10/77

Mr. Don Westergaard appeared to present basically the rules which the committee looked at the last time and he stated he had incorporated the suggestions given at that meeting.

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ARCHAEOLOGIST[70]  
Procedure and administration, Clis 1-9 NOTICE

8/24/77

Mr. Duane Anderson commented that the rules they have prepared were drawn up with the assistance of Howard Sokol, University of Iowa, and they were sent to almost 500 individuals and agencies for comment.

Representative Schroeder inquired if there would be any conflict between these rules and the Historical Department with respect to the section in the Code. Mr. Anderson stated they did not feel there would be any conflict.

Senator Kelly asked when the committee could hope to see chapter 13. Mr. Anderson advised they will be meeting next week to work out that chapter so that it will be available within a month.

Senator Kelly was assured that the chapter would include controls pertaining to burial sites which are unearthed during construction. Mr. Anderson feels the public should be informed as to what procedures should be when finds are made. Senator Kelly expressed a question as to whether or not Section 305 of the Code was sufficient in this area.

Mr. Ardian Anderson, Department of Historic Preservation, stated he did not have a formal statement prepared, but the conflict between chapters 305A and 303 for the State Historical Department has been the single most abrasive feature in the work of the Art Department in trying to develop historic preservation for the state.

Rep. Schroeder stated he hoped these two departments could get together and make changes before the next meeting.

Senator Doderer arrived.

Committee recessed for lunch.

LANDSCAPE  
ARCHITECTURAL  
EXAMINERS BOARD

LANDSCAPE ARCHITECTURAL EXAMINERS BOARD[540]  
Examinations, Ch 2 FILED

8/10/77

Ms. Marguerite Miller, Executive Secretary, stated general comments about three changes made to the rules which have been filed. They charge \$50 for the test.

NURSING BOARD

NURSING BOARD[590] NOTICE  
Accreditation, 2.9(5)  
Examinations, 3.1(5)

8/24/77  
8/24/77

Ms. Lynne Ellis, Iowa Board of Nursing, stated she had under consideration rule 2.9(5), accreditation. They are making more hospitals available for the nursing programs. They are easing up on the rule.

NURSING BOARD  
(continued)

They have added "or approved and certified by the Department of Health, State of Iowa, medicare program." Representative Schroeder stated he felt they were letting it be so that one person would be making the final decision for approval.

Representative Doyle questioned the number of male nurses and was told they did have two, but they have both resigned. There is an increase of male nursing students in Iowa.

Representative Monroe stated he could not find the rule where the Department of Health had the authority to approve medicare and Ms. Ellis stated she would check that.

Ms. Ellis informed that rule 3.1(5) is being proposed thanks to all of the help of the committee and the legislature in getting enacted into law the allowance for the Board of Nursing to give a partial exam.

Senator Priebe mentioned a case near his home wherein a young lady had to wait six months and she had to do the whole test over. Ms. Ellis requested the name of the young woman and stated she would investigate the situation. They give national testing and they are given on the same day. The dates are February through July. If the national exam is not used, then Iowa Nursing Graduates cannot practice out of the state.

COMMERCE  
COMMISSION

COMMERCE COMMISSION[250] NOTICE  
Pipeline construction, 10.11  
Notice of oral presentation, Ch 24

8/10/77  
8/10/77

COMMERCE COMMISSION[250] FILED  
Accounting, 16.1-16.5  
REC, 7.4

8/24/77  
9/7/77

Mr. Patrick Cavanaugh, State Commerce Commission, stated pipeline construction was taken off at the request of the Commission. Chapter 16 of the commission's rules governing accounting procedures was modified basically to update standard systems of accounts that the commission requires the utilities under its jurisdiction to comply with. The amendments which were published on August 24 are now proposed to become effective--they will adopt the federal power system of accounts through Feb. 2, 1977. Mr. Ernie Mercer, chief auditor, was also present for comments.

Representative Schroeder inquired if these rules would apply to municipal electrics and was informed that the municipal electrics were exempt. He also asked if the information the commission had relative to rates could be used by the legislature for information for projected income and expenditures. Mr. Cavanaugh stated the information filed by municipal utilities is not uniform. They are not subject to any regulations. Representative Doyle questioned the use of the words "these words" instead of chapter 16.

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ENVIRONMENTAL  
QUALITY

ENVIRONMENTAL QUALITY[400] Notice  
Water quality, 16.2, 16.3, filed without notice  
Wastewater construction, 19.6, 19.13, 19.15, filed emergency

8/24/77  
8/24/77

Mr. Dave Bach informed the committee that 16.2 and 16.3 were corrections of errors which appeared in the filed copies of the standards revisions of water quality. Two streams were called North Cedar Creek, and they left off the words "descriptor total".

In chapter 19, the same is true as there were things which were approved in the standards by the Water Quality Commission, and they did not get into the filed copies of the rules. The requirement for 180 days' notice that a major contributing industry must give the department before it hooks up on a new source remains but the request for an expansion of a present source was changed to 60 days.

DEPARTMENT OF  
TRANSPORTATION

DOT[828] Notice  
Motor vehicles, [07,D] Ch 9-11  
Registration, [07,F] Ch 1  
Inspection, [07,E] 21.13, filed without notice  
Highway and bridge construction, [06,G] 1.1  
Highway and bridge construction, [06,G] 1.1, filed emergency  
DOT[820] FILED  
Primary road extensions, [06,J] Ch 1

8/24/77  
8/24/77  
8/24/77  
9/7/77  
9/7/77  
8/10/77

Ms. Karen Bellis, Director, Office of Motor Vehicle Registration, stated they had done a little bit of housekeeping by moving the leasing into a different chapter. It had been included in the past with licensing of dealers and decided it should be separated and treated as a leasing section.

The second thing was to clarify some items that were confusing to the attorney general's office in that there is no provision in statute for filing evidence on a contingency basis. This was required in prior rules and the department felt this should be rescinded and that the lessee would be required to file his own insurance and not have it contingent upon what the lessor may have. They also clarified what information has to be included on a leasing license. In response to a question by Senator Priebe as to whether or not they had had any objections, Ms. Bellis stated they had not. She stated that the housekeeping changes made were not controversial.

Rep. Schroeder asked if the department received any complaints about title laws concerning manufacturers certificate of origin and was advised they had not. He was aware of some problems which had developed in this area. Ms. Bellis commented that all states now have title laws with very similar requirements.

The Rules Review Committee had specifically asked the department to take a look at the rules pertaining to licensing of motor vehicles of dealers, manufacturers and distributors. The committee had requested the department to look at rules for new and used car dealers.

DEPARTMENT  
OF TRANSPORTATION  
(continued)

in offering vehicles for sale. Minimum space requirements have been stipulated in this rule. The used car dealer has been given flexibility re showroom space in that they may be indoor but need not be indoor. In the case where a dealer's surety bond has been cancelled, the new rules provide for the department to be notified so that they can either cancel the dealer's license or take whatever appropriate action is necessary.

Rep. Schroeder commented that one surety bond whether or not the dealer sells one vehicle or 500 does not make sense and Ms. Bellis advised that is according to statute. Rep. Schroeder feels that if a dealer sells around 1000 vehicles, the person should have a higher surety bond. In response to a question from Senator Priebe as to why so much maximum space is required, Ms. Bellis advised they require minimum, not maximum spacing. They are interested in safe conditions for the public while viewing vehicles. The committee questioned the department's authority to do this and she advised that the Code requires they be displayed, but their enforcement group suggested minimum space.

Rep. Monroe stated there is a discrepancy in that the Code recognizes new car dealers and used car dealers, but the place of business applies to both, and the department is saying if you a new car dealer, you have to have indoor display space and if you are a used car dealer, you have to have indoor and outdoor space, but the same definition applies to both. He asked how they did this. Ms. Bellis stated it wouldn't be absolutely necessary to make a distinction between new and used car dealers. She advised they did work with the dealers' association on this rule.

Senator Priebe stated he felt the department was drawing distinctions which they did not have the authority to do.

Ms. Bellis agreed to look into this further and discuss it with the committee the next time.

Representative Monroe is interested in the exemption for trailer type vehicles for reconditioning and repairing and questioned why that was there. Ms. Bellis replied there is a different definition and advised him to check 10.1(8) in the proposed rules. Mr. West stated chapter 322 includes all kinds of vehicles which are trailers and they are subject to registration. Ms. Bellis advised the department will take another look at this. Rep. Monroe stated he interprets this to mean only cars are subject to the rule under 322.2 sub 5.

Representative Monroe questioned 10.4(2)"a" on dealer plates and Ms. Bellis stated it was an existing rule they left in as it hasn't created any problems. He

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DEPARTMENT OF  
TRANSPORTATION  
(continued)

could not see the need for the rule.

Representative Monroe, under the definition of engaging in business, any person selling more than five motor vehicles, he feels "five" is an arbitrary number and wants the committee to note this so that when the rules are filed, the committee may then file an objection to the number.

Ms. Bellis inquired if Rep. Monroe would like to suggest a more objective number. He stated "vehicles" should work.

Ms. Bellis stated they were trying to avoid the individual who may buy and sell or trade vehicles and if they don't say "five", you will have to be a dealer in order to buy, sell or trade vehicles.

Mr. West advised that the rule does not say less than five. Ms. Bellis commented they definitely need some guidelines. She stated the rules also clarify the status of people selling at public auction. We will be requiring them to be licensed as dealers and this has not been clearly stated.

Representative Doyle pointed out a printing error, i.e. the word is "retail" instead of "retain". Correction will be made.

Representative Monroe took the chair.

Representative Doyle asked why dealer plates had to be displayed on full-mounted and saddle mounted vehicles being transported (10.4(2) "a" and "b" when the vehicle wasn't on the ground and Ms. Bellis stated they just decided all vehicles should have them, but they would be open to change.

Representative Monroe commented re severance clause that they were not required by the Code and Ms. Bellis stated they were advised by counsel that the clause was required. Rep. Monroe asked her to read chapter 4.

Under inspection, Ms. Bellis spoke for Dennis Ehlert, and advised the committee, per their request, that the date of the Inspection Handbook was January 1, 1975.

Ms. Bellis discussed registration relative to chapter 11 covering vehicle registration and titling. A problem was called to their attention and they were requested to alter their rules to allow an Iowa title to be reassigned by a foreign dealer and sold back into the state of Iowa. This problem is created because in many border counties, residents trade Iowa vehicles in the other states. The out of state dealer may, in turn, sell the car to another Iowa resident, who may not receive title to the car until the out of state dealer has gotten title first.

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DEPARTMENT OF  
TRANSPORTATION

See chapter 11.7. The foreign dealer is not licensed by Iowa. General discussion of the problems of buying and selling autos between Iowa and Minnesota.

Senator Priebe assumed the chair.

Mr. Darrell Campbell commented re the procedures whereby a city or municipality may close a primary road for reasons other than fire, construction or repair. The rule has been circulated and they have not received objections. It only applies to those sections of primary roads within corporate limits of cities or towns. Usually utilized for those purposes of community celebrations.

In response to a question by Representative Monroe, Mr. Campbell commented that the highway patrol is a party to issuing the permit and he advised that it does not say that in the rule as such and Rep. Monroe stated the rule doesn't help much. Discussion of the number of days required for issuing a permit, and the feeling of the committee was that 45 days was too long a time. The requests are handled through the resident maintenance office. The amount of closings is around 25 to 30 statewide.

Representative Doyle called to Mr. Campbell's attention the use of the words "town marshall" and advised the legislature had abolished that or intended to and suggested having their legal counsel check that.

Mr. Tom McElherne, Department of Transportation, stated under O6.G, the specifications have been revised and they are asking for the revisions in the administrative code. Rep. Monroe asked what the net effect is to the amount of right of way that must be required and he was advised this area was not in specifications.

This is information that prospective bidders must have in order to make proper bids. The qualification forms are on file at the department of transportation.

General discussion of the use of concrete or asphalt on bridges and the effects of salt on these two products. The committee also discussed the limiting qualities of the requirements for specifications and the fact that small contractors would not be eligible to receive an award for a bid on road construction and bridge construction. Rep. Schroeder stated the committee may need to file an objection to this.

The committee was advised that asphalt is not waterproofed and that it is the salt which causes the problems with road surfaces. He informed the committee that the oil industry is in the process of changing specifications on asphalt.

CONSERVATION  
COMMISSION

CONSERVATION COMMISSION[290] <i>NOTICE</i>	
Wildlife refuges, Chs 3, 16, filed emergency	8/10/77
Hunting furbearing animals, Ch 100, filed emergency	8/10/77
Hunting rabbit and squirrel, Ch 102, filed emergency	8/10/77
Trapping, Ch 104, filed emergency	8/10/77
Game birds, Ch 109, filed emergency	8/10/77
Zoning and watercraft use, 30.60	8/24/77
Zoning and watercraft use, 30.60, filed emergency	8/24/77
Mourning doves, Ch 101, filed emergency	8/24/77
Mourning doves, Ch 101, filed emergency	9/1/77
CONSERVATION COMMISSION[290] <i>Filed</i>	
Vessel registration, 28.1, 28.19	8/24/77
Zoning and watercraft use, 30.7, 30.9	8/24/77
Contracts for public improvements, Ch 62	8/24/77

Mr. Allen L. Farris, spoke regarding rules on hunting and trapping season and the fox season has been shortened by two weeks. With respect to the judicial decree, Representative Schroeder asked if these rules would be placed in jeopardy by the ruling on mourning doves.

Mr. Farris stated that their legal counsel had said that the decision was restricted to mourning doves and was not generalized. The commission has contemplated this problem.

Senator Priebe asked if it wouldn't be simpler for the Conservation Commission to go through the regular channels and set the seasons, then set your bag limit "emergency". You have a season every year, you could file early in July, and had you looked at on the mourning dove, you probably would have had a mourning dove season. As chairman of the Rules Review Committee, he suggests the Conservation Commission look at this suggestion.

Mr. Ferris commented they had asked the attorney general's office about how finite the rule should be and they felt the commission would have to include everything. If everything is included, the attorney general suggested the commission could still be challenged.

Senator Priebe questions that they could challenge on the bag limit. Mr. Farris stated if this was feasible legally, they would be agreeable. The biologists make the determination.

## HEALTH DEPT.

HEALTH DEPARTMENT[470]	
Public health nursing, Ch 79, filed emergency <i>NOTICE</i>	8/24/77
Immunization, 1.10, 1.11, filed emergency	9/7/77
Public health nursing, Ch 79	9/7/77
Board of psychological examiners fees, 140.4(3), 140.9(1)	9/7/77
Hospital license, 51.3	9/7/77

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HEALTH DEPT.  
(continued)

HEALTH DEPARTMENT[470]  
Board of cosmetology examiners  
Examination, Ch 149  
Fees, 160.7  
Barber examiners  
Examination, Ch 152  
Assistants, Ch 154  
Fees, 160.6

FILED

8/24/77  
8/24/77  
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8/24/77

Mr. Peter Fox advised that one change made was the requirement that the instructors under Board of Cosmetology Examiners, attend the institute for a renewal of an instructor's permit. Also, the requirement that students in cosmetology schools have to have two years of high school, and they deleted the requirement that schools shall furnish the student with a kit containing all of the necessary equipment and the standard textbook.

Representative Monroe took exception to rule 149.13 wherein students who miss any two consecutive Saturdays are dropped and have to re-enroll in school. Ms. Grace West commented that this is in a school contract with the student. Rep. Monroe is asking for the rules to speak a little bit for the student, and feels that a minimum number of hours could be required for a student's attendance. He suggested that it could possibly state that no one day of the week carries any more weight than any other.

Mr. Charles Frizen, Cosmetology School at Dubuque, spoke in defense of the rule.

Senator Doderer feels the student should be allowed the opportunity for making up the absenteeism.

At the request of committee members, Mr. Frizen advised that tuition can be from \$750 to \$1000. He advised also that excessive absences would be considered any more than two days in an 8 month period of time.

Mr. Jerry Feich, Hairdresser Barber, spoke of a number of complaints in the area of cosmetology. He stated his objection to beauty schools advertising in the telephone books in the Beauty Salon Section.

Representative Monroe stated this is still under notice and I would suggest that they do note that instruction can't be given on Sunday and he would like the rule expanded to some reasonable limit of what an absence can be. Senator Priebe reminded Rep. Monroe that the rules were not under notice but had been filed.

Senator Doderer asked how many hours they put in class in a week and how many hours a student works in a week? The discussion centered around the policies of various cosmetology schools around the state.

HEALTH DEPT.  
COSMETOLOGY  
(continued)

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Rep. Monroe stated the problem he has with 149.3 could be resolved by using the petition process under 17A.7 and thereby promulgate the rule that he is looking for that deals with hours, etc.

The committee agreed that this is an area that needs some self-policing by the industry. The committee also agreed to join Representative Monroe in petitioning under chapter 17A.7 and requested Mr. Royce to draft the letter.

Representative Doyle asked why a student is required to pass the exam in the state where the student attends school before taking the exam in Iowa. (149.7(4))

Senator Doderer made the point that lawyers do not have to do this.

OBJECTION

Representative Schroeder moved the following objection:

The committee objects to rule 149.7(4) on the grounds that it is unreasonable to require out of state applicants for the board examination to be licensed in the state in which they obtained their training.

The motion was adopted unanimously.

Representative Monroe assumed the chair.

Mr. Fox stated that the Board of Barber Examiners had made the changes requested by the committee in that the words "without income" were deleted. They clarified rule 152.5(2) by adding the words "occupational positions". The old rule was replaced stating there would be no more than two students in a school per barber chair.

Mr. Feich restated his complaint about the method of advertising used by beauty schools in that they place ads in with Beauty Salons and/or Barbers. Representative Monroe advised him to utilize the prerogatives of chapter 17A.7 of the Code and petition the board to promulgate a rule.

Dr. Eckoff spoke on behalf of the Public Health Nursing and stated the rules implemented chapter 597 which was passed by the legislature during the last session. He commented they were filed under emergency rules in order to get under way in implementing the act. They have also filed them through the regular process. There is a public hearing scheduled for September 30.

Mr. Jack Kelly, State Health Department, stated they have asked the committee to consider filing under 17A on the Immunization Law. In effect, they are trying to give ample time for the schools and physicians who are going to be involved in participating in this law time to prepare.

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Mr. Kelly commented they had set up a 6 point program developing the immunization law.

Senator Priebe resumed chairing the committee.

Rep. Schroeder asked where the department obtained the authority to delay implementation of the law and Mr. Kelly advised that section 5 of the law requires the department to promulgate rules relating to provisional admission of students to the schools and he stated this would give the authority. Also, as a practical matter, there just wasn't enough time to get all the students immunized before August and September. The law went into effect August 15. Senator Doderer reminded him that this must be done by January 1, 1978.

Mr. Kelly advised the committee that one of the things the department is very concerned about is not being worried about the Buckley amendment and finding out how we are going to work around that or the informed consent which they are going to have to use, which some lawyers might interpret as being contradictory. The largest portion of the state's vaccine is purchased through a federal contract and they have to follow certain federal rules.

He advised the committee they are having a law suit filed against them and they feel the law is constitutional, but if the persons suing can attack, they will do so under the rules. Mr. Fox advised that the permanent rules would be taken to the Board of Health on Wednesday, September 14, 1977.

Mr. John Huff was available for questions on 51.3 and Representative Monroe asked when the Nursing Board came through, they lowered the requirements for nursing training and he wanted to know where to find the rule allowing them to participate in medicare. He was informed that it is not in the rules. Huff advised they operate under a set of rules supplied by HEW and they inspect hospitals for Medicare participation. Rep. Monroe asked how the Nursing Board could take that standard which the department doesn't have in a rule. The Nursing Board is under notice and Rep. Monroe asked Mr. Huff to contact them and come up with a term that is a standard of the department and for which there is a rule. Senator Priebe reminded that the Nursing Board would have to adopt it to a day certain. The rule that is under Nursing Board is 2.9(5)"a".

Mr. Fox stated there was one short rule providing for a fee for out of state applicants who come into the state to practice temporarily. The rule was inadvertently omitted. 140.4(3)

PSYCHOLOGY  
EXAMINERS

Senator Kelly informed the committee the reason he had asked for the Board of Psychology Examiners to be called up was because of some problems which developed in Sioux City. He stated he had handled an amendment in the legislature for the Board of Psychology Examiners and he feels he needs more evidence to see why he shouldn't regret doing so. He commented that, in the first analysis, there is an atrocious restraint of trade going on and Psychology has become a clique, exclusive, little group--they are going to license people they have now and they could "grandfather" them in as few other licenses as possible are going to be issued. Senator Kelly stated that he'd ask Mr. Royce to ask the Board to prepare a summary. Dr. Jack Menne, Chairman, Board of Psychology Examiners was introduced and said he was not quite sure of what issue he should be responding to. (For a copy of the summary, contact Mr. Joseph Royce, Staff, Rules Review Committee)

Senator Kelly replied that, according to the rules, the number of people failing to pass the test was substantially higher than those passing. This was the first time the test was given back in 1974.

Dr. Menne advised this happened because, at that time, they did not screen the people taking the test to see that they had met the educational requirements. In response to a question by Senator Kelly, Dr. Menne stated that the educational requirements are a Doctor's Degree in Psychology or a Master's Degree in Psychology, plus five years' experience. He said the problem the Board gets into is because psychology is such a broad field, many people will feel, because of a particular graduate training program they are trained in, that they are psychologists. What has happened in most licensing boards throughout the state, and he feels they are consistent on this, they have tried to define psychology training, predominantly, as that training which occurs in a psychology department, or alternatively, students who are not in such a department, but take such a background in the core areas in psychology. It is quite possible for a person to take many courses in many programs where they learn to apply psychological principles. Throughout all of the states, the intent has been to license only those people who are grounded in psychology, and could have some experience in application. He feels that had it been intended to write an omnibus licensing bill which would cover marriage counselors, social service workers, etc., the bill should have been written in a different way. He suggested the legislature, perhaps, did not do what they intended to do.

Senator Kelly commented he did what the Psychologists Association intended. He stated he was not an expert in the field, but there were some people present who could explain some of the problems he ran into because

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(continued)

of two people in Sioux City who took the first test, did not pass it and were not notified of subsequent tests, then opened offices, not as psychologists, but as counselors. There was a law suit filed against them on the basis they were violating the psychology law and that suit was dismissed and there has now been a subsequent civil suit filed. Senator Kelly inquired what was the percentage of persons who passed the second test and Dr. Menne responded that fifty percent passed the second test.

Senator Preibe, chairman, asked if anyone was present who wished to respond and Dr. Ron Leymaster, Sioux City, stated he had contacted Senator Kelly after they had the second law suit filed against them. They were interested in finding out what the intent of the legislation for licensing psychologists was.

Dr. Menne stated the intent, simply, was to provide some degree of assurance to the consumer public of the quality of services offered by psychologists. He had no part in the writing of the law.

Dr. Leymaster commented that, as he sees it, there has been some limitation on the people who practice psychology because people have gone through the the educational process, sometimes 8 or 9 years, to receive a doctorate in fields related to mental health and then, the persons are required to pass a psychological exam before they can be licensed.

Dr. Menne and Dr. Leymaster discussed the pros and cons of the problems in licensing persons for psychology. Mr. Peter Fox explained that in the particular case being mentioned, Dr. Leymaster and Dr. Mogen were advertising themselves as psycho-therapists and, after consideration by the board and the scope of their practice, what they were doing, in essence, was following the scope of psychology.

Senator Kelly commented that it is practically impossible to define the fields for the purpose of licensing and there will be overlapping problems. Mr. Fox stated the two gentlemen were doing almost all of the practices as defined in section 151B.1.

Dr. Menne said the Board is trying to stay within the law and they have contacted other states to see what they are doing and he feels what they are doing is reasonably fair and is expected.

Mr. Fox stated that the two men had made no attempt to re-take the test and Dr. Leymaster said they were never notified as to when the second examination would be given. He stated that no one who took the first test was ever notified of the time for the second test. He said they did write a letter requesting the time for the

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second test. Dr. Menne stated the various ways notification of the tests are given, but commented there is another issue in that the Board was advised by both Mr. Fox and Mr. Larry Blumberg that the Board had proceeded incorrectly when they started. They were advised that people have to go through a stepwise process, people have to look at education requirements and only after applicants have met those, would they be allowed to sit for the exam. Therefore, the Board stopped and wrote the rules, trying to abstract from any individual cases that might have gone one way or another and we worked out these rules and they were approved. Only at that point, did we then go back and look at the applications on file and sort them accordingly. He stated both Dr. Mogen and Dr. Leymaster would have been rejected on the basis of educational requirements at that time.

Dr. Leymaster asked Dr. Menne how he felt the written licensing exam, as used at this time, tests for the competency of the prospective psychologist. Dr. Menne responded that the test is not intended to; it is intended and it does a fair job and is designed to test the knowledge of basic psychology as a science.

Mr. Gordon Hopper, asked about the students who go through Iowa State and how they are prepared for taking the licensing test and practicing psychology.

Dr. Menne stated the student spends a year with another person before going out to take the test and practice psychology.

Senator Kelly asked if Dr. Menne was saying the tests did not really relate to or assure the person's competence as a practitioner. Dr. Menne said not directly, except indirectly from the standpoint to the extent that the person has a better, broadbased knowledge, they can be but may not be a better practitioner. He would not say the reverse is true. Senator Kelly commented he was not sure they were complying with the Code, because the Code requires that the examination is administered to assure the professional competence.

Mr. Hopper commented that the board had been quite strict in the applications in screening after they had grandfathered people in and quite liberal prior to that time. He feels it is almost a paradox and Dr. Minne commented that was a fair statement. Mr. Hopper said people were grandfathered in who were members of ITA as a result of being school psychologists, not counseling psychologists, but they had a license for counseling psychologists. Dr. Menne said this was not a board decision, but was what the law said and what the board had to do.

Mr. Hopper stated this goes beyond protecting the public in that certain insurance companies would not give a

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vendor number unless you are licensed.

Dr. Menne said certain insurance companies will not give vendor numbers unless a person is on the national register list, whose standards are higher still, and many psychologists don't meet those standards.

Senator Priebe asked what the vendor number did and Mr. Höpper replied that if you are seeing a client in a counseling situation, the insurance company will pay for that if you have a vendor number and are approved.

Dr. Menne said this also means people who aren't licensed or even if they are licensed and can't get a vendor number must always work with a physician, because the physician always has the vendor number. As a consequence, much of the money the state is putting out, for example, in a Title XIX program, is for overhead for the physician. Senator Priebe asked what percentage the doctor would take and Dr. Menne wasn't certain but stated approximately 20%.

Dr. Menne said this doesn't have to be this way because most every state, except Iowa, will provide direct payments. He said this could be changed in Iowa by the legislature and that the Department of Social Services has the authority to make the change.

When asked if he ever had a letter of rejection, Dr. Leymaster stated he had never received such a letter. Dr. Leymaster reminded Dr. Menne he said rejections were based on lack of education and Leymaster stated he qualified in that area. Dr. Menne said he maybe shouldn't have made the statement, because he wasn't really familiar with the Leymaster case.

Senator Kelly questioned under rule 6.9 re licensed psychologist being required to work with a trainee whether or not the individual could train under a licensed psychiatrist. Dr. Menne said the person has to train with a licensed psychologist as the Code says the person must be supervised by a licensed psychologist. Under the doctoral people, there is a little more flexibility.

Mr. Dom Pellegreno, Iowa State, stated he is really upset with the licensing procedure and feels the public has really been taken. He feels the test is 180 degrees out of line with what the psychologist will be using in practice. Mr. William A. Matthes, University of Iowa, also commented he has a concern for the criteria in a practitioner sense.

Senator Kelly stated that the law itself, to some degree, may have been at fault in that it is self-serving instead of public serving.

Senator Priebe stated maybe the legislature should

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take a look at the law, but this cannot be done in Rules Review Committee.

Senator Doderer advised the committee she had asked for an interim study committee on all of the licensing boards and the request was not granted.

MOTION

Senator Kelly moved that Mr. Stanley McCausland be called up to discuss the question as to whether or not there are rules in the area of section 18.6, paragraphs 6 and 8 of the Code.

The motion carried unanimously.

Senator Doderer stated that the Social Services Council who has been paying for the state share of abortions filed an emergency rule cutting off all funding. She advised she had repeatedly told the Department this was not proper procedure and they should file the rule under normal rule procedure. Then, a lawsuit was filed in Johnson County and the night before, the department had an emergency meeting and rescinded that emergency rule and filed under the "J" exception in the Administrative Rules, which states that when a department or agency desires not to exercise a discretionary power, then it is not a rule.

The department moved for summary dismissal and the judge didn't do that and gave them time to file new briefs and he will rule before the 16th as to whether or not they will have a stay order. Senator Doderer commented that she feels the Department of Social Services has gone around the rule making procedure just as other departments.

Senator Doderer asked the Rules Review Committee to ask the Department of Social Services to file a rule on the matter of the state's participation or non-participation in abortion.

Representative Schroeder asked if the appropriation passed last year would condone the endoresement of medical practices that were being condoned at that time, and any deviation of that be required by a rule.

Senator Priebe agrees they should go by rule.

Representative Schroeder stated that the Administrative Code was passed to get rid of the inter-departmental memos. Senator Doderer quoted from chapter 249A "they will operate under this chapter and appropriations bills."

MOTION

Senator Doderer moved that the Rules Review Committee request the Department of Social Services to bring this before Rules Review as a rule.

Representative Schroeder asked if the committee could

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send out a letter on the request petitioning for the rule and then, they would have to within 60 days, show the committee why they didn't or otherwise, present it.

Senator Doderer would like it stated that the committee feels it is a rule.

Representative Monroe suggested the committee ask the Department of Social Services to have a public hearing

MOTION

Mr. Royce was advised to write a letter as suggested by Senator Doderer and the committee agreed unanimously.

The committee recessed until 9:00 a.m. Wednesday, September 14, 1977.

*Reconvened  
9-14-77*

The committee reconvened Wednesday morning, September 14, 1977, 9:10 a.m. chaired by Senator Berl E. Priebe. Members present were William R. Monroe, Jr., Vice Chairman, Senator Minnette Doderer, Representatives Donald Doyle and Laverne Schroeder. Member not present for roll call: Senator E. Kevin Kelly.

GENERAL SERVICES

GENERAL SERVICES(450) NOTICE  
Data processing equipment, Ch 4

8/10/77

Mr. Stanley McCausland, Director, stated they had entered into a joint agreement with the Comptroller's Office. The agreement follows chapter 28E of the Code of Iowa. They are making sure that any questions with regard to the acquisition of data processing equipment will be in writing and go through the administrative procedure so that everyone will have a clear idea of the procedure.

Representative Schroeder questioned the review process under 4.3(2) relative to the five day time period and stated he felt this was a rather short period of time.

Mr. McCausland advised the committee is local and it is such that people are right there. Also, they would respond to the requests of people.

Mr. Terry Swanson was present for discussion of computers, software, hardware, computer bank possibilities and guidelines for data processing.

PHARMACY

PHARMACY(620)  
Depressants, 8.14(4)

Notice

8/24/77

Mr. Paul Crews stated they were bringing the new controlled substances under the provisions of the controlled substances act. He stated they have to come back a given number of days after the legislature convenes.

PHARMACY

The state list coincides with the federal list. Senator Doderer inquired if these were the two drugs that were on an amendment which the legislature did not pass. He advised these were the two drugs and she asked how they could be put on when the legislature didn't pass the amendment. He stated they could do it by temporary designation.

The committee discussed the pros and cons of having Darvon on the list and Representative Schroeder said it is on the federal list and the state list needs to be compatible so that people do not have problems. Disagreement as to whether or not the amendment failed in committee during legislature.

OBJECTION

Senator Doderer moved the following objection:

The committee objects to proposed rule 8.14(4) on the grounds that it is arbitrary, capricious and unreasonable to put the drug Darvon on the list of controlled substances. In view of the penalties which attach to possession of schedule IV drugs, it is the opinion of the committee that Darvon does not pose such a threat to warrant it being included as a controlled substance.

The motion failed on a vote of 2 ayes, 2 no, and the chair voted "no".

*See Pg 430 reconsidered*

REVENUE DEPT.

- REVENUE DEPARTMENT[730]
- Economic impact, 12, 15-19, 26, 30, 33, 34 *Notice* 8/10/77
- Assessment and equalization, 71.3, 71.12(1), filed emergency 8/10/77
- Corporation tax, Ch 56 9/7/77
- Tax for financial institutions, Ch 61 9/7/77
- Income tax, 40.5 9/7/77
- Corporation income tax, 54.1 9/7/77
- Special Review*
- Sales Tax*
- Electricity for Corn drying*
- Casual sale of going business*
- USE Tax on Motor Vehicles*
- REVENUE[730]
- Mobile home tax, Ch 74 *Filed* 9/7/77

Mr. J. Elliott Hibbs advised the committee that he was not informed they were to appear on the Economic Impact. Representative Doyle asked that agendas, in the future, be sent to each agency listed on the agenda prior to the time of the meeting.

Mr. Hibbs stated he would like to bring up a point of business to be added to the meeting next time for the committee to consider; concerns sales and use tax rules that were promulgated under notice and with which the Economic Impact Statement deals. The rules were recently filed with the Secretary of State for adoption and the effective date that was on the rules was October 24 or 26. The Revenue Department would be willing to implement those rules effective January 1, 1978, if the committee wishes. However, if there is going to

DEPT. OF  
REVENUE  
(continued)

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day delay, the effective date would be January 4, 1978. This is the tax on municipal water. He stated it would be nice to put the rules effective at the beginning day of a quarterly period rather than some unusual date. He asked if the committee would agree and Senator Priebe suggested Mr. Hibbs and Mr. Bair to request a time for the next meeting of Mr. Royce and it will be on the agenda.

Mr. Hibbs made the formal request of Mr. Royce.

The discussion then moved to chapters 71.3 and 71.12 filed emergency to implement the changes brought about by the passage of H.F. 332, which was passed during the last session. This deals with the method of assessment and equalization of agricultural property and they are conforming the assessment and equalization rule to that law change.

On 56 and 61, the rules read almost verbatim and they relate to filing of estimated tax by corporations and by financial institutions. Rule 40.5 deals with the law change imposing the tax on income from people in the military. Corporate income tax, 54.1, rule was promulgated by S.F. 140.

Representative Doyle asked under casual sale, did the department change the policy and Mr. Hibbs stated they implemented the casual sales rule because of single proprietorships where there is a transfer of stock for the business assets. The department had been somewhat erratically enforcing the tax in that area.

Senator Priebe wondered if they were doing anything on farm transfers. He stated lots of dollars are being lost by not collecting that tax. The lawyers are telling people they don't have to pay.

Mr. Hibbs stated he could not really tell for sure if anything was being done in this area.

Under the Motor Vehicle Use Tax, Representative Doyle asked what is being done when county treasurers receive bad checks. Mr. Hibbs stated the county treasurers are not supposed to give out the license until the check has cleared the bank. Representative Doyle has a concern because until the treasurer receives the money, the taxpayers are out that money. Mr. Hibbs stated if someone writes a bad check, they should be notified and come in to pay, if not, the license should be revoked. They are working with the DOT about this problem and there needs to be some kind of solution, but doesn't know exactly what it is at this time.

Representative Doyle would prefer a solution which does not entail legislation.

Senator Kelly arrived.

DEPT. OF  
REVENUE  
(continued)

Representative Doyle feels this is a real problem on the border cities and would like to see a solution.

Representative Schroeder asked, in the past, if the person took the time, the use of electricity for corn drying was exempt, the same as LP gas and he was advised that this was true. On January 1, 1976, the department had, somewhat erroneously, concluded that electricity was a fuel used in grain drying and, therefore, exempt from tax. Mr. Hibbs made the statement that electricity is not a fuel. Rep. Schroeder commented it is created from fuel.

He feels that provision should be retained and thinks the legislature has expressed the intent that fuels used for corn drying purposes, or converted fuel, was intended to remain exempt. Mr. Hibbs stated the section 422.22(3) exemption was on propane and electricity was exempted in processing, but never in grain drying.

Rep. Schroeder stated electric drying is going to be more and more the thing since fuel prices continue to go up.

Mr. Hibbs stated the proposed rule will not be in effect before the next session.

Senator Priebe made the formal request of the Dept. of Revenue as to how much increase in taxes the state has received due to the cost of fuel going up in the last five years. Mr. Hibbs replied he would see what he could do.

Chapter 74, mobile home tax, was discussed at the last meeting at some length and there were no specific problems. He assured the rules were still consistent.

#### AGRICULTURE

AGRICULTURE[30] <i>Notice</i>	
Fertilizers and agricultural lime, 3.1, filed emergency	8/10/77
Poultry, 11.1, filed emergency	8/10/77
Aujeszky's disease immunization, 16.151(3), filed emergency	8/10/77
Cottage cheese, Ch 34, notice terminated	9/7/77
AGRICULTURE[30] <i>Filed</i>	
Dairy inspection, 30.12	8/24/77
Abnormal milk, 30.26, 34.5	8/24/77
Food inspection, 37.12	8/24/77

Dr. Butler reminded they had filed emergency rules on the immunization and there were not a lot of changes made. Rule 16.1(3).

Dr. Slouter discussed 11.1, the emergency rule they are trying to get through to change to require the applicant to assist the state in maintaining its typhoid-free status by submitting evidence or an affidavit stating the applicant is following the rules of the Iowa Poultry Improvement Plan.

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AGRICULTURE  
(continued)

Ms. Betty Duncan explained why they filed an emergency rule re fertilizer and agricultural lime, 8.1--to clarify an ambiguity in the rule.

Representative Schroeder asked Ms. Duncan what the cost was to run cottage cheese samples through (8.20(2) and if the ten dollar cost was ample to keep the program self-sustaining. She advised that the rule before the committee was Chapter 34, 8.1. He suggested 8.20(2) may need to be looked at and she agreed to do this.

Representative Doyle asked the Department to change the "he" in 11.1, item 3 and Ms. Duncan stated the change would be made.

Ms. Duncan advised that the department had rescinded the rule and the committee was advised that the controls are in other sections. Also, there are federal cheese standards and they have been adopted in the state.

Representative Monroe wanted to know why there was no longer a need for this rule and stated maybe there should be an out and out maximum. Ms. Duncan replied what happened was the question was whether or not the cottage cheese had to come within the pervue of Grade A pasteurized milk ordinance and it doesn't. There is a provision in the Iowa Code which states it can be one of two things--you can have Grade A cottage cheese or you can have a non-Grade A cottage cheese under the production of dairy products. Non-Grade A cottage cheese comes within the pervue of chapter 194 of the Code. Mr. Dengler felt there should be some very precise rules regulating cottage cheese which falls within the pervue of this chapter.(190.1(4)

Ms. Duncan will discuss with Mr. Dengler and Mr. Lounsberry Representative Monroe's advice that this should be in both chapters and they will consider the advisability of going ahead with that rule.

Representative Monroe stated that he did not see the mention of cottage cheese under Chapter 194. Ms. Duncan stated they are not having any problems with enforcing.

Ms. Duncan advised the committee that one change was made in Dairy Inspection, 30.12, and it made the rule less restrictive, saying there will be regulations coming into effect in 1980. The statement is there just to give producers notice that, as of 1980, they will contemplate upping the standards.

REGENTS

REGENTS(720)  
Personnel, 3.39, 3.148, filed emergency Notice

8/10/77

Mr. Donald R. Volm, Assistant Director, Merit System stated they had proposed an increase in pay to bring the Merit employees an increase consistent with the

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REGENTS  
(continued)

blue collar workers. The rule also changes the number of days for funeral leave.

Mr. Volm advised the committee that they had discovered one or two rules, which they had filed under the emergency procedure last year and did not follow up, and they will now come back to the committee.

Representative Schroeder asked him to put a footnote on them when they come, so that the committee's attention will be brought to them.

Representative Monroe asked Mr. Volm to have an expiration date on them and provide an explanation.

Senator Doderer suggested Mr. Royce will be willing to help, and Senator Priebe reminded him that this has to be done.

DENTAL EXAMS

Mr. Wayne J. Barnes, Board of Dentistry, appeared for special review and the committee inquired why they did what they did without authority re dental assistants. Rule changes were brought in by the Board and they were not current with the Code, and the Board does not have the authority to regulate dental assistants.

Mr. Barnes advised that many of the changes were just renumbering the rules and there has been no change on the dental assistants. The committee advised him that was the very problem and there is no authority in the Code. He informed the committee that the Board has a two-day meeting set for just this very purpose and they feel there will be some statutory changes evolve. Rep. Schroeder informed Mr. Barnes that both chairs of the respective State Government Committees serve on the Rules Review Committee. The State Government Committee should initiate changes.

Representative Monroe commented that 153.13 of the Code describes the practice of dentistry and in their rules, under chapter 4, auxiliary personnel are listed. Under exemptions, dental hygienists, students, or physicians. When checking 153.34 of the Code, grounds for suspension or revocation of a license, sub 5 provides "For conducting the practice of dentistry so as to permit directly or indirectly an unlicensed person to perform work which under this chapter can legally be done only by persons licensed to practice dentistry or dental hygiene in this state".

Mr. Barnes stated that under 153.13(2), the Board feels that a dental assistant performing any procedure under the direction of a dentist would not fall into that category. Representative Monroe wanted to know how they get out from out that and Mr. Barnes stated because the dental assistants are not doing any irreversible procedure.

DENTAL EXAMS  
(continued)

Mr. Barnes commented they are aware of some problems and will be making changes.

Representative Monroe suggested if the Board of Dentistry wants legislative change, they should submit recommendations in January, 1978, and at the very latest, February. Rep. Monroe also stated it was brought to his attention that the Board had sent out a list of procedures that your dental assistants could or could not perform that was published in your journal and this was contrary to what you seem to have in your official rules.

Mr. Barnes stated he was not aware there was a contradiction and he said this was an explanation of the rules and the letter went out concerning 4.2. He commented this was not an attempt to make any new rules.

Representative Monroe said the more proper procedure, in his mind, was if a clarification of a rule is needed, then the rule should be rewritten.

Mr. Barnes said they have a problem when a dentist writes for clarification as to whether or not a dental assistant may use a certain thing to polish a filling. Rep. Monroe commented this could be handled under declaratory rules and that is treated elsewhere in the Code.

Representative Schroeder commented that the Board may be in trouble on the whole dental assistants program and that could mean legislation.

Mr. Barnes stated that the Dental Assistants Association and the Iowa Dental Association are working together on this problem.

DEPT. OF PUBLIC  
INSTRUCTION

*Athletics*

*DP1 ch9*

Mr. David Harty of the Iowa High School Athletic Association, Boone, Iowa, appeared before the committee and Representative Schroeder questioned a recent action by the Association which banned a student accused of a criminal act from competition in wrestling. Schroeder felt such action was improper since a person is innocent until proven guilty and he suggested that, in the future, such persons be allowed to compete until they are convicted, at which time any awards won would be forfeited.

Mr. L. W. Courter, legal counsel, IHSAA, stated that the matter was presented to a district court in Polk County at the time of the wrestling tournaments it was the decision by the district court that substitutes would not be placed in the tournament. There is a law suit pending at this time and Mr. Courter did not choose to make comment jeopardizing the case.

Representative Schroeder commented the committee did

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(continued)

not want detail on that particular case, but the committee would like to prevent that from happening again and the IHSAA needs some rules that address themselves, specifically, to those types of procedures that are then approved by the Department of Public Instruction so everyone will know what will happen.

Mr. Courter stated that the Athletic Association did not declare the boy ineligible--that was a decision that was made first by the Waterloo Community School District. It was after the Association was notified that a substitute was placed in the tournament. Mr. Courter commented he wanted to make it clear that the eligibility of the boy that participates because of good conduct is not a decision made by either the Iowa High School Athletic Association or the Iowa Girls High School Athletic Union, but each local school board makes the decision, by legislative power, to determine whatever good conduct rule they desire.

Representative Schroeder asked if Mr. Courter felt that this should apply equally across the state of Iowa and Mr. Courter commented that a standard was attempted across the state of Iowa as a result of the Bunker decision, eligibility requirements are still set at the local level.

Senator Doderer stated that the committee had served notice that they want some rules on this particular thing--the committee is not dictating the rules, but the committee thinks the student should be aware, prior to any court charges, what will happen to them.

Mr. Courter stated that every school board has adopted good conduct rules.

Representative Monroe stated there are three levels of control--Department of Public Instruction, the rules the department has adopted under chapter 9 and then, you have the confusion of allowing each individual school board to set rules. Then, there is the Association. Representative Monroe used as an example the problem existing in his school district, wherein his son wrestles in a district in Illinois, and has to wait for a certain time before the trophy can be his, apparently because of a local rule.

Mr. Courter stated this was covered under 9.15(9) and feels it is stated specifically that the trophies would not have to be held back.

There was a general discussion of some of the problems with participation in sports between persons living on the border cities and persons in surrounding states. Representative Schroeder asked if there was any coordination between the DPI and the two athletic unions to stabilize and make the rules more compatible. Senator Doderer asked if there was any coordination going on between the boys and girls associations in order to

DEPT. OF PUBLIC  
INSTRUCTION  
(continued)

provide equality of opportunity for sports participation. The boys offer a very extensive program and the girls do not and Mr. Saggau has stated that girls wanting to participate in some of the other sports is just a fad. She asked if the two associations see that the same amount of money is available for trips, that they have the same accommodations and she feels since they are both under the jurisdiction of the DPI, they have an obligation to see that the programs are equal.

Mr. Harty responded that since he had been with the Association for the last five years, there definitely has been efforts to cooperate on the part of all three bodies.

Representative Schroeder asked if Mr. Harty could see the two merging into one and he said he could not see that happening at the present time.

The committee discussed with Mr. Harty the allowances given for meals and travel and overnight lodging, if needed and whether or not they were comparable for both girls and boys. The committee was advised that the money is paid to the school.

Senator Priebe asked both the IHSAA and the IGHSAU representatives if they could set down compatible guidelines. Mr. Wayne Cooley stated there has been much cooperation on this very subject within the last five years.

Representative Monroe wanted to know, what with the DPI, the school boards and the Associations making rules, where would an aggrieved coach or player turn? (9.15(13))

Mr. Courter commented that member schools determine by votes--they run both associations. Representative Monroe made the point that that was the current rule but the organizations could change that the very next day. He felt it was mechanically deficient.

Mr. Courter advised the committee that a simple majority vote of member schools would be required to change the by-laws--there are some 500 member schools. Changes are not made by whimsy. Representative Schroeder stated he thought there should be a rule that says if a question arose concerning a rule of either association, the proper place to petition is DPI, who then initiates the action immediately, which the Association would then implement.

Senator Doderer asked re member schools making changes in the constitution, would the school get to vote or the school's representative. Mr. Harty replied that the superintendent or his delegated representative would get to vote. Senator Doderer took issue with the word "his" and stated that in this case, "his" was correct since all but one of the superintendents in Iowa are male.

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(continued)

Representative Schroeder asked with respect to the Board of Directors, were there qualifications stating whether or not it has to be male or female and Mr. Harty stated there is no reference made to either. Rep. Schroeder commented that in the Girls Union, it is stated that the sixth member has to be a lady.

Senator Doderer asked the representatives of the Associations to ask the Associations to look at the designation of who gets to vote because it is very one-sided when it is all superintendents. She said if it were the task of the individual school to instruct the superintendent, then she would not object to it, or even the coaching staff, where there are some female representatives. She feels, at some point, the federal government will be forcing this.

Senator Doderer asked if each sport had some sort of advisory committee and asked if there were any women. She was informed there were none. Mr. Harty stated there had not been a great deal of interest cited to the Association in this area.

Senator Doderer requested them to take some affirmative action in seeing that some women were serving on these advisory committees.

Mr. Harty commented Senator Doderer made a good point.

Representative Monroe referred to rule 9.18(8) about promoting interstate contests and asked what it meant. Mr. Harty stated that he understood that to mean something that would promote an all-star type of competition. Rep. Monroe stated they might want to re-word that. Under (9), Monroe asked if they had the authority to insist that all of the teams have chaperones. Mr. Harty said that, yes, student athletes should be properly supervised. Rep. Monroe took issue with the word "properly".

Senator Kelly asked how much the Iowa High School Athletic Association netted on football playoffs and was informed \$75,000. He inquired how much was paid to the schools for traveling expense and Mr. Harty did not have the figures but stated they were paid mileage, meals and lodging. Senator Kelly commented that, in terms of the profit the Association was making, the reimbursement to the schools was pretty minimal. He does not feel the profit should be made at the expense of the participating schools.

Mr. Harty advised that \$100 per school was sent back amounting to \$50,000 to the schools.

Representatives Doyle and Monroe questioned the rule re staying overnight on Saturday night and the reason for this. Mr. Harty stated that most of the schools

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(continued)

do not want students remaining overnight on Saturday, since this rule usually pertains to tournaments. Mr. Harty commented they have honored Saturday night lodging for good reasons. Representative Monroe stated they might want to change that, rephrase it.

Mr. E. Wayne Cooley, Iowa Girls High School Athletic Union, was questioned by Senator Doderer concerning their constitution and suggested it was tougher than that of the boys. Mr. Cooley replied that it was more liberal, section 2, item 1, lists the superintendent, assistant superintendent or the high school principal. The superintendent may designate the person the ballot may go to.

Ms. Peg Burke stated she was checking the book and had done 100 schools--there were no women superintendents, assistants, and only one female principal.

Senator Doderer commented she did not want Mr. Cooley to think she was backingoff from her objection to the constitution.

Senator Doderer stated she hoped this change would be made without having legislation and felt this could be accomplished.

Mr. Cooley discussed the numbers of women on the advisory committees across the state and Senator Doderer asked him to supply a list of the names of the people on the advisory committees. He will supply the list.

Senator Doderer commented women should be on the Board of Governors, as well as on the advisory committees.

The committee discussed the need for more female representation on the various boards of the IGSAU with Mr. Cooley. Mr. Robert C. Oberbillig spoke in support of Senator Doderer's stand for more representation of women in the field of athletics.

Mr. Cooley explained how tournament referees are chosen and that is that schools rate officials all through the year, and they are given a ballot that they vote for 6 referees to participate in the competition. This is done by designating four must come from each district in Iowa.

Ms. Ruth Johnson explained the operation of the Iowa Association for Girls and Women in Sports.

Senator Doderer asked the composition of the Girls Bowling Advisory Committee. Mr. Cooley gave an example of the golf committee--2 men, 1 woman. Senator Doderer made the point that most of the advisory committee members were men.

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Ms. Carole Baumgartner, Drake University, spoke of her experiences in the seeking of a position for coaching prior to the time she was hired at Drake.

Senator Doderer stated that if the Girls Union wishes women to have an opportunity to advance in sports, other than just play high school athletics, girls should be encouraged to become high school coaches, referees and should be encouraged to do all of the things in athletics that men do. She feels the way they are organized cuts off this opportunity.

Representative Doyle questioned on page 22 of the book, under questions and answers, concerning transfers within the private and public schools, the answers do not conform to DPI rule 9.15 and he stated this was important in his part of the state.

Mr. Cooley advised they knew that and they ruled with the DPI ruling. He stated they send memos anytime a change is made on student eligibility.

Senator Priebe stated that what they were seeing today was the Rules Committee responding to requests they get from over the state--he said the Rules Committee had been asked about the problem numerous times--it is part of the legislative process, the committee has to respond and maybe some of the people were inconvenienced in having to come down, but the Rules Committee has to respond to the people of the state.

Senator Doderer asked if it would be impossible to change the Board of Directors and was advised how the Board is made up. She asked if there was any chance to have at least 50% of the group as women.

Mr. Cooley stated he is influenced by people who show creativity and relies on the IAW for recommendations, and Senator Doderer asked if all of the male coaches now serving were required to meet the same standards that Mr. Cooley and the IGSAU were asking women to meet.

## SOCIAL SERVICES

SOCIAL SERVICES(11/0) NOTICE	
Halfway houses, Ch 24	8/10/77
WIN Program, Chs 90, 91	8/10/77
General provisions, 130.1, 130.3	8/10/77
Foster care, Ch 136	8/10/77
Homemaker home services, 144.3	8/10/77
Purchase of services, 145.1(1)	8/10/77
Transportation services, Ch 153	8/10/77
Health related services, Ch 154	8/10/77
Living costs, 41.8, filed emergency	8/10/77
ADC, 43.2, filed without notice	8/10/77
Medical assistance, 78.2(2), filed emergency	8/10/77
ADC, 41.6, 41.7	9/1/77
Referrals, 42.3	9/1/77
Medical assistance, Ch 78, 79.5	9/1/77
Care facilities, Ch 81, 82.15	9/1/77
General provisions, 130.4(2)	9/1/77
Social security Act, 131.3, 131.2	9/1/77
In-home care, 148.9(3)	9/1/77
Rural student loans, Ch 146	9/1/77
Adult day care, Ch 151	9/1/77

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SOCIAL SERVICES [770] FIVE  
Parole, 26.4(1)  
Housing, Ch 152  
ADC, Ch 40, 41

8/24/77  
8/24/77  
9/7/77

Ms. Judy Welp, Department of Social Services, appeared before the committee to discuss Halfway Houses and Mr. Steve Daly was present also. The discussion centered around pornographic material being used in Halfway Houses and Mr. Daly advised the committee that they are trying to keep hard-core pornography away from the houses. Ms. Welp advised the committee that the department uses the definition which is in the Iowa Code.

Representative Doyle objected to the language in 24.2(1) "b" (1) and (3), the last line and Mr. Daly commented that he hoped the committee would understand that they were not trying to run a concentration camp. The definitions have resulted because of the request of the Rules Committee. Representative Doyle commented that in 24.1(4) he thought that was a laundry list. Mr. Daly stated they do have a policy pertaining to religion and have no objection to defining the language.

Representative Doyle stated he thought they were wasting too much time on their policy concerning mail.

Representative Monroe questioned the "to and from" concept regarding a resident who is allowed to use an auto to get to and from work and Mr. Daly responded they would like to allow this and it will not be offered below level 5, except for extenuating circumstances.

The policy of searching visitors was discussed and Rep. Doyle expressed a dislike for this policy. Mr. Daly commented that visitors are allowed within curfew hours unless the resident is causing a problem.

The committee discussed furloughs under 24.3(9) and 24.3(16) and Representative Doyle stated he is bothered by law enforcement personnel following people and hopes this will be changed. Representative Doyle asked the department to check on out-of-state furlough policy, because it is not consistent.

Mr. Daly responded that the rule is under review at this time.

Under rule 24.3 (16) "a", the committee discussed the amount of money required for job hunting furloughs, and Mr. Daly advised that at Newton Release, they are still requesting \$40 of the person's own money.

Ms. Welp commented they would take all of the suggestions under consideration.

She informed the committee that the changes being made in chapters 90 and 91, WIN, were made to comply with federal regulations. She stated they had set out a priority list as to how they would pick people and Rep-

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(continued)

representative Monroe asked why they had to have priorities and Ms. Welp stated there are not enough slots. She said that unemployed fathers are mandatory registrants and it is required that the Department gets them into the program just as quickly as possible. Representative Monroe commented that the logic is convoluted in that the order is unemployed fathers, volunteers and women, and Senator Doderer agreed. Ms. Welp reminded that the federal regulations require that the unemployed fathers come first.

Representative Monroe took the chair.

Representative Monroe questioned the wording in 91.3(1) and Ms. Welp agreed to add the words "as needed" to the language.

Ms. Welp advised that in chapter 130, the department made changes to bring their rules in order with the Title XX plan. Item 1 adds a provision that adults residing together, other than spouses, can be looked at with regard to eligibility, such as two elderly sisters living together, etc.

Under foster care services, she stated they had never had rules before on the service part of the program. The department has attempted to provide some structure to the program to emphasize that this is a temporary type living arrangement and the emphasis is on getting the child back into the home and that foster care is really used as a last resort. Representative Monroe commented that he didn't see the need for three whole chapters on the subject of foster care homes.

Ms. Welp responded they were trying to keep licensing rules separate from program rules.

Representative Doyle discussed the case of a young man who was under foster care from the age of six, and who is now over 18 and wanting to get some vocational training. He is in need of assistance and stated that no one in Social Services would talk to him.

Ms. Welp stated if the boy was committed to the department, that commitment ends at the age of 18 years.

Representative Doyle made the point that the definition in 234.1 allowed for the age of up to twenty one if they were going into vocational training.

Mr. Ron Steele, Program Manager of the Foster Care Program commented that there had been a lot of discussion around the point Rep. Doyle made and agreed it is very confusing. Mr. Steele stated they could investigate the young man's problem further if Representative Doyle would give his name.

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(continued)

Representative Schroeder called to attention on page 5, chapter 136, the last two lines, that the word "profit" should be changed to "benefit".

Ms. Welp stated that on chapter 145, they added the date certain as requested by the committee. There was general discussion of rules on chapters 153 and 154..

In 41.8, the department changed the schedule in their rules to the same that was specified in H.F. 464. The rule for 78.2(2) was filed emergency in order to comply with H.F. 464 also.

Ms. Welp advised that 42.3 was the unemployed father segment of the ADC program. Rules right now state that if the father refuses a bona-fide offer for employment, then he is not eligible for ADC.

Senator Priebe assumed the chair.

In chapter 78, quite a few changes have been in the dental services that are paid for as suggested by the Dental Advisory Committee and will bring their costs into line with current dental practices.

Representative Monroe noted under Item 22, the patient was required to verify receipt of services and he wanted to know if that was necessary and asked them to find out why before the rules become permanent.

Ms. Welp commented that 79.5 rules were implemented to concur with section 504 of the Federal Rehabilitation Act, which provides that in providing services, the handicapped shall not be discriminated against.

Representative Monroe asked if that covered all vendors and was told that it does. Ms. Welp agreed to provide copies of the federal law for the committee. She stated the law does have quite a far-reaching effect. Rep. Monroe put the committee on notice that there could be problems with this.

Ms. Welp discussed chapters 81, 82.15, Care Facilities and noted changes which had been made. She also advised the committee of changes for purposes of clarification in chapters 130.4(2), 131.3 and 131.2.

In chapter 146.9(3), changes were made to clarify the maximum amount listed there was applied to money loaned under this program and not to any federal loan.

Representative Doyle had a general question on the chapter as to where the money came from--is it federal money originally and Ms. Welp stated that it was. He also asked how many loans were made under this chapter and she stated she thought it was between 200 and 300.

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(continued)

Ms. Welp made general comments on chapters 148.9 and 151.

Representative Doyle questioned whether or not the criminal code had changed 26.4(1)"h" re gun control and commented that if a person had a gun collection and was picked up on check charges, he would lose his guns. Ms. Welp advised that this was in strict compliance with the federal gun control act.

OBJECTION

Representative Doyle moved the following objection:

The committee objects to subrule 26.4(1)"h" on the grounds that it is arbitrary, unreasonable and capricious to have a total ban on the ownership, possession and use of a firearm by a parolee/probationer. The committee notes that there are many felonies of a non-violent nature and that to prohibit persons convicted of such crimes from owning firearms would serve no useful purpose.

The motion was adopted unanimously.

Ms. Welp advised the committee that chapters 40 and 41 specify who would be eligible for housing services and the types the department would provide. Rules filed on ADC deal with the application process and the review process.

MOTION TO  
RECONSIDER

Representative Schroeder moved to reconsider the vote by which Senator Doderer's motion re Darvon failed to pass in the committee.

The motion carried unanimously.

OBJECTION

(Pharmacy)

Representative Schroeder called for the question on Senator Doderer's motion as follows:

The committee objects to proposed rule 8.14(4) on the grounds that it is arbitrary, capricious and unreasonable to put the drug Darvon on the list of controlled substances. In view of the penalties which attach to possession of schedule IV drugs it is the opinion of the committee that Darvon does not pose such a threat to warrant it being included as a controlled substance.

The motion to object carried on a vote of 4 ayes and 2 nos. Senator Priebe and Representative Monroe voted "no".

Representative Schroeder moved to adopt the minutes, as corrected, of August 10 and August 23, 1977. The motion carried.

The committee postponed the regular meeting for next month to October 18 and 19.

The meeting adjourned at 3:15.p.m.

9-14-1977

Respectfully submitted,

  
\_\_\_\_\_  
Joseph Royce, Staff  
Vivian L. Haag, Secretary

APPROVED

\_\_\_\_\_  
Chairman

Dated

9/22/77