

MINUTES OF THE REGULAR MEETING  
of the  
ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of Meeting: Tuesday, August 10, 1976, 8:45 A.M.

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

Members Present: Representative W. R. Monroe, Jr., Vice Chairman,  
Representatives Donald V. Doyle and Laverne Schroeder;  
Senators Minnette Doderer and E. Kevin Kelly.  
Not present: Senator Berl E. Priebe, Chairman.  
Also present: David Charles, Research Assistant, Senate  
Joseph O'Hern, Research Assistant, House  
Dan L. Dudley, Legal Counsel, House

Moved by Doyle to postpone the next regular meeting until September 20 and 21, 1976, as two members of the committee would be unavailable and therefore a quorum would not be present on the regular meeting date.  
Motion carried.

Minutes: Moved by Doyle to defer action on the minutes of the July meeting.

Moved by Doderer to appoint Grace Rehnblom temporary secretary to be paid under 17A.8 of the Code.  
Motion carried.

Discussion was had on how the committee wished to proceed in regard to staffing and whether they should consider a legal or non-legal person and full or part-time basis. A salary of \$12,500 was considered as not out of line as the Attorney General hires recent law graduates for \$9,500 and in the private sector they are around \$14,000. Consideration was given to possibly hiring someone who was not a lawyer but was familiar with the legislature and laws and then rely on the House or Senate legal counsel. Representative Monroe suggested that Senator Doderer and Representative Doyle chat informally with members of the State Departments' Appropriations Committee and the Legislative Council to get their ideas on this matter. Doyle stated that the Legislative Council meets Sept. 8. A deadline of November or December was indicated as the individual should have at least 1 month to work with David Charles.

Representative Doyle suggested that the committee put out a notice to the law schools that we are contemplating staffing. We are unable to describe the potential job opening but put out feelers as to sources of where we can get people.

Senator Doderer distributed a copy of an Attorney General's opinion she had just received in regard to the 40 hour week matter and wanted to get it on the agenda and recommended that the committee indicate that they back the opinion completely. If the rule is not brought before the committee, some action should be taken to show approval.

Representative Schroeder felt that the Rule 4.6 should be brought before the committee for review with respect to this opinion that has been issued and that the rule be updated to concur with the opinion.

Representative Monroe stated that Merit Employment is implementing the rule and that the committee can request review of Rule 4.6 and that it be changed in accordance with the Attorney General's opinion of August 10, 1976.

Representative Schroeder suggested that we owe Merit the courtesy of a little time to review the opinion before calling them to discuss it.

Representative Doyle distributed a copy of an Order signed by Chief Justice C. Edwin Moore on Code Rule 116 on attorneys practicing in contested cases, and wanted to have this printed in the next supplement of the Administrative Procedures Act as a notice to attorneys and state departments that the rules are contrary to this Order.

Representative Doyle moved that the rule be added to the Style and Form section and that it be brought to the attention of all state departments that the Supreme Court has made this recommendation that it should be adhered to. Motion carried, 4 ayes.

Chairman Monroe discussed a method for recognizing in the filed rules that an objection had been posted and the 70 day deferral and that by inserting a blank page with a notation that it would be more easily recognized and noticed.

LIBRARIES  
7/12 Supp.

Brian Greer, representing the State Library Commission, appeared before the committee and explained that the rules of the library department primarily contain the guideline under which the state libraries serve the various regional libraries of the state and professional groups within the state. Representative Monroe questioned whether under 303A.4 (4) they are not required to serve the residents of the state and not merely the legislature, state departments, and regional libraries. Greer indicated that perhaps the library should be a reference library only so that at any time it is needed by the Judicial or Legislative branches that it has volumes available rather than checked out to some individual.

Motion

Representative Schroeder moved an objection to the Rules 1.7 (303A), 1.23(2) (303A), and 1.37 (303A) on the basis that the state libraries according to the

Code are to be available to all individuals and that if you have a need and can show it that you should be able to check out books for a certain length of time. No vote was taken.

Representative Monroe indicated that they should feel free to contact the members by phone before filing the rules and possibly a change in legislation should be made to change service to all individuals of the state.

AGRICULTURE  
7/26 Supp.

Robert Lounsberry, Secretary of Agriculture, appeared to explain that 2.2 and 2.4 were to update the referendum to conform with S.F. 49 on the corn check off. 6.11 also was to conform to the federal act. No further discussion was necessary.

Senator E. Kevin Kelly arrived at 9:45 a.m.

APPEAL BOARD  
7/12 Supp.

Fran Larew, Secretary of the Appeal Board, appeared. Additional rules under Chapter 23 and 24 of the Code regarding general provisions were discussed. The issue of administrative rules was raised in the LeClaire hearing on property taxes. The question concerned the notice procedures followed by the appeal board in conducting the hearing under S.F. 1062. Maurice Baringer, Chairman of the appeal board, stated that they felt the provisions of 17A were explicit as to how hearings were to be conducted and therefore they had not felt that rules were necessary.

INDUSTRIAL  
COMMISSIONER  
7/12 Supp.

Alan Gardner, Deputy Commissioner, appeared before the committee to explain the necessity of having someone located within the state who knows something about the employment compensation law and the problem of availability of knowledgeable people. The need to have someone who can be contacted by telephone who is responsible for handling injured persons claim without having to go to Detroit, Hartford, or Phoenix to expedite handling of claims was discussed. Reference to the insurance commissioner was struck and it will be only the industrial commissioner. Rules are to be filed August 16, 1976.

Recommendation concerning the emergency filed rules that they should be refiled under the normal channels as they will expire in 180 days under the emergency filing.

NURSING BOARD  
7/25 Supp.

Lynne Illes, Executive Director of the Board of Nursing, appeared before the committee to explain the rule changes in regard to closed meetings on certain occasions by the vote of 2/3 of the members to discuss dismissals and investigations of allegations, and test contents of licensing examinations. Also discussed the fee charged for persons requesting examination of the public record as it is necessary for someone to supervise the use of the records.

8-10-76

HEALTH DEPT.  
MOBILE HOME  
7/12 Supp.

Robert Leggett, Iowa State Department of Health, appeared before the committee to explain that they have basically updated the mobile home park rules and regulations.

Chairman Monroe indicated that in 71.3(1) where it specifies that "detailed plans shall be prepared by an engineer registered under Iowa statute." that perhaps you have gone farther than you can go by designating "engineer registered" although preparing the plans is an engineering function. This looks like an excellent situation for Adventureland, Cuttys, etc. but are we precluding an individual who desires to set up a small camping area to design his own? Leggett stated that if it is 8 spaces or less then a departmental policy applies. Senator Doderer stated that they can't have policies that make objections to rules. Senator Doderer indicated that under 71.5(4) where it indicates that a separate dressing room is necessary for women but not men that she suggested they have no authority for this distinction.

Chairman Monroe requested that Mr. Leggett contact Reprs. Doyle and Monroe concerning recommendations they have rather than taking the time of the full committee before filing the rules.

Senator Doderer requested that the Attorney General be asked to review and update his 1963 opinion on mobile home parks.

INSURANCE  
7/26 Supp.

Marshall Hunzelman, Superintendent of Securities, appeared before the committee to explain that most of these rules were pursuant to comments which were received on their original rules with certain minor changes, a few of them being grammatical, and have added a change in item 12 that is conforming the intrastate to the interstate offering.

Senator Kelly referred to 50.9 deleting the words "by a broker-dealer" and felt that a cross reference should be considered to let agents know that they are covered in two different places and it should be cross referenced back to Sec. 304.

Hunzelman stated that if you go back to the original rules it showed a separate rule for those who employed agents and who are bound by 50.9. Each reference was taken and deleted the reference to broker-dealer. No further questions.

SOIL CONSERVATION  
7/12 Supp.

H. Greiner, Director of Soil Conservation, appeared to present the rule changes to the committee. Chairman Monroe requested that before filing that in the last sentence of 2.3(3)e that the words "not in the public interest" be struck.

PUBLIC SAFETY  
7/26 Supp.

Wilbur Johnson, State Fire Marshal, explained the new regulations on day care facilities as worked out in conjunction with the state day care facility committee.

No hearing has been held on these rules and Senator Doderer requested that a hearing be held to work out some of the differences in the regulations, and Mr. Johnson indicated that they would try to schedule a hearing in the next 30 days.

Chairman Monroe pointed out a typographical error in 5.502(10)b "combusion" should be corrected. Senator Doderer suggested more careful use of personal pronouns.

REAL ESTATE  
7/12 Supp.

Ken Smith, Administrative Officer of the Real Estate Commission, appeared to explain the rules and was questioned by Chairman Monroe regarding the date January 1, 1977 in 1.25(2) as to the reason for the delay. Smith stated that it was to allow brokers to make arrangements but when asked if the law gave them authority to do this, Smith did not think it did.

Senator Doderer moved an objection to 1.25(2) requiring each branch office to be supervised by a real estate broker who is reasonably available to personally manage and supervise such office or offices during regular business hours as it is beyond the scope of their authority. David Charles asked that the committee file an objection only if the rules are filed in the present form. Motion carried, 5 ayes.

Chairman Monroe requested that under 2.3(1) that the means of obtaining a reciprocity broker's license should be set out in 2 separate paragraphs to make it clearer as to the requirements.

TRANSPORTATION  
7/26 Supp.

Terry Fritz, Director of the Public Transit Division, presented the rule changes to the committee. A public hearing is scheduled on Sept. 7, 1976. Discussion on the Regional or Multi-county transit system was had regarding the possibility of all counties not desiring to participate and later deciding to start a separate transit system and which group would be eligible for state aid or would either one since it was not a complete region involved.

8-10-76

ENVIRONMENTAL  
QUALITY  
AIR QUALITY  
7/12 Supp.

David Bach, Hearing Officer, and Ed Stanek, Air Quality Division, represented the department.

Senator Kelly objected to the wording of Item 6 to amend 3.1(1)d(2) and thought it should be clarified as to the use of plot plans.

A hearing is scheduled for Sept. 16, 1976, on these rules and some concern was expressed that not all affected companies may be aware of the hearing. Mr. Bach felt that they were as Iowa Manufacturers' Assn. and other organizations of that type dealing with companies have been notified. It was suggested that perhaps they should make a sampling of telephone calls to different places to see if they are aware of the hearing.

Bill Kovaks, attorney representing the Cattlemens' Assn., was concerned whether this would be the only chance they would have to object to the rules in case they were not changed after the hearing, and if there was some confusion by the rules being considered here before the hearing was held. He was assured that they are not yet filed and he can present objections at the hearing and again when the rules are brought up before the committee again.

WATER QUALITY  
7/26 Supp.

Mr. Crane explained that Ch. 21 deals with the water treatment systems and waste treatment systems and the thrust of the revisions is to make the existing regulations compatible with the Association of Boards of Certifications, a nationwide body which certifies waste and water treatment quality rules. In upgrading the facilities it makes little sense to build million dollar systems and then not have a certified operator in charge. The different systems are graded by size and before you can become qualified to operate a larger system you have to have had the training and experience in the smaller systems and work up. Some question was expressed as to whether this was not a means of pirating from a smaller system and constantly changing personnel.

Senator Priebe had contacted David Charles and desired to defer the effective date of these rules until after the September meeting or else contact him, as he would like to be present for the discussion. The critical date is Nov. 1, 1976 for the regulations and it was felt that Sept. 21 would not put too much pressure on them, although if objections were filed, the Water Quality Commission would have less time to consider what actions to take before the Nov. 1 deadline. Repr. Doyle suggested that during the lunch recess that Chairman Monroe try to contact Senator Priebe and get his feelings on this matter.

Recess

Chairman Monroe recessed the meeting for lunch at 12:15 p.m.

Reconvened

The meeting was reconvened at 1:45 p.m. with Repr. Monroe in the Chair. Five members were present.

WATER QUALITY  
Cont'd.

Chairman Monroe had been unable to contact Senator Priebe and Repr. Schroeder moved the 70 days deferral period to give Senator Priebe an opportunity to be present when this is discussed again and that the various people interested get statements ready to present at the public hearing so a compromise can be worked out by the time the rules come up. The Department stated that a hearing has already been held. Motion withdrawn.

Repr. Schroeder moved to file a petition that the Commission present the 3 or 4 items on which there is controversy and have another public hearing to give all sides an opportunity to explain their feelings.

Crane stated that if you take that action then the rules as printed are the rules that will be in effect on Nov. 1. Schroeder motion withdrawn.

Repr. Schroeder moved to delay the rules until October 25 for further study. Motion carried, 5 ayes.

GENERAL SERVICES  
7/26 Supp.

Vern Lundquist, Superintendent of the Printing Dept., appeared to present the rule changes.

5.17(2) is not completely accurate because the subscription is cancellable for various reasons but not refundable.

Question was raised about the Iowa Official Register being sent free to anyone requesting same. It was felt that some charge should be made for postage and Chairman Monroe requested that Mr. Lundquist send him a note on this and possibly legislative change could be made to include a postage charge.

Discussion was had on 5.4(18) regarding "no state printing equipment shall be used for private or political purposes." Chairman Monroe requested that the language be clarified in this area and brought back later so that there is less confusion on what can be included.

Repr. Monroe said clarification was needed on "prime grades" in 5.6(2); "design: in 5.6(4); and "large bond" in 5.8(1)c. 5.10(5) heading says Federal and state taxes and no mention is made of any federal taxes; 5.11(5) should read "five percent or \$50.00" rather than of \$50.00 and should also reword the "he" and "his"; 5.10(13) clarify "minor deficiencies" and in 5.14(5) define what is "excessive nature".

ACCOUNTANCY  
7/12 Supp.

Leo Burger, Chairman of the Board of Accountancy, explained that the sole purpose of these revisions was to bring them into compliance with 17A. Chairman Monroe noted that in 2.12(1) that reference should be made to 17A rather than 17A.4. Chairman Monroe complimented Mr. Burger on 2.12(3) and that this should be referred to other departments desiring to include this type of statement in their rules, as well as all of 2.12 through 2.14 to be used as a model.

AGRICULTURE  
7/12 Supp.

Robert Lounsberry, Secretary of Agriculture, explained the Meat Packing Act regulations which are for purposes of clarification of the Wholesome Meat Act passed in 1967 and the Iowa Act passed in 1969. Question was raised by the committee as to the propriety of adopting a federal handbook without specifying a particular date. Charles was asked to do some research and contact the department.

CONSERVATION  
7/26 Supp.

Stanley Kuhn, Administration Division, explained the declaratory ruling and no questions were offered. Jerry Shnepf discussed the Public Employment program and there were no questions. Bob Barrett, Wildlife Supt. explained Chapters 102, 109, and 110 and that the chapter on inland commercial fishing deals with high pesticide levels, basically of dieldrin.

LABOR  
7/12 Supp.

Jerry Addy, Labor Commissioner, indicated to the committee that these rule changes were to adopt the federal rules. No questions offered.

MERIT  
7/12 Supp.

Wallace Keating, Director, explained the rules. It was recommended that the wording of 5.8(2)f should be clarified to indicate that no person may be retested within 30 days of the previous test. Chairman Monroe stated that the committee will not file an objection but that it should be corrected the next time a rule change is made.

PLANNING AND  
PROGRAMMING  
7/12 Supp.

Dolores Abels presented to the committee that this was placed under emergency because they needed to get started with the winterization program. Chairman Monroe suggested that since under the emergency status it will expire in 180 days that it should be refiled as a regular filing.

PUBLIC SAFETY  
7/12 Supp.

Wilbur Johnson, State Fire Marshal, appeared and it was recommended that under 5.230(5)c that some clarification of language could be made as to the sixty-five feet in height mentioned repeatedly in the rules.

REGENTS  
7/12 Supp.

Donald Volm, Merit Co-ordinator, Board of Regents, told the committee that revision in 3.39(17) dealing with pay for time on call dealt primarily with people at University Hospital and at the physical plant. Chairman Monroe felt that clarification of the difference between 3.39(11) and 3.39(17) dealing with Iowa State University and the University of Iowa should be indicated or there may be trouble ahead.

HEALTH  
7/12 Supp.

Bill Miles, Department of Health, explained Chapt. 200 dealing with the State Health Plan. Standards are for the State Health Care projects that receive federal reimbursement. Considerable discussion was had to determine whether the standards as in the State Health Plan are the same as rules or how you can change a standard. The Governor has designated the Dept. of Health as an agency to take care of the health care projects. Senator Doderer noted that if the duties were not code-delegated that it does not matter whether this health care agency is under the Health Dept. or Office of Planning & Programming. O'Hern stated that under 17A it says what are rules and says that if the department is doing something that is a rule that it has to publish it in a certain manner and have to hold a public hearing. Does the appeal process you have set up conform with 17A? It was suggested that Mr. Miles contact David Charles to work out the problem.

SOCIAL SERVICES  
7/12 Supp.

Sandy Scott presented the rules on Chapter 3 regarding oral presentations. Senator Doderer moved that the committee object to 3.2(17A) indicating that all oral presentations will be held in Des Moines on the grounds that it does not abide by 17A and it exceeds the power of the department under 17A.4 of the Code and effectively precludes some people the opportunity to be heard. Motion carried, 5 ayes.

Ms. Scott reported that the reason for limiting it to Des Moines is a matter of insufficient staff and by having it in Des Moines there would be someone available who was more knowledgeable in the field.

John Thalacker presented the penitentiary and reformatory mail regulations in regard to unclothed pictures, and Iowa State Industries. Repr. Schroeder mentioned that in 23.1(1) that you preclude sales to the general public but Thalacker replied that sales can not be solicited but the general public can purchase items from Iowa State Industries.

SOCIAL SERVICES  
Cont'd.

Chairman Monroe asked if there were adequate markets for the products in order to keep inmates busy and it was indicated that they do not, but they do not desire to solicit business as then they may be deluged and would then be in competition with the private sector.

41.2(1) Aid to Dependent Children was discussed briefly with no particular questions offered.

Isabel Sanders discussed 51.3 dealing with custodial care facilities and the situation if one spouse requires custodial care but the other is able to remain in the home - if they have a small income the first concern is that the spouse at home has income for expenses.

Mr. Clough explained Ch. 54 dealing with Facility Participation. Under the new 3-part classification now in effect there are approximately 85 custodial care homes while there are 800 intermediate care facilities. Chairman Monroe recommended that a letter be directed to the Human Resources Standing Committees to review proposed Ch. 54 since they are planning to look into this custodial care situation.

Mr. Clough also explained 81.6 and 82.3 which relate to the financial report of the nursing homes and mentally retarded homes. Basically the same as Ch. 54 and the Human Resources Standing Committees should also look at this.

75.1 and 75.2 dealing with medical assistance eligibility prompted no questions.

Ch. 76 on application for medical assistance was without question.

Ch. 77 dealt with providers of medical and remedial care and prompted no questions.

Ch. 78 dealing with medical and remedial services. A concern was expressed about the cost plus aspect in drugs and that a larger prescription is more practical for elderly who are on a certain drug for an extended period of time and the professional fee is the same whether it is for a 10 tablet supply or a 100 tablet supply.

Senator Doderer moved an objection to 78.1(16) stating sterilization of any individual under age twenty-one for the reason that it is arbitrary and adulthood in Iowa is age 18 and it should be changed to age 18. Motion carried, 5 ayes.

SOCIAL SERVICES  
Cont'd.

79.3 dealing with providers of service records prompted no specific questions.

80.2 and 80.5 dealing with procedure of payment prompted no specific questions. The committee asked that a letter be sent to the Human Resources Standing Committees advising them of these rules and suggesting that a subcommittee study them this interim.

Ch. 81.5(4) Code Editor's note indicates care facility was probably intended in two places instead of nursing home and correction should be made and filed to take care of this.

Ch. 83 and 84 prompted no questions dealing with remedial eye care and screening, diagnosis, and treatment.

Senator Doderer objected to 105.2(232) and 107.2(5) where it indicates that a staff person must be a woman where care of girls over the age of six is involved for the reason that this is discriminatory and precludes the use of male nurses. Motion carried, 5 ayes.

107.4 and 108 prompted no questions regarding institutional care services and child placing agencies.

Miriam Turnbull explained the provisions of Chap. 130 dealing with general provisions which was filed as an emergency filing which establishes fees for day care and home maker services.

Ch. 147 deals with state child care centers and prompted no questions.

ADJOURNMENT

Representative Doyle moved to arise.

Chairman Monroe adjourned the meeting at 5 P.M.

Next regular meeting to be held Monday, September 20, 1976, Senate Committee Room 24, 9:00 a.m.

Respectfully submitted,

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(Mrs.) Grace Rehnblom  
Temporary Secretary

APPROVED

\_\_\_\_\_  
Chairman

DATE \_\_\_\_\_