

MINUTES OF THE REGULAR MEETING
of the
ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of Meeting: Tuesday, September 9, 1975, 9:40 a.m.

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

Members Present: Senator Berl E. Priebe, Chairman, Senator Minnette Doderer, Representatives Donald V. Doyle, Laverne Schroeder and W. R. Monroe, Jr., Vice Chairman.
Senator E. Kevin Kelly arrived 10:20 a.m.
Also present: Wayne A. Faupel, Code Editor.
David Charles, Legal Counsel.

Minutes: Moved by Schroeder to dispense with reading of minutes of the August meeting and that they stand approved.
Carried viva voce.

CIVIL RIGHTS
6.7 Withdrawn
Written request from Joseph L. Tate, Executive Director, Civil Rights Commission, to withdraw proposed amendment to 6.7 concerning mandatory retirement was considered. Moved by Doyle that Civil Rights Commission be permitted to withdraw proposed rule 6.7. Carried.

SOCIAL SERVICES
Judith Welp, Methods and Procedures, represented the Social Services Department for review of the following rules proposed under notice in IAC Supplement 8/11/75:
Chapter 1--Departmental Organization.
Chapter 4--Petition for Adoption of Rules.
Chapter 5--Declaratory Rulings.
Chapter 17--Iowa State Penitentiary.
Chapter 18--Iowa State Men's Reformatory.
Chapter 19--Women's Reformatory.
Chapter 20--Iowa Security Medical Facility.
Chapter 21--Riverview Release Center.
Chapter 101--Iowa State Juvenile Home.
Chapter 103--Iowa Training School For Boys.

Chapters 1, 4 and 5 would implement Chapter 17A of the Code.

Monroe asked that the Department consider clarification of 5.2(2) by eliminating the word "full" preceding the word "statement".

Monroe took the Chair.

Schroeder questioned the limited visiting hours for inmates on weekends and holidays--17.2(1) a and b.

John Thalacker, Deputy Director of the Division of Correctional Institutions, responded the provision was intended to ensure that all inmates had an opportunity to visit during busy seasons.

SOCIAL SERVICES Committee suggested that a clause be added to the rule to allow the warden or designee to grant additional visiting hours under unusual circumstances.

Monroe raised question in 17.1(1) concerning the definition of "contraband" including "obscene materials".

Committee recommended that "immediate family" as defined in 17.1(2) include "natural grandparents."

Senator Priebe took the Chair. He took the position that 17.2(7) in re visitors dress style was too restrictive.

Suggestions to amend included the following substitute: "Visitors shall not wear suggestive clothing styles." Another alternative would be to drop the rule and the institution would provide smocks for all visitors.

Senator Kelly arrived.

Doderer favored granting discretionary power to the warden in re number of visits allowed per month in 17.2(3).

Monroe objected to requirement in 17.2(4) that visitors have character reference letters when requested. He suggested that such letters be restricted to actual charges and known facts and that suspicions and innuendoes may not be requested unless the visitor so authorizes.

Doyle suggested that 17.2(13) be more specific as to circumstances warranting modification of visiting procedures.

Discussion of 17.2(5) in re periodic personal searches of visitors.

Ray Cornell, Citizens' Aide at the prison, favored searching all persons to eliminate drug traffic problem. He further proposed that modification of the visiting privileges for Cellhouse 20 be considered.

In answer to Doyle, Department officials said prisoners' letters to the governor or legislature are not read by prison authorities.

Charles pointed out that the statute requires uniformity among the three penal institutions. However, he noted variances in the proposed rules and questioned whether the inconsistencies could be justified.

Priebe suggested that one set of rules be drafted to be apply to the three institutions.

SOCIAL SERVICES
Cont'd

Monroe took the position that articles which may be mailed to an inmate should be enumerated in the rules--18.4(5). The list could be filed under temporary procedure to be effective December 15.

Discussion of 19.3--interviews and statements. Department officials were amenable to striking all of 19.3(2) which provided "Federal offenders shall have access to the press at the discretion of the superintendent pursuant to appropriate policies governing nonfederal prisoners."

It was suggested that clarification of 19.2(6) was needed as to which possessions visitors would be required to leave with receptionist.

In re 19.4--mail and package inspection. It was suggested that rules set out those who have unlimited access to mail.

AMERICAN REVOLU- Mr. Redfern was present to answer questions concerning propose
TION BICENTENNIAL rules of the American Revolution Bicentennial Commission
COMMISSION appearing in 8/11/75 IAC Supplement, being Chapter 1. Rules were taken up out of order so Mr. Redfern could keep a plane reservation.

Monroe voiced objection to the paragraph concerning procedure for filing requests for matching funds, second sentence which read: "One copy of the criteria form is to be submitted plus thirty one-page narratives including a brief description of the project and funding requested including the following information." More specifically, his objection was to the words "plus thirty one-page narratives". The Commission was willing to delete the objectionable language.

Priebe questioned Redfern as to requirements for flying the bicentennial flag and was told rules are set out in PL93-179. Committee members requested that the policy be set out in letter form for further clarification.

SOCIAL SERVICES
Cont'd

Discussion of Chapter 20--security medical facility. It was suggested that 20.4(3)a be clarified re materials which would cause interference with patient treatment.

In re tours of the facility--20.6, Committee suggested that the first sentence be amended to read: "Tours shall be limited to adults."

Recess

Chairman Priebe recessed the meeting at 12:05 p.m. Reconvened at 1:05 p.m. Senator Doderer out.

Review of rules relating to Riverview Release Center. Gene Gardner, Associate Director of Bureau of Community

SOCIAL SERVICES
Cont'd

Services, Paul Mueller, Superintendent Riverview Center, and Judy Welp were present.

Department representatives agreed to include "grandparents" in definition of "immediate family"--21.1(2).

Suggestion was made by Committee to insert the words "of Iowa" following "Code" in 21.2(5) "a".

Priebe raised question in 21.2(8)c and Schroeder proposed the following substitute language: "Liquids may be brought on institutional grounds by visitors only with the permission of the captain of security."

Question was raised in 21.3(2) as to use of "must". Committee favored substituting "shall".

Discussion of 21.4(218) in re mail and packages. Doyle questioned what is "standard type stationery" referred to in 21.4(1). He suggested inserting "or guardian" after "the parents" in 21.4(3).

Priebe objected to 21.4(4) as being too restrictive. Committee suggested amending line 2 by striking "and shall be mailed" and inserting "unless mailed".

The following amendments were suggested by the Committee:
21.5(2) in re phone calls--strike "shall" and insert "may".
21.5(3) amended to read: "Phone calls may be limited to three minutes at the discretion of the superintendent."
Strike all of 21.6(3) as being redundant.

Department representatives agreed to rewrite 21.2(5) in re visiting.

Review of rules pertaining to juvenile home--Chapter 101. The following recommendations were offered by the Committee:
101.1(1), line 2, strike "under the age of eighteen".
101.2(1), strike "must" and insert "shall".
101.6(218), line 1, strike "must" and insert "shall"; line 3, strike "will" and insert "shall".

Schroeder raised question as to lack of uniformity in definitions in Chapters 101 and 103. "Immediate family" and "contraband" were not defined in Chapter 103.

Charles recommended that since the two institutions are under the same director, rules should be uniformly applied to both, unless there is legitimate reason to do otherwise.

SOCIAL SERVICES
Cont'd

Doyle objected to the words "in any situation" in 101.3(4) and suggested as a substitute the word "when".

Committee suggested that 103.1(1), line 2, be amended by striking "over twelve and under eighteen years of age".

TRANSPORTATION
Motorcycle
Equipment

William Armstrong, Management Review, Department of Transportation, appeared before the Committee to discuss rules in re motorcyclists' safety equipment, being Chapter 6 (07,E). The rules which became effective September 1 under emergency provisions of the law had been revised to overcome objection filed by the Rules Committee. Copies of the revised portion of the rules was furnished Committee members. Brief discussion as to possible clarifying legislation in re windscreens for motorcycles.

CONFIDENTIAL
RECORDS COUNCIL
Chs 1 to 3

Carroll Bidler, TRACIS, represented the Confidential Records Council for review of proposed rules Chapters 1 to 3 published in 8/25/75 IAC Supplement. Said rules were pursuant to authority of sections 17A.3 and 749B.19 of the Code. There were no objections voiced.

ALCOHOLISM
COMMISSION

Norman Messenger, Assistant Director, Commission on Alcoholism answered questions concerning notice of intended action to amend Chapter 5 of their rules. Said amendments, published in the 8/25/75 IAC Supplement, relating to emergency treatment and to approval and funding, were initiated after the Commission's appearance before the Rules Committee in June. No action taken by Committee today.

COMMISSION ON
AGING

The Commission was represented by Richard Woods, a student intern, who explained rules of operations published in IAC Sup 8/11/75 under emergency provisions of law. In Part I of the same publication, Notice to replace the emergency rules with new permanent rules was also published. Charles pointed out a problem with the effective dates of the rules and notice. There would be a time gap when the Commission would be without effective rules.

Several questions were raised by members concerning the rules and it was thought additional time should be spent studying them. It was decided to place the matter on the agenda for the October meeting.

The Committee requested the Commission to consider the following amendments: Substitute "rules" for "regulations" wherever they appear in the rules. Substitute "shall" for "must" and with respect to reference to gender, it would be preferable to repeat the noun rather than using "he/she". Monroe urged that reference to Iowa law (Chapter 249B) be used in the rules whenever possible rather than federal references.

RECESS

Chairman Priebe recessed the meeting at 3:15 and reconvened it at 3:45 p.m.

CITY FINANCE
COMMITTEE

Francis Larew, Comptroller's Office, and Edward H. Allen, Jr., Iowa League of Municipalities, were present for review of proposed substitute amendment for 2.5(5) of rules of the City Finance Committee. Said amendment, published in IAC Supp. 8/25/75 provided: "City utility fund and city enterprise fund. Any governing body of a city utility, combined utility system, city enterprise, or combined city enterprise which has a surplus in its fund may transfer such surpluses to any other city fund, except the emergency fund, by resolution of the appropriate governing body. A surplus shall be defined in accordance with generally accepted accounting principles as promulgated by the American Association of Certified Public Accountants."

Schroeder raised objection to the proposed amendment contending it exceeded authority in §384.15.

Some discussion concerning different definition of "surplus". Allen pointed to §384.89 of the Code and voiced support for the amendment. He indicated he would be unopposed to taxation of municipal utilities even though gain would be offset by collection expense.

Objection

After some discussion, Schroeder moved that the following objection be filed:

"We object to the proposed substitute for 2.5(5) relating to 'City utility fund and city enterprise fund', appearing in August 28, 1975 Iowa Administrative Code Supplement, on the basis that the City Finance Committee has exceeded the rulemaking authority granted under Code sections 384.15 and 384.89.

It is the opinion of the Committee that the statutory framework contemplates offering city services at the lowest possible cost to the consumer. The proposed rule does not effectuate this intent, therefore, the agency has exceeded its authority in proposing 2.5(5). In addition, the Committee feels that the authority granted in section 384.15(1) relates solely to transferring moneys between funds during the budgeting process."

Vote on the motion to object was as follows: 3 ayes, Doderer and Doyle "present" and Priebe "no." Doyle later changed his vote to "aye" and motion to object carried.

Charles was doubtful the objection would be upheld by the court. He advised the Committee to seek corrective legislature.

PLANNING AND
PROGRAMMING

Winterizing
Homes of
Low-income
Elderly

Proposed rules of the office for Planning and Programming were before the Committee. Said rules, being Chapter 15-- State Winterization Program, were published under notice in IAC Supp. 8/25/75. Dolores Abels represented the Department. She pointed out two errors which will be corrected before the rules are filed--the word "and" where it appears between "elderly and low-income families" will be stricken to conform with the statute (66GA, SF573).

LAW ENFORCE-
MENT ACADEMY
Ch 1

E. K. Yarrington, Assistant Director of the Law Enforcement Academy, was present to review proposed amendments to rules establishing the minimum age requirement for entrance to law enforcement training schools, being Chapter 1. Notice was published in IAC Supp. 8/11/75. Discussion centered on Item 2, second sentence, amending 1.1(6) which provided: "When the hiring authority is prohibited from receiving criminal history data as specified under 749B, then the fingerprints will be taken by a police department under civil service, a sheriff's department or a state law enforcement agency and submitted to the Iowa Law Enforcement Academy Director for search." This provision would conform to Chapter 749B of the Code in re the prohibition of dissemination of criminal history data to a mayor.

Doderer suggested a possible meeting of the Committee with the Academy officials to review the existing rules on height requirements for law officers--1.2(80B). No final action was taken on the suggestion.

COMMERCE
COMMISSION
Procedura
Rules

At the request of the Commerce Commission, Doderer moved to defer review of pending rules of the Commission--IAC Supp. 7/14/75--until the October 14 meeting. Carried.

NATURAL
RESOURCES
COUNCIL

Othie McMurry, Director, James Cooper, Chief Engineer, and Kent Lewis, Deputy Water Commissioner, represented the Natural Resources Council. Also present was Orr Van Eck representing the State Geologist. Rules of the Council were summarized in IAC Supp. 8/25/75 and comprised 12 chapters. Briefly, Mr. McMurry said the rules were developed over a two-year period following public hearings. Full text of the proposed rules was provided Committee members at the August meeting.

Discussion of changes made since copies were furnished the Committee.
2.15--line 5, insert after "public" the words "fuel storage facilities".
2.21--line 2, insert after "unincorporated" the words "communities located in".

NATURAL RES.
COUNCIL Cont'd

Senator Priebe raised question in Chapter 3--Permits to Divert, Store or Withdraw Water--as to miscellaneous uses of water. A permit would be required for use of more than 5,000 gallons of water daily, including water used for poultry, livestock and domestic animals. It was noted §455A.25(2) requires permits for 5,000 gallons.

The following amendment was proposed: Amend 3.1(7)a to read: "Poultry, livestock and domestic animals. Any use of water for an extraordinary use, a permit shall be required." Department officials agreed to give the matter consideration by amending the rule or seeking corrective legislation.

Discussion of 3.6--Renewal of water permits. Suggestion was made that legislation is needed to simplify the process.

Department officials expressed a willingness to co-operate with the Committee if, after further study, the Committee finds problem areas in the rules.

Recess

Meeting was recessed at 5:25 p.m. to be reconvened at 8:30 a.m. Wednesday, September 10.

Reconvened

Chairman Priebe reconvened the recessed meeting at 8:35 a.m. Senator Kelly absent. Representative Doyle arrived 8:45 a.m.

SECRETARY OF
STATE

Hermann Schwieker, Deputy Secretary of State, was present to answer questions concerning the Department's rules proposed under Notice in TAC Supp 8/25/75 as follows:
Chapter 1--Uniform Commercial Code;
Chapter 6--Description of Organization;
Chapter 7--Rules of Practice;
Chapter 8--Administrative Hearings.

Chapter 1 would be a substitute for the one previously filed November 14, 1967 and would be in compliance with Chapter 554 of the Code as amended.

Priebe brought up the matter of researching for mortgage information. He considered it to be important to absolve an auctioneer from the responsibility for selling mortgaged property. Schwieker indicated the Department would have no objection to legislation on the matter.

SECRETARY OF
STATE Cont'd

In re Chapter 6, Committee suggested that 6.13--athletic commissioner--line 3, be amended by striking the words "the old" before the words Chapter 727A.

Doderer suggested that 7.2--filing complaints--line 3, be amended by striking after the word "attention" the words "of the person in charge". Agreed to by the Department.

No changes were suggested for Chapter 8.

PROFESSIONAL
TEACHING PRACTICES COMM.

Proposed amendments to Chapters 1 and 2 of rules of the Professional Teaching Practices Commission were published in IAC Supp. 8/25/75. Donald Bennett represented the Commission for review of said amendments. It was noted some "desexing" of the rules was needed. Monroe suggested that 1.4(1) in re rulemaking without notice or hearing be expanded for clarification. Schroeder suggested that 2.10(5)--notification of decision should include provision for oral notification.

Charles pointed to possible problem in 2.9(9) providing for restricted oral proceedings. It was his opinion that restricted dissemination of the opinion would be permissible.

In the matter of informal settlement procedure, Charles suggested clarification in that the proposed rule 2.2(1) speaks after a complaint has been filed not before as provided by law.

ENVIRONMENTAL
QUALITY
Procedural
Rules

Rules of DEQ, summarized under Notice 7/14/75 IAC Supp and printed in full 9/8/75 IAC Supp., were before the Committee, having deferred at the August meeting.

David Bach represented the Department and explained that the proposed rules were strictly procedural intended to implement Chapter 17A of the Code. Public hearing concerning the rules was held on August 28 and comments made by Iowa Manufacturers Association would be considered at the September 26 meeting of the Executive Committee of the DEQ.

In answer to Priebe, Bach responded that 39.4 in re an appeal being considered in closed session would be legal under Chapter 28A of the Code since it is not a contested case. Bach pointed out that the statute permits them to hold closed meetings when matters of a confidential nature warrants them.

Schroeder raised question concerning emergency suspension of a license--42.10(4). Bach said if a revocation is to take place, they could not follow the emergency rule procedure

DEQ Cont'd

They would instead follow complete administrative process.

In re petition for declaratory ruling, Schroeder wondered if it would be advisable to include the name of the hearing officer in 41.2(4).

Charles commented that in re hearings, consideration should be given to possible amendment of §455B.37 to exclude 17A.

REGENTS BOARD

Wayne Richey, Executive Secretary, and Robert McMurry, Administrative Assistant, represented the Regents Board. Rules for consideration published under Notice in IAC Supp., 8/25/75.

Mr. Richey explained that amendments to Chapter 8 relating to purchasing were drafted to conform with suggestions made by the Committee in June.

No objections were voiced.

Proposed amendment 12.7(13) and 12.7(14) would clarify rules on certain activities at University of Iowa to ensure that parades or bands on the football field would not be considered "disruptive devices" and in violation of rules. Doderer was not sure the proposed language was clear enough. Mr. Richey agreed to give the matter additional study.

There were no objections voiced concerning Chapter 16-- School for the Deaf.

PUBLIC INSTRUCTION

James Mitchell, Associate State Superintendent for Planning and Information Branch, and Dean Crocker, Director of Management Information, were present for review of rules of Public Instruction pertaining to Iowa Educational Data Processing-- Chapter 55. A summary of the rules was printed in IAC Supp. 8/11/75. Full text of the tentative draft was furnished Committee members yesterday.

Mitchell stated that the rules, in essence, provide that the area education agency is responsible for filing a claim with DPI for approval by the DPI Board annually starting November 1, 1976 for the use of computer services for local school districts. Further, it is the intent of the rules that merged area schools file a plan for computer services.

Schroeder recalled that the statute prohibits creating new systems but such limitation was not provided in the rules. Monroe suggested an amendment to 1.1--Intent by striking from line 5 the words "it is intended that" before "each Area". Schroeder suggested a rule to provide the Department would not approve a plan unless it submitted to the GA for approval.

DPI Cont'd

Discussion of 1.4--Area Agency Responsibility. Monroe urged that "may" be substituted for "shall" in line 1 otherwise the rule would be mandatory. Mitchell agreed to rewrite the rule for clarity.

Schroeder thought 1.4(3) was a duplication and asked the Department to rewrite it also.

10:20 a.m.

Chairman Priebe excused at 10:20 a.m. to attend another meeting. Monroe took the Chair.

Monroe asked that revised copies of the rules be provided the Committee.

CAMPAIGN FIN-
ANCE COMMITTEE

Barbara Snethen represented the Campaign Finance Disclosure Commission for review of proposed amendments under Notice published in IAC Supp., 8/25/75. Said amendments to Chapters 1 and 3 of rules of the Commission would implement 17A of the Code and 66 GA, H.F. 431.

Snethen indicated the amendments had not been drafted in full at this time, but copies would be supplied the Committee as soon as they were available.

Discussion of proposal to adopt a rule implementing §56.6(3)"j" to include the name and address of the person preparing and filing a disclosure report and to include a standard identification number.

Snethen explained the number would be very helpful when processing the reports.

Monroe suggested the rule provide for voluntary use of the identification number, not mandatory use.

Snethen indicated the Commission would probably file an emergency rule setting out the disclosure report form.

ACCOUNTANCY

Donald W. Herron, CPA, and Executive Consultant for the Board of Accountancy appeared before the Committee to request them to reconsider rules of the Board which were reviewed and approved at the July 8 meeting of the Committee. Said rules, being Chapters 1 to 14, were "in process" prior to July 1, 1975, the effective date of the Administrative Procedures Act. They were approved by the Committee contingent upon the Board's adoption of numerous amendments. The rules also carried an effective date clause of July 1, 1975.

ACCOUNTANCY

Herron told the Committee the Board had agreed to amendments proposed by the Committee with the following exceptions:

In re 2.10--Disclosure of confidential information, the Board agreed to deletion of 2.10(1) but wished to retain 2.10(2) for these reasons (a) To enable Iowa CPA's to readily obtain reciprocal certificates in other states (b) To improve the curriculum and instruction in state supported educational institutions (c) To define the word "results" as set forth in §116.16 of the Code which is clarified in the second paragraph of 2.10(2).

In re 9.5(2)--Retired partners or shareholders, not actively engaged in practice in this state, will not be required to have a permit. The board objected to deletion of the subrule and asked to reword it as follows: "Retired partners or shareholders, who no longer have any control over the policies of the firm and who are not actively engaged in the practice of accountancy in the state."

The Board interpreted the law to require permits for practice only from those CPA's, Public Accountants or Accounting Practitioners who are serving the public.

In re 11.7(2)--Solicitation and advertising, the Board agreed to delete "and advertising" from the subject and the last sentence. They did not however concur to eliminate the restriction on "solicitation," because professions emphasize the quality of performance ahead of material reward and to permit solicitation would not be to the best interest of the public.

Herron also asked that the rules be amended to provide effective date to be immediately upon filing.

Motion

Doderer moved to reconsider action of the Committee on July 8 in approving as amended Chapters 1 to 14 of the Board of Accountancy. Carried with 4 ayes.

Discussion followed. It was consensus of Committee members that the rules should be implemented as they suggested. If problems arise concerning the rules, the Board could initiate amendments under the APA.

Motion

Moved by Doderer to amend Chapters 1 to 14 by striking from the effective date clause in each chapter the words and figures "July 1, 1975" and inserting "immediately upon filing." Carried with 4 ayes.

9-19-75

ACCOUNTANCY

Schroeder moved approval of Chapters 1 to 14 as amended.
Carried with 4 ayes.

ADJOURNMENT

Meeting was adjourned at 11:15 a.m. Next regular meeting
to be held October 14, 1975, 9:00 a.m.

Respectfully submitted,

Phyllis Barry
(Mrs.) Phyllis Barry Sec.

APPROVED

Chairman

DATE _____