

MINUTES OF THE REGULAR MEETING
OF THE
ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of Meeting: Tuesday, April 11, 1978, 7:50 a.m.

Place of Meeting: Senate Committee Room 24, Statehouse, Des Moines, Iowa

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

Also Present: Joseph Royce, Administrative Coordinator.

MINUTES

Doderer moved for the adoption of the minutes of the March 14, 1978 meeting and the motion carried un-animously.

CONSERVATION

The following rules were presented to the Committee by Kenneth Kakac, Superintendent of Law Enforcement:

CONSERVATION[290] N	
Wildlife refuges, Ch 3	4/5/78
Waterfowl hunting, Forney Lake and Riverton area, Ch 14	4/5/78
Waterfowl hunting on Lake Odessa, Ch 15	4/5/78
CONSERVATION[290] F	
Fishing regulations, Ch 108	4/5/78
Inland commercial fishing, Ch 110	4/5/78

Kakac stated that the notice rules incorporated amendments to existing rules. Chapter 3 was amended to add three waterfowl refuges to those already in existence. Schroeder inquired if the prohibition against the carrying of firearms extended to law enforcement officers. Kakac stated that this prohibition was in accordance with the statute prohibiting weapons in a wildlife refuge. Schroeder and Doyle suggested that the prohibition be clarified so that law enforcement personnel would be exempted.

Kakac discussed the provisions in Chapter 14 of the rules which deal with reservations for blinds in waterfowl hunting areas, and provisions in Chapter 15 of the rules which provide for a goose hunting season on Lake Odessa.

Kakac presented the filed rules to the Committee stating that there was no change from the time that these rules were on notice. There was no discussion by the Committee and the rules were accepted as filed.

AGRICULTURE

Betty Duncan and Dr. Lang presented the rules to the Committee as follows:

AGRICULTURE[30] N	
Anhydrous ammonia, 8.6	3/22/78
Aujeszkys disease, 16.150(2)	3/22/78
Economic impact statement regarding Aujeszkys disease, 16.150(1), 16.150(2), 16.151(3)	3/22/78
AGRICULTURE[30] F	
Hopper scales, 55.47(1)	3/22/78

AGRICULTURE
(continued)

Duncan discussed with the Committee the rules on anhydrous ammonia and explained that the rule changes the definition of public assembly and spells out where buildings may be located in conjunction with ammonia storage tanks.

Kelly and Monroe arrived 7:59.

Priebe suggested that the distance between a storage tank holding 30,000 or more gallons and the nearest building should be increased. Schroeder inquired into the possibility of "grandfathering in" those storage tanks which were already in existence as, for example, some rail sidings where the tanks are stored for a period of time are very close to inhabited buildings. Duncan stated that the suggestions of the Committee would be submitted along with any others received at the public hearing held on April 13th. Doderer left 8:05.

Aujeszkys' Disease
Economic Impact
statement (see p.
481 of the
minutes)

Dr. Lang handled the presentation of the economic impact statement to the Committee on rules 16.150, 16.151 & 16.152 of Agriculture rules dealing with pseudorabies immunization and the movement of swine. Lang reported that the incidence of pseudorabies was down 50% from last year and that the department attributed this decrease to a) vaccination, b) build up of natural immunities as a result of increased vaccination, and c) the restriction of swine movement out of the state of Iowa, particularly of breeding swine.

Priebe contended that Iowa was virtually the only state in the midwest to implement such restrictive rules concerning the movement of swine through the market and that the "previous test" requirement was found only in Iowa. Lang and Duncan stated that only in Iowa was the disease near epidemic proportions and that the states surrounding Iowa were in the process of implementing rules similar to those promulgated in Iowa.

Schroeder stated that the existing rules were advantageous to purebred swine breeders only and that the existing rules drive the movement of hogs underground, so that producers circumvent vaccination requirements, and prevent the department from having any viable records of swine movement.

OBJECTION

Schroeder moved to object and the Committee voted unanimously in favor of the following:

The committee objects to proposed amendments to subrule 16.150(2) on the grounds that they are arbitrary and unreasonable. The committee notes that the proposed amendment would require a negative Aujeszkys' disease test thirty days prior to any shipment except to slaughter and feels such a restriction would place an undue burden upon Iowa's farmers, without substantially slowing the spread of the disease. The committee further notes that the proposed amendments would encourage the underground movement of swine to avoid compliance. The objection may be overcome by amending the subrule by reverting to the language used in the amendment to 16.150(2) which appeared as a filed emergency amendment in the 12-14-77 supplement to the IAC and which was filed with the secretary of state on 11-18-77.

AGRICULTURE
(continued)

Duncan pointed out that the Agriculture rules on Aujeszky's disease as they presently stand are a result of efforts by the department to obtain divergent views on the subject and that the department sent letters to interested parties notifying them of the public hearing on these rules, and the resulting discussions etc. prompted the department to draft the rules as they now appear. Duncan also pointed out that the views of the Committee will be presented at the public hearing to be held this afternoon, April 11.

Subrule 55.47(1) dealing with hopper scales was modified to meet the suggestions of the Committee, from the notice presentation, and the Committee accepted the subrule as filed.

EGG COUNCIL

Mark Truesdale, Attorney representing the Iowa Egg Council, presented the following filed rules to the Committee:

EGG COUNCIL, IOWA[345] F

Organization, election of members, excise tax on egg sales, Chs 1—4

3/22/78

Truesdale explained that the rules are organizational and that suggested changes per Doderer were incorporated regarding quorum and that a majority be required to vote on matters of substance.

Truesdale and the Committee discussed "check-off" agencies and Truesdale pointed out that the Egg Council was the first such agency to bring rules before the Committee. Monroe requested Royce to research and report to the Committee the status of other "check-off" agencies, ie. the Pork Producers, Beef Producers, Soybean Producers, etc.

Royce Research

CIVIL RIGHTS
COMMISSION

Barbara Snethen, Hearing Officer, presented the following filed rules to the Committee:

CIVIL RIGHTS[240] F

Rules of practice, Ch 1

3/22/78

Rules of practice, Ch 3 rescinded

3/22/78

Sex-segregated want ads, 4.11, 4.12

3/22/78

Snethen said that the filed rules represented "house-keeping" measures which the commission felt would organize their rules in a more orderly manner.

Kelly inquired if the commission had rules setting out requirements for a quorum and establishing that a majority be required to vote on matters of substance. Snethen said that she would bring the matter to the attention of the commission at their May 1978 meeting so that they could consider it along with discussion of the notice rules, as follows:

CIVIL RIGHTS[240] F

Generally, 1.1(7)—1.1(10), 1.3(1), 1.15(4), 3.9, 6.1, 6.2(6)

4/5/78

Royce and Snethen discussed subrule 1.1(8) and Snethen stated that the commission wished to clarify the benefit

CIVIL RIGHTS
COMMISSION
(continued)

program definition as Code Chapter 601A was vague. Therefore, for the purposes of the commission rules, benefit program is defined as retirement program. Monroe acknowledged that 601A of the Code presented problems to such bodies as the commission. Royce and Snethen also discussed the commission's investigatory authority as compared to the authority of the hearings officer.

REVENUE

J. Elliott Hibbs, Deputy Director, and Carl Castelda presented the following notice rules to the Committee:

REVENUE[730] N

Sales and use tax, 11.2, 11.6, 11.10, 12.3, 12.6, 12.11, 14.3, 15.1, 15.3(5),
15.13, 15.14, 16.4, 16.7, 16.47(3,4) 16.50, 17.3, 17.11, 17.14, 17.15,
18.7(1,3,4), 18.8, 18.10(2), 18.11, 18.32-18.35, 19.3, 19.4, 20.1, 26.2(6),
26.7, 26.18, 26.55, 32.1, 34.1
Quarterly estimated payments, 52.4(1)
Franchise tax, Chs 57-60

3/22/78
3/22/78
3/22/78

MOTION TO OBJECT

OBJECTION
WITHDRAWN

Schroeder and Castelda discussed subrule 17.3 and the question as to whether or not electricity is tangible personal property and therefore taxable. Castelda said that 423.1(4) of the Code specifically lists electricity as tangible personal property as it is not a fuel and is not exempt. Schroeder moved to object to subrule 17.3 on the basis that it was unreasonable. However, with further discussion and with Priebe pointing out that this very subject was to be taken up by the Ways and Means Committee, Schroeder withdrew his objection.

In answer to a question by Schroeder, Hibbs explained that rule 11.10 dealt with expanding the bonding procedure as the department had a problem in the sales and use tax area of collecting taxes in the event a corporation dissolved and then began another corporation and in this way successfully evaded taxation. Massage parlors are a perfect example of this type of operation. However, the corporation organized after such a dissolution would be required to be bonded only if the bond of the corporation which dissolved was revoked for failure to file or pay.

Castelda discussed rules in which major changes of interest to the Committee were evident. Rule 15.1 reflects usury statutes in that sales tax will no longer be levied on finance charges. Rule 16.50 establishes sales tax on business sale, but bankruptcy and receiverships are handled separately. Castelda stated that all of these rules would be reviewed at a public hearing to be held April 13. In response to a question by Schroeder as to what sales tax on business sales would generate financially for the state, Castelda said that there were no projections available on this subject.

ECONOMIC IMPACT
REVENUE RULES
16.50 & 17.3

Schroeder and Priebe requested that the revenue department prepare an economic impact statement on rules 16.50 and 17.3 to indicate to the Committee what financial gains would be generated by the implementation of these rules. The request is authorized under the provisions of § 17A.4(1)"c" of the Code.

REVENUE
(continued)

Mel Grummert of the Iowa Taxpayer's Association questioned the revenue department as to the definition of chemical in rule 17.14. Grummert said that chemical's can also prevent change and so this definition should be expanded. Castelda said that the department arrived at this definition after holding public hearings on these rules.

Grummert proposed that rules 15.14 and 19.3 were contradictory in that there was no mention of "enumerated services" in rule 19.3. Castelda said that the department would investigate the matter. Grummert also said that rules 17.11 and 20.1 were contradictory. Castelda stated that the rules were intended to implement 422.45(12). Doyle took the position that 17.11 in re taxable foods should be clarified. Department officials indicated they would add the phrase "if consumed on the premises." Doyle suggested that rule 18.11 be desexed, and had a brief discussion with Castelda and Hibbs about what entailed a "casual sale."

JUDICIAL NOMINATING
COMMISSION

William J. O'Brien, Court Administrator, and Justice Mason presented the following filed rules to the Committee:

JUDICIAL NOMINATING COMMISSION[525] F
Procedure, Ch 1

4/5/78

Doyle noted that suggestions offered by this Committee when the rules were under Notice had not been incorporated

Objection

1.3(7)

Kelly moved the following objection to 1.3(7):

The committee objects to subrule 1.3(7), providing that nominees be selected at closed meetings, on the grounds that the subrule exceeds the authority of the commission by violating Iowa's Open Meetings Law, Iowa Code chapter 28A. The committee notes that 1977 Code section 28A.3 requires that 'Any final action on any matter shall be taken in a public meeting and not in closed session, unless some other provision of the Code expressly permits such action to be taken in a closed session.' The committee believes that the selection of nominees is a final action as used in this section and therefore must be made in an open meeting.

Motion carried with 5 ayes.

Objection
1.3(8)

Monroe moved to object to 1.3(8) as follows:

The committee objects to subrule 1.3(8), providing for an 'adjourned public meeting', on the grounds that it is unreasonable. The committee feels that the term is rather esoteric and should be changed to a term readily understandable by the layman.

Motion carried with 5 ayes.

Doderer returned at 9:30.

Objection
1.5(5)

Monroe moved the following objection to 1.5(5):

The committee objects to subrule 1.5(5), requiring that the minutes of non-public meeting be confidential, on the grounds that the subrule exceeds the statutory authority of the commission by violating Iowa's Open Meetings Law, Iowa Code chapter 28A. The committee notes that 1977 Code section 28A.5 requires that 'Each public agency shall keep minutes of all its meetings showing the time and place, the members present and the action taken at each meeting. The minutes shall be public records open to public inspection.' The committee does not find any exception for minutes of a closed meeting.

Motion carried unanimously with 6 ayes.

Discussion followed. Priebe questioned whether 1.2 in re nominations was appropriate, in particular the next to the last sentence which could easily be misinterpreted.

Monroe challenged the procedure by which the Commission rules were proposed and adopted.

In response to question by Doyle, O'Brien said that no rules had been adopted by the Client Security Commission.

Objection
Ch 1

Monroe moved the following objection to the entire Chapter:

The committee objects to chapter one in its entirety on the grounds that it exceeds the statutory authority of the commission. The committee notes that 1977 Iowa Code section 17A.4(1)

requires that notice of intended rule-making be published in the Iowa Administrative Code at least thirty-five days before the rule may be formally adopted by an agency. Since the commission has not met since the notice of intended rule-making was published on December 14th, 1977 it therefore may not adopt rules.

Motion carried with 4 ayes. Kelly voted "present" and Doderer was out of the room and not voting.

Doyle recommended that the rules also be "desexed."

BEER & LIQUOR
CONTROL

Rolland Gallagher, Director presented the following rules to the Committee:

BEER AND LIQUOR[150] N

Checks accepted, I.D. Cards, 2.16, 2.17

Sunday sales, 4.5

4/5/78

4/5/78

BEER AND LIQUOR[150] F

Store lease bidders list, 11.12, Filed Without Notice,

3/22/78

Gallagher discussed the rules on checks accepted, 2.16 & 2.17, and introduced Bill Witten, Hearing Officer, to the Committee. Gallagher said that the department had requested an attorney general's opinion and had received a ruling that cashier's checks would not be acceptable because of a problem with the payee. Gallagher pointed out that this check policy is also in compliance with chapter 71 of the Session laws. Gallagher reported that there had been 23 suspensions because of the check problem and he with the Committee discussed the costs to the state to pursue prosecution on the check issue as opposed to the relative merits of allowing more liberal check cashing policies. The Committee discussed H.F. 351 which would alter the statute and which is presently in committee in the Senate--Kelly agreed to look into the status of this bill.

Monroe and Gallagher discussed the Sunday sales rules, 4.5, and Monroe inquired about the 90-day provision for gross sales to determine what percentage of business was food, etc. and what percentage liquor sales. Gallagher said that this provision had been included at the request of various city councils across the state.

The filed rules of the department were acceptable to the Committee without further discussion.

SUBSTANCE
ABUSE

The following rules were presented to the Committee
by Gary Riedmann, Director:

Organization, Ch 1, Filed emergency
Funding, Ch 2, Filed emergency
Licensure, Ch 3, Filed emergency
Procedures, Ch 4, Filed emergency

4/5/78
4/5/78
4/5/78
4/5/78

The rules were basically acceptable to the Committee. However, Monroe called attention to a grammatical error in 1.4--"council who is comprised". Riedmann indicated the Department would strike "who is" when the rules are submitted for publication under the normal rulemaking process.

Rules of
Superseded
Agencies

The secretary asked if rules of the Commission on Alcoholism and Drug Abuse Authority had been superseded by those of the Substance Abuse Department and, if this were the case, who would have authority to rescind the obsolete rules. It was agreed that the substance abuse rules superseded those of the other agencies in question. After brief discussion, the Committee concurred that authority to editorially remove such rules should be provided by statute to the Code Editor. Monroe and Kelly agreed to pursue the matter by amending Senate File 244, pending legislation pertaining to the Code Editor.

NATURAL RESOURCES

Jim Wiegand, Deputy Water Commissioner, and Louis Giesseke, Water Commissioner, presented the following notice rules to the Committee:

NATURAL RESOURCES COUNCIL[580] N
Water withdrawals, amended Notice, 3.3(1), 3.4, 3.5

4/5/78

Schroeder and Giesseke discussed subrule 3.3(1)b, with Schroeder contending that this limitation of 6 acre inches per acre per month could cost a farmer his crop if he farms in sandy soil. Giesseke said that these rules implement council policy and are in compliance with H.F. 277. Schroeder suggested that the council needs discretionary powers incorporated into these rules so that the director may operate provisions in emergency situations.

EMPLOYMENT SECURITY

Harold Keenan, Legal Counsel, presented the following rules to the Committee:

EMPLOYMENT SECURITY[370] N

Employer's payroll report, 2.3(4), 2.3(6)"b", 2.9(1)

4/5/78

Employer's contribution and charges, 3.1(19), 3.3(2,3), 3.6(1,2), 3.7(2), 3.17,

3.40(2), 3.43(10,14), 3.44(1-4), 3.65(3), 3.70(1-3,6), 3.71(3), 3.72, 3.73, 3.83(4)

4/5/78

Claims, benefits, 4.13(1), 4.22(1)"j,p,r", 4.22(2,3), 4.23(39), 4.24"a", 4.25(41),

4.31(6), 4.34(1), 4.39, 4.39(7, 9-12), 4.54(1), 4.57, 4.58

4/5/78

Appeals, hearing officer, 6.2(5)"a"

4/5/78

Appeals, ex parte communications, 6.2(6)"c" 6.2(7), 6.4(1)"j", "m"

4/5/78

Forms, 10.2--10.4, 10.6, 10.7(1), (4), (8-11)

4/5/78

EMPLOYMENT SECURITY[370] F

Quorum, 8.1(2)"j"

4/5/78

EMPLOYMENT SECURITY
(continued)

Monroe, Doyle and Keenan discussed the notice rules with Monroe and Doyle pointing out typographical errors in 3.3(2)f, omission of "a" in two places and in 3.6(1)d (1) extra "r" on "rrank."

Monroe wished a clarification on 4.22(3) of the rules, as to the reason no redetermination would be considered for such a school employee. Keenan said that good faith agreements for employment during the next school year would be honored unless unforeseen circumstances prevented such honoring. In addition, the Department of Labor did not want retroactive determinations under such circumstances and neither did the Regional office in Kansas City.

Monroe and Keenan discussed the expansion of the rules dealing with corporate officers, 4.25.

It was suggested to Keenan by the Committee that the rules on domestic service, 4.58, be desexed.

OBJECTION OVERCOME
Subrule 6.2(5)"a"
(see minutes p. 254
& p. 258)

Keenan presented the following text of subrule 6.2(5)"a" and stated that the wording as amended corrected the subrule and brought it into compliance, overcoming the Committee's objection of 1-4-77, published in the IAC 1-26-77:

a. The hearing officer shall inquire fully into the matters at issue and shall receive in evidence the testimony of witnesses and any documents which are relevant and material to such matters. The hearing officer may reopen the record of the hearing, for the receipt of relevant and material evidence which has not been presented at the scheduled hearing at any time prior to mailing notice of the decision upon written application by an interested party.

Kelly concurred and there was no further discussion by the other members of the Committee.

Doyle pointed out that in 6.2(7)"b", "Any party" should read "All parties". Keenan and the Committee also had a discussion of rule 6.2(6)"c" regarding the fact that an attorney-at-law does not have to be admitted to the Iowa bar to represent a party in these proceedings.

There was no discussion of the filed rules, except Doyle pointed out the omission of the word "the" before the word "date," in 8.1(2)"f".

NURSING BOARD

The following rules were presented to the Committee by Lynne Illes, Executive Director:

NURSING BOARD[590] N
Nurse specialties, Ch 6

4/5/78

There was extensive discussion by the Committee and it was the general consensus that the board had gone beyond the intent of the legislature in implementing these rules as 152.1(2)d of the Code has limited

NURSING BOARD
(continued)

applicability. Illes stated that the board had requested and received an attorney general's opinion which supports the interpretation of the statute by the board. Doderer returned and defended the rules as being what the legislation intended. Illes agreed to remove the registration fee requirement, subrule 6.3(1)d per the Committee's request.

MOTION TO OBJECT

OBJECTION
WITHDRAWN

Kelly moved to object to subrule 6.3(2)a on the basis that it exceeds statutory authority by restricting practice. However, with further discussion by the Committee, Illes, and the Chairperson of the Board of Nursing, Kelly withdrew his objection.

SOCIAL SERVICES

Judith Welp, Methods and Procedures, submitted the following rules to the Committee:

SOCIAL SERVICES[770] N

Rules exempted from public participation, 1.5	3/22/78
Mt. Pleasant medium security facility, Ch 22	3/22/78
Prison industries advisory board, 23.2, 23.3	3/22/78
Half-way houses, work release and furloughs, Ch 24	3/22/78
Supplementary assistance, facility participation, 54.1, 54.4—54.7	3/22/78
Medical assistance, 78.1	3/22/78
Resources, generally, 130.2(5), 130.3(1)"b," 130.3(5), 130.4, 130.4(2—44), 130.5	3/22/78
Foster care, 137.1, 137.1(1)"c," "g," 137.1(4), 137.8(1), 137.17	3/22/78
Child care centers, 145.1(8), also filed emergency	3/22/78
In-home health related care, 148.4(3), 148.4(6), 148.5(4), 148.7(1,2)	3/22/78

1.5

Welp summarized the rules exempt from public participation rule, 1.5, stating that because of frequent changes in federal regulations which effect certain departmental rules, rather than filing emergency with lengthy explanation as to why public participation is unnecessary, the department could file emergency and cite this rule as basis. Monroe suggested that the department use Code Section 17A.21 as authority as this Section deals with the mechanics of this particular set of rules, rather than 17A.4(2) of the Code. However, the Committee did not agree as to the necessity of this rule.

Chapter 22

The Committee had numerous comments about these rules. Schroeder commented that 22.2(1)a & c were restrictive; Doyle questioned 22.1(1) materials used in the production of alcohol or drugs as potatoes can be used in such production thus the definition should be more specific, 22.2(1)g raised the question what if spouse was an ex-felon would this require double approval for visiting privileges, 22.2(3) regulations about differentiation between guests and visitors to the institution were questioned especially escorts for female guests, 22.2(6) liability of the institution questioned in cases where guests or visitors injured.

Phil Riley, member of the Governor's Blue Ribbon Committee on Corrections, presented written comments to the Committee regarding social services implementation of chapter 22 and those portions of chapter 23 as amended, see attachments*.

*p.549 through
552 of minutes

John Thalacker, Deputy Director of Adult Corrections, discussed Riley's comments with the Committee and Riley

SOCIAL SERVICES
(continued)

stating that the department was criticized in the past for having such different rules for penal institutions. Therefore, the department adopted standardized rules for all of the penal institutions. Monroe suggested that the Committee request the presence, at the next Committee meeting, of the Chairman of the Social Services Council and other members of the Council if they would like to attend so that the discussion of these rules could continue in their presence. In addition, the Committee and Council could in this way have some direct communication which might help the rulemaking procedure in the future.

OBJECTION REMOVED
Subrule 26.4(1)"h"
(see minutes p. 430)

Kelly made a motion and it was carried by the Committee unanimously that the objection to 26.4(1)"h", parolee/probationer--weapons, be removed. This objection was voted 9-14-77 and published in 10-5-77 IAC.

The Committee decided that because of the complexity of the social service rules, further examination of these rules would take place at the next Committee meeting and would appear first on the agenda.

HEALTH
HOUSING FINANCE
TRANSPORTATION

The Health, Housing Finance Authority and Transportation rules appeared on the agenda but were not reviewed by the Committee.

HEALTH[470] N

Renal disease, financial assistance, 111.1(3)

4/5/78

Physical therapy examiners board meetings, 137.2(6)

4/5/78

Physical therapy continuing education, Ch 138

4/5/78

HOUSING FINANCE AUTHORITY[495] F

Homesteading program, Ch 3

3/22/78

TRANSPORTATION[820] F

Federal-aid urban systems, [06,P] 2.1; 2.1(1), 2.1(3), 2.1(4)

4/5/78

Counties borrowing money, [06,Q] Ch 10 rescinded

4/5/78

TRANSPORTATION[820] N

Motor vehicles, dealers, registration, [07,D] 10.1(4), 10.4(2,3), 11.33

3/22/78

FAIR BOARD

A representative from the Fair Board appeared at the request of the Committee, but as the difficulties with certain policies not being adopted as rules have been resolved, the Committee dismissed the representative.

ARCHAEOLOGIST
CRIME COMMISSION
ENGINEERING EXAMINERS
HISTORICAL DEPT.
PLANNING & PRO -
GRAMMING
VOTER REGISTRATION
AGING COMMISSION
ARCHITECTURAL
EXAMINERS
BANKING
EMPLOYMENT AGENCY
LICENSING
GENERAL SERVICES
LABOR BUREAU
PUBLIC SAFETY

The following rules were acceptable to the Committee as published.

ARCHAEOLOGIST[70] N

3/22/78

Generally, Chs 1, 2, 5, 7, 8, 10-12

CRIME COMMISSION[300] N

Meetings, public information, 1.3, 2.2(1), 2.2(2), 3.3

3/22/78

ENGINEERING EXAMINERS[390] N

Experience and education, 1.2(2), 1.2(3)"d"

3/22/78

HISTORICAL DEPARTMENT[490] N

Preservation districts, 12.3(1)"b," "c," "12.3(2)"a," "b," "12.3(4)"a," "12.4(1-9)

4/5/78

PLANNING AND PROGRAMMING[630] N

Building Code, thermal and lighting, 5.800(4)"q"

3/22/78

VOTER REGISTRATION COMMISSION[845] N

Edit requirements, 7.3

4/5/78

AGING, COMMISSION ON[20] F

Political activities prohibited, 5.6, Filed Without Notice

3/22/78

SCHOOL BUDGET
REVIEW
SECRETARY OF
STATE
VETERINARY
MEDICAL
EXAMINERS

ARCHITECTURAL EXAMINERS[80] F
Examinations, rules of conduct, 1.2, 2.1(1), 2.2, 2.3, 2.3(2), 2.4(1) 4/5/78

BANKING[140] F
Time and savings deposits, 8.5(1), 8.6 3/22/78

EMPLOYMENT AGENCY LICENSING[350] F
Purpose, license, fees, records, forms, Chs 1-10 4/5/78

GENERAL SERVICES[450] F
Purchasing procedures, Ch 2 4/5/78

LABOR, BUREAU OF[530] F
Occupational injuries and illnesses, 4.2, 4.3, 4.4(1), 4.5, 4.6, 4.12(1), 4.16, 4.17 4/5/78
Findings of danger hazards, 6.9 4/5/78

PUBLIC SAFETY[680] F
Criminalistic laboratory, evidence, 4.5(5) 3/22/78

SCHOOL BUDGET REVIEW[740] F
Generally, Ch 1 4/5/78

SECRETARY OF STATE[750] F
Forms, annual agricultural reports, amendments to Ch 12 4/5/78

VETERINARY MEDICAL EXAMINERS[842] F
Organization and examinations, Chs 1-8 3/22/78

LAND PRESER-
VATION POLICY
COMMISSION

The Secretary inquired of the Committee whether or not rules should be adopted by the Land Preservation Policy Commission as it is a temporary commission, the Committee concurred with Royce that the commission should file rules.

Motion for
Special Meeting

Schroeder made a motion and it was unanimously carried that the next Committee meeting should be held Tuesday May 18, 1978 at 9:00 a.m.

There being no further business, Chairman Priebe adjourned the meeting at 12:15 p.m.

Respectfully submitted

Phyllis Barry
(Mrs.) Phyllis Barry, Secretary
Assistance of Mary Applegate

APPROVED:

Chairman

DATE _____

COMMENTS ON THE PROPOSED RULES 770.22.1(218) THROUGH 770.22.7(218),
ON THE AGENDA OF THE ADMINISTRATIVE RULES REVIEW COMMITTEE FOR
TUESDAY, APRIL 11, 1978, SENATE COMMITTEE ROOM 24.

I wish to comment on the above proposed rules, pertaining to the Mount Pleasant medium security facility.

Possibly some preliminary comments should be made to the Administrative Rules Review Committee which will place this matter in focus. As the Committee is aware, the first session of this General Assembly enacted legislation which would turn the "temporary" medium security prison at Mount Pleasant into an institution which would treat personality disorders which are evidenced by drug and alcohol abuse. The legislation was in response to a need proved by the Advisory Commission on Corrections Relief, whose report showed that approximately 80% of the inmates in Iowa's penal institutions have histories of chemical abuse. That figure was no shock -- it echoed similar findings around the country.

The legislation enacted last year required that the Director of the Division of Adult Corrections coordinate with the Division of Mental Health Services and the State Psychiatric Hospital in Iowa City in the creation, staffing and operation of a research and treatment program directed at treatable personality disorders, with or without accompanying history of drug or alcohol abuse. The change-over was to take place beginning April 1, 1978.

What has happened since enactment of that legislation is not unusual in terms of the Department's treatment of corrections legislation; it amounts to a direct and visible avoidance of the Legislature's intent by the Division of Adult Corrections. First, a warden was appointed for Mount Pleasant without any consideration of the focus of that individual or his staff toward the research or treatment programs that might be operated there; at that point, no programs had even been chosen. Next, a single treatment program was chosen; no research programs, only the "treatment" program which has been operated over a period of time at the medical security facility at Oakdale. All of you have closely observed the prison system in this State. All of you know that Iowa has not had an effective drug or alcohol treatment program worth the label in its adult corrections institutions, including Oakdale. The short stay concept at Oakdale makes for a clean record for Oakdale, but it is certainly not known to have had any significant impact on the chemical abuse problems of persons passing through Oakdale's gates.

Adult corrections has now also hired a treatment director for Mount Pleasant who has no significant drug or alcohol treatment background, particularly in any of the newer research or treatment programs that have emerged over the past few years and are proving themselves across the country.

What has happened again is that Iowa corrections professionals have once again taken a clear mandate from the General Assembly to deal with a critical problem in an effective way and have molded it into a safe, low-performance operation which is doomed to the same level of failure as in the past. Its value to the corrections professionals

is that it won't require them to do anything but fence and house their charges and keep them until their sentences have run, with a token effort displayed in response to the problem.

Those are harsh words. But they declare a real problem, and they express a valid concern that once again Iowa's corrections professionals have proved that the only real concerns they have are security and care and keep.

I would like to draw your attention to certain aspects of the proposed Mount Pleasant rules to show you the focus that has emerged. Keep in mind that Mount Pleasant's main thrust is supposed to be treatment and resolution of personality disorders which manifest themselves in drug or alcohol abuse, not to run a maximum security prison -- and let's look at the proposed rules:

22.2(3) - Persons approved for group volunteer program activities are not allowed on an individual resident's visiting list except with special permission. Why? The value of real-world relationships for inmates, and the need for positive reinforcement by outsiders is obvious to others; why not to corrections people?

22.3(2) - Look at the tremendous resistance shown in these subsections to the concept of personal contact or involvement with outsiders. Virtually every line of the rule reeks of maximum security, over-control, de-personalizing -- all of the de-gutting aspects of prisons are present, with little or no aspects of a real treatment program. The assertion is that the treatment program demands that degree of control; the fact is, the program at Mount Pleasant is totally one of security and control, and treatment is hardly in the race.

22.4 - is an example again of the security craze, mixed with the need for domination. Note that 22.3(1) requires that a resident's number be contained in the address on an envelope. Number? They won't even have 100 men in that place. Why a number, except to declare control, power; the opposite of treatment. The rest of the rules are extremely heavy: Newspapers, books, magazines can only come from the publisher direct to the inmate; letters can be opened at will where there is cause to suspect something called an "abuse of correspondence"; the only letters which can't be opened by staff are those from the ombudsman -- not even a member of this committee is beyond the reach of 22.4(7). There isn't even a provision for the inmate being present when his mail is opened; the absence of such a provision is a more straight-forward approach than the sham followed in opening mail at other institutions.

I wish I could say that Mount Pleasant is strict but properly oriented. But these new rules help tell you what is really happening there - the same old business at a new stand.

COMMENTS ON PROPOSED RULE 770-23.2 (67 G.A., Ch. 87), ON THE AGENDA
OF THE ADMINISTRATIVE RULES REVIEW COMMITTEE FOR TUESDAY,
APRIL 11, 1978, SENATE COMMITTEE ROOM 24.

I wish to comment on the proposed rules which have been issued by the Department of Social Services, pertaining to the Prison Industries Advisory Board. Again, this is a point where I believe the Committee should be brought up to date on what has happened since the last legislative session. During the last session, when the House was seriously considering creating a Prison Industries Board which would make policy and oversee and possibly activate Iowa's prison industries, the new Director of the Division of Adult Corrections went to the mat on that concept and declared that such powers would jeopardize the security of his institutions. During discussions with legislators and others in which he was even offered a veto power on Industry Board decisions, he refused to fall away from his position, explaining that security of the institutions was at stake. Subsequent events make it clear that it was not the security of his institutions that worried him.

The concept of overview and change by the prison industry situation in Iowa was one which was proposed by the Advisory Commission on Corrections Relief. It became part of a strong legislative effort to bring Iowa's prison industries to life, in a manner done in other states -- to produce meaningful industries, involving usable skills, with pay that was a true incentive to work, to make the industries a real program, all as opposed to the situation which has existed in this State.

Mr. McCauley's adamant opposition led the legislators to agree to make the industries board an advisory board, and House File 57, which became Chapter 87 of the Acts of the 67th General Assembly, was enacted in that form.

As in other instances of corrections legislation, what you hoped to see isn't what you got. The Prison Industries Advisory Board advises only on what the Director of the Division of Adult Corrections chooses to refer to it. It has been placed in a sharply limited role, and as a consequence it has acted as though the experience of other states is simply not available. The Board is thinking of possibly one small outside industry to be introduced into the Iowa penal system in a year or so. It has recommended peeling back parts of last year's legislation, even in the face of the success of such directions in other states, without trying it here. It is providing what Mr. McCauley wants, not what the Legislature wanted.

The proposed rules bear out what I have said. As an example, 23.2(4) indicates that the Board will meet quarterly, with other meetings as necessary. Does that sound like an active Board? Valuable to the Director? Dynamic? Or even moving at all? By statute, the duties of the Board are to advise the Director of the Division of Adult Corrections regarding the management of Iowa State industries so as to further the intent stated in the Act. How can they as the rule is written?

But that rather obvious indication of the role to which the Board has been relegated doesn't measure up to the total take-over which is indicated by the rules as a whole. The rules were promulgated by the

Department of Social Services. They are supposed to be promulgated by the Prison Industries Advisory Board, by the specific dictate of the statute. Section 4 of Chapter 87 states that among the Board's duties shall be to promulgate and adopt rules, not to propose them to the Department of Social Services for consideration by the Director. What has happened, as you can see, is that the Board has been either incorrectly advised or totally taken over, to the point where the role declared for it by the Department is simply not that which is written into the law.

If the Board chose to become what the law makes it, I would suggest that it consider some of the following:

1. Clearly identify in its rules that the Board shall advise the Director on such matters as it, not he, deems advisable.
2. Establish regular monthly meetings, with known agendas sent in advance to its membership and others, with a current financial report.
3. Assure by rule that the minutes of its meetings are regularly made available to those who request them, not simply placed on file in the Department as in the proposed rule.
4. Assure by rule that it receives from the Director all proposals for significant change in Iowa State Industries, such as proposals for new industries, new products or product review, new construction, industry deletion, searches for private industry, and the like, and that it receives all such sufficiently in advance of the Director's action that it can indeed perform its legislated advisory role.
5. Write its own rules and conduct its own affairs.

You will likely now hear from the Board and from the Department that it is indeed independent, that it stands on its feet, and that its members are fully aware of their roles. In practice, that is not the case. Their indoctrination by the Department has led them to give over their function to a Director who did not want them in being in the first place, as he personally expressed himself to the Chairman of the Advisory Commission on Corrections Relief, and who has so co-opted them and limited their function that they don't even make their own rules. The concept of the Board held promise, and the membership of the Board can't be wholly blamed for what has happened to them, when the entire thrust of the legislation has been thwarted and dulled by the Division of Adult Corrections. The concept still holds promise. Other states have proved what can be done to make prison industries into a viable program, and I cannot believe that we in Iowa cannot capitalize upon their valuable experience and put together a program that can flesh out prison industries into more than a keep-'em-a-little-busy operation.