

# MINUTES OF THE SPECIAL MEETING OF THE ADMINISTRATIVE RULES REVIEW COMMITTEE

**Time of meeting** The special meeting of the Administrative Rules Review Committee (ARRC) was held Monday, February 10, 1997, in Room 116, State Capitol, Des Moines, Iowa.

**Members present:** Senators Merlin E. Bartz, John P. Kibbie, William Palmer, and Sheldon Rittmer and Representatives Danny Carroll, Minnette Doderer, Janet Metcalf, Christopher Rants, and Keith Weigel. Senator H. Kay Hedge was excused.

**Also present:** Joseph A. Royce, Legal Counsel; Kathleen Bates, Administrative Code Editor; Paula Dierenfeld, Administrative Rules Coordinator; caucus staff; and other interested persons.

**Convened** •Representative Metcalf convened the meeting at 8:05 a.m.

**Committee Business** •Metcalf moved the minutes be approved. Motion carried.

**ARRC Budget** •At the request of Metcalf, Legislative Service Bureau Director Diane Bolender addressed the committee and distributed written information concerning the structure, budget, and duties of the Administrative Rules Review Committee and the Administrative Code Division of the LSB.

Bolender explained the process whereby the budget is prepared by LSB, presented to the Legislative Council for approval, and sent to the department of management for inclusion in the governor's budget. Bolender reported publishing costs for the IAB this past fiscal year averaged between \$2,000 to \$3,000 every two weeks; IAC Supplements averaged between \$12,000 and \$15,000 every other week.

ARRC funding provisions are contained in Chapter 17A. Bolender stated the 1998 ARRC budget includes committee expenses, per diem and travel based on an estimated 18 days of meetings and factoring in the increased per diem rate and legal counsel salary, benefits, office expenses, and travel.

•In response to Rants, Bates stated that, with the exception of personnel department, all rules have been converted to Interleaf 6, are up-to-date, and will be proofread as pages are published. Phase II will consist of loading information into RDM to permit exporting to sources such as World View. RDM has been installed, but is not yet operational. It is anticipated that loading the IAC into RDM may take six months. Bolender added that selected agencies' rules are available on CD-ROM. The IAC totals approximately 12,500 pages and changes in content every two weeks.

**HUMAN SERVICES DEPARTMENT** Mary Ann Walker, Gary Gesaman, and Deidre Leverette represented the department for the following Notices of Intended Action.

**ARC 7025A** There were no questions concerning 77.31, Medicaid providers—nurse anesthetists.

**ARC 6994A** •Rittmer was informed by Walker that a person may select a facility once the central point of coordination has approved a new placement in an intermediate care facility for the mentally retarded.

**ARC 6992A** •In response to Rants, Leverette stated no costs would be incurred by foster parents and adoptive families of special needs children in completing the required training. Monthly training is available at community colleges throughout the state on an evening and Saturday class basis.

•Carroll expressed concern that increased regulation would discourage adoptive parents and suggested the training be optional.

•Leverette indicated to Bartz such training was applicable to departmental but not private adoptions.

•Kibbie asked for a definition of special needs children. Leverette replied it encompasses sibling groups of three or more, sibling groups of two if one has been found to have an emotional or mental deficiency, minority children based upon population in the state and the ability to find minority homes for those children, and children eight years of age or older. Kibbie suggested the additional regulations would perpetuate the shortage of foster care parents and felt the requirements for foster and adoptive parents should be separated.

Leverette said a provision exists for training to be waived if a foster child has been placed in a home for six months.

**March Agenda** Metcalf requested that adoptive training be placed on the March agenda and the department consider the committee's concerns and comments.

**INSURANCE DIVISION** Rosanne Mead, Susan Voss, and Craig Goettsch appeared on behalf of the division

ARC 7003A

Mead stated that the definition of twisting was changed and the application of advertising rules was clarified in the adopted Chapter 15.

•Palmer questioned the use of the word "retain" in the definition of twisting. He asked what situation could be interpreted as twisting if an insurer or agent encouraged retention of existing coverage. Mead said that would occur if an improper attempt is made by the original selling agent to conserve a policy after replacement notice has been received by the company. She added it is incumbent upon an agent to report to the insured if a new policy is better and added that no comments were received concerning the twisting definition.

•Bartz asked if the assignment to another company and possible reduction in benefits for individual policyholders fell under the definition of twisting. Mead stated action can be taken if the commissioner ascertains a certain business decision by the company is to the overall detriment and falls under the definition of twisting. In reference to the situation described by Bartz, Mead added it was determined that Principal elected to discontinue a certain product line, provided notification and information to the insurance division, and policyholders had not been "induced" to leave.

•Doderer questioned whether the action by Principal could be considered termination since the entire group of policies was sold to Mutual of Omaha. She pointed out that this did not appear to fall under twisting but wondered about its legality. Mead said this is permissible since Principal ceased that line of health insurance business and Mutual of Omaha offered that group of persons the opportunity within a certain time for a similar policy at a similar rate and has agreed upon guaranteed acceptance of those policyholders, who may seek coverage elsewhere.

•Rittmer expressed accord with Palmer and indicated he did not feel "retain" fits in the category of twisting. Mead stated such determination will be made on a case-by-case basis.

•Palmer pointed out a guaranteed renewable policy over two years old is an incontestable unilateral contract. Any transfer of policies from one insurer to another gives the appearance of conflict if those policies are over two years old and the other insurer modifies the provisions. He contended that if a corporation ceases to offer a policy, the contractible liability of the policy is not negated.

•Carroll noted that in the definition of "twisting" the word "include" should be "induce".

•Weigel did not envision that corporate transfers of assets or selling assets dealt with twisting.

•Doderer was informed by Mead that any complaints pertaining to Principal would fall under the commissioner's general powers to regulate the industry.

March Agenda

•Following discussion, Kibbie requested only the portion dealing with the Principal transaction to Mutual of Omaha be placed on the March agenda.

ARC 6995A

There were no questions concerning proposed securities rules 50.90 to 50.93.

ARC 7010A

•Doderer asked what constituted a normal delivery and stated the word "normal" would probably always pose problems. Voss indicated a meeting between the division and industry will be held to discuss clarification of the word. She explained that the proposed rules are intended to make maternity coverage available to people who have left group insurance, are unable to be underwritten, and have to go to the basic and standard guaranteed issue.

•Voss stated that the individual market generally provides no automatic maternity coverage and indicated to Rants there is currently a preexisting condition 12-month waiting period. The proposed rules would credit an individual for previous coverage and negate the preexisting condition waiting period.

•Carroll questioned whether the industry considers it an undue requirement that every carrier selling individual health insurance offer maternity benefit riders. Voss explained that approximately one year ago, the division encouraged carriers in the individual market to provide maternity benefit riders. Voss noted the proffered riders were extremely expensive and the idea was not as successful as hoped.

•Palmer commented on the high cost of a rider and stated that maternity benefits should be paid by the group carrier of a pregnant woman who was initially covered but is no longer included in the carrier's group plan.

**VETERANS AFFAIRS COMMISSION** Jerry L. Meek, Randy Brown, and Mary Ellen White represented the commission and Jack J. Dack was present on behalf of Iowa Veterans Homes.

ARC 6996A

•In response to Metcalf, Meek noted paragraph 1.2(3)"c" was changed so the commission is now charged with the supervision of the executive director's administration of commission policy.

•Kibbie was advised the proposed changes met with approval from the state veterans' organizations.

**IOWA SEED CAPITAL CORPORATION** Gregg Barcus was present from the corporation for the following.

- ARC 7019A •Weigel questioned provisions in 2.5 regarding closed meetings and the use of cameras and recording devices. Barcus indicated both are permissible under the Code and that in the past six years only one request for a closed meeting had been received. Closed meeting requests are granted if it would prove detrimental to the company being considered for investment to present confidential business plan information that could be obtained by another company.
- Barcus responded to Kibbie that the \$100 fee in 3.5(3), transferred from Iowa product development, was imposed to ensure the seriousness of the request.

**UTILITIES DIVISION** Vicki Place and Gary Stump were present from the division for the following.

- ARC 7001A No committee action on 18.2 concerning principal office records and personnel.
- ARC 7000A •Carroll asked why the utilities board is concerned over the amount of free extension pipe given customers by a utility company. Place stated the amount involved was determined to be minimal and the amendment ensures it would not be subsidized by other rate payers.
- ARC 7017A No committee action on proposed natural gas amendments in 19.13(4)"e" and 19.13(6).
- ARC 6999A No questions concerning Chapters 22 and 38, mediation procedures and agreement reviews.
- ARC 7016A No questions on proposed rules 35.12 and 35.13, energy efficiency cost recovery and prudence review.

**TRANSPORTATION DEPARTMENT** Dick Hendrickson Dave Titcomb, Jan Hardy, Carol Crouse, Kirsten Bandon, Dennis Ehlert, Shirley Andre, and Ruth Skluzacek appeared on behalf of the department. Fred Scaletta, Doug Dillavon, and Dale Dewey were present from the corrections department.

- ARC 7013A •Ehlert indicated to Kibbie the department is aware that the reduced size of some trailer license plates has created a problem in the sticker application and a solution is being addressed.
- In response to Bartz, Ehlert stated the county treasurer collects an amount for use tax based solely upon what is reported on the title application by the leasing company. Questionable use tax collections can be referred to the department of revenue and finance.
- ARC 6993A •Doderer reported receiving complaints about the requirement that handicapped parking placards be signed by doctors. She pointed out this is excessive regulation and requires second visits to doctors. Discussion ensued about the statutory requirement for a signature.
- Ehlert told Rittmer that provisions governing doctors reflect federal law changes regarding qualifications for handicapped parking permits.
- Weigel reported constituent confusion resulting from a DOT letter regarding renewal of a handicapped license plate. Agreeing that the double signature for a handicapped parking permit was burdensome, Weigel supported referral of ARC 6993A in its entirety.
- Doderer stated that some individuals do not want names of doctors displayed on the parking placards. Ehlert replied that unless the statute changes, these issues must again be addressed in 2001 when the Code requires permit renewals.

**Motion to Refer  
Motion Carried**

- Doderer moved a general referral of ARC 6993A. Following discussion, the motion carried.
- ARC 7004A •In response to Kibbie, Skluzacek stated holiday and weekend restrictions apply to multitrip permits.
- Skluzacek informed Doderer that less height, weight, and width are allowed under a multitrip permit than a single-trip permit.
- ARC 7005A There were no questions on amendments in Chapter 750 pertaining to aircraft registration.
- Special Review •Proof of identification requirements in 601.5, requested by Rants.
- ARC 6868A The department reported that county-issued birth certificates are now being accepted.
- Hendrickson advised Doderer that DOT has worked with the corrections department regarding prisoners' birth certificates and added that court orders are accepted as proof of identity. Scaletta and Dillavon then presented to the committee alternative solutions to the problem of identification documents.
- At the request of Metcalf, the departments of corrections and transportation agreed to meet for further discussion and return next month with a new rule.
- Rittmer was advised by Hendrickson that a person moving into the state can use a valid out-of-state driver's license as proof of identification. However, one primary form of identification is needed if a person was born in another state and has no valid driver's license.
- Doderer pointed out the DOT expunges all records more than four to five years old when licenses are renewed.
- 761 IAC 425.3 •Doderer notified legal counsel the committee has received a petition, signed by 84 Iowans, opposing DOT rules regulating the hours of operation for automobile dealers, rule 761 IAC 425.3. This rule

was referred to the legislature in October by the committee. The petition is on file at the committee's office. [Petition received subsequent to meeting.]

**HISTORICAL DIVISION** Patricia Ohlerking represented the division for the following.

- ARC 7021A  
Rittmer in Chair
- Metcalf inquired how applicants were apprised of the change in the grant application deadline for historical properties. Ohlerking replied that letters were sent to all who previously applied.
  - Bartz asked whether unregistered historical properties which are moved to avoid being destroyed can be included on the National Register of Historic Places. Ohlerking said a property generally is not eligible since a move can compromise its integrity. Occasionally such a property will be listed if it is moved to a location with similar architecture and not taken out of its context.
  - In response to Kibbie, Ohlerking noted Iowa has no state level listing but uses the national register listing.

**ENVIRONMENTAL PROTECTION COMMISSION** David Wornson and Keith Bridson represented the commission.

- ARC 6998A
- Rittmer asked why there are limitations on overexcavating contaminated soils. Wornson replied that noncertified groundwater professionals are limited to removing one to two feet of contaminated soil. Removal of any contaminated soil beyond that requires a certified groundwater professional who is capable of sampling what has been removed and what remains. Removal of only the tanks does not require certified groundwater professionals and those people can voluntarily overexcavate if proper notice has been given to the department.
  - In response to Bartz's query concerning enforcement of voluntary nonprofessional overexcavation, Wornson stated that before any closure activities are conducted, the department must receive notice and be given the opportunity to conduct on-site supervision. A report is also required to be submitted indicating the extent of any soil contamination removal.

**PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, IOWA** Pat Rounds and Bob Galbraith were present  
Metcalf in Chair

- ARC 7008A  
ARC 7007A  
Special Review  
ARC 6926A
- from the board.
- No committee action on proposed 11.1(5)"d" concerning the innocent landowners program.
- No questions pertaining to the proposed rescission of 11.6(6) concerning soil remediation.
- Rounds requested this special review to apprise the rules committee members of the expansion of the innocent landowners program. When no other responsible party can be found, owners who have a net worth of less than \$15,000 will receive 100 percent benefits covering all costs. The board expanded the intent of the original financial hardship provision of the Code by including both old sites and those in the innocent landowner program. Discussion ensued regarding deletion of the dates from the original Code section.
- Kibbie inquired if the estimated cost of cleanup can be deducted in determining the \$15,000 net worth. Rounds replied that the estimated benefits to be received must be deducted. When Kibbie noted the \$15,000 amount seemed minimal, Rounds stated very few people qualify.

**REVENUE AND FINANCE DEPARTMENT** Carl Castelda appeared on behalf of the department.

- ARC 6997A
- In response to Rants, Castelda stated 18.20(5) is intended to tax Internet access, not content, an issue which is under study. Castelda explained the department's position that Internet access charges fall within the general definition of communication services and that most of the Internet access is to a local telephone number. Service providers are charged with the responsibility of collecting any taxes.
  - Castelda indicated to Bartz a fax transmitted from a library is not taxable but falls under the general exemption in the sales and use tax statute which relates to sales by education, religious, or charitable organizations when the gross receipts are used for those respective purposes. Bartz was informed the fiscal impact to the state upon adoption of this rule is minimal.
- Motion to Delay  
Motion Carried
- Bartz moved to object; following discussion, Bartz withdrew the motion and moved a 70-day delay of ARC 6997A. The motion carried.
- ARC 7018A
- There were no questions on proposed 75.5 and 81.14 concerning confidential information.

**TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA** Harold Thompson, Tamara Fujinaka, and Libby Nelson appeared on behalf of ICN; other interested parties included Todd Schulz and Julie Johnson McClain from Iowa Telephone Association; David Bolender, Pamela Adams Johnson, and Molly Phillips from Iowa Public Television Network; Chris Young from Miller the Driller; Jim Sutton from the Iowa State Education Association; and John Flannery from GTE.

- ARC 7011A
- In response to Rittmer, Thompson stated that the city of Des Moines qualified as an authorized user by receiving communication support from the state prior to July 1, 1989.
  - Rittmer inquired about rates. Thompson replied that video rates are set annually in September for implementation the following July 1; other rates, also set in September, are subject to review and are often revised downward. Thompson indicated he will provide Rittmer the published rate schedule.



## TELECOMMUNICATIONS AND TECHNOLOGY (Cont'd)

•Metcalf questioned the commission's authority to hold contractors liable for lost revenue if "one call" is not used and a main trunk line is cut. Nelson replied the Code requires the commission to recover operating costs and the commission believes such costs would encompass contractor-caused network failure. Conversely, the commission could be obligated to pay for lost time if a network failure is due to ICN problems.

•Thompson stated to Rittmer that all utilities assess for damages, but ICN would set a precedent in recovering lost revenue, an issue that will be reviewed by the commission.

•Thompson explained to Rittmer that ICN video usage has increased over 100 percent in the last year and the video side of the network will require expansion, but voice and data capacity will not. Optronics are coming to the end of their seven-year life cycle and the backbone capacity of the network will be expanded in the next two years to meet an additional 200 classrooms, up from the current 500 classrooms. Regarding outdated technology, Thompson added that provision of more bandwidth flexibility could cost \$18,000 per classroom.

•Kibbie asked about the legality of school districts providing Internet service. Thompson, noting it is a nebulous area, said some districts use a private provider for dial-up Internet access for teachers.

•Rants expressed concern over 7.12"2" and possible problems by authorized use of unnamed persons or entities. He stated that subrule should be expressly defined or deleted. Thompson agreed that these "catch-all" phrases should be removed from the rules.

•In response to Bartz, Nelson said taxing of services on the system would depend on interplay between tax-exempt organizations. The majority of public organizations are tax-exempt, but vendors performing contractual duties on behalf of the state agencies would be required to pay state sales tax.

•Weigel asked if there is concern over whether the commission can state that vendors qualify as authorized users. Thompson confirmed that further review is needed to determine if vendors will be omitted from the authorized user list but remain on the authorized uses list.

McClain expressed opposition to Chapter 7 of the proposed rules, specifically the expansion of authorized users beyond what the statute provided for and to the use of remote dial-up Internet access.

Young opposed subrule 13.2(2) and questioned the ability of the commission to accurately measure lost revenue. She stated it is not fair to assess excessive costs until the contractors can rely on guaranteed cable "locates." At this point "one call" does not provide location and depths of cables.

Sutton spoke in favor of the proposed rules, pointing out the network was created to provide classroom communication services to students. He stressed the access needs of special education homebound children to Internet and that affordable rates should be available. He said approximately 3 percent of Iowa children have no access to Internet.

**CORRECTIONS DEPARTMENT** Fred Scaletta, Eugene J. Gardner, Dale Dewey, and Doug Dillavon were present from the department.

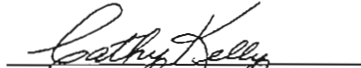
ARC 7023A There were no questions regarding money orders for inmates in 20.5.  
 ARC 7022A No committee action concerning the jail facility amendments proposed for Chapter 50.  
 ARC 7024A There were not questions on proposed amendments to Chapter 51, temporary holding facilities.  
 Special Review Scaletta stated that the Union County sheriff expressed concern over the meals being served to inmates,  
 Jail Dietary so a dietitian was provided to review the meals. Senator Angelo said that because the jail did not want to be in violation of the dietary guidelines, it contracted with the local hospital to provide inmate meals. The supervisors are concerned over the additional \$10,000 expense incurred and the request for an added vehicle for use in picking up the meals. The sheriff was told TV dinners are acceptable as long as the same meal is not repetitively served and the meals are nutritionally supplemented. Metcalf asked the department to communicate with the Union County sheriff.

March Meeting The March meeting was scheduled for March 10, 1997.


Adjourned The meeting was adjourned at 12:15 p.m.

Respectfully submitted,

  
 Kathleen K. Bates

  
 Cathy Kelly

APPROVED:

  
 Representative Janet Metcalf