

**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 Wednesday and Thursday, December 11 and 12, 1996, in Room 22, State Capitol, Des Moines, Iowa.

Members present: Representative Horace Daggett, Senator Berl E. Priebe and Representative Janet Metcalf, Cochairs; Senators H. Kay Hedge, John P. Kibbie, William Palmer, and Sheldon Rittmer; Minnette Doderer, Roger Halvorson. Representative Keith Weigel was excused for Wednesday December 11.

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

Convened •Cochair Daggett convened the meeting at 10:05 a.m.

INSURANCE DIVISION Rosanne Mead, Scott Galenbeck, Craig Goettsch, and John Leonhart represented the division for the following. Jim West appeared on behalf of Iowa Life and Health Insurance Association.

ARC 6846A •Mead replied to Metcalf that the first Notice was terminated following consultation with the Code Editor's office. Numerous changes justified a second public hearing. Comments received at the hearing and from Representative Weigel resulted in a revised definition of "twisting" and a clarification to ensure that Chapters 14 and 15 would not be in conflict. The suitability standard generated comment, but no change was made since it is believed to afford consumer protection.

•Kibbie asked how the new rules would apply when an agent approaches a person to convert a built-up cash value to a new policy. Mead replied that in accordance with suitability guidelines in 15.8(4), complaints are reviewed on a case-by-case basis; and an enforcement action can be brought to revoke an agent's license if a case is considered an unsuitable customer transaction.

•Doderer asked if recourse would be available to customers upon the suspension or revocation of an agent's license and was told the insurance company is responsible for the actions of agents.

•Mead told Rittmer no substantive changes were made to the preneed funeral contracts, and contracts are denied to domestic abuse victims to prohibit underwriting the occurrence of a possible event.

•Palmer expressed dissatisfaction that the rules do not address disclosure problems and not enough people are available to enforce advertising rules.

•Halvorson pointed out twisting, including the policy of internal twisting, could be stopped if the practice of paying commissions on all replacement policies were discontinued.

ARC 6837A •Priebe inquired about the 5 percent limitation of stock offering in the first six months following public trading in mutual holding companies in 46.10(3). Galenbeck stated this eliminates an allegation that the stock offering is for the benefit of management rather than raising capital for the entire corporation. Priebe asked if insiders could purchase at initial cost any amount of stock upon the completion of the six months. Galenbeck explained the initial offering is set through consultation with underwriters, is approved by the insurance commissioner, and is not a publicly traded stock at that time. Any transaction improperly benefiting insiders beyond six months would initially be disapproved. Price factor beyond six months is based on trading.

ARC 6870A No committee action concerning Chapter 50 securities.

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF Melanie Johnson and Mary Lawyer represented IDED.

ARC 6845A •At Priebe's request, Johnson will provide the number of relocation payments made for farm operations.

•Johnson told Halvorson rules pertaining to the CDBG program incorporate HUD federal regulations.

ARC 6844A No committee action concerning amendments to Chapter 22, Standard Industrial Classification Code.

ARC 6843A No comments concerning the new jobs and income program in rule 58.2 and subrule 58.4(5).

ARC 6842A Lawyer noted comments from community colleges resulted in changes to subrules 75.6(7) and 75.9(7).

•Kibbie requested clarification concerning contracting when workforce development economic job opportunities occur in multiple community college districts. Lawyer indicated the service delivery boundary is a different program and encompasses community college boundaries extending to county lines. The service delivery programs often are administered through the community colleges.

ENVIRONMENTAL PROTECTION COMMISSION Scott Vander Hart appeared on behalf of EPC.

ARC 6878A •Kibbie asked the significance of the May 30, 1991, date in subrule 23.1(2) and how compliance differs when construction or construction modification occurs before or after that date. Vander Hart said the date was established by the EPA. Any construction or construction modification to an existing municipal solid waste landfill subsequent to May 30, 1991, is governed by the new source performance standards and anything previous falls under emission guidelines. Kibbie asked how municipal officials can avoid the confusion of knowing whether to use the standards or the guidelines. Vander Hart replied the date of any modifications would be reflected on a construction permit.

EPC (continued)

ARC 6879A

•In response to Metcalf's inquiry about "small sources," Vander Hart stated an application for this permit may be made by sources with the potential to emit more than 100 tons of any regulated pollutant per year whose actual emissions are under 50 tons. Small businesses are made aware of these regulations through ICN workshops, the Iowa Reduction Waste Center, and the IDED.

ARC 6880A

January Agenda

•Priebe moved special waste authorization requirements in Chapter 100 be rescheduled for discussion at the January agenda since no one appeared on behalf of EPC to address the committee.

NATURAL RESOURCE COMMISSION Richard Bishop, Steve Derman, Janet Ott, and Marion Conover represented the commission for the following.

ARC 6859A

Royce pointed out that with the termination of ARC 6674A, the federal government enforces the distance from ponds that duck hunters are allowed to hunt. This is done on a case-by-case basis and could conceivably remain in effect upon the adoption of rules.

ARC 6863A

No questions on amendments to rules 40.45 and 40.46 concerning boating speed and distance zoning.

ARC 6864A

•Kibbie asked why a Tuttle Lake State Park group camp facility near Dolliver was being razed instead of undergoing renovation. Ott stated she would investigate the matter.

ARC 6860A

•Halvorson noted opposition to the proposed increase to 4 inches for the taking of dead washboard mussel shells and stressed that harvesting of smaller dead shells should continue. Conover indicated dead washboard mussel shells are valuable for culturing pearls and that harvest of the slow growing live species decreased by 80 percent in the past year.

ARC 6862A

•Priebe asked why the rule pertaining to nonresident deer hunting was presented so far in advance of the 1997 season. Bishop replied it was for notification purposes since nonresident applications have to be received by the second Friday in June.

ARC 6861A

•Kibbie requested clarification concerning rule 94.8 party applications. Bishop said applications received by out-of-state hunters and submitted as a group were accepted or rejected as a whole rather than on an individual basis. He noted there were 4200 applications in 1996 and 5000 expected in 1997. Bishop stated the special late deer season hunt is intended to reduce overpopulation of does in Van Buren, Davis, Ringgold, Taylor, and Adams Counties.

•Priebe was informed by Bishop that a landowner is eligible for only one free landowner license. A person obtaining a license in January for the special hunt is ineligible to receive another in the fall.

PUBLIC HEALTH DEPARTMENT Carolyn Adams, Carol Hinton, Janet Beaman, Jill France, Larry Coghlan were present from the department of public health, Rose Vasquez was present from the attorney general's office.

ARC 6896A

•Doderer expressed concern about the confidentiality of insurance records relating to the termination of the pregnancy of a minor. Vasquez stated such documentation is considered medical records and further indicated it is not within the purview of the department to issue a confidentiality requirement but the issue should instead be addressed legislatively. Hinton told Doderer the duplicate copy of the record is provided to the minor.

Motion to Refer

•Priebe moved referral of Chapter 89 parental notification of intent to terminate a pregnancy to the general assembly. The motion carried.

Motion Carried

Motion to Object

•Doderer, noting the incompleteness of the rules, moved to object to the emergency filing.

Motion Failed

The motion did not pass.

PROFESSIONAL LICENSURE DIVISION Carolyn Adams and Marge Bledsoe represented professional licensure.

Priebe in chair

•Priebe asked if comments were received from chiropractors. Bledsoe responded that due to concerns regarding continuing education requirements as well as the mentor program, the association intends to submit comments at the public hearing.

ARC 6857A

ARC 6877A

No questions concerning optometry examiners in Chapter 180.

TRANSPORTATION DEPARTMENT Dick Hendrickson, Norris Davis, Dave Titocomb, Dennis Kleen, Kirsten Bandon, Daggett in chair

Dennis Ehlert represented DOT. Others present included Linda Jacobsen and Nancy Parrott from the County Recorders Association and Jill France from the department of vital statistics.

ARC 6868A

•Hedge asked why 615.30(2) pertaining to out-of-state drug-related convictions was rescinded. Davis said an Iowa Supreme Court ruling held that it violated Constitutional double jeopardy protection.

•Priebe asked if 601.5(2)"a"(3) was applicable only to birth certificates issued in the U.S. and Canada; Kleen stated those issued in U.S. territories could also be used in applying for a motor vehicle license.

•Doderer was informed that licenses from Canada and Mexico have to be surrendered when an Iowa motor vehicle license is issued.

•Daggett questioned the consistency in the prosecution of OWUI violations. Hendrickson responded that statutes are being reviewed. Dierenfeld pointed out charges are within the prosecutorial discretion of the county attorney.

•Halvorson noted the public wants more uniformity in the laws as opposed to discretionary power.

DOT (continued)

Jacobsen expressed concern that under 601.5(2)"a"(3) the DOT will accept only birth certificates issued by state agencies and not by counties. She said that on July 1 county recorders will implement the federal requirement that all birth certificates must be on 8½ x 11 security paper. She noted county recorders will have computers and printers at state expense, will be on-line with the department of vital statistics, and it will be those records that are accessed and issued. Jacobsen added there is no discernable difference in state- or county-issued birth certificates and no opportunity for fraud.

•Metcalf asked if a "comparable agency" included counties. Davis said the definition meant a similar out-of-state agency.

•Doderer was informed that there was no intent to exclude counties from issuing birth certificates.

Dierenfeld suggested a meeting between public health and transportation officials to resolve the issue.

France noted the original intent was for recorders to serve as "registrars" at the county level.

•Kibbie expressed concern that anyone could view and copy a county or "open" record.

**Motion to Defer
Motion Carried**

Doderer moved a delay until 10:30 a.m., December 12, 1996, to afford an opportunity for the parties to meet and discuss the differences. The motion carried.

ARC 6865A

•Priebe expressed concern over lien priority since FAA registration of aircraft occurs in Oklahoma City.

UTILITIES DIVISION Vicki Place was present from the division.

ARC 6838A

•Kibbie inquired about what happened when a company merged with another and requested a rate increase but did not ask for advertising costs prior to the merger. Place informed him advertising was then considered a cost of doing business and came from the profits.

ARC 6866A

•In response to Kibbie, Place stated the lawsuit filed by Peoples Natural Gas was still in court.

RACING AND GAMING COMMISSION Karyl Jones and Beverly Zylstra appeared on behalf of the commission.

ARC 6848A

No committee action concerning record retention in Chapters 4, 10, and 24.

ARC 6847A

No committee action concerning licenses in Chapters 5, 6, 20, 21, and 25.

REVENUE AND FINANCE DEPARTMENT Carl Castelda, John Christensen, Art Nustat, James Hamilton, and Ed Henderson represented the department; Martha Martell, Dave Duncan, and Gary W. Thomas were present from the Iowa Auto Dealers Association.

ARC 6804A

No committee action concerning the taxable communication service subrules 18.20(5) and 18.20(6).

ARC 6819A

No committee action concerning Chapter 19, sales and use tax on construction activities.

ARC 6800A

No questions concerning the individual, corporate and franchise tax in Chapters 38, 39, 52, and 52.

ARC 6802A

No committee action on 43.8, corporate and individual taxpayer livestock production credit refunds.

ARC 6806A

No questions on Chapter 50 amendments regarding S corporations.

ARC 6805A

No committee action concerning 52.13, livestock production credits.

ARC 6801A

•In response to Priebe, Castelda noted kerosene was exempt. Dyeing would produce contamination.

ARC 6803A

•Priebe asked if anything prior to the 1982 cutoff date in subrules 80.7(1) and 80.7(7) qualified for the credit. Castelda said assessed value was reduced from 100 percent to 30 percent in 1982; and legislation provided for the phaseout of property acquired in 1982 and thereafter, not a total phaseout.

•Halvorson said many businesses are paying millions of dollars in used machinery and equipment property tax while other businesses are exempt and that property tax is lost.

•Rittmer inquired about TIF exemptions and was informed that property used to support payment of bonds remains taxable until the bonds are paid off.

•Kibbie surmised counties will oppose phaseout unless the state provides reimbursement.

**Motion to Refer
Motion Carried**

Priebe moved referral of subrules 80.7(1) and 80.7(7) to the general assembly. The motion carried.

ARC 6853A

No questions on subrule 10.2(16) concerning 1997 calendar year interest rate.

ARC 6871A

No committee action on amendments to Chapters 16 to 18 concerning taxable and exempt sales.

ARC 6851A

Castelda explained the motor vehicle use tax on long-term leases would become effective January 1, 1997. Car dealers' vehicles are exempt, but a use tax is assessed on the value of the lease and paid when the vehicle is registered with the county treasurer. Computation of tax is difficult when fleet industries lease to businesses and the length of the lease is unknown. Rollover deficiencies residuals from prior leases also present a computation problem. If a leased vehicle is totaled, the vehicle is replaced but the lease remains.

•Responding to Rittmer, Castelda said when a vehicle is registered following a change of ownership, there is a new computation of use tax and no provision for a credit exists.

Martell appeared on behalf of the Iowa Automobile Dealers Association and indicated resolution of the differences with the department is near.

REVENUE (continued)

- Castelda indicated to Priebe most states have a special tax provision on leased vehicles but was unaware if uniformity exists throughout the industry.
- Kibbie noted credit life insurance is not taxed when a car is purchased with money borrowed through a bank but it is taxed when a lease is involved. Castelda confirmed that tax is computed based on the total lease price, excepting manufacturers' rebates.
- Halvorson asserted it was not the intent of the legislature to tax insurance and registrations.

ARC 6852A

No questions on 39.13 concerning electronic filing of Iowa individual income tax returns.

ARC 6874A

No questions concerning delinquent debt amendments in Chapter 152.

ARC 6872A

No committee action concerning Chapter 210 prepayment of expenses.

Recess

The committee recessed at 3:40 p.m. and reconvened Thursday, December 12, 1996, at 9:05 a.m. in Room 22. Senator Palmer was excused for Thursday, December 12.

PUBLIC SAFETY DEPARTMENT Michael Coveyou, Roy Marshall, and Gary Forshee represented the department Others present were Secretary of State Paul Pate, Don Beal and Charles F. Wasker from the Homebuilders Association of Iowa; Kirk Geist from Edwards Sales; Doug Bibee from Dow Chemical; Larry DeBuse, Randy Myers, and Dan Moeller from MidAmerican Energy; and Frank Purvis from Habitat for Humanity International; and Ron Newman from A-Tec Energy Corporation.

Daggett in Chair

ARC 6883A

•Coveyou indicated to Metcalf and Doderer the Iowa Building Code contains numerous exceptions to requirements in the National Building Code and allows for discretion.

•In response to Kibbie, Coveyou explained that the Iowa Building Code may be adopted by local jurisdictions, and the only two parts that are mandatory pertain to the handicapped accessibility provisions and the federal energy efficiency standards.

•Rittmer was told two counties have adopted the Iowa Building Code.

•Coveyou replied to Hedge the energy efficiency standards are applicable to all builders of private homes, but the handicapped accessibility provisions are not.

ARC 6876A

•Halvorson requested cost estimates of insulating a basement and was told by Marshall it varies from \$700 to \$2000 and the annual savings in utility costs average \$170. Halvorson then asked if this provision could cause enough of an increase in utility usage to impact generating capacity and was told the utility companies favored the standard.

•Forshee told Hedge any exposed basement wall is considered an upper wall for insulation purposes. Marshall received comments that installing insulation at time of construction is more practical.

Pate views the proposed amendment as providing a choice for consumers, not as anti-energy-efficiency. Deal stated building codes are compiled by independent agencies with no connection to the federal government. He felt it should be a homeowner's option to insulate basements and said the optimal time to insulate was when the basements were finished, not at construction.

Metcalf in Chair

•Halvorson said FHA is building low- to moderate-housing in Iowa and requires insulated basements. There should be a certainty this amendment does not counter a federal requirement.

•Wasker stated that FHA and HUD accept the criteria of the Iowa Building Code. Metcalf requested Wasker to research whether any conflict exists and provide the information to Royce.

Purvis discussed energy efficiency and cost factors as they apply to homes built by Habitat affiliates.

Daggett in Chair

•Coveyou indicated to Priebe that the amendment was proposed in response to a petition filed by Secretary Pate and 500 signatories requesting relaxation of the basement insulation requirement.

HUMAN SERVICES DEPARTMENT Mary Ann Walker, Debbie Johnson, Ruth Schanke, James Chesnik, Susan Bergwall, Gloria Conrad, Maya Krogman, and Doug Howard were present from the department for the following.

Special Review

Temporary Assistance for Needy Families

•Priebe was informed by Walker that an individual who has not reached the 60-month limit, could return to the temporary assistance for needy families after working for a few months and then quitting. Walker said enforcement will be done by the counties. Priebe pointed out that once the 60-month limit is exhausted, people will be forced back onto country relief.

•Responding to Metcalf, Howard stated the 60-month limit begins January 1997, and will not be retroactive. The department can define exemptions for up to 20 percent of the caseload. The state has flexibility to be more restrictive than 60 months.

•Priebe was advised by Howard the block grant does not directly affect SSI.

•Doderer was told by Howard that approximately 30,000 families or 15 percent will be affected.

•Kibbie asked if an adequate dollar amount exists to cover child care in the FIP program for this fiscal year. Howard said there currently is no child care waiting list and recently enacted federal law is bringing in substantial income to the program.

DHS (continued)

Welfare Reform

Walker provided the requested information concerning aliens and changes in the food stamp program.

- In response to Kibbie, Howard stated the department is working with counties to determine the legal requirements counties face regarding mentally or physically disabled aliens. He noted the policy decision is at the local level. Kibbie stated counties with property tax freezes lack funding to do this.
- Metcalf asked if proof of citizenship is required for eligibility for those services. Howard said citizenship eligibility is requested but a data system to track citizenship does not currently exist.

Special Review (SSI)

No questions concerning SSI c.o.l.a. changes in Chapters 51, 52, and 75.

ARC 6826A

- Bergwall indicated to Weigel a change in the law was necessary to effect an automatic child support payment schedule. Weigel then inquired if people seeking child support increases are aware of the retroactive possibilities. Bergwall said such disclosures may come from attorneys representing the parties, but the department is not aware of those seeking court action.

- Kibbie asked about the procedure when an out-of-state parent fails to pay support owed an Iowa family; Bergwall responded that the department works through that other state's child support enforcement agency.

- Hedge was advised the department can do nothing when a mother who is unable to obtain Medicaid benefits for a child refuses to seek support payments from the father.

ARC 6839A

No committee action concerning rule 25.41, minimum data set in disability services management.

ARC 6827A

No questions concerning rent subsidy program amendments to Chapters 53 and 83.

ARC 6829A

No questions concerning subrules 65.47(3) and 65.146(3), noncitizen food stamp eligibility.

ARC 6830A

No questions concerning rule 75.17, pregnancy verification by certified nurse midwife.

ARC 6831A

No questions concerning amendments to the HCBS waiver program in Chapter 77.

ARC 6867A

No questions concerning paragraph 83.22(1)"b," elderly waiver program.

ARC 6840A

Kibbie wondered if transition or tuition payments for job training would be available for workforce development when PROMISE JOBS tuition is not paid. Walker stated most people receive Pell grants and noted other assistance is also available.

ARC 6832A

No questions concerning income withholding notice amendments in Chapter 98.

ARC 6833A

No questions concerning child support recovery amendments in Chapter 99.

ARC 6834A

No questions concerning Chapter 176, dependent adult abuse.

ARC 6841A

No questions on the Chapter 182 preamble pertaining to family-centered services.

TRANSPORTATION DEPARTMENT Dick Hendrickson, Norris Davis, Dave Titocomb, and Dennis Kleen were present from the department and Nancy Parrott was present from the County Recorders Association.

ARC 6868A

Returning from the December 11 meeting, Davis reported records certified by county recorders will be accepted for license identification. Rule modification will be timed to the July 1 implementation of federal requirements. France said an additional \$5 is charged when a credit card is used to obtain a birth certificate copy. Following discussion, it was determined that Dierenfeld would check into the charge. Parrott said test pilot counties will start in March, April and May.

ETHICS AND CAMPAIGN DISCLOSURE BOARD Lynette Donner appeared on behalf of the board.

ARC 6854A

Metcalf asked Donner to provide information on why printing listed as an expense must be identified.

ARC 6855A

No questions on rule 4.9 concerning the initial report information.

ARC 6856A

- Donner indicated to Priebe that a pro rated portion of salaries of executive lobbyists is to be shown when lobbying activities are performed.

- Doderer was told the rule is applicable to any individual who lobbies state agencies.

- Kibbie was informed that any money paid on behalf of a candidate must be reported as an in-kind contribution.

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT John Whipple represented the department. Others present included Leon Lamer from Marshalltown Water Works; Steve Setoodeh from American Water Works Association; John R. Lutiter from the West Des Moines Water Works, Michael Peterson from the U.S. Department of Energy; and Sue Cosner, Dawn Goodrich, and Dennis McAllister from the Des Moines Water Works.

Priebe in Chair

ARC 6881A

- Hedge was told by Whipple the department has no authority to require further testing of agricultural liming materials for harmful and toxic materials that could damage the soil.

Setoodeh stated the liming byproduct produced by the water works is both cheaper and a pure product. No complaints regarding the cost or the moisture content had been received from farmers. He expressed concern that there was insufficient time for planning, design, procurement, and construction of facilities. He indicated willingness to work with the department to resolve differences.

AGRICULTURE (continued)

•Cosner said the Des Moines Water Works supports the proposed rules which set standards for the end user. Priebe noted the Des Moines Water Works has implemented this and is a large supplier of the product. He pointed out smaller towns might need more time for implementation.

•Responding to Rittmer, Whipple stated the statute requires the department to establish certification rules. He added the main issue is whether or not to deduct the moisture during the certification process and that it is strictly for consumer protection. Rittmer pointed out some smaller communities do not have funding for the implementation. Whipple responded the department would attempt to work with the communities.

Economic Impact Statement

Kibbie moved an economic impact statement be conducted on this proposed ruled. There were no objections.

•In response to Priebe, Whipple stated the byproduct is regulated only when sold.

Lamer expressed concern that each tanker load of liquid lime could not be certified at a specific percent. He raised the question of which entity is considered the seller when a water works facility contracts for lime removal from the lagoon and the contractor subsequently sells it.

Daggett in Chair

EDUCATIONAL EXAMINERS BOARD Orrin Nearhoof represented the board.

ARC 6850A No questions concerning amendments to the complaint process in Chapter 11.

ARC 6849A No questions concerning Chapters 14 and 17, business-office endorsement, fees and renewals.

EDUCATION DEPARTMENT Ann Molis, Chris Scase, and Gary Borlaug represented the department.

ARC 6836A •Hedge asked how a party appealing to the federal court would know to notify the department.

Scase replied copies of the rules containing that provision would be given to all litigants who are unable to mediate or reach agreement at the local level and opt to appeal to federal court. She stated the department needs to be aware a case is pending in order to determine whether the department should serve as intervenor in the case.

Royce pointed out appeals in this instance are unique and the department does need to know when these cases are filed. Royce stated because of extensive federal regulations, appeals are directed not to the agency head but to state or federal court.

ARC 6835A

No questions regarding rescinding Chapter 96, asbestos removal training and licensure.

Student Abuse

Molis stated there currently are no provisions to correct a "false founded" abuse allegation nor is there anything that would permit expungement of records. The department is working with various educational groups to effect change.

•Scase told Rittmer the state board will reverse its position if it is deemed to be in the best interest of education on a statewide basis.

Committee Business

Minutes

•Priebe moved the minutes be approved. Motion carried.

January Meeting


The January meeting is scheduled for January 6 and 7, 1997, with the party at noon on January 7.

Adjourned

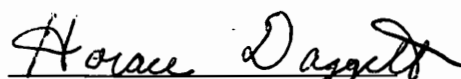
The meeting was adjourned at 12:06 p.m.

Respectfully submitted,


Kathleen K. Bates


Cathy Kelly

APPROVED:


Representative Horace Daggett, Cochair