

MINUTES OF THE SPECIAL MEETING OF THE ADMINISTRATIVE RULES REVIEW COMMITTEE

- Time of meeting:** A special meeting of the Administrative Rules Review Committee (ARRC) was held Monday, April 12, 1999, in Senate Committee Room 22, State Capitol, Des Moines, Iowa.
- Members present:** Senator H. Kay Hedge, chair, and Representative Christopher Rants, vice chair; Senators Merlin E. Bartz, Patricia M. Harper, John P. Kibbie, and Sheldon Rittmer; Representatives Danny Carroll, Minnette Doderer, and Janet Metcalf. Representative Geri Huser was not present.
- Also present:** Joseph A. Royce, Legal Counsel; Kathleen K. Bates, Administrative Code Editor, and Teresa Vander Linden, assistant; Bryan Gentry, Administrative Rules Coordinator; caucus staff and other interested persons.
- Convened** •Chair Hedge convened the meeting at 8:05 a.m.
- HUMAN SERVICES DEPARTMENT** Mary Ann Walker, Debbie Johnson, Jennifer Steenblock, Sue Stairs, Eileen Creager, Ruth Schanke, and Terri Pollard represented the department.
- ARC 8801A No questions on amendments to ch 24 pertaining to mental health service providers.
- ARC 8722A No questions on annual adjustment for community spouse resources and SSA program.
- ARC 8723A Walker outlined changes to the home- and community-based services waiver programs made in response to comments received.
- Walker told Kibbie that "unit" varies, depending upon the service, from an hour to a day or a half-day. Johnson added that the number of units allowed is related to the level of care required.
- ARC 8726A No questions on amended appeal process for the HAWK-I program.
- ARC 8787A Proposed 95.25 pertains to emancipation verification for the CRSU.
- Carroll asked if, in the case of conflicting information, the obligor's obligation would continue while the conflict is being resolved. Pollard responded that the obligation would continue until a determination is made, and then an adjustment may need to be made.
- ARC 8724A No questions on prioritization of persons on waiting list for state child care assistance.
- Committee business** The minutes of the March meeting were approved.
- The next meeting will be held May 11 and 12.
- The committee began discussion of fire safety in small group homes. Under current law the fire marshal cannot require sprinkler systems in small group facilities for Alzheimer's patients.
- ENVIRONMENTAL PROTECTION COMMISSION** Anne Preziosi and Catharine Fitzsimmons represented EPC.
- ARC 8744A Preziosi outlined proposed amendments to chs 22, 23 and 25.
- In response to Bartz, Fitzsimmons stated that item 40, pertaining to training fires, is not more restrictive and identified item 9 as potentially controversial in that a professional engineer is no longer required for a construction permit.
- NATURAL RESOURCE COMMISSION** Lowell Joslin, Arnie Sohn, and Richard Bishop represented the commission.
- ARC 8741A No questions on free fishing licenses for severely handicapped persons.
- ARC 8750A Amendments to ch 29 pertain to the local recreation infrastructure grants program.
- Sohn reported to Kibbie that 54 grants totaling \$2.5 million were funded from the 159 applications received.
- ARC 8745A No questions on boating amendments requested by the coast guard.
- ARC 8747A No questions on game management areas.
- ARC 8748A The proposed amendment to ch 52 pertains to wildlife refuges.
- Hedge asked the status of the snow geese population. Bishop estimated that no change will be noticed for a few years and indicated that the cooperation of all the states in the region will be required if an impact is to be made.
- ARC 8746A No questions on waterfowl and coot hunting.
- ARC 8742A Bishop summarized amendments to ch 94 regarding nonresident deer hunting.
- ARC 8743A Proposed amendments to ch 99 pertain to wild turkey fall hunting.
- Bartz questioned the reduction of the size of zone 6 without a corresponding reduction in the number of licenses and called attention to the fact that only 75 licenses are allowed in the new zone 8 as compared to 3,000 licenses in zone 6. Bishop responded that zone 6 is restored to what it used to be and added that the number of licenses allocated to zone 8 may need to be adjusted.
- ARC 8749A Proposed amendments to ch 106 pertain to deer hunting.
- Bishop informed Rittmer that the 50-cent increase for licenses was allowed by the legislature to implement electronic licensing.

- ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA** Charles Smithson represented the board.
- ARC 8807A Smithson stated that 4.42(2) was amended in response to ARRC comments to specify that meals and other expenses incurred by an officeholder to attend local meetings may be paid from campaign funds.
- Metcalf asked how 4.1(4) would be executed. Smithson said the board would be making the changes in conjunction with future amendments.
- ARC 8812A No questions on proposed ch 14.
- LOTTERY DIVISION** Ken Brickman and Libby Nelson represented the division.
- ARC 8856A Brickman and Nelson outlined the proposed new rule regarding options for payment of prizes.
- Nelson estimated for Rittmer that the tax rate for lottery winnings is 36% to 38%.
 - Brickman explained to Harper that the lottery invests in federally backed securities.
- ECONOMIC DEVELOPMENT DEPARTMENT** Rose Wazny, Melanie Johnson and Mary Lawyer represented the department. JoAnn Callison was present from the workforce development department.
- ARC 8762A No questions on proposed 23.14 and 23.15 concerning the disaster recovery fund.
- ARC 8763A No questions on proposed 28.9(3) pertaining to record retention for the local housing assistance program.
- ARC 8764A No questions on proposed increased award amounts for CEBA venture projects.
- ARC 8765A No questions on the agency's proposed administrative procedures.
- ARC 8696A Chapter 4 is under a 70-day delay. Lawyer outlined measures taken by the department to ensure the confidentiality of social security numbers.
- In response to Doderer's question about compliance with the federal Privacy Act, Johnson stressed that no one would be denied training for failure to disclose their social security number.
 - Bartz was assured that disclosure of social security numbers would be treated as voluntary.
- REVENUE AND FINANCE DEPARTMENT** Mel Hickman and Jerri DeVries represented the department.
- ARC 8850A No questions on proposed contested case procedures for the state board of tax review.
- ARC 8786A No questions on the department's proposed administrative procedures.
- ARC 8725A The amendments to 71.1, taxation of condominiums, go into effect April 14, 1999.
- Carroll noted that although legislation may address taxation of condominiums, the committee can impose an objection at any time if the matter is not resolved statutorily.
- Motion to delay Bartz moved a 70-day delay be imposed on 71.1.
- Rittmer suggested that a delay at this time might defer legislative action this session.
 - Carroll observed that the tax will not be imposed until after the next legislative session.
 - In response to Kibbie's question about low-rent housing, Hickman stated that the department provided Burns suggested language to remove those housing units from the statute.
 - Hedge offered the opinion that the amendments close a loophole.
 - Bartz expressed the view that the contentiousness of the issue merits a delay and stressed that if the committee fails to take action, the power to delay will be lost.
- Motion failed The motion to delay failed on a vote of three in favor and four opposed. Bartz asked to be recorded as voting in favor of the motion.
- ARC 8785A No action on proposed 150.10 to 150.16, offset of debts owed state agencies.
- PUBLIC SAFETY DEPARTMENT** Mike Coveyou, Tim McDonald, and Roy Marshall represented the department.
- ARC 8796A Proposed 7.2(3) revises the list of approved breath testing devices.
- In answer to Metcalf's inquiry about devices removed from the list, Coveyou stated that these are obsolete devices no longer in use in the state.
- ARC 8855A No action on administrative procedure rules.
- ARC 8790A Rules pertaining to criminal history records were filed emergency.
- Hedge was informed that the emergency adoption was necessary to comply with federal legislation.
 - McDonald indicated to Harper that the department completes a criminal history check within two days, whereas FBI fingerprint-based checks can take 15 to 45 days.
- ARC 8602A Coveyou reported that a notice of intended action to amend the delayed subrule 5.620(1) in conformance with statutory language will be published in the Bulletin on April 21, 1999.
- Metcalf asked the committee to consider sponsoring a bill to amend 135C.2(5)"b" because unless the statute changes, the fire marshal cannot require sprinkler systems in Alzheimer's facilities.

Public Safety continued

•Marshall responded to Bartz that the 1986 statute recommended Chapter 22 of the National Life Safety Code as the standard for small group homes. Sprinkler systems under the current Life Safety Code would be an option, based upon the evacuation capability of the residents. Bartz noted that an amendment to the Code would affect a great many facilities in addition to the one in Windsor Heights.

•Metcalf voiced the opinion that local officials could best make the determination about the safety of the residents. Marshall added that the Alzheimer's facility in Windsor Heights has magnetic locks to prevent the residents from wandering, and sprinklers would be a benefit to residents in terms of fire safety.

•Noting that it can later be refined, Hedge supported introducing a bill.

•Kibbie cautioned that more than sprinkler systems might be affected by this action.

Motion to amend Metcalf moved the committee sponsor a bill to strike the last two sentences from 135C.2(5)"b."

Motion carried The motion to sponsor a bill to amend 135C.2(5)"b" passed.

TRANSPORTATION DEPARTMENT Steve Westvold, Jan Hardy, Kirsten Badow, Valerie Hunter, Tom Sever, and Dave Titcomb represented the department.

ARC 8779A Proposed ch 118 amendments add tourist attractions to logo signing. In addition, some previously ineligible restaurants and lodging facilities may now qualify for logo signing.

•Westvold told Bartz that lotteries are held when more than six eligible vendors apply. A signed entity must be within 15 miles of the interstate.

ARC 8794A The proposed amendment to 400.60(1) allows a dealer to request a registration from the dealer's county treasurer rather than the county of residence.

ARC 8721A Ch 454 restricts the maximum gross weight exemption to tow trucks moving wrecked vehicles from the scene of an accident to a place of repair or storage.

ARC 8720A No questions on adoption of motor carrier safety regulations.

ARC 8730A Procedures for petitions to reopen administrative hearings for OWI revocations are adopted in 620.4(5).

•Metcalf was assured that concerns of the bar association have been addressed.

INSPECTIONS AND APPEALS DEPARTMENT Rebecca Walsh, Larry Bryant, and Ron Pohlman represented the department.

ARC 8797A A code of administrative judicial conduct for presiding officers in contested cases is proposed in ch 10.

•Doderer and Bartz voiced concern about the use of the word "should." Pohlman stated that the decision to use "should" instead of "shall" was based on the use of "should" in the code of ethics and conduct of the supreme court. Royce reviewed the meaning of the words: "shall" imposes a duty; "must" designates a requirement; and "may" is discretionary. Although the word "should" is not used in the administrative code, it is used by the court.

•Kibbie and Hedge encouraged the department to use "shall" in the adopted rules so that the meaning is clearly understood.

ARC 8798A No questions on proposed administrative procedures.

WORKFORCE DEVELOPMENT DEPARTMENT Joe Bervid represented the department. Other interested parties included Russell Samson of Dickinson Law Firm, Matt Eide of the Association of Business and Industry, and Nancy Robertson of the Coalition Against Domestic Violence.

ARC 8648A At the March meeting, a 70-day delay was imposed on 24.26(14), which includes domestic and workplace violence within the voluntary quit provisions for unemployment compensation.

Samson expressed the view that domestic abuse does not belong in this rule which governs voluntary quit with cause attributable to the employer. Samson concluded that the agency may have exceeded its authority since the legislature has not addressed the domestic violence issue.

•Bartz asked the department to respond. Bervid stated that the courts have ruled that the employee is eligible for benefits when cause is attributable to neither the employer nor the employee. Bervid estimated that fewer than 20 cases per year involve domestic abuse.

Robertson summarized how domestic abusers undermine the efforts of their victims to be employed and self-supporting and offered several examples of domestic abuse that may take place in or near the workplace.

•Doderer pointed out that unemployment compensation is less costly to employers than court proceedings.

•Bartz suggested wording that covers violence at or near or affecting the workplace rather than identifying workplace or domestic violence.

APRIL 12, 1999

Workforce Development continued

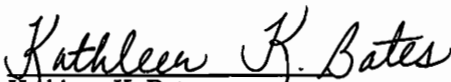
At the request of Gentry, Bervid provided the committee copies of cases in which the court awarded benefits when cause was not attributable to the employee or to the employer. Bervid pointed out that the burden of proof is on the employee to provide documentation such as restraining orders, or advice by police or a counselor to leave employment.

•Metcalf requested that the issue be on the May agenda. The committee concurred.

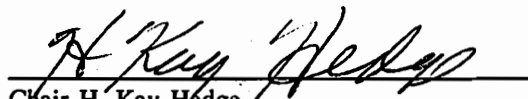
Adjourn

The meeting was adjourned at 11:30 a.m.

Respectfully submitted,


Kathleen K. Bates

APPROVED:


Chair H. Kay Hedge

Vice chair Christopher Rants