

# MINUTES OF THE REGULAR MEETING OF THE

## ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of meeting: The regular meeting of the Administrative Rules Review Committee (ARRC) was held Tuesday, September 8, 1998, in Room 118, State Capitol, Des Moines, Iowa.

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

Also present: Joseph A. Royce, Legal Counsel; Kathleen K. Bates, Administrative Code Editor and Teresa Vander Linden; Jackie Van Ekeren Romp, Administrative Rules Coordinator; caucus staff and other interested persons.

Convened •Chair Hedge convened the meeting at 10 a.m.

**HUMAN SERVICES DEPARTMENT** Mary Ann Walker, Cindy Havercamp, Candy Nardini, Jane Gaskill and Jim Overland represented the department.

ARC 8217A No questions on amendments to 75.1 pertaining to transitional Medicaid and payment of home health portion of Medicaid B to HH-SLMB clients.

ARC 8251A No questions on proposed amendments to ch 81 concerning Medicaid payment to nursing facilities.

ARC 8218A No questions on electronic transmission of nursing facility resident assessment information in 81.13(9).

ARC 8219A Nardini reported on revisions to the Iowa plan for behavioral health in ch 88.

ARC 8220A No action on 92.110(1)"e" allowing PROMISE JOBS payment to nonregistered child care providers awaiting child abuse and criminal records checks.

ARC 8221A No questions on amendments to chs 107 and 110 concerning procedures followed when a certificate of noncompliance is received from CRSU regarding certified adoption investigators or day care providers.

ARC 8226A The department has reached agreement with ISAC, Community Mental Health Centers and the Iowa Association of Rehabilitation Facilities regarding amendments to the state payment program in 153.51 to 153.59.

ARC 8252A No questions on proposed increase in maintenance payment to a child in independent living, 156.12(1).

ARC 8250A No questions on proposed community adolescent pregnancy program, ch 163.

**HISTORICAL DIVISION** Mark Peitzman and Patricia Ohlerking represented the division.

ARC 8268A No questions on 1.5 regarding western historic trails center.

ARC 8269A Ohlerking reported a high level of interest in ch 50, the historic site preservation grant program. Workshops have been held in Council Bluffs, Des Moines and Waterloo and 285 applications have been mailed out.

•Bartz was informed that sites already listed on the National Register of Historic Places are not excluded from this program, which also includes sites that interpret Iowa's history.

•Ohlerking told Weigel that while an initial mailing was sent to over 2,000 organizations from the division's database, organizations that could not meet the cash match requirement did not respond. Ohlerking added that the review and selection process is consistent with the division's other programs; and although the administrator has the final decision, the selection of projects is almost always as recommended by the review committee.

•Ohlerking told Kibbie that the statute does not require geographic distribution of funds; however, the intent is to fund as many projects as possible statewide.

•Bartz was advised that the \$40,000 minimum was selected because the historical development program funded by REAP is for projects up to \$35,000.

**COLLEGE STUDENT AID COMMISSION** Julie Leeper represented the commission.

ARC 8267A No questions on 13.1, vocational-technical grant program.

ARC 8266A No questions on the proposed industrial technology forgivable loan program, ch 35.

ARC 8265A No action on proposed ch 36, the Iowa state fair scholarship program.

**ACCOUNTANCY EXAMINING BOARD** Bill Schroeder represented the board.

ARC 8229A No questions on proposed procedures following a notice of noncompliance from the college student aid commission.

ARC 8235A No questions on proposed ch 13, waivers or variances from rules.

**REAL ESTATE COMMISSION** Roger Hansen represented the commission.

ARC 8228A Hansen distributed a newsletter that pertains to the proposed amendments concerning communications and advertising on the Internet.

Real Estate Commission(Continued)

•Carroll was advised that Iowa real estate brokers and salespersons have been following the same rules for Internet advertising as for other forms of advertising. Brokers elsewhere in the country are soliciting information about buyers and sellers and making referrals to brokers in other areas. The national organization is attempting to have this rule, which applies only to those web sites that are owned or controlled by real estate licensees, adopted in all jurisdictions.

Rants in chair

Committee business

Minutes

Hedge moved the minutes of the August meeting be approved. The motion carried.

October meeting

The next meeting was set for Tuesday, October 13 and Wednesday, October 14.

IAC

Hedge moved that the Administrative Code Editor be directed to remove from the IAC rules of agencies that have ceased to exist, including the International Network on Trade and the Iowa Statehood Sesquicentennial Commission. The motion carried.

**ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF** Kim Statler, Lane Palmer, Melanie

Johnson and Bob Henningsen represented the department.

ARC 8222A

No action on amendments to ch 25 which provide for joint review of projects with the Iowa finance authority, fund homeless shelter rehabilitation, and limit funding for specific types of activities.

ARC 8223A

Proposed amendments to ch 59 pertain to enterprise zones.

•Henningsen indicated to Rittmer that oversight in an alternative venture city would be from the city council. Henningsen pointed out that under the alternative criteria, which are project specific, it is not necessary to establish a zone.

•Weigel asked if the prohibition on closures and reductions also applies to alternative businesses. The department responded that relocations within the same city have been considered as being within the same area of the state. Statler reported that the language prohibiting relocations from one area of the state to another was based on the CEBA program. In reviewing relocations within an eligible city with an enterprise zone, the enterprise zone commission determines the net impact on the community. Weigel stressed that the intention of the legislation was to prevent existing businesses from moving from outside the zone into the zone in order to gain the tax benefits.

Hedge in chair

**ENVIRONMENTAL PROTECTION COMMISSION** Mel Pins, Pete Hamlin, Joseph Obr, Jack

Riessen, and David Wornson represented the commission.

ARC 8275A

Hamlin reported that because the proposed medical waste incinerator requirements are stringent, the number of such incinerators is expected to decrease.

ARC 8239A

No committee action on amendments to 50.4(1) and 52.21(2) which change the permit application and completion deadlines for agricultural drainage wells.

ARC 8240A

Rule 103.7 establishes requirements for coal combustion residue landfills.

•Obr responded to the inquiry from Bartz that seeding with harvestable crops is encouraged under 103.7(5)"d" but added that alfalfa would not qualify because it is too deep-rooted and it is not a permanent cover.

ARC 8241A

No action on proposed ch 137 which pertains to the Iowa land recycling program and response action standards.

•Hedge was informed that EPC can order an investigation to assess the extent of the problem, but cannot hold liable an owner that did not cause the contamination.

ARC 8238A

No action on proposed ch 219 concerning beneficial uses of waste tires.

Rants in chair

**REVENUE AND FINANCE DEPARTMENT** Carl Castelda represented the department.

ARC 8262A

Amendments to ch 17 pertain to nonprofit organizations.

•Castelda explained to Kibbie that if the use of funds generated by an organization is for an educational, religious or charitable purpose, the organization does not need to collect tax on the sales. Charitable gaming sales, however, are taxable.

•Bartz was advised that individuals who later learn that an item purchased was exempt from tax have five years from the date of purchase to request a refund for sales tax paid. Castelda confirmed that while taxes are overpaid because people aren't aware of what is exempt, it would be difficult to assess the numbers of dollars involved.

ARC 8260A

No questions on proposed individual income tax amendments.

ARC 8261A

No questions on amendments to chs 52, 53, 55, 59 and 60.

ARC 8263A

No questions on proposed amendments to chs 73, 74 and 81 on property tax and cigarette and tobacco tax.

**GENERAL SERVICES DEPARTMENT**

ARC 8271A

Bill Bruce and Julie Dettman represented the department. Jason Bridie represented the Iowa Association of School Boards, David Vestal represented the ISAC and Tracy Kasson represented the Iowa League of Cities.

Rule 5.21 pertains to fees paid to newspapers for required publications.

- Bruce informed Rants that the rule was filed emergency because the process took longer than anticipated and the previous rule expired at the end of the fiscal year.
- Rittmer supported the department's role in determining the rates, but objected to the emergency adoption of the rule making.

- Carroll observed that the rule which sets the rates for the fiscal year did not go into effect until August 7, 1998, and asked if newspapers would apply the rates back to July 1. Bruce confirmed that the rates would not be applicable before the rule went into effect on August 7, but added that the department has no means to monitor billings to individual school districts, cities or counties.

Bridie estimated annual publication costs of school districts statewide to be in the vicinity of \$1 million and commented that the rule represents an unfunded mandate in terms of Iowa Code section 25B.6. The emergency adoption of this rule did not afford the districts time to allow for an increase in their budgets which were set in the spring. Bridie further observed that while the statute calls for an annual review, the rule covers a two-year period.

- Bruce told Rants that the studies conducted by the department were on a per-entity basis, and the estimated impact per entity did not exceed \$100,000.

Motion

Kibbie moved that the committee request an economic impact statement.

Motion carried

The motion carried.

- Carroll asked about the impact on counties. Vestal estimated it would amount to less than one percent of a county's budget. Carroll speculated that without this rule newspapers might charge a great deal more.

Hedge in chair

**RACING AND GAMING COMMISSION**

Jack Ketterer, Brad Peyton and Bill Hansen represented the commission. Jeff Farrell represented the attorney general's office. Other interested parties included Otto Steele Jr., Paul Stanfield, Tom Coates, Art Hill, Bob Farinella, Serge Garrison, Bill Wimmer, Tom Flynn, Bruce Wentworth, Nancy Boyd, Bill Hutchins, Jeff Terp, Jane Bell, Mark Joyce, Carlos Jayne, Steve Roberts and Dick Thornton.

ARC 8231A

Ketterer summarized the amendments adopted in response to the comments received concerning access to credit on ATMs and limitations on numbers of licenses and gaming machines.

Commission chair Peyton outlined the commission's response to the letter received from Royce. Peyton differentiated between the commission's statutory authority to set the number and location of licenses and the legislature's authority to impose a moratorium and clarified that the adopted rule prohibits credit advances rather than ATMs. The commission views the current practice as the equivalent of licensees granting credit on a credit card in that when credit is authorized, a draft payable to the casino is printed in the cashier's cage. Payton further stressed that this rule does not address the failed legislation regarding location of the terminals.

- In response to Palmer, Peyton identified market studies that have been conducted to assess saturation in various parts of the state. Palmer challenged consideration of economic viability of license applications.

- Carroll was informed that the statutory prohibition against extension of credit was part of the original legislation, whereas the rules have been silent on the issue. Satellite terminals have been in place in casinos for a number of years and have come into question as a result of changes in the makeup of the commission and the availability of more information.

Illustrating the casino's role in the use of credit cards in satellite terminals and the fees charged for the service, Stanfield supported the commission's authority to regulate the use of credit cards.

Garrison, representing travelers express, addressed legislative intent and distinguished between the availability of third-party credit and credit issued by the casino.

Coates, of consumer credit counseling and truth about gambling, endorsed the rule and reported on the extent of credit card debt related to gambling that results in suicide, divorce, bankruptcy and embezzlement.

- Bartz observed that if the availability of third-party credit is a circumvention of legislative intent, then the legislature needs to rectify the situation.

Hansen, of the racing and gaming commission, voiced dissent with the rules and spoke to the separate functions of the legislature and the commission.

Racing and Gaming Commission(Continued)

- Steele, representing citizens for gambling-free government, stressed the need for the rules; whereas, Roberts, of the gaming association of Iowa, characterized the credit card prohibition as beyond the scope of the commission's authority.
- Motion to delay Kibbie moved that 1.6(4) be delayed until adjournment of the 1999 Session of the General Assembly.
- Motion carried The session delay of 1.6(4) passed.
- Carroll asked Royce's views of the commission's authority; Royce confirmed that in his view the statute clearly gives the commission the authority to establish the number of licenses.
- Motion to delay Palmer moved that 5.1(5) and 20.22 be delayed until adjournment of the 1999 Session of the General Assembly.
- Motion to substitute Weigel offered a substitute motion of a general referral to the legislature.
- Substitute failed The motion to substitute a general referral failed.
- Motion to substitute Weigel offered a substitute motion of a 70-day delay on 5.1(5) and 20.22.
- Substitute failed The motion failed.
- Motion failed Palmer's original motion for a session delay failed.
- Motion to object Kibbie moved objection to 5.1(5) and 20.22.
- Motion failed The motion to object failed.
- ARC 8232A No action on amendments to 20.11(6) requiring recipients to explain how the proceeds of the distribution will benefit the citizens of Iowa.

SECRETARY OF STATE Lynette Donner represented the secretary of state's office.

- ARC 8244A No questions on termination of notice of proposed constitutional amendment in 21.200(5).
- ARC 8274A No questions on ballot language for uses for local option sales and services tax revenue, 21.801.
- ARC 8243A No questions on termination of notice regarding local sales and service tax elections for school infrastructure projects, 21.803.

TRANSPORTATION DEPARTMENT Dennis Ehler, Gary Harris, Harry Miller, Tom Parham and Will Zitterich represented the department

- ARC 8264A No questions on the adopt-a-highway notice, 121.2, 121.3.
- Bartz in chair
- ARC 8258A No questions on amendments proposed to chs 400, 411 and 450.
- ARC 8259A Proposed ch 716 pertains to the commercial air service airport infrastructure program.

PUBLIC SAFETY DEPARTMENT Mike Coveyou and Sam Knowles represented the department

- ARC 8233A No questions on proposed amendments to ch 4 which incorporate the national instant criminal background check system into the weapons permitting process.

Rants in chair

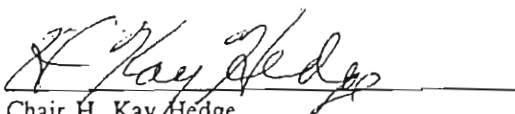
EMPOWERMENT BOARD, IOWA Donna Eggleston represented the board.

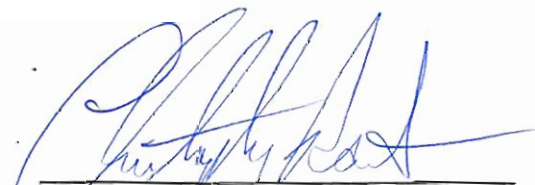
- ARC 8248A No action on ch 1 concerning development of community empowerment areas.
- Adjourn The meeting was adjourned at 3:08 p.m.

Respectfully submitted,

  
Kathleen K. Bates

APPROVED:

  
Chair H. Kay Hedge

  
Vice chair Christopher Rants