

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 Tuesday, August 19, 1997, and Wednesday, August 20, 1997, in Room 1, 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; and Representatives Danny Carroll, Minnette Doderer, and Janet Metcalf. Representative Keith Weigel was absent.

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

Convened •Chair Hedge convened the meeting at 10:01 a.m.

HUMAN SERVICES DEPARTMENT Present from the department were Mary Ann Walker, Maya Krogman, Norma Hohlfeld, Lucinda Wonderlich, Karla Fultz McHenry, Deb Ozga, and Gloria Conrad. Others present included Lois Cox and John S. Allen from the University of Iowa Clinical Law Programs and Ann Thompson from the Coalition for Families and Children.

ARC 7405A No questions on rent subsidy program amendments to 53.3(1)"a," 53.4(3), and 53.4(4).
ARC 7364A No committee action regarding amendments to the FIP policies in Chapters 75, 76, and 86.
ARC 7406A No questions concerning Chapter 78 Medicaid transplant coverage.
ARC 7362A •Hohlfeld responded to Kibbie that if these amendments are adopted, FIP participants will no longer receive PROMISE JOBS assistance with direct education costs such as tuition, books, and fees; instead, transportation and child care costs will be made available, retroactive to March 1, to participants in the postsecondary education or training plan.

•Bartz pointed out that payments by both federal and state could result in double payments for child care.

ARC 7404A No questions on rehabilitative treatment and support services in Chapters 108, 114, 152, 156, 182, and 185.

ARC 7363A No questions regarding child day care amendments in Chapters 130 and 170.

Special Review by Representative Doderer

ARC 7321A

•Doderer asked why releases are required of all FIP families instead of only those families with children in grades K through 6. Krogman and Conrad stated releases enable truancy information to be supplied to DHS by the department of education and obtaining releases from all FIP families ensures that all households subject to the truancy sanctions are included. A central office database for access by truancy officers is planned and strict penalties will be implemented for breaching confidentiality. Although 1,700 families have been on canceled status since July 25 for not returning the signed releases, those cancellations will not be enforced until January 1. Until that time, periodic reminder letters to sign the releases will be forwarded to those families.

Cox and Allen pointed out that failure to sign the release by any FIP family results in 100 percent loss of the grant, whereas FIP family truancy penalties are applicable only to those families with children in kindergarten through sixth and amount to 25 percent of the stipend. Cox suggested information concerning a child's grade be included in the DHS monthly reports completed by FIP families. Families have voiced concerns that their welfare status would be inappropriately shared with the schools. It was requested the committee object to Item 3.

•Metcalf was advised by McHenry that only DHS county offices are provided lists of FIP recipients with truant children and that information would not be disseminated elsewhere.

•Hedge was told that schools are not aware in all instances that families are on welfare.

•Rants discussed the contents of the release with Krogman and expressed concern that releases would be discarded if a family did not have a truant child or one in grades other than K through 6. Conrad added the forms clearly state that all families must sign and the releases apply to families rather than individuals. Although there is an appeal process, it does not excuse anyone from signing the form.

Motion to Refer
Motion Withdrawn

•Metcalf moved a general referral of the rule. Discussion ensued and the motion was subsequently withdrawn.

CORRECTIONS DEPARTMENT Fred Scaletta was present from the department.

ARC 7399A •Scaletta stated that ARC 7399A was rescinded and replaced with a rule that will be before the committee in September. Rants was advised that under the new rules all legal obligations will take precedence, followed by an inmate's financial need for hygiene items and postage. Payment of incarceration fees will follow those deductions.

ARC 7400A No committee action concerning supervision fees in Chapters 42, 45, and 46.

Special Review by Senator Hedge

Prisoner health fees •Hedge explained that bills for any health care received by prisoners are submitted to the county sheriffs even though prisoners have health insurance or are employed. Scaletta said the department supports a change of the rule.

PAROLE BOARD Jim Twedt represented the board for the following.

ARC 7402A •Rants was advised by Twedt that Chapter 12 pertains only to the Sixth Judicial District. Following discussion, Twedt stated reference to the district will be added to the rules.

EDUCATIONAL EXAMINERS BOARD Appearing on behalf of the board was Anne Kruse and Jason Bridie represented the Iowa Association of School Boards.

ARC 7376A Following public hearing comments, Kruse stated a change will be made in the termination date of education endorsements from August 31, 2000 to August 31, 2002. The change will permit current students to complete courses and allow institutions time to implement the transition.

•Hedge was advised that current license holders will be grandfathered in, and by combining three related endorsements fewer college hours may be needed after 2002.

PUBLIC SAFETY DEPARTMENT Michael Coveyou, Eugene Meyer, and Jen Worthington were present from the department. Tim McDonald represented the DCI.

ARC 7393A No committee action on 5.620 and 5.620(1), fire safety standards for small group homes.

ARC 7394A No questions pertaining to Chapter 11 criminal history records.

ARC 7396A •Rittmer asked who pays for autopsies requested by a public agency and was advised by Coveyou the cost is allocated to the county of residence. Coveyou pointed out that autopsy reimbursement to the counties is provided in certain instances and will provide the amount involved to the committee.

ARC 7395A •In response to Rants, Myer indicated that use of a riverboat satellite surveillance room allows surveillance from a remote location.

•McDonald advised Carroll that approximately 50 of the total 115 sworn peace officers are assigned to the racing, lottery, and gaming industry. Four gaming enforcement officers and two special agents are assigned to each riverboat and two special agents are assigned to each track.

•McDonald then indicated to Rants that in pay comparison to highway patrol officers, gaming enforcement officers are paid less while special agents are paid more. Primary duties of special agents assigned to the gaming bureau encompass corporate background investigations on business and gaming done in this state. The higher pay is determined by the expertise required by the DCI and through a comparable worth study.

Committee Business •Kibbie moved approval of the minutes as presented. The motion carried.

•Discussion was held on legislative review concerning general referrals by the administrative rules review committee. Bartz pointed out that under the proposed subrule, notification of a decision by a standing committee could be made to the rules committee five days after the funnel deadline. It was subsequently agreed to change that language to five days before the final funnel deadline.

ENVIRONMENTAL PROTECTION COMMISSION Present from the division were Mel Pins, Jeff Fiagle, Joe Griffin, Wayne Farrand, and Diana Hansen. Joan Racki represented the board of regents.

ARC 7381A No committee action concerning wastewater construction and operation permits in Chapter 64.

ARC 7383A No questions on 211.2 and 211.11 regarding regional collection centers operations support.

ARC 7384A No questions on RCC household hazardous material disposal funding amendments to 214.11.

ARC 7242A Pins reported an accord with the regents concerning the tire-derived fuel program has been reached and allows for a 75 percent allocation beyond the Btu equivalency basis.

70-Day Delay Lifted Metcalf moved the 70-day delay be lifted. The motion carried.

Committee Business Metcalf moved approval of the fifth draft dated August 19, 1997, amending rule 1.2 of the rules of procedure for the administrative rules review committee. Discussion ensued. The motion carried.

NATURAL RESOURCE COMMISSION Appearing on behalf of the division were Richard Bishop, Judy Pawell, Gregory Jones, Arnie Sohn, and Pete Hamlin. Others present included Shirley Peckosh from the Iowa Nursery and Landscape Association and Mark Fleming from Fleming Landscape and Irrigation.

ARC 7377A No committee action pertaining to general license requirements in 15.11.

ARC 7382A No questions concerning the dock management areas amendment to 16.9.

ARC 7379A No committee action on barge fleeting areas in rules 17.10, 18.2, and 18.3.

ARC 7387A No committee action regarding Chapter 19 sand and gravel permits.

ARC 7378A No questions regarding nontoxic shot for the taking of migratory game birds in subrule 93.3(3).

ARC 7385A Peckosh stated legislation does not differentiate between typical agricultural crops and high-value cash crops. Under the proposed rules, however, horticultural crop producers must follow all preventive measures of typical agricultural crops plus use expensive, permanent deer fencing if that is required by the DNR. She added minimal deer depredation relief has been granted for high-value cash crops. Peckosh praised the potential for management plans between DNR and producers but raised concerns should an agreement not be reached. She asked whether an appeal process could be implemented and whether local DNR field persons would have flexibility in working with producers. Noting that the majority of deer damage occurs at night, she requested out-of-season deer permits and the use of artificial lights other than for specific months, stating "this is not hunting but pest control."

NATURAL RESOURCE COMMISSION continued

•In response to Palmer, Bishop said enforcement people are concerned about the use of high-powered rifles and lights during controlled nighttime shoots. Such shoots would project a negative image to the public and generate numerous complaints. Bishop added the department wants oversight of the producer's designee so known poachers are not granted a license. Palmer advised flexibility on the part of DNR and Bishop stated the department is willing to work toward successful management plans. He maintained that agricultural products scattered over many acres of land is the major concern rather than those horticultural products contained on specific plots of land which can be fenced against the deer.

•Bartz inquired about the derivation of the \$1,500 in paragraph 106.11(2)"b" and was told the legislature set that amount as the worth of a deer. He then stated the intent of the legislation in dealing with deer depredation was not whether it is a high-value horticultural or typical agricultural crop but the value of the crop and what constituted the amount of damage. He indicated the department should review handling the damage issue of the two types of crops in an identical manner.

•Carroll stated both the \$1,500 "deductible" amount and a required deer fence seem unreasonable.

•In response to Rittmer, Fleming stated his 40-acre nursery sustained \$20,000 damage in two weekends and that electric tape fences are not feasible and are expensive to replace.

•Doderer queried why deer antlers must be returned to the department. Bishop said it alleviates poaching since racks can be sold for amounts between \$3,000 to \$5,000.

ARC 7386A

No questions regarding the beaver trapping amendment to subrule 108.7(2).

EPC continued

ARC 7380A

No committee action on amendments to emission guidelines in Chapters 22 and 23.

TREASURER OF STATE Bret L. Mills appeared from the treasurer's office.

Rants in chair

ARC 7398A

•Metcalf requested inclusion in the rules of the statute language that the fund shall not be any greater than \$68 million or 10 percent of the pool fund.

PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, IOWA COMPREHENSIVE Pat Rounds represented the board.

ARC 7369A

•In response to Hedge, Rounds said backdating of insurance coverage for people qualifying for innocent landowner benefits was previously done and noted this time it will only apply from August to December 1. Hedge then inquired about the determination of funding for old site contamination. Rounds stated that innocent landowner case assessments must be conducted by board-funded groundwater professionals who determine causes and parties responsible for payment. The second type, remedial benefits cases in which releases on a site occurred prior to October 26, 1990, have been almost fully assessed.

•Rounds indicated to Kibbie that few claims are anticipated prior to December 1, 1997.

TRANSPORTATION DEPARTMENT Present from the department were Sue Allbright, Doug Bates, Carol Crouse, and Ruth Skluzacek. Craig Finch appeared on behalf of the Iowa Motor Truck Association.

ARC 7352A

No questions on real property acquisition and relocation assistance in Chapter 111.

ARC 7373A

•Skluzacek responded to Carroll that overweight vehicles are allowed more movements under multitrip permits as opposed to single-trip permits and that these amendments extending the period of multi-trip permit validity have reduced the number of requests for single-trip permits, resulting in less waiting time for carriers.

•In response to Palmer, Skluzacek said the increased multipermit fee covers the administrative fee and is placed in the road fund.

•Kibbie was advised a single-trip permit has no weight or height limit.

SECRETARY OF STATE Carol Olson and Sandy Steinbach were present from the secretary's office.

ARC 7391A

No questions on amendments to 4.3, concerning forms.

ARC 7390A

No committee action pertaining to election forms and instructions in Chapter 21.

ARC 7392A

No questions concerning Chapter 22 alternative voting systems.

ARC 7295A

•Rants was informed by Olson the portion concerning initiative and referendum in the emergency rules has been rescinded but remains in the noticed rules.

Motion to Refer
Motion Carried

Rittmer moved a general referral of the rule and the motion carried.

HISTORICAL DIVISION Jerome Thompson, Tom Morain, Mark A. Peitzman, Lore Solo, and Gordon O. Hendrickson represented the cultural affairs department. Others present included Patrick Dittert from general services and Thomas Mathews.

Special Review by Representative Doderer.

Deaccession
policies

Thompson and Morain indicated to the committee that material discarded in July by the historical division was contaminated by coal soot, mold, mildew, and insects. The cache of materials, located in a small subbasement crawlspace of the old historical building following the 1988 move, was basically comprised of county tax records, many from Cerro

HISTORICAL DIVISION continued

Gordo. Thompson added that since 1919, the Code does not list county records as part of the permanent government records and those records may be disposed of at the discretion of the county government after five to ten years. At the time of the discovery, division staff examined the material and determined there was potential for contamination of the newly prepared spaces and general services recommended the material not be moved due to asbestos on the heating pipes in the general area. That recommendation was changed by the general services department in January 1997 and the historical division staff examined the material and again recommended disposal.

Mathews believed the disposal was not justified and said the state historical society as the entity entrusted with these records should operate on a presumption of preservation for future generations.

Dittert, appearing at the request of Doderer, stated he helped remove books, records, stamps, and personal letters from the subbasement crawlspace. He said the material was dusty and dirty and some book bindings were loose or nonexistent but the writing was clearly legible and the records dated back to the 1840s and 1850s. Three dumpsters were taken to the landfill before people learned of the disposal and took the material in the remaining dumpster.

•Thompson stated a uniform collections policy based upon national professional association guidelines has been in place since 1989 and, when asked by Rants if that policy was followed, stated the decision to dispose of the material was not reviewed by the board of trustees because no permanent records were involved. He added that in the approximately ten instances of deaccession activities occurring since 1989, policy was followed.

•Thompson noted that acquisition of the records by the state could not be traced. Carroll and Bartz expressed displeasure that Cerro Gordo County was not contacted about making the material available to local historical societies. Morain pointed out the division was hesitant to recommend or offer materials in that condition.

•Kibbie observed that preserving records is expensive and the division has received minimal appropriation increases.

•Doderer suggested there should be rules on disposal of material when the method of acquisition is unknown.

Recess

The meeting recessed at 3:50 p.m. until the following day.

Reconvened

The meeting reconvened at 9:09 a.m. on Wednesday, August 20. Hedge in chair.

Committee Business

It was determined that lifting objections should be done by a positive action of the committee and the objection to the secretary of state's rules 21.30 and 21.31 not be removed until the initiative and referendum issue is resolved.

STATE PUBLIC DEFENDER Bill Wegman and Mark Smith represented the office for the following. Lorelei

Brewick represented the Iowa State Bar Association,

ARC 7412A

Brewick pointed out that an erroneous word "with" in paragraph 10.5(7)"d" should read "without." This will be corrected by agency memo.

•Metcalf was informed the approximately \$29 million cost of the program will not exceed budget.

COLLEGE STUDENT AID COMMISSION Laurie Wolf was present from the commission.

ARC 7354A No committee action on Chapter 20 concerning the Iowa national guard tuition aid program.

PHARMACY EXAMINERS BOARD Lloyd Jessen was present from the board.

ARC 7359A No questions pertaining to examination registration fees in rules 2.2 and 2.4.

ARC 7360A No questions on pharmacist identification and notification amendments in Chapters 3 and 8.

ARC 7366A No committee action concerning Chapter 6 general pharmacy licenses.

ARC 7367A No questions on 7.3, hospital reference library.

ARC 7368A No committee action on Chapter 21, confidential and electronic data in pharmacy practice.

PUBLIC HEALTH DEPARTMENT Mike Marshall, Carol Hinton, Judy Solberg, Karen Fread, Mark Schoeberl, Jill France, and Barb Nervig represented the department. Also present were Terese Vaughan and Susan E. Voss from the insurance department, Lorelei Brewick representing the Iowa State Bar Association, Larry Carl representing the Iowa Chiropractic Society, Todd Schulz from ITA, Mark Lambert from Planned Parenthood, and John Schachterle from Iowa Managed Care Association.

ARC 7417A Brewick requested that Iowa Code chapter 141 be referenced in the rules since many of the entities offering HIV home collection kits may operate outside Iowa and may not be familiar with Iowa requirements.

•Metcalf noted such an addition could be made in a future rule.

•In response to Hedge, Marshall stated it is not anticipated that additional companies, other than the one currently selling HIV home collection kits and operating in compliance, will enter the state market. Katz added it would be difficult for anyone to operate or advertise in the state without the department's awareness.

ARC 7414A No questions on WIC amendments in Chapter 73.

ARC 7413A No questions on amendments concerning district health departments in Chapter 78.

ARC 7418A No questions concerning parental notification amendments to Chapter 89.

PUBLIC HEALTH DEPARTMENT continued

ARC 7416A

•Metcalf was informed by France that "provider codes" as described in 106.5 are assigned to the provider, who in turn assigns a patient tracking number. Report tracking numbers are maintained for six months following year-end in order to close out statistical files. All providers have been supplied the necessary forms to comply with the law.

ARC 7415A

•In response to Metcalf, Marshall stated this is a three-year pilot program which allows for the creation of a review committee to reach resolution acceptable to boards with disputes regarding the scope of practice issues. Recommendations will be made to the parties or to the legislature. The committee will not deal with individual scope of practice but allows for grievances or differences to be aired and provides nonbinding conflict resolution.

Carl stated various professional organizations are in accord in objecting to the director-initiated review in 194.5, believing it goes beyond the scope of legislative intent. He further indicated that 194.5 and 194.6 language regarding committee member appointments should not differ and the director should provide written explanation of the determination of health professions selected for inclusion on the committee.

•Bartz was informed by Marshall a mechanism is needed in which disputes can be brought by the director rather than disputatious parties who may not want to bring board disputes into a public process. Marshall continued there may be more requests than ability to implement reviews and, given limited available fiscal and employee resources, prioritization is needed. This will be done by the director in conjunction with the general assembly, the review committee, and the boards.

•Rittmer cautioned that the success of the committee will depend on the expertise of impartial members.

February agenda

•In response to Bartz, Schoeberl stated a progress report must be made to the legislature in January. Following discussion, Bartz requested that dialogue between the professional organizations and the department continue with respect to possible future modification concerning the differences and that the matter be placed before the rules committee on the February agenda.

ARC 7419A

No questions on Chapter 202, certificate of need program.

Special Review by Representative Weigel

"Gag rules"
prohibition

Following committee discussion, Vaughan and Marshall expressed willingness to propose rules consistent with federal regulations.

INSURANCE DEPARTMENT Terese Vaughan and Susan E. Voss were present from the department. Others present included Serge Garrison from the Iowa Life and Health Insurance Association and Cathy Cory and Merle Pederson from Principal Mutual,

ARC 7371A

•Carroll was advised by Vaughan that under the guaranteed issue standard benefit policy, mental benefits increase from \$10,000 to \$50,000.

Pederson spoke to concerns that Iowa, rather than the federal government, maintain regulation over health benefit plans of employers with more than 50 employees

GENERAL SERVICES DEPARTMENT Representing the department were Kathy Miller and David Ancell. Representatives from AFSCME included Marcia Nichols, Steve O'Donnell, Christopher C. Wise, Otto Groenewald, and Frank Janaszoh.**Special Review by Representative Doderer**

Driving guidelines

Miller stated the department of transportation and the board of regents requested exemption from the state fleet self-insurance fund and three sets of rules now exist for driving guidelines. Nichols expressed concern the rules are not unilaterally enforced, are punitive in nature, and may result in job loss.

**Motion to Refer
Motion Carried**

Following discussion, Doderer moved to refer Chapter 11 based upon the uniformity of the three sets of guidelines and consistency with private industry. The motion carried.

ECONOMIC DEVELOPMENT Ken Boyd, Mike Miller, Melanie Johnson, Bob Henningsen, and Allen Williams appeared on behalf of the department.

ARC 7355A

No questions concerning CEBA venture project, 53.2, 53.6(3)"e," and 53.9.

ARC 7358A

No questions on Chapter 60 entrepreneurial ventures assistance program.

ARC 7356A

•Rittmer requested inclusion in the rules of the language as set forth in the statute pertaining to the additional requirements for compensation and benefits, as well as the hiring preference of those living in the enterprise zones.

•In response to Bartz, Miller stated that applications for zone certification have been received from Floyd and Pocahontas Counties and from the cities of Des Moines and Council Bluffs and further explained that cities may be subdivided into census precincts or geographical units in designating zones that do not comprise the entire city.

•Palmer was advised that precincts must be contiguous and all other criteria must be met.

ARC 7357A

No questions pertaining to enterprise zone designation and certification, 59.1 to 59.4.

RACING AND GAMING COMMISSION Jack Ketterer and Karyl Jones represented the commission and Miranda Hughes was present from Southern Iowa Gaming.

ARC 7353A No questions on amendments to Chapters 1, 2, 3, 5, 7, 10, 12, and 20 pertaining to the industry.
Special Review requested by the commission
Employee drug testing The committee discussed lifting the 1991 objection to 4.27 on the grounds that the rule pertaining to alcohol consumption is unreasonable as it pertains to owners.
Motion to Lift Objection Carroll moved the objection be lifted. Following a vote of five in favor and four opposed, action on the vote was delayed until the September meeting to determine parliamentary procedure concerning the number of votes required to remove the objection.
September Agenda

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

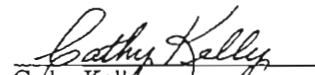
ARC 7408A No questions on penalty and interest in Chapters 10, 67, 68 and 69.
ARC 7365A No questions regarding offset of debts owed state agencies, 150.1 and 105.2(2).

TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA Harold Thompson and Libby Nelson represented the commission.

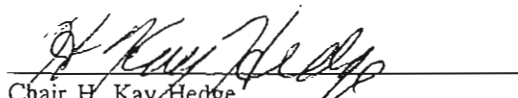
ARC 7361A and
ARC 7403A and
ARC 7407A Thompson briefly reiterated actions taken concerning Chapters 7, 14, and 16.
•In answer to Rants, Thompson stated that comments received were in opposition to the proposed rules concerning the dial-up access from remote locations. Questions were raised as to affordability and whether the commission had exceeded the scope of its authority.
•Responding to Hedge, Thompson replied that only those library employees and volunteers granted passwords and authority for official business use will have access.
•Metcalf was informed the modems are installed by state agencies and the citizen pays for the telephone service. Thompson acceded the possibility that ICN could take business away from the private sector.
September meeting The September meeting will be held Tuesday and Wednesday, September 9 and 10, 1997.
Adjourned The meeting was adjourned at 12:01 p.m.

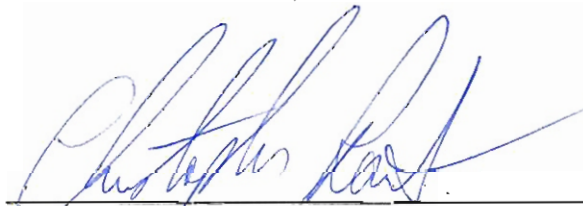
Respectfully submitted,


Kathleen K. Bates


Cathy Kelly

APPROVED:


Chair H. Kay Hedge


Vice chair Christopher Rants