

# MINUTES OF THE REGULAR MEETING OF THE

## ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of meeting: The regular, statutory meeting of the Administrative Rules Review Committee (ARRC) was held Tuesday, September 12, 2000, and Wednesday, September 13, 2000, in House Committee Room 19, State Capitol, Des Moines, Iowa.

Members present: Representative Clyde Bradley, chair, and Senator H. Kay Hedge, vice chair; Senators Merlin E. Bartz, Patricia M. Harper, John P. Kibbie, and Sheldon Rittmer; Representatives Danny Carroll, Minnette Doderer, Geri Huser, and Janet Metcalf.

Also present: Joseph A. Royce, Legal Counsel; Brian Gentry, Administrative Rules Coordinator; Kathleen K. Bates, Administrative Code Editor, and Bruce Carr, Assistant; caucus staff and other interested persons.

Convened Chair Bradley convened the meeting at 8:55 a.m.

**REVENUE AND FINANCE DEPARTMENT** Carl Castelda and Ed Henderson represented the department. Other interested parties included Helen Blaney, Margaret Buckton of the Iowa Association of School Boards, Mark Schuling of the Des Moines Public School Board, and Denny Presnall of the Ankeny School Board.

ARC 0045B No action on proposed ch 3 pertaining to the voluntary disclosure program for out-of-state businesses. Castelda stated that the program is proposed under the director's authority to settle claims based on disputed liabilities.

ARC 0047B Castelda explained that proposed ch 4, concerning collection of sales tax from multilevel marketers allows the distributor to remit the tax collected by the retailers.

ARC 0046B Proposed 15.13 prescribes when the transportation charge for electricity and natural gas is exempt from tax.

ARC 0068B No questions on amendments to 28.1, 107.2(1) and 108.2(5) concerning a use tax exemption for vehicles returned to the manufacturer under the lemon law.

ARC 0044B Amendments are proposed concerning taxation of condominiums, reporting the number of mobile homes to county treasurers, and property tax exemptions for barns and one-room schoolhouses.

ARC 0048B No questions on proposed amendments pertaining to notification of the department of public health of suspensions or revocations of cigarette and tobacco retail permits.

ARC 0067B No questions on amendments pertaining to the ratio for distribution of tax payments.

Special review The department's proposed rule providing for recovery of fees for administration of local option tax for school infrastructure was adopted September 1, 2000, and will be published September 20, 2000. Castelda distributed a summary of comments received at the public hearings and the department's response.

Motion to delay Metcalf moved a session delay be imposed on 107.16 and 108.4 to allow the legislature to reconsider their action in light of the many concerns that have been expressed by school districts.

Motion withdrawn Following discussion concerning the authorization given by the legislature, the impact of a delay on the department's operations and budget, the public's perception and the ability of the legislature to make and change a statute, Metcalf withdrew the motion.

Motion to refer Bartz moved a referral to the general assembly.

Motion failed The motion to refer failed.

Interested parties voiced their concerns. Blaney complained that the citizens would not have voted for the measure had they known that the legislature would authorize the withholding of a fee for administration of the tax. Buckton asserted that a general appropriation offers greater efficiency and asked that the policy of fee-based tax administration be reexamined by the ways and means committee. Presnall stated that there was no attempt to mislead the public; it was believed that 100% of the moneys collected would go to the schools because the local option sales tax had been collected without fee for the past 15 years. Schuling contended that the interest earned by the state on the funds collected is sufficient to pay for the cost of administration of the tax and should be directed toward that purpose.

**ELDER AFFAIRS DEPARTMENT** Stephanie Laudner represented the department.

ARC 0027B No questions on ch 28 concerning the Iowa senior living program. A change requested by legal services concerning confidentiality appears in the adopted rules.

**ENVIRONMENTAL PROTECTION COMMISSION** Wayne Ferrand represented the department.

ARC 0051B No action on 64.16(4) which allows for a refund of fees for storm water discharge permits not timely processed.

**PUBLIC HEALTH DEPARTMENT** Rita Gergely represented the department.

ARC 0012B No action on proposed ch 70 which pertains to lead professional certification and incorporates HUD requirements that lead paint be addressed in all federally assisted housing. Gergely clarified that while the state does not require inspections, it requires that inspectors be certified.

**SUBSTANCE ABUSE COMMISSION** Dean Austin represented the commission. Marv Fangman represented Chemical Dependency Treatment Programs of Iowa.

ARC 0026B Proposed amendments to ch 3 pertain to licensure standards for substance abuse treatment programs. The amendments incorporate ASAM criteria for placement, continued stay and discharge. Austin reported that 11 individuals attended public hearings held at five ICN sites, and five of the seven written comments received pertained to "deemed status."

Fangman reported that joint commission accreditation standards meet and exceed state requirements and that the clinical review required by the state is redundant and burdensome. Austin responded that the department will take these comments regarding clinical review into consideration and is willing to continue discussions.

**TRANSPORTATION DEPARTMENT** Dave Titcomb represented the department. Sandy Dirks and Lori Hommer, both of Grimes, were also present.

ARC 0025B No questions on amendments to allow for a refund of fee for licenses not timely processed.

Special review Metcalf requested a review of school driver's licenses, 602.26(1)"b." Concerns have been raised about passengers in vehicles driven by students with a school permit.

Dirks reported that students are riding in vehicles without parental permission and requested that the rules be amended to stipulate that no passengers other than siblings be allowed in vehicles driven by minors with a school license. Hommer confirmed that accidents resulting in injuries and death have involved drivers with a minor's school license and added that the existing rules are often not enforced. The department responded that it has no authority to restrict passengers; this is a legislative issue.

Motion to refer Metcalf moved a referral of rule 761—602.26(321) to the general assembly.

Motion carried The motion to refer carried.

**EMERGENCY MANAGEMENT DIVISION** David Miller represented the division.

ARC 0018B No questions on ch 1.

ARC 0020B No questions on uniform rules, chs 2 to 6 and 9.

ARC 0019B Ch 7 pertains to local emergency management. In the final rules, NFPA standards not required by Iowa law are recommended, but not required. Miller stated that the financial impact of reproducing new planning documents is not known, and added that in 7.7(5) the words "or future serious" will be deleted. Miller assured Rittmer that the division will assist counties with planning for disaster response, mitigation, and recovery. Miller added that both the state and the federal governments require hazardous materials compliance. Miller advised Carroll that these rules do not affect the local emergency planning committees, which are governed by chs 100 to 104. Bartz requested information about counties that are not in compliance with planning requirements for local emergency management.

ARC 0017B No action on criteria for awards or grants.

Committee business The minutes of the August meeting were approved.

Meeting dates were set for October 9, 2000, and November 14, 2000.

A Christmas party is planned for December 12, 2000, at Noah's Ark. Royce has paid a deposit to reserve the room.

Gentry introduced Kristen Hardt who will be assisting the administrative rules coordinator.

**COLLEGE STUDENT AID COMMISSION** Julie Leeper and Keith Greiner represented the commission.

ARC 0049B No action on proposed ch 19 pertaining to eligibility of students for the accelerated career education grant program.

ARC 0050B No action on proposed ch 21 concerning approval of postsecondary schools. In response to Harper's inquiry, Greiner stated that there are exemptions for colleges and universities currently in existence in the state and these rules would not apply to colleges with no presence in the state that offer all their courses via Internet.

**ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF** Mary Lawyer, Melanie Johnson, Rose Wazny, Paul Stueckrad, and Joe Jones represented IDIED.

ARC 0034B Lawyer informed the committee that this ch 20 has already been rescinded and a new ch 20, which will be reviewed next month, has been adopted. Lawyer responded to Metcalf that changes have been made in application cycles, funding percentage allocations, and other changes to coordinate with community colleges.

ARC 0033B Amendments to ch 25 pertain to the housing application review team.

In response to Metcalf's and Bradley's inquiries about the current housing situation, Wazny indicated that there is still a great need for affordable housing and Gentry added that the governor has created a task force to address affordable housing issues. Affordable housing is geared to 80 percent of the median income for an area and is based on size of the family. Affordable rental units, rather than single-family structures, are generally being constructed, but a considerable portion of the funding is directed to rehabilitation of existing housing.

Economic Development Department (continued)

Bartz asked Wazny for more specific information about the amount of funding for rehabilitation. Wazny agreed to provide figures, and explained that funding criteria are based on income, ability to pay and the property's being the principal residence of the owner.

Carroll offered an example of how tax abatement, buydown of interest rate and lower down payments can reduce monthly payments on new housing.

ARC 0031B

No questions on proposed ch 42 concerning rural resource coordination for fire services.

ARC 0032B

Proposed amendments to ch 57 pertain to the VAAPFAP program. Metcalf suggested that stricken and new language be shown so that changes can be identified and commented on the director's broad discretionary authority. Royce concurred that "viable" is a subjective term and lacks objective criteria. Bradley noted that "customary legal remedies" also lacks specificity.

**RACING AND GAMING COMMISSION** Karyl Jones represented the commission.

ARC 0028B

No action on amendments to reorganize commission rules.

ARC 0029B

No questions on proposed thoroughbred and quarter horse racing rules.

**CORRECTIONS DEPARTMENT** Michael Savala and Roger Baysden represented the department. Marty Ryan represented the Iowa Civil Liberties Union.

ARC 0041B

Rule 20.3 concerning visits to offenders has been revised based on comments received from the public, the committee, the ICLU and the ombudsman's office. Changes include a second, confirmatory test for all positive tests, confidentiality of testing records, training standards involving 16 hours of initial training and 4 annual recertification hours for operators of ion scanning machines, a certified trainer of trainers at each institution, and an opportunity for no-contact visits for those testing positive that have either traveled a great distance or have taken a medication that they believe may have interfered with the test result. Ryan commended the department for working with ICLU to resolve concerns.

ARC 0042B

No questions on proposed ch 26 regarding the north central correctional facility.

ARC 9947A

The review of 37.5 pertaining to private sector employment projects was carried over from the July meeting. No complaints have been received by the department of corrections or the department of workforce development. Baysden reviewed the process by which private sector employers may use prison labor and presented charts to illustrate how incomes of inmates are allocated. Baysden made an appeal that a portion of the inmate's income be directed toward a study of recidivism of employed inmates. Kibbie asked that the information on the charts be provided to the committee on standard letter-size paper.

**ALCOHOLIC BEVERAGES COMMISSION** Judy Seib and Lynn Walding represented the division. Julie Pottorff represented the attorney general's office. Other interested parties included David Brown and Jim McClintock of Hansen, McClintock & Riley, Mark Doll of Doll Distributing, Inc. of Council Bluffs, Richard Murillo of Nacho Mamma's, and Christine Hensley and Bruce Bergman of the City of Des Moines.

ARC 0036B

Proposed amendments to 16.2 reflect a broad interpretation of the tied house statute, section 123.44, and include 10 criteria to allow remote interest in a retail establishment. As recently as 1995 the division had interpreted the statute to prohibit any interest by a manufacturer or wholesaler. Noting that other jurisdictions interpret similar statutes more broadly, Walding commented that these amendments will not erode the three-tier system.

Interested parties were afforded an opportunity to comment. Brown stated that the statute, which has been on the books for 70 years, is clear and that this rule making represents an attempt to accomplish by rule a change which was not accomplished legislatively. Doll reported that his family's wholesale beer distributing business in Council Bluffs has abided by the tied house statute and the same statute applies to the Seagram Corporation unless the statute is changed by the legislature. McClintock stated that this rule is clearly beyond the scope of the the division's authority and it will not withstand judicial scrutiny, as criminal statutes must be strictly interpreted. McClintock also questioned the accuracy of the report that 13 other jurisdictions have interpreted a similar statute to allow for a remote interest. Murillo identified the issue as an economic one which would allow the city of Des Moines to bring Gameworks to the capital city to provide the kind of entertainment which would attract and retain young people. Hensley related the two-year history of the Court Avenue entertainment project and stated that the proposed amendments to 16.2 are essential to the project which will revitalize the area with a private investment of \$53 million and will lead to additional development including housing and commercial and retail development.

Alcoholic Beverages Commission (continued)

Walding stated that the attorney general's office is of the opinion that a statutory change is not needed, and the division can interpret the statute to allow for an interest that is sufficiently remote. Royce outlined the options the committee will have when the adopted amendments are reviewed, most likely in November. Walding stated that the division believes that the criteria set out in the rule protect the tied house provisions and require purchase through the three-tier system. Hensley stressed that without these amendments, the project will not happen. Bergman stated that the city had consulted with attorneys from Gameworks and Seagrams and relinquishing control of operations to a third party is not an option.

In order to ensure consistency of interpretation, Bartz asked Pottorff to consult with others in the attorney general's office who pursue with diligence any ownership, direct or indirect, of livestock by meat packers in Iowa. Bartz also asked that the attorney general's office compare each of the ten proposed criteria to the Bass Ale situation in 1995 and issue a written analysis of whether Bass Ale would have qualified under these criteria. Walding responded that he believes Bass would have qualified under the proposed provisions. Noting that the establishment is prohibited from purchasing more than 20 percent of their alcoholic beverages (measured by gallons) from the industry member, Bartz requested a written response regarding whether anything prohibits the industry member from giving, rather than selling, the alcoholic beverage in order to circumvent the 20 percent limitation. In response to his concern that Gameworks may be promoted as "family entertainment," Bartz was advised that two ventures, an interactive arcade and light restaurant, will be targeted at both minors and adults, but a Des Moines city ordinance would prohibit minors on the licensed premises after 9 p.m. In addition, Bartz requested that the last proposed criterion stand alone rather than appear as one of the ten criteria.

Gentry asked for more information about previous attempts to change the statute and any litigation in jurisdictions that administratively interpret that statute broadly. Doderer concurred with Carroll that the whole legislature, not just the ARRC, needs to consider the issue. Rittmer pointed out that the limitation on alcoholic beverage purchases from the industry member includes beer, wine and liquor measured by gallons, not alcohol content, and pointed out that a gallon of liquor goes further than a gallon of beer. Although in favor of economic development, Rittmer expressed concern about addressing the rule rather than the statute. Metcalf asked the division to clarify the terms "sufficiently remote" and "passive" as they relate to Seagrams and the tied house statute. Bradley raised the question about whether waivers of the criteria would be requested if the rule were adopted and asked for a comparison of these proposed criteria with those in other states. Carroll characterized Universal Studio's 19 percent ownership of Gameworks as substantial rather than inconsequential. In conclusion Bradley asked that requested information be provided to the committee, the city of Des Moines and to industry representatives, including beer wholesalers.

**Wednesday, September 13, 2000**

Members present: Representative Clyde Bradley, chair, and Senator H. Kay Hedge, 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.

**EDUCATION DEPARTMENT** Lee Tack, Ann McCarthy, Evelyn Anderson, Karen Poole, and Bertha Caldwell represented the department.

- ARC 0080B No questions on proposed amendments to ch 97 concerning supplemental weighting for at-risk students.
- ARC 0076B No action on proposed ch 100, the vision Iowa school infrastructure program. Tack explained in detail the criteria that will be used in evaluating applications and stated that the three-year period for spending grant funds will commence when the local match is approved.
- ARC 0078B No questions on the open enrollment amendments to ch 17.
- ARC 0075B No action on 21.31 and 21.32 concerning substance abuse treatment programs.
- ARC 0077B No action on 26.1 regarding qualifications for instructors of driver education.
- ARC 0085B No question on proposed amendments to ch 48, certified school to career program.
- ARC 0084B No questions on 63.3, educational programs for juvenile homes.
- ARC 0083B No questions on alternative sites for school breakfast programs.
- ARC 0060B No action on proposed ch 80, standards for paraeducator programs.
- ARC 0082B No questions on 83.5 pertaining to funding for approved beginning teacher induction programs.

## Education Department (continued)

ARC 0081B Amendments to ch 96 require districts to report enrollment of students by county of residence for calculation of the sales tax capacity per pupil, which is used to determine the local match required for grants under the vision Iowa school infrastructure program. McCarthy will provide information about whether local option money follows open enrolled students or remains in the district of residence.

**DENTAL EXAMINERS BOARD** Jennifer Hart represented the board.

ARC 0039B No questions on amendments to incorporate registration of dental assistants.

ARC 0038B No action on proposed ch 20 which pertains to scope of practice for dental assistants, registration requirements, categories of dental assistants and continuing education requirements.

ARC 0037B No questions on amendments to ch 27.

**MEDICAL EXAMINERS BOARD** Ann Mowery represented the board. Other interested parties included Libby Coyte of the Physician Assistant Society, Denise Hill of the Iowa Medical Society, and Norman Pawlewski of the Iowa Osteopathic Medical Association.

ARC 0065B Amendments to ch 14 pertain to licensure of acupuncturists. Mowery indicated that the concerns that have surfaced pertain to the statute rather than the rules. Metcalf suggested that if the board believes the concerns have merit, the board should propose changes to the legislature.

ARC 0063B The previously noticed ch 21 has been terminated.

ARC 0064B Proposed ch 21 concerns eligibility of a physician to supervise a physician assistant. A sentence will be added to make an exception for physicians practicing in a federal facility. Bartz observed that it may be necessary to clarify "resident license" and "not common to the physician's practice." Harper reported receiving a comment from a PA opposing the "not common to the physician's practice" language. Mowery responded that the "...not common..." language was selected because it matches the wording in the PA rules. Coyte stated that the PA Society believes the "common" language is too restrictive. The Iowa Medical Society and Iowa Osteopathic Medical Society voiced support for the rules.

**INSPECTIONS AND APPEALS DEPARTMENT** Marvin Tooman and Nancy Ruzicka represented the department. Other interested parties included Nancy Jipp, ARNP/CNM, of Options in Birth, Norman Pawlewski of the Osteopathic Medical Society, Denise Hill of the Iowa Medical Society, Sheryl Puderbaugh of Hearts and Hands: Women and Children's Health Center, Carey Ryan, ARNP/CNM, of Gentle Birth Midwife, P.C., Linda Goeldner of the Iowa Nurses Association, Jeanine Gazzo of the Iowa Academy of Family Physicians, Jessica Bottenfield of Gentle Birth Clinic, John Dooley, M.D. of Options in Birth.

Special review A special review of birthing centers, 481—Ch 52, was requested by Bradley. Tooman stated that the department wishes to preserve the current standard of medical oversight of birthing centers.

Interested parties addressed the committee as follows: Pawlewski spoke in support of retaining the current standards. Jipp distributed materials, identified areas in which the rules are overly restrictive and asked that changes be made because current rules, developed in 1987, impose excessive liability on physicians and require women to undergo examinations that are not required of women who give birth in hospitals. Hill reported that the Iowa Medical Society believes that the rules are in accordance with the Code. Puderbaugh stated that in her experience Medicaid patients often have difficulty completing the two required examinations by a physician and that physicians do not wish to be exposed to increased liability by signing the health record after delivery. Puderbaugh expressed concern that in a communication to physicians the Iowa Medical Society had not distinguished between certified nurse midwives and lay midwives. Ryan stated that she operates a home birth practice because excessively restrictive rules make operation of a birthing center nearly impossible. Gazzo supported the current standards. Goeldner recommended changes in relation to laboratory services, required annual physicals for staff, HIV status, and mandated employment agreements. Bottenfield supported a woman's right to choose a practitioner. Dooley noted that the rules may be outdated in the areas of client selection and stated that risk assessment is an ongoing process that cannot be accomplished in two visits to a physician. Dooley suggested that the requirement for a physician to sign off on the record is unrealistic and that the department's requirement for two examinations by a physician exceeds the Code, which would allow for telecommunication visits or chart review. Dooley recommended adding a provision that would allow a woman to sign a waiver of the physician examinations.



Inspections and Appeals Department (continued)

Toomey responded to Bartz that the department is not aware of a maternity center association as referenced in the Code, but stated that there is a national body that establishes standards relative to nurse midwives and birthing centers. Toomey acknowledged that the department's rules are more restrictive than those standards and are in conflict with the Code, but added that there are contradictory provisions within the statute. Bartz recommended that Jipp file a petition for rule making, which will require a response from the department within 60 days.

Jipp informed Carroll that birthing center viability is threatened by these rules.

IOWA FINANCE AUTHORITY Loyd Ogle represented the authority.

ARC 0013B No questions on local contributing effort, contested case proceedings and low-income housing tax credits.

ARC 0062B No questions on the proposed low-income housing tax credits compliance manual.

UTILITIES DIVISION Excused

WORKFORCE DEVELOPMENT DEPARTMENT Deferred until October.

HUMAN SERVICES DEPARTMENT Karla Fultz McHenry and Julie Ingersoll represented the department. Curt and Betty Bolin of Bear Basics and Sara Patterson of Grand View Child Development were also present.

ARC 0007B No questions on 28.13 regarding county institutional credit balances.

ARC 0058B No questions on proposed amendments concerning eligibility for FIP and Medicaid under FMAP and FMAP-related coverage groups.

ARC 0009B No questions on SSA RCF and IHHRC reimbursement rates.

ARC 0059B No action on proposed cost-based reimbursement for RHCs and FQHCs.

ARC 0010B No questions on child support guidelines and criteria amendments to ch 99.

ARC 0011B No questions on ch 100, child support parental obligation pilot projects.

Special review A special review of child care center investigations was requested by Huser.

Ingersoll reported that a statewide group representing providers, parents and the department was convened to examine the licensing or registration compliance complaint review processes and policies. Goals identified by the group included safety of children, better consumer education, and equity for providers. All were in agreement that when there is a complaint, a provider needs to know the allegation, the information from the investigation, the department's conclusion and any corrective action that may be required. In addition, providers should be given an opportunity to respond and a copy of the final resolution. Concerned parties confirmed that all had been given an opportunity to be heard. Bolin repeated concerns about past practices. Patterson emphasized the need for uniform treatment of complaints statewide. A rule-making draft was distributed. The department proposed making all complaint reviews part of the licensing files, thereby eliminating the need for closed files.

Adjourn


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

Respectfully submitted,

  
Kathleen K. Bates

  
Bruce A. Carr

APPROVED:

  
Chair Clyde Bradley

  
Vice Chair H. Kay Hedge