

**MINUTES OF THE NOVEMBER 2000 MEETING
OF THE
ADMINISTRATIVE RULES REVIEW COMMITTEE**

Time of meeting: The regular, statutory meeting of the Administrative Rules Review Committee (ARRC) was held Tuesday, November 14, 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; Kathleen K. Bates, Administrative Code Editor, and Bruce Carr and Teresa Vander Linden, assistants; caucus staff and other interested persons.

Convened Chair Bradley convened the meeting at 9:08 a.m and announced that the department of revenue and finance has been removed from the agenda for this month.

LABOR SERVICES DIVISION Byron Orton represented the division.

ARC 0198B The review of elevator standards was rescheduled for the December meeting.

ARC 0190B Orton reviewed amendments intended to prevent fraud in application for licensure of asbestos workers and establish grounds for denial or revocation of licenses and permits. In addition, Orton indicated that the nonrefundable fee may, in fact, be refunded when the application is withdrawn by the applicant before being reviewed by an industrial hygienist; the fee is not refunded, however, when an application has been reviewed and not approved. Orton agreed to provide Royce with information about how many applications have been disapproved and further information about fees for renewals and resubmission of an application.

HUMAN SERVICES DEPARTMENT Karla Fultz McHenry and Sally Madolsky represented the department. Brenda Oas of the department of education, Linda Goeldner of the Iowa Nurses Association and Jeanine Freeman of the Iowa Medical Society were also present.

ARC 0227B No questions on proposed amendments to ch 1.

ARC 0230B No questions on amendments pertaining to FIP and Medicaid eligibility.

ARC 0231B No action on the one-month increase in RCF reimbursement.

ARC 0228B Madolsky clarified the procedures for Medicaid payment for services provided by local school districts or through the infants and toddlers with disabilities program. On behalf of school nurses, Goeldner voiced support for the amendments which bring federal funds into the district to provide necessary health services for children.

ARC 0232B Freeman supported amendments allowing Medicaid payment to physicians providing oral screening and fluoride treatment for children.

ARC 0233B No questions on reimbursement of RHCs and FQHCs.

ARC 0234B No action on amendments for rehabilitative treatment services for children in out-of-home placements and the families with which they are placed.

ARC 0191B Proposed amendments are intended to streamline processes in the HAWK-I program, which now covers over 14,000 children.

CORRECTIONS DEPARTMENT Fred Scaletta, John Baldwin and Mike Savala represented the department. Steve Palm of the ICN was also present.

ARC 0243B No questions on ch 26.

ARC 0244B No action on 37.6(5) regarding OSHA training.

ARC 0199B The rule on offender telephone commissions, 20.20, was revised in response to ARRC concerns. Savala reported that all commissions generated by an institution are returned to the institution, and the board of corrections must approve expenditures by the institutions. Scaletta explained that commissions are expected to decrease because the ICN has a contract which provides services at lower rates. In response to Metcalf's concerns about the costs of a visiting room at Clarinda exceeding commissions, Baldwin explained that over time Clarinda has generated sufficient funds for the visiting room. Doderer emphasized the importance of the inmate's maintaining contact with family and expressed concern that families may not be able to afford the telephone calls. Bradley suggested that the department could consider making some provision for hardship cases.

MEDICAL EXAMINERS BOARD Ann Mowery represented the board.

- ARC 0210B No questions on amendments to board procedures.
ARC 0212B No questions on waiver rules.
ARC 0211B No questions on 11.10 pertaining to conflicts of interest.
ARC 0214B Amendments to ch 11 concern resident physician licenses and fees for verification of licensure status. Mowery agreed to check elsewhere in the rules in order to respond to Bartz's inquiry about a fee for renewal of the resident physician license. Mowery elaborated on the options for verification of licensure status, which range from the free Web site to a subscription for unlimited verifications.
ARC 0213B No questions on ch 21, physician assistant supervision.

ATTORNEY GENERAL William Hill, Marty Anderson and Chris Kuhn represented the office of the attorney general. Mike Rehberg represented the department of public safety. Fred Scaletta represented the department of corrections. Marty Ryan of the Civil Liberties Union was also present.

- ARC 0226B Proposed amendments to ch 8 pertain to DNA profiling. Rehberg reported that the cost of the kit is \$4.79, and an analysis costs about \$200 per sample. To date approximately 1500 samples have been processed. Within the next 12 months the department will be connected to the FBI's database. Ryan indicated there is still a need to know what rules for samples the department of public safety will be adopting.
ARC 0242B Proposed rules 9.25 to 9.36 pertain to crime victim compensation. Bartz and Rittmer agreed with Kibbie's suggestion that transportation be reimbursed at the state rate, rather than the proposed 25 cents per mile. Anderson explained to Bradley that automobile accident victims could be compensated only in cases of drunk driving, reckless driving, hit and run, or vehicular homicide.

ECONOMIC DEVELOPMENT DEPARTMENT Rose Wazny, Melanie Johnson, Brice Nelson, Joe Jones, Paul Stueckrad, Jim Chupp and Amy Johnson represented the department.

- ARC 0196B No action on proposed housing fund amendments.
ARC 0197B No questions on ch 42 concerning rural resource coordination programs for fire services.
ARC 0193B Amendments to VAAPFAP were revised to specify legal remedies. Bartz questioned the department's discretion in situations under which a higher percentage of grants or forgivable loans may be provided and requested that an additional review of these amendments be scheduled for the January meeting.
ARC 0194B Proposed ch 66 is intended to implement the assistive device tax credit. Johnson indicated that the department intends to proceed with an emergency after notice filing in December. Metcalf suggested that the rules specify the tax period for which the rule applies.
ARC 0195B Proposed ch 67 pertains to life science enterprises.

ENVIRONMENTAL PROTECTION COMMISSION Diane Moles, Ralph Turkle and Jim Humeston represented the commission.

- ARC 0218B Amendments have been adopted to rules governing water supplies. Bartz asked the commission to provide Royce with a breakdown of the \$350,000 collected from public water supply systems for administration of the program. Moles advised Kibbie that small systems that add a disinfectant may be subject to additional monitoring and possible remediation; the approximately 500 systems that do not add disinfectant will not be affected.
ARC 0215B No action on amendments to ch 6, water quality standards.
ARC 0216B The amendment to 135.19(3) specifies when sampling for MTBE is not required. Humeston reported that although the MCL has not been established, MTBE has been found at a significant number of sites; one in excess of the level identified as a health concern.

PUBLIC HEALTH DEPARTMENT Cathy Callaway and Rita Gergely represented the department.

- ARC 0245B Chs 151 and 152 pertain to tobacco use prevention and control. In response to Carroll's inquiry, Callaway stated that baseline data on youth tobacco use has been established and will be used to measure the success of the program.
ARC 0163B No questions on ch 70, lead professional certification.
Committee business Hedge moved approval of the minutes. The motion carried.

ETHICS AND CAMPAIGN DISCLOSURE BOARD Kay Williams and Charlie Smithson represented the board. Katy Gammack and Joan Lucas of Money and Politics Iowa were also present. Special review Doderer requested a review of reporting requirements. Rittmer expressed some frustration with the requirements. Smithson responded that this year the board has issued fewer letters of reprimand and is attempting to simplify filing. Williams referenced the new on-line reporting, which will be much more user-friendly. Discussion ensued about the mission of the agency and the requirements of Iowa Code chapters 56 and 68B. Gammack and Lucas requested a requirement that reports be typed and specific information be provided on cover pages.

ALCOHOLIC BEVERAGES DIVISION Lynn Walding represented the division. Also present were John McClintock on behalf of beer wholesalers, Rich Murillo of Nacho Mamas and Christine Hensley of the city of Des Moines.

ARC 0250B After summarizing the history of the tied house statute, Walding pointed out changes from the Notice made in response to committee comments. Reviewing prior interpretations of the statute and the attorney general's advice that the criteria specified in this rule are not in conflict with the statute, Walding stated that these amendments provide an opportunity for development and preserve the three-tier system.

McClintock analyzed actions in other states and how they differ from the situation in Iowa. Stressing that he is not opposed to development, McClintock voiced opposition to these amendments which set a precedent for changing a statute by rule. Murillo and Hensley urged the committee to support the amendments to allow this unique entertainment opportunity for the city of Des Moines.

Motion to object Stating that the law prohibits any interest in a retail establishment, Carroll moved an objection be imposed on rule 16.2.

Gentry expressed confidence in the legality of the rule. Walding assured Bradley that the rule is not subject to waiver. Metcalf reviewed the role of the committee and concluded that she does not believe the agency has exceeded its authority. Bartz indicated that although he does not support the motion to object, he intends to file a bill to nullify the rule. Hedge observed that the committee cannot change the law; therefore, the legislature or the courts will ultimately resolve the question. Kibbie noted that an objection will not prevent the rule from going into effect, and Royce added that in a legal challenge the burden of proof, and possibly an assessment of attorney fees and court costs, would be shifted to the agency. In response to the request from Bartz, Bradley directed the secretary to call the roll.

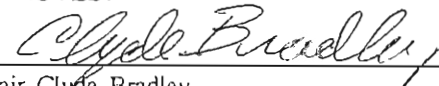
Motion failed The following votes were recorded: Senator Bartz, nay; Representative Carroll, aye; Representative Doderer, nay; Senator Harper, nay; Senator Hedge, aye; Representative Huser, nay; Senator Kibbie, aye; Representative Metcalf, nay; Senator Rittmer, aye; Representative Bradley, aye. The motion to object failed.

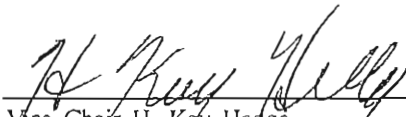
Adjourn The meeting was adjourned at 3:10 p.m.

Respectfully submitted,


Kathleen K. Bates

APPROVED:


Chair Clyde Bradley


Vice Chair H. Kay Hedge