

# 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 10, 1997, in Room 116, 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, Janet Metcalf, and Keith Weigel.

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 10:05 a.m.

**HUMAN SERVICES DEPARTMENT** Present from the department were Mary Ann Walker, Mike Thomas, Siri Granberg, Norma Hohlfeld, and Bob Krebs.

ARC 7261A In response to a previous ARRC meeting question, Walker stated there are 302 children receiving nonrehabilitative services under policy exceptions.

ARC 7423A No questions concerning the paternity contested amendment to 99.27.

ARC 7424A No questions on rehabilitative treatment and supportive services in Chapters 152 and 185.

Special Review by Representative Doderer

Pilot diversion •No committee action regarding pilot diversion and self-sufficiency, Chapters 7, 41, 47, and 95.

**DENTAL EXAMINERS BOARD** Constance Price represented the board.

ARC 7442A No questions pertaining to the continuing education amendment to 25.7.

ARC 7440A No committee action concerning anesthesia amendments to Chapter 29.

ARC 7441A No committee action regarding disciplinary procedure in 51.4(1) and 51.12(7).

**TRANSPORTATION DEPARTMENT** Thomas L. Reis, Dick Hendrickson, Dave Titcomb, Jan Hardy, Patt Schnoor, and Kirsten Bandow appeared on behalf of the department.

ARC 7421A No committee action on highway and bridge construction rules 125.1 to 125.3.

ARC 7422A •In response to Bartz, Hardy advised that physicians' signatures are no longer required on disability parking placards.

•Hardy indicated to Metcalf the department of public safety determines the number of handicapped parking spaces assigned in retail outlets.

ARC 7429A No committee action on driver's privacy protection in Chapter 415.

ARC 7428A •Weigel was informed by Hendrickson that no identification is required to view open records. Unless driver's license information has been restricted, it too is subject to the open records law. Hendrickson added that subrule 611.4(4) provides the department a method to determine which exempted groups may access restricted information.

•Hendrickson replied to Bartz that a federal provision permits research for producing statistical reports as long as the personal information is not published, disclosed, or used to contact individuals.

•Doderer was apprised by Titcomb that names from drivers' licenses are sold by the department unless individuals request privacy protection. Doderer stated record restriction should be more widely publicized.

**INSPECTIONS AND APPEALS DEPARTMENT** Appearing on behalf of the department were Rebecca Walsh, Robert Haxton, and Mary Oliver

ARC 7461A •In response to Bartz, Haxton said the department will honor the poultry shows exemption that appears in the statute.

ARC 7431A No questions on the amendment to 51.14, hospitals—pharmaceutical service.

ARC 7449A •Doderer indicated spousal abuse should also be included in the background check of anyone seeking employment in a health care facility after July 1997. Oliver stated she would review the department's authority for its inclusion.

ARC 7432A No committee action regarding collection methods for food stamp overpayment in Chapter 71.

**PERSONNEL DEPARTMENT** Linda Hanson, Gregg Schochenmaier, Clint Davis, Sheila Broome, and Phyllis Watson were present from the department. Greg Cusack and Kelly Lovell appeared on behalf of IPERS. Others present included Representative Libby Jacobs and Representative Geri Huser, Michael Donahoe and Gerald V. Foster from Equitable Life of U.S., Dennis Schneider, Jerry Hepperstand, Richard Harbaugh, and Rick Paiddies from the Iowa Association of Life Underwriters, and Dolly Schneidwind from Great West.

ARC 7464A Hanson stated companies indicated they would not submit bids if the mutual funds products coexisted with the annuity products. Many companies also required transfer of plan assets, which currently stand at \$158 million. The department entered into a contract with Great West Life and Annuity Insurance Company of Englewood, Colorado, to serve as the third-party administrator. Seigel Company serves as benefits consultant. A 60 basis point for fee service; an initial core group of eight mutual funds; and two annuities, as opposed to 35, were agreed upon following negotiation with Great West. Additionally, there is an Iowa Stable Value Fund which permits a new employee who has no annuity product to move

**PERSONNEL DEPARTMENT (continued)**

money into that fund at a guaranteed interest rate with no surrender fees or fees associated with moving that money to an annuity product or mutual funds at a later time.

•In response to Palmer, Hanson stated that notification regarding the third-party administrator was sent to a national organization and to all others who had expressed interest, including the 35 companies. Five companies submitted bids that were accepted. Existing annuity products were not part of the mutual fund RFP.

•Palmer stated it was the belief that H.F. 540 would in no way affect existing deferred compensation programs. He objected to the department establishing a new direction for the existing plan with no public input. He further objected to the third-party administrator conducting all educational seminars when that entity is involved in the administration of the mutual funds. Hanson stated she notified the state senate government committee in April of the intended reduction from 35 to 2 and that it was due to the tie-in between annuity products and mutual funds. She added this is an unbundled arrangement in which Great West provides access to over 300 mutual fund families rather than putting forward its own funds and provides educational service to employees on a complex issue. Siegel Company and the department select the funds for the core investment plan.

•Rants expressed concern over the impartiality of a third-party administrator also selling funds. Hanson and Davis replied that Great West operates as a service provider.

•After being informed by Hanson and Davis that the third-party administrator does not take the fee of those employees electing to retain a current contract, Weigel pointed out that all new employees will then be limited to eight mutual funds or the two annuities which have not yet been selected. Weigel believed it was the intent of H.F. 540 to add mutual funds as an option and not restrict choice. Hanson stated obtaining a mutual funds contract was intertwined with decreasing the annuity products to two and in order to comply with the September 1 deadline, the rules were filed emergency. Weigel stated the legislature should have been made aware and made the decision regarding the reduction. He further added he was never told administration of mutual funds, if carried out by the department, would require an additional 100 employees.

•Metcalf expressed her belief that legislative intent was not met and discussed options available to the committee.

Jacobs, as floor manager for H.F. 540, provided background on the legislation and stated the intent was strictly to add mutual funds and that coupling annuities with the mutual funds was not discussed. She expressed concern that a rollover life or annuity from one company to another is included in the options and noted the insurance industry has long fought such rollovers. Jacobs noted a constituent who represents one of the companies complained after being told by a department of personnel employee that he could not communicate to existing clients that this change is going to occur. Hanson replied that was an unauthorized action by the employee. In response to Jacob's statement that she was not contacted by the department concerning the changes, Hanson stated she had maintained communication with Senator Deluhery.

•Kibbie said only the mutual funds portion should have been filed emergency to meet the September 1 deadline and the remaining portion by noticed rule with public hearings.

Dierenfeld reiterated Hanson's comments concerning making structural changes if mutual funds were to be made available and asked the committee, if the contract could be vacated, what direction it would like the department to take. Discussion followed.

Hanson pointed out that by April 1, there will be a self-directed brokerage option which allows an individual for a small fee to select any mutual fund outside the core selection with administration and record keeping provided by Great West.

•Weigel suggested the emergency rule be withdrawn and the department operate under current law until the matter can be resolved.

Huser addressed brief remarks to the committee and stated the department moved in a manner which was not the intent of the legislature.

The committee recessed at 12:47 p.m. and reconvened at 1:20 p.m.

No committee action concerning IPERS amendments to Chapter 21.

•Rittmer was advised by Lovell that military wages have no effect on employee retirement benefits.

•In response to Bartz, Cusack said technically the state-contributed portion of an individual's IPERS account is never considered the property of that individual. Currently, if a member terminates and takes a refund, the employer share is not available to that member. A proposal is being considered to give a vested terminating employee a portion of the employer share. Such distribution would occur only in good investment return years.

•Doderer inquired if employee "quit money" is used for benefits enhancement. Cusack stated the approximately 6,000 termination refunds of short-term employees provide no significant aggregate amount of money; the greater source of money used for benefits enhancement is derived from long-term investments. Doderer pointed out the proposal could affect future benefit increases.

Recess

ARC 7458A

ARC 7457A

**PERSONNEL DEPARTMENT** (continued)

•Carroll asked whether IPERS had gone from 110 percent funded to less than 90 percent funded. Cusack stated the apparent discrepancy was caused by changed cost methods and the lifting of the covered wage ceiling. Future growth and benefits previously were not allowed to be reported as a liability. The funding status is actually better based upon currently permitted accurate reporting of liabilities.

Rants in chair

**CORRECTIONS DEPARTMENT** Fred Scaletta was present from the department.

ARC 7455A No committee action concerning 20.10, incarceration fees.

ARC 7451A •In response to Kibbie, Scaletta said the telephone company contract is done by bid process using evaluation criteria based on the highest percentage of commission paid to the corrections department, number of business references, and lowest rates charged.

•Doderer pointed out there is no consistency in rule 20.20 concerning who controls spending of the 25 percent commission reserve. Scaletta noted this will be reviewed.

•Carroll stated that Representative Garman indicated the 25 percent commission should not be transferred between institutions but remain for use at the facility where the inmate is incarcerated. Scaletta pointed out many inmates are transferred daily and the 25 percent commission would not be used to benefit all inmates.

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

ARC 7443A •No committee action pertaining to gaming official, procedures and licensure in Chapters 4, 20, and 25.

Special Review Track employee drug testing The vote taken at the August meeting was 5 to 4 to lift the 1991 objection to 4.27 pertaining to alcohol consumption as it relates to owners. Following research, Royce stated that the number of votes required to undo an action of the committee is the same as the number required for the action.

•Rants announced the August motion pertaining to the objection failed.

Motion to lift objection failed •Carroll moved the objection be lifted. Following discussion, the vote taken was 4 to 6. The motion failed.

**REVENUE AND FINANCE DEPARTMENT** James Hamilton and Mel Hickman appeared on behalf of the department.

ARC 7444A No questions on long-term vehicle leases in subrules 31.5(1), 31.5(2), and 32.11(2).

ARC 7445A •Hamilton indicated to Hedge the livestock production credit refund implemented in 1996 is now set at \$2 million yearly for cow/calf herds. The department will not be able to determine whether the total annual amount of money will be spent until the end of this year.

ARC 7446A No questions on interest and dividends in Chapters 40 and 53.

ARC 7459A No questions on Chapter 86 inheritance tax.

ARC 7460A No questions on 107.2 and 107.10, local option sales and service tax.

**EDUCATION DEPARTMENT** Don Helvick, Charles Bullon, Jim Reese, Evelyn Anderson, Ann Molis, and Ralph Childers represented the department. Others present included Vilja Tarvydas from the University of Iowa, Troy Dannen from the Iowa Girls' High School Athletic Union, Dave Harty from the Iowa High School Athletic Association, Suzanne McKinley and Jack P. Hackett.

ARC 7471A No questions on ICN subsidization reimbursement procedures in Chapter 8.

ARC 7469A •Molis indicated to Hedge that unless an interagency agreement existed between local law enforcement and a school, the record of a student under investigation could not be accessed.

•Rittmer was advised by Molis legislation clarified that parent-teacher conferences can be included in the minimum 27½ hours instructional time.

ARC 7468A No questions pertaining to community colleges accreditation in 21.10 and 21.11.

ARC 7467A No committee action on extracurricular interscholastic competition in subrule 36.15(7).

ARC 7466A No committee action concerning vocational rehabilitation personnel qualifications, 56.42.

ARC 7465A No questions on Chapter 72 accreditation of area education agency programs and services.

**SECRETARY OF STATE** Carol Olson was present from the secretary's office.

ARC 7456A •Metcalf moved to lift the objection concerning the referendum and initiative issue. The motion carried.

Motion to lift objection carried

**AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT** Representing the department were Dr. Walter

Hedge in chair Felker, John Schiltz and Lawrence Birchmier.

ARC 7453A No questions on subrule 64.47(8), designated brucellosis control and eradication.

ARC 7474A No committee action concerning pseudorabies disease in Chapter 64.

**VETERINARY MEDICINE BOARD** Dr. Walter Felker appeared on behalf of the board.

ARC 7473A No questions on 8.1, veterinary technician.

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

ARC 7454A

•McAllister concurred with Kibbie the total number of formed tanks shown on EPC tables excludes hundreds of statewide sites under construction that are below the 625,000 pounds or more for hogs. Kibbie questioned permitting earthen manure structures to be built below the groundwater table and cautioned against the associated hazards.

•Bartz questioned whether all permitted sites are reflected in the table of counties and whether the proposed rules were more lenient concerning liners. McAllister will verify the information and report the findings to Royce.

•McAllister clarified that an earthen manure basin structure is used only for the storage of manure and is emptied completely while an anaerobic lagoon provides some treatment and is half emptied. Rittmer inquired how an earthen structure can be emptied and was told the earth is excavated and the soil returned and compacted. Rittmer questioned whether it was actually a structure.

•In response to Carroll, McAllister said additional risks occur to earthen manure structures built below the groundwater table when the basin is emptied. Pressure on the outside of the structure can cause a collapse and water moves in, weakening the liner, with subsequent leakage into the groundwater.

•Rittmer was apprised that no permit for an earthen lagoon is needed for any hog facility under 200,000 pounds. When the weight reaches 1.2 million pounds, a facility must switch from anaerobic lagoons to the same type of treatment as used by a small city. Currently no facilities of that size have been constructed in the state.

•McAllister indicated to Kibbie that Animal Agriculture Consulting Organization (AACO) and DNR have proposed different rules concerning lagoons. It was deemed advisable to present both sets of recommendations at public hearings for comment. Kibbie noted it was extremely unusual for proposed rules by an advisory committee to be presented for public hearing.

•Doderer was informed the hearings are well attended and comments for both sides have been received. Following a review of the comments, EPC will determine which recommendation to bring forth as a filed rule to the rules committee.

**ECONOMIC DEVELOPMENT** Ken Boyd, Mike Miller, Lane Palmer, Monica Fischer, Kathy Beery, Carol Stewart, Mary Lawyer, and Phil Dunshee appeared on behalf of the department.

ARC 7438A  
Rants in chair  
ARC 7437A

•No committee action regarding Iowa industrial new jobs training program in Chapter 5.

•In response to Metcalf, Palmer stated that applications for the local housing assistance program will be reviewed following the deadline to ensure a balanced distribution of available funds. It is anticipated awards will be granted within the coming months and construction will commence next spring.

ARC 7436A  
ARC 7435A

•No committee action concerning governmental enterprise fund, Chapter 42.

•Weigel was informed by Beery the eligible population level for participation in the rural innovation grants was increased to 30,000 and that number was an expressed intent rather than written into appropriation language. Beery stated that a general pool of approximately \$750,000 is allocated for use by eight different community development programs, one of which is the rural innovation grants. Applications are received from the communities throughout the year and are granted on a first-come, first-served basis.

ARC 7439A

•In response to Weigel, Miller stated that communities on county borders complained about disparity and that was the impetus for the proposed change in the CEBA program wage definition. Miller added the basic purpose of calculating wages on a larger area is to lower the differential. Weigel noted that it did so at the expense of rural counties. He added it appears the department is moving from a standard 85 percent of average wages paid to one of wide variance and was informed no specific legislation exists to direct the department to do this. Miller responded the IDED board has not approved any project paying less than \$7 per hour in the past three years and the proposed rules reflect that reality and provide such notification to the counties, communities, and businesses.

•Rittmer expressed support for the \$7 level after noting there is much criticism over the state subsidizing jobs at a wage level that is too low.

•In response to Kibbie, Miller said university workers are not included in the calculations because IDED is not likely to fund a business or industry under the CEBA program.

•Bartz was advised by Miller that mining, agriculture, and government workers are not included in the CEBA calculation.

Weigel moved to refer ARC 7439A to the legislature. Following discussion, the motion failed.

Motion to refer  
Motion failed  
ARC 7433A  
Hedge in chair  
ARC 7434A

•No committee action on 56.2 and 56.6(1), entrepreneurs with disabilities.

•Stewart indicated to Kibbie that within certain restrictions grant agreements up to \$4,000 per company are available three times per fiscal year. Stewart said the department normally charges \$2,500 to cover administrative costs and other costs associated with the trade commission and 75 percent of the grant may be used toward the participation fee. Per diem is based on 50 percent for travel days and is based on federal per diem. Doyle added there are approximately

**ECONOMIC DEVELOPMENT** continued

100 contracts per year and the proposed rules provide more flexibility in determining how the money can be used at three events.

•In response to Bartz, Doyle stated nonprofits and associations are not funded.

Committee business  
Tribute

Tributes and thank yous were extended to Paula Dierenfeld for her service to the committee.  
•Kibbie moved approval of the minutes as presented. The motion carried.

**NAARR Motion**  
**Motion carried**  
October agenda

•Weigel moved payment of the National Association of Administrative Rules Review \$350 membership. Following discussion, the motion carried.

Continued discussion pertaining to personnel department ARC 7464A is slated for the October meeting. Weigel noted almost every insurance contract grants a time frame of 30 days to reconsider and requested Royce check with the insurance department to see if that is applicable in this case.

October meeting  
Adjourned

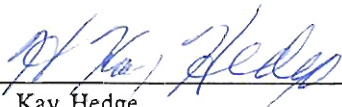
The October meeting will be held Tuesday and Wednesday, October 14 and 15, 1997.  
The meeting was adjourned at 4:25 p.m.

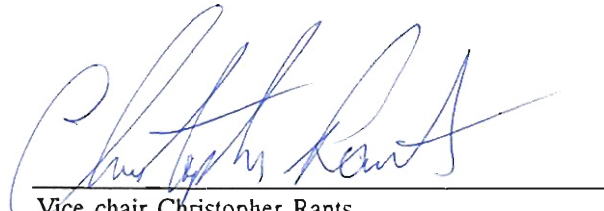
Respectfully submitted,

  
Kathleen K. Bates

  
Cathy Kelly

APPROVED:

  
Chair H. Kay Hedge

  
Vice chair Christopher Rants