

M I N U T E S

IOWA LEGISLATIVE COUNCIL

July 25, 1973

The second meeting of the 1973-75 Legislative Council was called to order by the Council Chairman, Senator Clifton C. Lamborn, at 10:35 a.m., Wednesday, July 25, 1973 in the Speaker's Room, State House, Des Moines, with the following Council members present in addition to Chairman Lamborn:

Representative Edgar H. Holden, Vice Chairman
Lieutenant Governor Arthur A. Neu
Speaker of the House Andrew Varley
Senator James E. Briles
Senator Lucas J. DeKoster
Senator Willard R. Hansen
Senator Eugene M. Hill
Senator Karl Nolin
Senator James F. Schaben
Senator Roger J. Shaff
Senator Earl M. Willits
Representative Dale M. Cochran
Representative Donald V. Doyle
Representative Joan Lipsky
Representative James I. Middleswart
Representative Arthur A. Small, Jr.
Representative Delwyn Stromer

(NOTE: Representative David M. Stanley was not present when the meeting was called to order, but arrived at 11:00 a.m. and attended the balance of the meeting. Representative Charles E. Grassley, who serves as the Chairman of the Legislative Departmental Rules Review Committee, was presiding over a meeting of that Committee and was therefore not able to attend the Council meeting.) Other legislators present for all or portions of the Council meeting were Senators E. Kevin Kelly and William Plymat and Representatives Robert Krause, W. R. Monroe and Laverne Schroeder. Also present were Senior Research Analyst Phil Burks, Legal Counsel Burnette Koebernick and Research Analyst Thane Johnson of the Legislative Service Bureau, Legislative Fiscal Director Gerry D. Rankin, Secretary of the Senate Ralph Brown, and a number of other legislative staff personnel, news media representatives, and other interested persons.

Chairman Lamborn inquired whether there were additions or corrections to the minutes of the July 10-11, 1973 Council meeting. None being requested, the minutes of that meeting were approved as submitted to Council members.

Chairman Lamborn recognized Lieutenant Governor Neu, who had requested an opportunity to bring several matters before the Council.

Lieutenant Governor Neu stated that Mr. Brown had concluded that there is a need for a magnetic tape typewriter to be installed in the Senate office area for use by Senate staff personnel. He added that it has been decided to proceed at the present time to acquire such a machine on a lease basis, and that it does not appear that Council approval is necessary for this action, but the Lieutenant Governor stated that the Council should be informed of this action because if the arrangement proves satisfactory it is likely that the Council will subsequently be requested to approve outright purchase of such a machine for the Senate.

Lieutenant Governor Neu suggested that Mr. Brown and Chief Clerk of the House William Harbor be authorized to obtain a number of electric typewriters for each house to be used by clerks and others who have frequent need for a typewriter, in order to determine whether such typewriters are more satisfactory than manual typewriters. On motion of the Lieutenant Governor, seconded by Senator Shaff, the Council unanimously approved this proposal.

The Lieutenant Governor then moved that the Council's Administration Committee be instructed to consider and recommend to the Council a policy governing the attendance at out-of-state legislative meetings and conferences by members of the General Assembly, with particular reference to attendance at events occurring during the interim following the second session of each General Assembly by members who have decided to retire or have been defeated for renomination or reelection. The motion was seconded by Representative Lipsky and adopted by a unanimous voice vote.

Lieutenant Governor Neu moved that the Council appoint a committee composed of three senators and three representatives to study the entire question of pari-mutuel betting, and present to the Council a recommendation as to whether legislation authorizing and regulating pari-mutuel betting should be enacted, and if so what the provisions of such legislation should be. The motion was seconded by Senator DeKoster. Speaking in support of the motion, Lieutenant Governor Neu said he is not particularly enthusiastic about legalization of pari-mutuel betting in Iowa, but that he considers it quite likely that such legislation will be proposed and perhaps be reported to the floor of one or both houses during the 1974 session and that therefore it would be prudent for the Council to proceed at this time with a study of the merits of and problems associated with pari-mutuel betting.

Senator Hill pointed out that this matter had been presented at the previous Council meeting (see minutes of Council's July 10-11 meeting, page 10), and stated that it was his impression that the matter had been settled at that time and that he therefore opposed further consideration at the present meeting. Senator Hill outlined the reasons why he opposes legalization of pari-mutuel

betting in Iowa, and asserted that establishment of a study committee in a particular area is not really a neutral action but is in fact a means of promoting legislation.

After further discussion, Senator Shaff moved to amend Lieutenant Governor Neu's motion so as to direct the proposed study committee only to oversee the Legislative Service Bureau's effort to gather facts in regard to pari-mutuel betting, as directed by the Council on July 11, and not to make any recommendations. Lieutenant Governor Neu indicated he would not oppose Senator Shaff's amendment, which was adopted by a voice vote.

Lieutenant Governor Neu's motion, as amended, was then adopted by a voice vote.

Lieutenant Governor Neu stated that the final point he wished to bring before the Council at this time related to some complex and controversial bills which are awaiting action by the second session of the 65th General Assembly. He explained that he had in mind particularly the criminal code revision bill, the functional classification of highways bill, and the bill to establish a Department of Transportation, adding that in one or two cases appropriate subcommittees have already been appointed to consider these matters. Lieutenant Governor Neu requested that the Council authorize the formation of joint subcommittees in each of these areas which could commence work at an early date, so as to have time to complete their respective assignments prior to the 1974 session.

It was pointed out by Council members that proposals for interim work by subcommittees of standing committees, submitted by standing committee chairmen, are pending before the Council with respect to criminal code revision and functional classification of highways. After a brief discussion, Speaker Varley moved that a joint six-member subcommittee of the House Transportation Committee and the Senate State Government Committee be designated and initially authorized three meetings during the 1973 interim for the purpose of considering the Department of Transportation legislation. The motion was seconded by Senator DeKoster, and adopted by a voice vote.

Consideration of authorization of joint subcommittees to have jurisdiction in the areas of Criminal Code revision and functional classification of highways was temporarily deferred.

Chairman Lamborn recognized Senator DeKoster for the report of the Legislative Fiscal Committee, a copy of which is attached to and by this reference made a part of these minutes.

Senator DeKoster moved that the four members of the Legislative Fiscal Committee who are not members of the Legislative

Council be authorized to attend the National Legislative Conference annual meeting in Chicago, August 7-10, 1973, noting that the intent of his motion is to authorize the individuals involved to attend that conference although they may or may not in fact do so. The motion was seconded by Representative Holden and adopted by a unanimous voice vote.

Senator DeKoster moved that a meeting of the Legislative Fiscal Committee be authorized on August 6, 1973 for the purposes set forth in the Committee's report. The motion was seconded by Representative Stromer and adopted by a unanimous voice vote.

Senator DeKoster noted that under Senate File 476 of the 65th General Assembly, First Session, the Legislative Fiscal Director is to be appointed by the Legislative Council upon recommendation of the Legislative Fiscal Committee. He therefore moved that the Council approve the appointment of Mr. Rankin to the position of Legislative Fiscal Director retroactive to July 1, 1973. The motion was seconded by Representative Stromer and unanimously adopted.

Chairman Lamborn recognized Senator Hansen for the report of the Council's Studies Committee, submitted pursuant to the Committee's meeting earlier in the day, the minutes and report of which are attached to and by this reference made a part of these minutes. Copies of the Committee's report recommending membership of the several study committees previously authorized by the Council were distributed to Council members, and Senator Hansen moved its adoption. The motion was seconded by Senator Nolin, and Chairman Lamborn called for discussion.

Representative Lipsky requested that the name of Mrs. Dan Frudden of Charles City, representing the Iowa Association for Retarded Children, be added to the list of advisory members of the Mental Health and Juvenile Institutions Study Committee. In response to questions, Representative Holden explained that while it has been the customary procedure of the Council to appoint legislative members to study committees and then subsequently consider the question of appointing advisory members if the legislative members so recommend, in the case of this particular Study Committee it was deemed advisable to name advisory members to the Study Committee concurrently with the appointment of legislative members because the Council proposes to delegate to the Study Committee considerable responsibility in connection with the comprehensive study of all of the public and private mental health delivery systems in the state contemplated by section 2 of House File 784 of the 65th General Assembly, First Session, a study which it was originally suggested should be conducted by a lay committee. There was no objection to the addition of Mrs. Frudden as an advisory member of the Mental Health and Juvenile Institutions Study Committee, and the Council Chairman so ordered.

Representative Lipsky then moved that the Studies Committee's report be amended by exchanging the appointments of Representative Richard Norpel to the Mental Health and Juvenile Institutions Study Committee and Jerry Fitzgerald to the Regulation of Consumer Credit Charges Study Committee for each other. She explained that during the recent session, at Representative Fitzgerald's request, she had designated him to undertake some work in a related area, that he anticipated attending a meeting pursuant to this designation on July 27, and that she therefore believes that the Mental Health and Juvenile Institutions Study Committee could profit by the information he has thus gained. Representative Lipsky's motion was seconded by Representative Holden, and adopted by a voice vote.

Representative Cochran moved that Representative Small be replaced by Representative Mary O'Halloran on the proposed membership of the Land Use Policies Study Committee, explaining that the motion was made in anticipation of appointment by the Speaker of Representative Small to the Confidential Records Council established by the recent session of the General Assembly. The motion was seconded by Representative Lipsky and adopted by a unanimous voice vote.

Senator Willits, noting that Senator Minnette Doderer already has a number of committee assignments which will require work during the interim, moved that she be replaced on the proposed membership of the Pension and Retirement Programs Study Committee by Senator C. Joseph Coleman. The motion was seconded by Senator Nolin and adopted by a unanimous voice vote.

Senator Hansen briefly noted the recommendation to the Land Use Policies Study Committee regarding advisory members for that Study Committee. In response to a question, Chairman Lamborn stated that the Council will have to approve in the future any requests for appointment of advisory members to study committees.

Senator Hansen's motion to adopt the Studies Committee's report, as revised by action of the Council, was adopted by a unanimous voice vote.

Senator Schaben moved that the Council establish a special study committee pursuant to Senate Concurrent Resolution 29, a copy of which had earlier been distributed to Council members. The motion was seconded by Senator Hill. Senator Schaben and Representative Cochran, speaking in support of the motion, called attention to the serious problems being experienced by Iowa grain producers and dealers in transporting grain produced in the state to purchasers and processors outside of the state, noting in particular the desirability of achieving a situation in which the Mississippi and Missouri Rivers would be kept open for barge traffic throughout the winter. Senator Schaben also noted that the

state of Iowa has no specifications or standards for products such as fertilizer, diesel fuel, and other items used in the production of agriculture commodities.

Speaker Varley expressed opposition to Senator Schaben's motion, terming it an example of segmenting transportation in the state at a time when the state should be moving toward a coordinated transportation policy by establishment of a Department of Transportation. He added that in his opinion the study contemplated by SCR 29 would have to address itself to too many unrelated matters. Finally, he noted that in any case the Iowa General Assembly cannot exercise any meaningful control over navigation on the boundary rivers, which is regulated by the federal government and the Army Corps of Engineers.

Senator Nolin agreed that the General Assembly cannot legislate directly on these matters, but said that he felt it would be helpful to establish better liaison with the Corps of Engineers and try to make them more fully aware of problems in relation to transportation of grain and other agricultural products by river traffic. Senator Hill commented that the study proposed by Senator Schaben's motion could be conducted by a subcommittee of the Department of Transportation Study Committee, but that in his view the latter Study Committee will not in fact address itself to this problem. In regard to legislation relative to river traffic, Senator Hill observed that while the General Assembly cannot directly control traffic on the border rivers, it can exercise significant influence over the location of barge terminals and other matters which directly affect river traffic.

Senator Schaben's motion was defeated by a nine to nine roll call vote. Those voting yes were Senators Briles, Hill, Nolin, Schaben and Willits and Representatives Cochran, Doyle, Middleswart and Small; those voting no were Chairman Lamborn, Vice Chairman Holden, Speaker Varley, Senators DeKoster, Hansen and Shaff and Representatives Lipsky, Stanley and Stromer.

Representative Stanley, apologizing for his inability to be present at the previous Council meeting stated that he felt that the Council might not have given sufficient consideration to the importance of House Concurrent Resolution 72, requesting a comprehensive study of the desirability of suggested amendments to the Uniform Commercial Code, which was originally adopted by Iowa in 1965. He pointed out that there are a number of variations in Iowa law from the 1962 official text of the UCC, and also that the 1972 official text contains a number of changes from the earlier version, particularly in Article IX which deals with secured transactions. Representative Stanley acknowledged that this is a complex and controversial area, but expressed the view that Iowa should not make its version of the UCC significantly different from that in effect in other states, without very good reason.

Senator Hansen stated that he recognizes the importance of the UCC, but pointed out that any such study would fall into the jurisdiction of the standing committees on Judiciary and Commerce, and that the membership of these committees is already heavily burdened by interim work approved by the Council. Representative Stanley replied that the bulk of the necessary staff work could be performed by the University of Iowa College of Law faculty and students, and that the study would not therefore represent a serious additional burden for legislators or the Legislative Service Bureau.

After further discussion, Representative Stanley moved that the study contemplated by HCR 72 be approved by the Council, with staff work to be provided primarily by faculty members and students of the University of Iowa College of Law. The motion was seconded by Senator Briles and approved on a voice vote.

Senator Willits moved that the Council arrange for a study in regard to state policy on use of computerized lists of licensed drivers and similar material for private or nongovernmental purposes. There was considerable discussion of the motion, with most Council members agreeing that a policy needs to be defined that balances the general right of access to public records against the individual's right to some degree of confidentiality in terms of use of information which the individual is required by law to provide to state government, by nongovernmental agencies for private purposes. Some concern was also expressed about the likelihood that a significant amount of state employees' time may be required to prepare information requested by nongovernmental agencies if they are deemed to have a basic right of access to lists of licensed drivers and other similar types of information. At the conclusion of the discussion, Speaker Varley suggested that the Council defer action on Senator Willits' motion and request that the new Confidential Records Council look into the matter and that Representative Small make a report at the next Council meeting. Speaker Varley's suggestion was accepted.

The meeting was recessed for lunch at 12:15 p.m., and reconvened in the Speaker's Room at 1:40 p.m.

Chairman Lamborn recognized Senator Schaben, who introduced Mr. Holmes Pedelty, Mr. Robert Brenton and Mr. Gerald Frankl, representatives of the Governor's Beef Task Force, who were present to discuss problems concerning construction and use of new cattle and hog feeding facilities, with particular reference to the effect of Iowa's nuisance law.

Mr. Pedelty briefly discussed the problems confronting cattle and hog feeders in Iowa today in attempting to comply with the requirements of existing environmental and nuisance statutes,

pointing out that these affect relatively small as well as large livestock feeders.

Mr. Brenton presented figures on the amount of money which has been or is about to be invested in livestock production facilities in Wright County, which he used for purposes of illustration. He stressed that much of this investment is by local residents, not outside investors coming into the area.

Mr. Frankl, in his presentation, noted unfavorable economic trends currently affecting the livestock feeding industry in Iowa, and asserted that the present nuisance law in Iowa is a factor in this situation. He cited an article in the June 7 issue of the magazine Industry Week regarding land use policy, and suggested that it might be feasible to zone certain areas in Iowa for livestock feeding and, in effect, guarantee that any livestock feeding operation within the zoned areas which meets applicable environmental requirements would not be subject to action under the nuisance law. He added that technology now permits the operation of large-scale feedlots without necessarily producing odors.

Four representatives of the Department of Environmental Quality were also present for this portion of the meeting, Hearing Officer J. Edgar Brown, Mr. Joseph E. Obr, Mr. Brice Harthoorn and Mr. Ullo Agena. Senator Schaben inquired of them when it appears that it will be possible for the state to begin issuing operating permits to large-scale livestock feeding facilities as opposed to construction permits. The reply was that this will probably become possible the first of next year.

In response to questions from Senator Shaff, Mr. Pedelty stated that operators of livestock feeding facilities know that they must live with state Department of Environmental Quality and federal Environmental Protection Agency requirements, and that they can find the means to do so. However, he added, even if the livestock operators achieve full compliance with these requirements they have no assurance that they will not be closed virtually without warning by lawsuits filed under the nuisance law. Senator Shaff then inquired whether the intent of Mr. Pedelty's statement is to say that the nuisance law, rather than specific environmental requirements, is all that the legislature need be concerned with at this time in terms of helping to provide a more favorable climate for large-scale feeding operations in Iowa. Mr. Frankl stated that he would be inclined to respond to Senator Shaff's inquiry in the affirmative.

Senators Willits and Shaff then asked a number of questions regarding the operation and effect of nuisance laws in other states. Mr. Koebernick reported that the Legislative Service Bureau has gathered some data on this matter.

Senator Hill asked whether the livestock feeding industry has standards which it recommends to producers, and whether it has recommendations for specific zoning provisions. Mr. Pedelty suggested that each county should have authority to zone all rural areas for livestock production. Mr. Harthoorn indicated that not all rural, that is unincorporated, areas are necessarily appropriate as potential locations for livestock feeding operations.

Speaker Varley inquired whether the Department of Environmental Quality representatives are in a position to speculate about what future requirements might be established with respect to air pollution, dust, noise, and other conditions which arise or might be expected to arise from the operation of livestock feeding facilities. Mr. Harthoorn responded that a major problem with odor control is measurement. He pointed out that odor complaints most often relate to nighttime hours when there tends to be little or no wind and atmospheric conditions are such that what he termed the "mixing level" is low. He discussed the special problem of large livestock feeding operations, which he categorized as industry rather than what has traditionally been considered agriculture in Iowa. He agreed that it is possible to operate such facilities with virtually no odor, but pointed out that it is not cheap to do so and that therefore such methods are not always used by large-scale livestock feeding facilities.

In response to specific comments, Mr. Harthoorn stated that complaints are often received not only from persons who are non-farm oriented residents of rural areas, but also from longtime farm families who are offended by odors or other effects when large-scale livestock feeding operations are introduced into an area where they were not previously in existence. Mr. Harthoorn expressed the view that if the Iowa nuisance law is repealed or weakened, the General Assembly would probably be pressured for stronger specific environmental controls in relation to odor and other effects of livestock feeding operations.

Representatives Holden and Lipsky pointed out that odor is not by any means a new problem in relation to livestock production and processing, and inquired what other states have done or are doing in this area. Mr. Harthoorn said that he has been in contact with a number of persons in positions similar to his in other states and that he knows of no satisfactory regulation in any state relative to odor control. Senator DeKoster remarked that scientists have been trying unsuccessfully for 50 years to find a way to measure odor.

Mr. Pedelty asserted that Iowa will have to find a way to accommodate to large-scale livestock production facilities or lose them to other states. Speaker Varley commented that the

immediately preceding discussion is an excellent example of why Iowa needs a good land use law.

Mr. Brown stated that well written environmental control regulations and siting and zoning requirements, will, in the long run, be beneficial to both the livestock industry and those who are actually or potentially affected by the industry.

Chairman Lamborn expressed appreciation to the representatives of the Governor's Beef Task Force and of the Department of Environmental Quality for attending and participating in the meeting.

After further discussion, Representative Stromer moved that the matter of a review of the state's present nuisance law be referred to the Land Use Policies Study Committee. The motion was seconded by Representative Small and adopted by a unanimous voice vote.

Chairman Lamborn noted that Mr. Frank Pulley, who had been scheduled to make a report to the Council relating to the feasibility of air conditioning Senate Committee Room 22, would be unable to attend the present meeting.

The Council discussed the desirability and urgency of at least some interim subcommittees of standing committees beginning work in the very near future in preparation for handling certain pieces of major legislation during the 1974 session. Mr. Burks noted that Senator Hansen had indicated at the time of the noon recess that he wishes to hold a meeting of the Council's Studies Committee on August 14, the day prior to the next scheduled Council meeting, for the purpose of considering proposals for interim work by subcommittees of standing committees. Lieutenant Governor Neu objected to deferring all consideration of authorization for work by interim committees of standing committees until the August 15 Council meeting, stating that at least a few such subcommittees should be authorized at the present meeting and urged to begin work promptly.

On motion of Senator DeKoster, seconded by Senator Hill, the Council authorized a ten-member joint subcommittee of the standing Judiciary Committees of the Senate and House of Representatives to immediately be established and begin work on a review of the criminal code revision bill submitted to the 1973 session. The subcommittee was initially authorized three meetings. Lieutenant Governor Neu stated that a subcommittee of five members of the Senate Judiciary Committee had previously been appointed for this purpose, consisting of Senators E. Kevin Kelly, Richard Ramsey, Gene W. Glenn, Gene V. Kennedy and Earl Willits. It was noted that it will be necessary to appoint the House members to the authorized ten-member subcommittee.

The Council next considered the establishment of a joint interim subcommittee to review functional classification of highways legislation, and the July 12 letter from Representative Richard F. Drake to Speaker Varley regarding this matter, copies of which were distributed to Council members. It was noted that Representative Drake's letter stated that a five-member subcommittee of the House Committee on Transportation had already been appointed for this purpose. Lieutenant Governor Neu commented that it should not be necessary to have a subcommittee of as many as ten members for this purpose, and that therefore it would be sufficient to appoint three senators to meet with the five representatives named in Representative Drake's letter. Representative Lipsky then moved that a joint interim subcommittee consisting of the five representatives so designated (Representatives Richard Welden, Adrian Brinck, John Connors, Richard Drake, and Rollin Edelen) and three senators drawn from the senate State Government Committee be established to review the matter of legislation in regard to functional classification of highways, and that the subcommittee be initially authorized three meetings for this purpose. The motion was seconded by Senator Briles, and adopted by a unanimous voice vote.

Chairman Lamborn suggested that the matter of possible state legislation in the area of competitive bidding requirements be initially turned over to the Iowa Crime Commission Study Committee. Senator Hill concurred, pointing out that concern about the competitive bidding requirements and procedures has been one of the sources of criticism of the Crime Commission. The suggestion was agreed to by Council members.

Senator Briles informed the Council that the joint standing Committees on County Government of the Senate and House of Representatives will be requesting authority for a two-day meeting in October, as has been the practice of these standing committees since the initiation of annual legislative sessions.

Senator Schaben raised the matter of the announced intention of the Beer and Liquor Control Department to close a number of state liquor stores in small communities later this year. He stated that he considers this action highly unfortunate, and expressed the view that if the state is going to maintain its monopoly of package liquor sales in Iowa, it should undertake to make liquor outlets available in all portions of the state with a minimum of inconvenience to the purchasing public. Representative Krause expressed agreement, and noted the anticipated unfavorable effect of closing of the state liquor store in the town of Rolfe upon business conditions generally in that community.

Senator Schaben then moved that the Legislative Council formally recommend to the Executive Council that it provide for the funding of the stores which the Beer and Liquor Control Department

has announced it intends to close until such time as the 1974 session of the General Assembly can take the action necessary to assure continued operation of these stores. After a brief discussion, Chairman Lamborn requested that Senator Schaben defer action on his motion until the next Council meeting, and that the Legislative Service Bureau arrange for Beer and Liquor Control Department Director Rolland Gallagher to meet with the Council at that time to discuss the plans for closing of certain liquor stores in the state.

It was announced that the members of the special interim subcommittee to oversee the factual study of pari-mutuel betting in Iowa would be Senators George Kinley, Ralph Potter and Cloyd Robinson and Representatives James Caffrey, Horace Daggett and Donald Lippold. It was further announced that the members of the interim study committee on revision of the Uniform Commercial Code would be Senators E. Kevin Kelly, Ralph Potter and Earl Willits and Representatives William R. Ferguson, George Knoke, Jay Mennenga and Steven Rapp.

Senator Willits moved that, in view of his own appointment to the study committee on revision of the Uniform Commercial Code, Senator Berl E. Priebe be placed on the Reduction of Highway Facilities Study Committee in place of Senator Willits. The motion was seconded by Senator Nolin and unanimously adopted.

On motion of Senator Briles, the meeting was adjourned at 3:30 p.m.

Respectfully submitted,

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