
LEGAL UPDATE

Legal Services Division



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ADMINISTRATIVE RULES REVIEW COMMITTEE MEETING — DECEMBER 10, 2019

Purpose. *Legal updates are prepared by the nonpartisan Legal Services Division of the Legislative Services Agency. A legal update is intended to provide legislators, legislative staff, and other persons interested in legislative matters with summaries of recent meetings, court decisions, Attorney General Opinions, regulatory actions, federal actions, and other occurrences of a legal nature that may be pertinent to the General Assembly's consideration of a topic. Although an update may identify issues for consideration by the General Assembly, it should not be interpreted as advocating any particular course of action.*

AUDITOR OF STATE, *Periodic Examination Fee Schedule, 12/4/19, ARC 4787C, NOTICE.*

Background. This rulemaking revises the fee schedule for periodic audits of municipalities with populations under 2,000 and budgeted expenditures of less than \$1 million. The revised schedule adds an additional fee stratum to the schedule, but the effect of the revised schedule on the fee rate varies depending on the size of the municipality.

Commentary. In response to questions from committee members, Mr. John McCormally, speaking on behalf of the Auditor's Office, explained that fee increases would affect smaller municipalities more when the relatively higher number of such municipalities in Iowa is considered, but larger municipalities would see greater fee increases individually; that there is a relationship between this rulemaking and a bill prefiled by the Auditor that would raise the overall statutory cap on these fees, but the two are not contingent on each other; that the fee cap is set by statute but the fee schedule is set by rule; and that the periodic audits at issue occur every eight years.

In further discussion about the need for this increased funding, Mr. McCormally explained that currently the fees are significantly less than the cost to the Auditor's Office to conduct the audits and noted that the fees have not been increased since the underlying legislation was enacted in 2014, resulting in the Auditor's Office spending more on these audits than it is taking in through fees for the last three years. He also explained that the current fee schedule does not account for 100 municipalities that will soon be newly subject to such auditing, that the new schedule would even out the cost of auditing across municipalities, and that the additional \$20,000 taken in would be used for training.

Committee members expressed concern about the effect of the fee increases on smaller municipalities and questioned whether the Auditor's Office could generate \$20,000 in revenue through internal efficiencies on matters such as mailing and printing instead. Mr. McCormally stated that the goal of the Auditor's Office is not to raise \$20,000, but to make the audits self-sustaining. He stated that the increase of \$20,000 would not accomplish this, although the office is taking other steps to do so. Committee members questioned whether the fee increases are necessary if they would not resolve the shortfall. Additional discussion occurred regarding options for contracting to have the audits carried out by private entities.

Action. No action taken.

STATE PUBLIC DEFENDER, *Claims for Indigent Defense and Other Professional Services, 10/9/19, ARC 4778C, NOTICE.*

Background. This rulemaking conforms to various statutory changes from the 2019 Legislative Session, including updated rates of compensation and a new process for payments to privately retained attorneys

for indigent defendants. The rulemaking also makes a variety of other changes including required online filing of certain claims and limitations on payments for mileage and investigative services.

Commentary. Discussion centered on portions of the rulemaking that prohibit payment for mileage when an attorney travels outside of the county of the attorney's office and cap payment for investigators at \$75 an hour. Mr. Kurt Swaim, speaking on behalf of the State Public Defender (SPD), explained that the SPD does not feel it is appropriate for investigators to receive a higher hourly rate than the statutory cap on certain attorney rates and that investigators have at times been asked to do clerical work for which attorneys are not eligible to claim payment. He also explained that the SPD sees payment for mileage for travel to another county as overhead rather than a matter suitable for reimbursement and that there have been instances of attorneys double billing for mileage. He stated that the SPD works with stakeholders to best use the limited funds that are available.

Committee members expressed concern about the impact of limiting mileage payments, particularly for attorneys in rural areas who do not practice in county seats. Committee members and Mr. Doug Struyk, speaking on behalf of the Iowa State Bar Association, also expressed concern about the effect of capping rates for investigators, stating that courts already impose caps on payment for such services and that the cap in the rulemaking may deprive some defendants of access to certain qualified investigators or even to investigative services altogether. Committee members noted that it would be odd for an investigator to receive a higher payment rate than an attorney in a class A felony case, which may indicate that both rates are too low.

Action. No action taken.

DEPARTMENT OF AGRICULTURE AND LAND STEWARDSHIP, *Animal Welfare*, 12/4/19 IAB, ARC 4789C, ADOPTED.

Background. The purpose of this rulemaking is to do all of the following: ensure that all dogs and cats handled by commercial establishments are provided with humane care and treatment; regulate the transportation, sale, purchase, housing, care, handling, and treatment of dogs and cats by persons engaged in transporting, buying, or selling them; require that all vertebrate animals consigned to pet shops are provided humane care and treatment by regulating the transportation, sale, purchase, housing, care, handling, and treatment of such animals by pet shops; authorize the sale, trade, or adoption of only those animals which appear to be free of infectious or communicable diseases; protect the public from zoonotic disease; and establish subclassifications of licenses and further clarify requirements. The rulemaking does not apply to livestock as defined in Iowa Code section 717.1 or any other agricultural animal production as provided in Iowa Code chapter 717A.

Commentary. Mr. Maison Bleam represented the department and responded to inquiries. Three groups of stakeholders appeared at the meeting and presented arguments on the rulemaking: Ms. Betsy Fickel, who identified herself as a professional retired dog breeder; a group of dog daycare owners and their representatives; and Ms. Emily Piper, who represented the Humane Society Legislative Fund of Iowa.

Ms. Fickel provided a handout to committee members and discussed her concerns regarding the rulemaking. She raised questions with the definition of rescues, arguing that the department had exceeded its statutory authority. She also raised constitutional concerns with the rulemaking's treatment of the seizure of animals, specifically noting due process concerns and arguing that the rulemaking was inconsistent with Iowa Code chapter 17A. Committee members asked Mr. Bleam to work with Ms. Fickel to address the questions she raised in an ongoing effort to improve the animal welfare rules.

Mr. Dane Schumann and Ms. Sandra Suarez stated that they represented the dog daycare owners that were present and were requesting a delay of a portion of the rulemaking because of the following issues with the rulemaking: the 75 square feet per dog requirement and the requirement of posting signage indicating the maximum allowable number of dogs in spaces smaller than 1,125 square feet for a playgroup. Dog daycare owners stated that if the 75 square feet per dog requirement, which is current law, is newly enforced, it will cause them to lose revenue and terminate staff, increase prices for customers, and possibly close one or more of their businesses. They gave examples of department

inspectors encouraging them to divide large rooms in half, thus not abiding by the 75-square-foot requirement per dog. The owners asserted that Iowa laws were more restrictive than surrounding states, and as such, they would not be expanding in Iowa, but would rather be expanding in nearby states. The owners stressed that 1,125 square feet can be a dangerously large space because dogs begin to hunt each other and staff are unable to quickly get to a fight and stop it. They additionally argued that the industry is self-regulating in that customers would not return if the dogs became injured. The owners stated that the 75-square-foot requirement does not recognize the cost of commercial space.

Committee members asked Mr. Blead to respond to the assertion that the inspectors were not enforcing the requirements. He read an inspection report which found a violation for a dog daycare, whose owner was speaking at the meeting, where the inspector did not cite the dog daycare for a violation and Mr. Blead called it a “teachable moment.” Committee members expressed frustration, stating the 75-square-foot requirement may have been current law, but it was not current practice.

Committee members asked for the factual record on the harm to animals related to this rulemaking. Mr. Blead cited scholarly research and best practices proposed by animal behavioralist Ms. Victoria Stilwell, animal behavioralists Dog Gurus, and policies from North Carolina and Colorado. Mr. Blead did not have data from Iowa dog daycares. Committee members questioned the urgency of the rulemaking due to the lack of data on injuries from Iowa dog daycares. Dog daycare owners stated that the businesses present at the meeting had an injury rate of between .02 percent to .04 percent.

Committee members inquired if a dog daycare had been closed down due to a violation of the 75-square-foot requirement. Mr. Blead was unsure. In response to an inquiry from committee members, Mr. Blead stated that between 2 to 4 percent of licensees were noncompliant.

Committee members stated that regardless of whether a rule is currently enforced, it is not a good idea to conduct business as though it will not be enforced in the future—for example, building a multimillion dollar facility that does not comply with a current administrative rule, which one dog daycare owner is in the process of doing.

Committee members urged a review of the statute underlying the rulemaking, stating that the 75-square-foot rule, which is in current rules, was arbitrary and unnecessary. Committee members read an excerpt from the statute and noted that it did not have a square footage requirement.

Upon inquiry from committee members, Mr. Jack Ewing, Administrative Code Editor, opined that by putting a session delay on the requested portion there would be no standard governing this topic because the former chapter is rescinded.

Committee members discussed the possibility of a session delay. Mr. Blead reiterated the stance of the department in moving forward with the adopted rulemaking, relying on scholarly research and utilizing the department’s grant of rulemaking authority. Committee members told Mr. Blead that the department needed to change course because it was overreaching its authority.

Ms. Piper urged the adoption of the rulemaking as drafted without a session delay to ensure the greatest protection of animals without exception.

Action. A motion for a session delay of a portion of new rule 21 IAC 67.8, subrule 4, paragraph “b,” as adopted in ARC 4789C, carried on a 7-3 record roll call vote.

Next Meeting. The next committee meeting will be held in Room 116, Statehouse, on Friday, January 10, 2020, beginning at 9:00 a.m.

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Doc ID 1125722