

THE ADMINISTRATIVE RULES REVIEW COMMITTEE 1993

I. Introduction. This report covers the period beginning with the Committee's February, 1993 meeting through the January, 1994 meeting. This curious time period is chosen because those meetings cover the rules published in final form during the 1993 calendar year.

In 1993 62 administrative agencies promulgated 411 filings, representing over 1600 individual rule additions, amendments or repealers. This represents a significant decrease over the number of filings from 1992, as set out below:

In 1993 62 agencies promulgated 411 filings.	In 1987 60 agencies promulgated 503 filings.
In 1992 61 agencies promulgated 493 filings.	In 1986 57 agencies promulgated 476 filings.
In 1991 66 agencies promulgated 511 filings.	In 1985 63 agencies promulgated 505 filings.
In 1990 56 agencies promulgated 498 filings.	In 1984 55 agencies promulgated 415 filings.
In 1989 60 agencies promulgated 463 filings.	In 1983 55 agencies promulgated 458 filings.
In 1988 86 agencies promulgated 621 filings.	

116 of these filings were placed into effect using the "emergency" provisions of chapter 17A, Iowa Code. Most of these were also placed under notice. This figure represents 28 per cent of the total volume of rulemaking and is a significant increase over the level of emergency rulemaking in 1992, and is the worst showing for as long as these records have been kept. The level of emergency rule making is set out below:

In 1993 116 "emergency" rules represented 28% of the total.
In 1992 92 "emergency" rules represented 20% of the total.
In 1991 135 "emergency" rules represented 26% of the total.
In 1990 94 "emergency" rules represented 19% of the total.
In 1989 92 "emergency" rules represented 20% of the total.
In 1988 111 "emergency" rules represented 18% of the total.
In 1987 133 "emergency" rules represented 26% of the total.
In 1986 142 "emergency" rules represented 30% of the total.

To calculate the volume of rulemaking for 1993, filings are counted instead of single rules. Each filing put into effect contained one or more individual rule changes; on the average each filing contains roughly four changes. The agencies which adopted rules are listed below together with the number of filings put into effect. For purposes of this analysis the term "agency" ignores the statutory groupings of divisions, boards, commissions, etc. Instead the chart below independently lists every rule-making unit, without regard to its location within a larger "umbrella" agency. The first column of numbers represents

the number of emergency filings adopted 1993. The second column of numbers represent the total number of rules promulgated by the agency.

HUMAN SERVICES DEPARTMENT	27	80
NATURAL RESOURCES COMMISSION	4	30
PUBLIC HEALTH DEPARTMENT	9	23
ENVIRONMENTAL PROTECTION COMM.	4	22
PROFESSIONAL LICENSURE DIVISION	3	20
INSURANCE DIVISION	3	18
REVENUE AND FINANCE DEPARTMENT	2	14
UTILITIES DIVISION	1	13
LABOR SERVICES DIVISION	9	13
ECONOMIC DEVELOPMENT DEPT.	8	13
RACING AND GAMING COMMISSION	5	11
TRANSPORTATION DEPARTMENT	1	10
DENTAL EXAMINERS BOARD	0	10
PHARMACY EXAMINERS BOARD	0	9
EDUCATION DEPARTMENT	0	9
AGRICULTURE DEPARTMENT	2	8
CORRECTIONS DEPARTMENT	1	7
NURSING EXAMINERS BOARD	1	6
LAW ENFORCEMENT ACADEMY	3	6
SECRETARY OF STATE	1	5
PERSONNEL DEPARTMENT	2	5
INSPECTIONS AND APPEALS DEPT.	1	4
BANKING DIVISION	1	4
VETERANS AFFAIRS COMMISSION	2	3
UST BOARD	1	3
SOIL CONSERVATION DIVISION	2	3
REAL ESTATE COMMISSION	1	3
JOB SERVICE DIVISION	1	3
HISTORICAL DIVISION	2	3
ENGINEERING EXAMINING BOARD	1	3
EDUCATIONAL EXAMINERS BOARD	2	3
CIVIL RIGHTS COMMISSION	0	3
SUBSTANCE ABUSE COMMISSION	0	2
STATE PUBLIC DEFENDER	2	2
SESQUICENTENNIAL COMMISSION	1	2
REGENTS BOARD	0	2
PUBLIC SAFETY DEPARTMENT	0	2
MANAGEMENT DEPARTMENT	2	2
LOTTERY DIVISION	1	2
LANDSCAPE EXAMINING BOARD	1	2
COMMUNITY ACTION AGENCIES	1	2

CAMPAIGN FINANCE DISCLOSURE	1	2
ATTORNEY GENERAL	1	2
ARCHITECTURAL EXAMINING BOARD	1	2
ALCOHOLIC BEVERAGES DIVISION	1	2
ACCOUNTANCY EXAMINING BOARD	1	2
WALLACE TECHNOLOGY FOUNDATION	0	1
VETERINARY MEDICINE BOARD	1	1
SAVINGS AND LOAN DIVISION	0	1
REAL ESTATE APPRAISERS BOARD	1	1
PRODUCT DEVELOPMENT CORP.	1	1
PREVENTION OF DISABILITIES COUNCIL	0	1
MEDICAL EXAMINERS BOARD	0	1
LIVESTOCK HEALTH ADVISORY COUN.	0	1
INDUSTRIAL SERVICES DEPARTMENT	0	1
HEALTH DATA COMMISSION	0	1
GENERAL SERVICES DIVISION	0	1
ENERGY AND GEOLOGICAL RESOURCES	0	1
EMERGENCY MANAGEMENT DIVISION	0	1
ELDER AFFAIRS DEPARTMENT	0	1
CREDIT UNION DIVISION	0	1
AUDITOR OF STATE	0	1
TOTALS	116	411

While administrative rules are a major source of state law, relatively few agencies are heavily involved in the rule-making process. There are essentially 114 state agencies, with 62 of them promulgating rules in 1993. Note that seven agencies account for half of the volume of rule making, while half of the agencies promulgated three or fewer rules.

II. Formal Committee Actions

While the volume of rule making for 1992 was reduced, the volume of formal objections filed by the committee has remained relatively constant for three years. In 1993 the committee imposed five objections, down from a decade high of eight objections imposed in 1989. A total of 139 objections have been imposed since 1977, but the trend has clearly been toward a decline in their frequency, as indicated below:

1977.....36	1984.....04	1991.....07
1978.....24	1985.....03	1992.....04
1979.....13	1986.....05	1993.....04
1980.....06	1987.....03	
1981.....08	1988.....02	
1982.....02	1989.....08	
1983.....03	1990.....06	

The volume of session delays for 1993 declined slightly, from five in 1992 down to four. A total of 47 delays have been imposed since the power was created in 1978.

III. Summary of Major Committee Actions. In 1993 the committee voted four new objections, four session delays, thirteen general referrals, thirteen seventy day delays and one request for an economic impact statement; making for a total of 35 committee actions. In 1992 the committee took a total of 39 formal actions. Note that a single rule can be subjected to several committee actions. "Housekeeping" matters, such as rescinding or affirming earlier actions, are not included in the listing. The 1992 formal actions are summarized as follows:

OBJECTION: ARC 4466A, subrule 441 IAC 7.5(8) and paragraph 441 IAC 41.24(8)"f", relating to appeals and disqualification for limited benefit plans {Department of Human Services}.

OBJECTION: ARC 4355A, concerning the adoption of this filing on an emergency basis {Professional Licensure Division}.

OBJECTION: ARC 4223A, subparagraph 441 IAC 185.10(8)"b"6(1), relating to foster parent responsibilities {Department of Human Services}.

OBJECTION: ARC 4213A, subrule 187 IAC 9.2(5), relating to title insurance {Division of Banking}.

SESSION DELAY, ARC 4215A, relating to interest rates on utility customer deposits {Utilities Division}.

SESSION DELAY, ARC 3886A, relating to the "short" course for law enforcement officers {Law Enforcement Academy}.

SESSION DELAY, ARC 3760A, relating to complaint procedures before the Iowa Civil Rights Commission {Iowa Civil Rights Commission}.

SESSION DELAY: ARC 3668A, relating to nursing assistance provided to physicians assistants {Nursing Board}.

GENERAL REFERRAL, 641 IAC 25.5, relating to backflow prevention in water lines {Department of Public Health}.

GENERAL REFERRAL, ARC 4507A, relating to standards for elder group homes {Department of Elder Affairs}.

GENERAL REFERRAL, ARC 4487A, relating to burning of abandoned houses {Environmental Protection Commission}.

GENERAL REFERRAL, ARC 4479A, relating to crime victim assistance {Attorney General}.

GENERAL REFERRAL, ARC 4458A, Relating to registration of acupuncturists {Medical Examiners Board}.

GENERAL REFERRAL, ARC 4448A, relating to obtaining drivers licenses by mail {Department of Transportation}.

GENERAL REFERRAL, ARC 4289A, relating to provider standards relating to mental illness and mental retardation {Department of Human Services}.

GENERAL REFERRAL, ARC 4223A, relating to certain changes in the provision of services for children {Department of Human Services}.

GENERAL REFERRAL, ARC 4213A, relating to the use of title insurance by state chartered banks {Division of Banking}.

GENERAL REFERRAL, ARC 4174A, CHAPTER SIX, relating to technology transfer {Product Development Corporation}.

GENERAL REFERRAL, ARC 4117A, relating to exemptions from certain requirements limiting the use of heavy metals in packaging {Environmental Protection Commission}.

GENERAL REFERRAL, ARC 4018A, relating to medicaid day treatment for children {Human Services Department}.

GENERAL REFERRAL, ARC 3938a, item 11, relating to trust accounts {Real Estate Commission}.

SEVENTY DAY DELAY-ARC 4448A, paragraphs 761 IAC 605.26(2)"a" and "d", relating to the renewal of drivers licenses by mail {Department of Transportation}.

SEVENTY DAY DELAY -ARC 4359A, relating to the testing of water supplies {Environmental Protection Commission}.

SEVENTY DAY DELAY-ARC 4102A, subrule 1.8(4) relating to fuel efficiency in vehicle assignments {State Vehicle Dispatcher}.

SEVENTY DAY DELAY-ARC 3687A, relating to providing prescriptions for lenses {Professional Licensure Division}.

SEVENTY DAY DELAY-ARC 3760A, relating to investigative procedures {Civil Rights Commission}.

SEVENTY DAY DELAY-ARC 3826A, relating to Phase III education {Education Department}.

SEVENTY DAY DELAY-ARC 3855A, relating to establishing fiscal years for certain care facilities {Human Services Department}.

SEVENTY DAY DELAY-ARC 3927A, relating to various items relating to motor carrier services {Department of Transportation}.

SEVENTY DAY RELAY, ARC 4026A, relating to the staffing requirements in certain RCF's {Inspections and Appeals Department}.

SEVENTY DAY DELAY, ARC 4046A, relating to taxation of pensions {Department of Revenue and Finance}.

SEVENTY DAY DELAY-ARC 4048A, relating to unethical conduct {Real Estate Commission}.

SEVENTY DAY DELAY-ARC 4059A, relating to funding for renewable fuel production {Department of Agriculture and Land Stewardship}.

SEVENTY DAY DELAY-ARC 4064A, relating to special education matters {Department of Education}.

ECONOMIC IMPACT STATEMENT-ARC 3909A, relating to special waste permits {Environmental Protection Commission}.

IV. Major Issues of 1993

ATTORNEY GENERAL

PROHIBITION AGAINST PRICE GOUGING, ARC 4128A, F.E. Iowa Code section 714.16 relates to consumer frauds; the Attorney General has rule-making authority to interpret this section pursuant to Iowa Code section 714.16(4)"a". In the aftermath of the Summer flood, the Attorney General implemented rules prohibiting "*the charge of excessive prices for merchandise needed by victims of disasters...*" They are based on Iowa Code paragraph 714.16(1)"n" which defines an unfair practice as "...*an act or practice which causes substantial, unavoidable injury to consumers that is not outweighed by any consumer or competitive benefit...*" While this statute is part of the Iowa Criminal Code; it carries only civil penalties, although that civil penalty can be a fine of up to \$40,000. The rules are also based on a model created by the national attorney general's association along with excerpts from proposed federal legislation. The rules provide that it is per se {automatically} unlawful, in an area declared to be a disaster area, to charge an excessive fee for merchandise to persons living within that area. This means that the offense occurs regardless of what the intent of the merchant was; if the price is excessive, the offense has occurred. An excessive price is defined as a price not justified by the cost of the product plus a reasonable profit. An excessive price will be presumed when there is a substantial increase over the price charged immediately before the disaster. Note that this presumption could be rebutted by the merchant by evidence that the substantial price increase was caused by a similar increase in obtaining that item at the wholesale level.

CIVIL RIGHTS COMMISSION

CONTESTED CASE PRACTICE AND PROCEDURE, ARC 3760A, ADOPTED. The commission adopted a general re-write of its rules relating to contested case procedures. A number of issues were raised by opponents of these provisions. These concerns related to procedural technicalities of the contested case process. In essence the opponents questioned the authority for these changes and contended that many of those changes would reduce the due process protections of the contested case process. The problem is that for every allegation made against the rules, there was also a response in their favor. Both the initial allegations and the responses turn on fine points of common law. For this reason, the committee chose to

impose a session delay on these rules and allow the General Assembly to make a final determination. Subsequent to that action the agency and other interested persons reached compromises that rendered legislative review unnecessary.

BANKING DIVISION

STANDARDS FOR REAL ESTATE LENDING, IAB Vol. XVI, No. 5, ARC 4213A. In 1993 the Banking Division adopted new standards for real estate lending by state chartered banks. These new rules allowed banks to use title insurance as a way to establish the value of the mortgages or other liens held as collateral; they replaced earlier standards which allowed title insurance only on out-of-state property. The standards were controversial because of Iowa's long-standing prohibition against the sale of title insurance within the state. Although the rules had nothing to do with the sale of title insurance, there was some feeling they violated the spirit, if not the letter of the law. The division chose to withdraw the rules and ultimately reinstated a previous version.

DEPARTMENT OF EDUCATION

FEES IMPOSED ON PUBLIC SCHOOL STUDENTS, ARC 4005A, NOTICE ONLY. The department proposed rules to outline the school activities for which districts may impose a fee, and created a process for the waiver or reduction of fees for indigent students. Currently, Iowa districts impose fees as they see fit. Under Iowa law fees may be imposed for textbooks and supplies, eye and ear protective devices, drivers education and for materials and activities relating to the educational program; the term does not apply to fees for yearbooks, class rings, etc. The proposal would require schools to develop formal policies concerning fees, and would specifically require that fees be waived or reduced for students who qualify for free and reduced price meals, AFDC, supplemental security income, etc. Note that the student does not need to actually receive these benefits, the student must only be eligible to receive them.

The department was concerned that school personnel charge fees for items not enumerated in the Iowa Code, lumping such fees under "materials and activities". The rules would require each district to promulgate policies that define the scope of these fees, thus limiting the discretion individual instructors to assess fees on a case by case basis. The schools were particularly concerned over the requirement that a waiver policy be in place. Their concern was over the loss in funds that a mandatory waiver provision might create.

Iowa law is silent on whether waivers must be given to indigent students, raising the issue whether the department can promulgate a rule requiring such a policy. The issue became increasingly complicated; it was unclear whether districts could lawfully impose all the fees they collected, and it was equally uncertain whether the department had any rulemaking authority in this area. The rulemaking was never completed; ultimately the notice was terminated and the issue remains unsettled.

ENVIRONMENTAL QUALITY COMMISSION

STATE DRINKING WATER PROGRAM, SELECTIVE REVIEW. The committee extensively reviewed the question whether the state should continue to retain control over drinking water quality. The issue was whether it was more cost effective to have state government administer the program or to turn the program over to the federal EPA. Testimony indicated that a

federal takeover would saving the state budget almost \$300,000, that being the current state share of the 4:1 match. However, such a takeover would also present significant costs for local water supplies. Initially, the state would lose the current \$800,000+ it receives in federal funding, but more significant was the potential impact on local water systems. The Federal EPA is primarily an enforcement agency and would work simply to enforce the requirements of the federal law, dropping many of the services offered by the local program. Local systems would no longer be notified that test results were due, instead, fines and penalties would be assessed for late submissions. The federal government would not review plans or specifications, or administer the operator certification program. In short, the state might save some money by dropping the program, but costs for local government would increase.

The committee referred this issue, along with the public testimony, to the General Assembly for a final determination whether jurisdiction should be retained.

LIMITS ON SULFUR DIOXIDE EMISSIONS IN MUSCATINE, ARC 4201A, NOTICE ONLY. Five times in 1993 the ambient air quality standard for sulfur dioxide was exceeded in the Muscatine area. The result is that the EPA demanded that new sources of this pollutant be restricted. In response to that demand the Environmental Protection Division proposed a rule restricting any new sulfur dioxide emissions in the Muscatine area. It appeared that the federal Environmental Protection Agency conducted models on many Iowa cities and discovered six non-attainment areas. These include Clinton, Muscatine, Cedar Rapids, Iowa City, the Quad Cities, and Montpelier. The Iowa agency was the required to monitor these areas. The division first monitored Clinton, and then Muscatine was the second city to be monitored. The remaining communities will be monitored one at a time. That initial notice has now been withdrawn, but can be reinstated if SO₂ levels are not reduced.

HUMAN SERVICES DEPARTMENT

WELFARE REFORM CHANGES, ARC 4310A and 4466A. Pursuant to Senate File 268 the department emergency implemented a series of sweeping changes in welfare services; the two filings offered a carrot and stick approach to reform. ARC 4310A allows clients to retain welfare benefits while settling into a new employment position. In essence the rules allows clients to establish a sound financial base before benefits were completely withdrawn. The changes loosened all the numerous restrictions placed on a recipients assets. All the benefits of the program were contained in a Family Investment Program (FIP), an individually tailored program with the goal of moving the client family to self sufficiency.

ARC 4466A contained the stick portion of the new plan. The FIP is not an open ended program, the client family is moved through the program and out of the system. Moreover, if a client fails to participate in a FIP, that client is deemed to have "chosen" a limited benefit plan (LBP). The LBP is simply a phased reduction in benefits resulting in termination of all benefits. The Committee found two problems with this termination process. First, in a two adult household both must participate in the FIP to retain benefits. If one adult refused to participate the whole family was placed in a LBP; in short, the whole family was punished because of the indolence of a single member. The committee felt that it was unfair to punish the family due to the laziness of a single member. The department responded that benefits would continue if the nonparticipating adult left the family. No change was made in this rule. Second, if a client did not immediately challenge being placed in a LBP, the client had no other opportunity to escape being eliminated from the program. The committee noted that

clients were generally not sophisticated about procedural matters and that a single opportunity for appeal was unfair. The department agreed with this assessment and added additional appeal opportunities.

REHABILITATIVE TREATMENT AND SUPPORT SERVICES FOR CHILDREN, ARC 4223A, EMERGENCY. The department changed various programs relating to children's services, by recreating them as medicaid services. The result was that 60% of the costs are now met with federal medicaid dollars, instead of being paid with 100% state dollars. The amendments capture some 19 million dollars in federal money. The key change is the use of "clinical assessment and consultation team" (CACT) which will determine the necessity and authorization for treatment services. This concept is vaguely similar to an HMO where service is monitored though the use of a gatekeeper who forwards the client to the particular, needed service. the CAC teams service this gatekeeper function. Each team is headed by a full-time coordinator, with the members made up of physicians or practitioners of the "healing arts". When a social worker or court officer feels a child needs assistance, that person will collect the necessary information and forward it to the CACT. Based on changing circumstances, the CACT will also periodically review the continued need for services.

Rates for services are established in a manner similar to those used for care facilities. Providers must prepare a financial and statistical report reporting all revenues and depreciating capital assets. Costs must be allocated according to a specified schedule which identifies personnel expenses. This report must be provided annually and is used as the basis for establishing provider rates. The actual reimbursement rate is calculated "...on the basis of net reasonable and necessary cost per unit..." The rate is based on the allowable costs as established in the rules. The rates are adjusted by the utilization rate for the facility and an inflation factor is applied. Rates are also capped: for new contracting programs the provider receives the lower of either adjusted cost or the 75th percentile of all programs.

REAL ESTATE COMMISSION

UNETHICAL PRACTICES, ARC 4048A, NOTICE ONLY. For over a year the commission considered a provision prohibiting an arrangement where the real estate broker sells property to a developer, and offers to discount the brokerage fee if the developer provides the broker with an opportunity to sell the completed homes. The most common example is where a licensee imposes a mandatory condition or requirement on the sale of the lot. At issue was whether this type of agreement is a tying arrangement, even though it is voluntary, since the developer is under no obligation to list the finished property with the selling broker. Opponents of the practice contended that this is a "tying arrangement", which is a form of agreement generally prohibited under the commissions rules. They argued that tying arrangements occur when the licensee is able, through a superior bargaining position, to require certain concessions that restricts another persons right to freely contract. They contended this particular practice gave an inherent, unfair advantage to wealthy licensees who owned undeveloped property.

The committee members seemed to agree that the practice was not per se unethical, but there was a sentiment that the buyer should be informed of this agreement between the seller and the sellers agent. The rule was never adopted.

REVENUE DEPARTMENT

CAPITAL GAINS DEDUCTION ON THE SALE OF A FARM, 701 IAC RULE 40.38,

SELECTIVE. At the request of a member of the public, the committee reviewed rules relating to the treatment of capital gains. Iowa Code section 422.7 (21) provides a forty-five percent capital gains exclusion on the sale of real property, used in a business, in which the owner materially participated for ten years and held the property for ten years, during which time the owner was active in the operation of the business in a "regular, continuous and substantial manner", see: IRC 469h. This provision was interpreted by rule 40.38 to mean that the owner must have been active in the business at the time the property was sold. The department maintained this was based on federal requirements. This is particularly an issue to farmers who face retirement. Commonly, a farmer who retires may hold on to the property for several years, either sharecropping the land or renting it for a year or two before selling it. In the sharecropping arrangement, the farmer might be considered actively in business; however, if the land is rented the farmer is NOT considered to be in business. The result is that the capital gains exclusion IS NOT available to a farmer who sells property after renting it, even though the farmer may have owned and actively farmed the land for decades. The review revealed that federal law did not actually require the farmer to be an active participant at the time of sale and the department subsequently allowed the capital gains exclusion for rented property.

TAXATION OF OUT-OF-STATE RESIDENT PENSIONS, ARC 4046A, ADOPTED.

Iowa Code section 422.8 imposes a tax on nonresidents for income "derived from a business, trade, profession, or occupation carried on within this state or income from any property, trust estate or other source within Iowa. The department promulgated rules which interpret this statutory provision, stating that pensions are taxable income to the extent that they were earned in Iowa, related to the individuals employment and were not taxed when the initial contribution was made.

Only a handful of states attempt to tax out-of-state pensions, due to the difficulty of enforcement. Iowa currently has a voluntary compliance of perhaps \$800,000; with perhaps \$8,000,000 more that could be collected. Thus the question is whether the revenue justifies the effort to collect it. Part of this question involves the cost of compliance. The immediate problem is locating former Iowans who are subject to the tax. In the long run, the tax could only be collected if Iowa law was changed to require reporting of pension contributions and possibly even withholding. Such a requirement would be a paperwork nightmare for companies and pension plans.

Even though the rule was lawful, it was apparent that the actual collection of the tax was impracticable. For that reason the department withdrew the rule and sought clarification of the statute itself. Action is pending before the legislature to eliminate this tax.

STATE PUBLIC DEFENDER

ELIGIBILITY FOR COURT APPOINTED COUNSEL, ARC 4284A, F.E. Pursuant to the authority of Senate File 266 the public defender emergency filed rules to limit access to court appointed counsel. As stated in the Act persons with income less than 150% of the guideline qualify for free legal counsel; persons with larger incomes may qualify, but only on a case-by-case basis. Section 24 of the Act mandates that persons who earn in excess of the guidelines contribute to the cost of the defense. The factors that will be considered include income, family size, assets, debts and expenses. The term assets includes anything from real property to automobiles, if the assets can be turned into cash in a reasonable amount of time

and would not jeopardize the applicants ability to maintain a home or property. Liabilities include debts of whatever nature. Applications for assistance must include a financial statement; each district will appoint an individual to review these cases and made recommendations to the court .

TRANSPORTATION DEPARTMENT

REFRESHMENTS AT HIGHWAY REST STOPS, ARC 4214A, ADOPTED. At the request of the committee, the department developed rules outlining the conditions where volunteer groups may dispense free donuts and coffee to traveling motorists {holiday rest stops}. The initial proposal was controversial because the Department of the Blind had exclusive rights to the vending concession at rest stops. A compromise was reached allowing local group to sponsor rest stops on a limited basis. The program is limited to roughly nine days per year (with several odd hours added). Those are the three day holiday periods of Memorial Day, Labor Day and the Forth of July.

There are numerous restrictions on the program, to ensure that public property is not being used for a private purpose. First, the volunteer groups may not charge for the refreshments, although unsolicited donations may be accepted. No matter how worthy the purpose, no group may solicit funds on public property, otherwise all groups would demand the same right. Next, the sponsoring group must assume full liability for any injury resulting from the holiday rest stop.