

ADMINISTRATIVE RULES REVIEW COMMITTEE
Annual Report
1978

State of Iowa

In the 1978 calendar year 55 agencies put into effect 357 adopted rule changes, down approximately 11% from 1977. These changes involved well over 1000 individual additions amendments and repealers. These changes are as follows:

Accountancy Board	9	Insurance Department	2
Aging Commission	2	Iowa Development Commission	2
Agriculture	11	Judicial Nominating Comm.	1
Appeal Board	1	Labor	5
Appeal Board, S.I.C.C.	2	Land Preservation Policy Comm.	1
Archaeologist	2	Landscape Architects	3
Architectural Examiners	2	Law Enforcement Academy	1
Arts Council	1	Merit Employment	10
Attorney General	1	Natural Resources	12
Banking Dept.	5	Nursing Board	4
Beer and Liquor Control	3	Nursing Home Administrators	1
City Development Board	1	Pharmacy Examiners	4
City Finance Committee	2	Planning and Programming	4
Civil Rights Commission	6	Prison Industries Ad. Board	1
Commerce Commission	4	Professional Teaching	3
Comptroller	2	P.E.R.B.	1
Conservation Commission	24	Public Instruction	1
Dentistry Board	1	Public Safety	4
Educational Radio and TV	1	Real Estate Commission	1
Egg Council	1	Regents	6
Employment Agency Licensing	1	Revenue	9
Employment Security	14	Social Services	78
Engineering Examiners	3	Soil Conservation	1
Environmental Quality	20	Substance Abuse	7
General Services	2	Transportation	23
Health Department	37	Veterinary Medical Examiners	3
Historical Department	3	Voter Registration	7
Housing Finance Authority	1		

Committee Suspensions. Since July, 1978, the committee has thrice used its new power to delay a rule until the expiration of 45 calendar days into the 68th General Assembly. If these rules are not "disapproved" by a joint resolution by FEBRUARY 26, 1978, they will automatically go into effect. The rules suspended are as follows: AGRICULTURE-Rule 6.17, relating to the processing of animal waste for feed. Subrule 6.17(8) provides that such waste may contain up to 30% dirt, rocks, sand or other foreign material. The Committee feels that this percentage is too high, while the department maintains that the percentage is within generally accepted standards and that a certain amount of dirt must always be present, due to the methods used to collect the waste.

ENVIRONMENTAL QUALITY-Subrule 4.5(3) mandates that newly constructed anaerobic lagoons, used for animal waste disposal, must be located certain distances from inhabited areas. The Committee, the department of agriculture, and the Iowa development commission feel that the required distances would have a disastrous impact upon Iowa's pork and cattle industry by greatly limiting the areas available for the construction of these lagoons. It was also noted

when properly managed, these lagoons present virtually no odor problems. The department of environmental quality responds that the stench from anaerobic lagoons which are not properly maintained do cause a number of problems, and since the department has no authority to require specific management practices, the separation requirement is the only way to solve the problem.

REVENUE-Subrule 17.1" c" imposes sales tax upon electricity used in grain drying; §422.42(3), 1977 Code, exempts from tax fuel used in grain drying. The department contends that the exemption does not apply, since Webster's dictionary defines fuel as a combustible material such as wood, coal, oil, etc., and therefore electricity is not a fuel. The Committee responds that the Legislature is its own dictionary, and is not bound by textbook definitions, when the statute clearly intends a different meaning.

Committee Objections.*In 1978 the Administrative Rules Review Committee voted 24 objections to agency rulemaking, down approximately 35% from 1977. The objections and their final disposition are as follows:(as of Dec. 15, 1978):

AGING COMMISSION-Rule 5.6 banned employees from holding elective, partisan office. Committee objection on the grounds that §19A.18 bans partisan activity only during working hours. CORRECTED.

AGRICULTURE-Subrule 16.150(2), relating to the movement of swine, was objected to on the grounds it was arbitrary and unreasonable, in that the rule severely limited the ability of the pork producer to ship swine. CORRECTED.

Subrule 16.151(3), relating to the release from quarantine for Aujeszky's disease, on the grounds it is arbitrary, in that it severely limits the ability of the pork producer to ship swine. CORRECTED.

APPEAL BOARD, STATE INSTITUTION CONTRACTS-Objection on the grounds that the board can not make rules because it has not met in 17 years. BOARD ABOLISHED BY STATUTE.

BANKING BOARD-Rule 4.3, enumerating the functions of the banking board, was objected to on the grounds that the rule expanded the authority of the board beyond the scope of §524.205(4). NOT CORRECTED.

CIVIL RIGHTS-Rule 2.14, providing that affirmative action programs do not violate the civil rights act. Objection on the grounds that such a rule is beyond commission's authority in that the legality of affirmative action is a judicial decision. CORRECTED.

CONSERVATION COMMISSION-Subrule 72.7(3), establishing a rating system for the allocation of recreation funds. Objection on the grounds the subrule was arbitrary in that the system lacked uniform application. CORRECTED.

HEALTH-

1. Funeral Directors. Rule 147.102, relating to continuing education was objected to on the grounds that self study was not eligible for credit, as provided by the statute. CORRECTED.

2. Cosmetologists. Rule 151.3, same as above. CORRECTED.

3. Chiropractors. Rule 141.51(2), providing that a peer review committee must function for at least a year before it may be registered. Objection on the grounds that the requirement is unreasonable and would discourage the formation of peer review committees. NOT CORRECTED.

4. Care Facilities. Paragraph 58.27(3)b provides that care review committees may not have access to medical or financial records. Objection on the grounds that the paragraph was beyond the authority of the department, in that §135C.25 and 38 contemplated a committee with broad investigative powers independent of the department. NOT CORRECTED.

HISTORICAL DEPARTMENT-Rule 12.4 relates to the establishment of historic preservation districts, and provided in part that the petitioner supply lists of eligible voters before an election could take place. Objection on the grounds this requirement placed a greater burden on the petitioner than contemplated by statute and could discourage persons from seeking to form these districts. CORRECTED.

JUDICIAL NOMINATING COMMISSION-Chapter 1 of the Commission's rule were objected to on the grounds they violated the provisions of Chapter 28A and 68A, 1977 Code, by holding closed meetings and keeping minutes confidential. CORRECTED.

Subrule 1.3(7) provided that the selection of judicial candidates would take place in an open meeting, but by a secret ballot. Objection on the grounds this provision is arbitrary, capricious, and in violation of Chapter 28A, 1977 Code. CORRECTED BY STATUTE.

PROFESSIONAL TEACHING PRACTICES-Subparagraphs 3.2(1)b and c provided that such things as moral turpitude and sexual behavior with or toward minor students would be grounds for dismissal. Objection on the grounds that these terms are vague, subjective, and do not adequately describe the forbidden behavior. CORRECTED.

REAL ESTATE COMMISSION-Subrule 3.7(5) denied credit to any activity that involved solely self-study, for continuing education purposes. Objection based on the grounds this provision violated Ch 95, 67th GA, §1 (1977 session). NOT CORRECTED.

REVENUE-Subrule 26.2(6) would impose sales tax upon repair services rendered by a third party for a used car dealer to render a used car fit for sale. Objection based on the grounds this rule violated §422.42(3). AMENDED.

Amendments to 26.2(6) merely provided a case cited to justify the imposition of the tax. Research demonstrated that the case was materially different from the situation in Iowa, and the objection was reimposed. NOT CORRECTED.

SOCIAL SERVICES-

1. Rule 3.2, relating to oral hearings on proposed rule making, provided that when a petition for a hearing was received, the hearing would be held in the district containing the largest number of people. Objection based on the grounds this provision violates Schmitt v. DSS, which mandated an increased number of hearings, to allow indigent people easier access to rule making procedures. NOT CORRECTED.

2. Paragraph 130.3(1)b provided that eligibility is to be determined on the basis of gross income. Objection on the grounds that it is unreasonable not to take into account allowable deductions. Additional objection on the grounds that the income levels established for the various services are unreasonable in that they are not uniform. NOT CORRECTED.

3. Rule 78.14, relating to payment for hearing aids, was put into effect under the "emergency" provisions of Chapter 17A, while the rule itself was still in the middle of oral hearings. Objection on the grounds this action constituted a flagrant violation of the emergency provisions. "EMERGENCY" FILING OVERTURNED IN COURT.

4. Paragraph 79.7(5)b established voting requirements for the medical advisory board. Objection on the grounds this provision was unreasonable in that it did not establish a voting requirement of a majority of all voting members to pass a measure. NOT CORRECTED.

SUBSTANCE ABUSE-Subrule 3.22(6) required that a physician be in charge of all medical matters and care provided in a substance abuse program. Objection on the grounds the cost of contracting for a physician's services would prove unreasonably expensive to the program. NOT CORRECTED.

TRANSPORTATION-Subparagraph [07,D] 11.3(6)a(9), relating to the weighing of vehicles for registration purposes. Objection on the grounds that the procedure established did not insure a uniform system to insure all vehicles are fairly weighed. NOT CORRECTED.

* Objections to rules under notice have been omitted from this compilation as an objection has no force or effect until the rule has been adopted in final form and filed in the Governor's office.

Synopsis-Of the 24 objections filed in 1978 only 11 have not yet been corrected, a decided improvement over 1977 when only about 33% were corrected. In fact, since the transportation department has agreed to correct their one objection, it appears that the correction rate will jump to 59%. It should be noted that the department of social services continues to be the least cooperative, voluntarily making no corrections.

Statutory Problems

A number of rules found objectionable or questionable by the Committee are the result of "quirks" in the law, which may need some sort of legislative action.

1. Aujeszky's disease. Acts of 1977 (67 GA), Chapter 81, mandates the secretary of agriculture to create a program to control the spread of Aujeszky's disease. The law imposes very little direction upon the scope of the program developed by the department, and therefore the legislature has very little control over the implementation of the program.
2. Beer and Liquor. Acts of 1977 (67 GA), Chapter 71 provides that a licensee may pay for liquor by check; and further provides that the license be suspended if the check is dishonored "for good cause". This phrase has been interpreted to mean dishonored for any reason except for a bank mistake. It therefore follows that a licensee careless enough not to have a balanced checkbook automatically gets a thirty day suspension. A better system would be to allow a three or four day "grace" period to make good on the check.
3. City Finance. §§97B.9 and 97C.10, 1977 Code apparently require that the city-employers share of FICA and IPERS be budgeted within the general fund up to the 8.10 limit.
4. Dentistry. The question is still unresolved as to whether the dental board may promulgate rules regulating the use of dental assistants. Code Chapter 153 makes no mention of dental assistants. While the board probably has sufficient implied authority to regulate a dentist's use of an assistant, a Code addition specifying the duties of a dental assistant would be helpful.
5. Historical preservation. §303.23 provides that historic preservation districts may be created by a vote of the residents; however, the section is silent about who bears the cost of the election. §47.3, 1977 Code, provides that the cost of such elections be paid by the political subdivision for which the election is held. Clarification is needed as to what a political subdivision is, and §303.23 should be amended to spell out who pays the cost of these special elections.
6. Insurance. Acts of 1978 (67 GA) Ch. 1166 was promulgated to end alleged fraud in the sale of insurance for skilled nursing homes. The insurance department is currently engaged in very controversial rule making to implement the spirit of the law. Since the current law has been declared unconstitutional, corrective legislation is needed as soon as possible.