

MINUTES

JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS

August 28, 2003
Room 514-S—Statehouse

Members Present

Representative Carl Holmes, Chairman
Senator Duane Umbarger, Vice Chairman
Senator Karin Brownlee
Senator Stan Clark
Senator U. L. "Rip" Gooch
Senator Chris Steineger
Representative Jerry Henry
Representative Andrew Howell
Representative Jan Pauls
Representative Candy Ruff
Representative Sharon Schwartz
Representative Dan Williams

Members Absent

None

Staff Present

William G. Wolff, Kansas Legislative Research Department
Melissa Calderwood, Kansas Legislative Research Department
Mitch Rice, Revisor of Statutes Office
Judy Glasgow, Secretary

Others Present

David L. Pope, Kansas Department of Agriculture
Thomas Huntzinger, Department of Agriculture
Leland Rolfs, Kansas Department of Agriculture
Leslie Kaufman, Kansas Farm Bureau

Twila Drybread, Division of Budget
Wendy Harms, Kansas Aggregate Producers Association
Woody Moses, Kansas Aggregate Producers Association
Steve Johnson, Kansas Gas Service
Larry Buening, Board of Healing Arts
Jennifer Springer, Behavioral Sciences Regulatory Board
Tuck Duncan, Kansas Occupational Therapy Association
Sonya Allen, Office of the State Bank Commissioner
Danny J. Vopat, Office of the State Bank Commissioner
David Owen, Homeless Care Home
Sandy McAdam, Kansas Department of Health and Environment
John Mitchell, Kansas Department of Health and Environment
Christine Mennicke, Kansas Department of Health and Environment
Paul Graves, Kansas Department of Health and Environment
Bill Bider, Kansas Department of Health and Environment
Gabriel R. Faimon, Kansas Department of Health and Environment
Lorne A. Phillips, Kansas Department of Health and Environment
Harry Bossi, Department of Administration
Faith Loretto, Department of Administration
Deletria Nash, Kansas Insurance Department
Terry Tracy, Kansas Department of Human Resources
Anne Haught, Kansas Department of Human Resources
Kraig Knowlton, Department of Administration
Jack Rickerson, Department of Administration
Cheryl Magathan, Real Estate Appraisal Board
Tracy Diel, Kansas Racing and Gaming Commission

Morning Session

Chairman Holmes called the meeting to order at 10:10 a.m. Action was called for on the minutes for the meeting of July 15, 2003. Chairman Holmes asked that the word “day” be inserted on page 4, last full paragraph, last line, to read “30 day-notice cycle.” Senator Clark requested that the sentence on page 6, first full paragraph “Committee members suggested that the funds for the computer upgrade could be spread over a three-year period and then be phased out” be added to the comment section of the minutes. *Representative Williams moved to approve the minutes as amended; Representative Pauls seconded. The motion carried.*

A letter was distributed to all Committee members providing information requested from the Department of Administration on the proposed amendments to KAR 1-6-23, reemployment, at the May meeting (Attachment 1).

Chairman Homes recognized Lee Rolfs, Department of Agriculture, Division of Water Resources, to speak to the proposed rules and regulations noticed for hearing on the

Kansas Water Appropriation Act. KAR 5-1-1, definitions; KAR 5-1-4, water flowmeter specifications; KAR 5-1-6, water flowmeter installation specifications; KAR 5-1-9, criteria to determine when a water flowmeter is out of compliance; KAR 5-1-12, list of water flowmeters certified by the manufacturer to meet the specifications of the chief engineer; KAR 5-3-1, application acceptable for filing; KAR 5-3-1b, complete new application; KAR 5-3-3a, legal access; KAR 5-3-4c, retaining new applications; KAR 5-3-4d, stratigraphic log requirements; KAR 5-3-5c, check valves; KAR 5-3-7, request for extension of time; KAR 5-3-16a, closed areas; exemptions for up to five acre-feet of groundwater; KAR 5-3-19, maximum reasonable annual quantity of water for irrigation use; KAR 5-5-2a, complete change application; KAR 5-5-16, additional wells; KAR 5-6-13a, check valve specifications; KAR 5-6-15, drainage basin boundaries; KAR 5-7-1, due and sufficient cause for nonuse; KAR 5-9-1, application for temporary permit acceptable for filing; KAR 5-9-6, approval of application; KAR 5-14-10, civil penalties; suspension or modification of water rights; and KAR 5-14-11, civil fines; water use reporting.

Concerning KAR 5-1-9, several members asked about the number of meters that would need to be replaced upon the implementation of the regulation. Additionally, they requested clarification as to whether the problem with the existing meters resulted from mechanical failure or design flaw. Mr. Rolfs stated that there were only a few that would need to be replaced and all meters installed had to come from the approved list. The faulty meters were ones that had been on the list approved by the Department. Mr. Rolfs stated that it was felt that these were mechanically faulty meters that had not been sealed correctly.

KAR 5-3-4c specifies that if an application is not processed by the Chief Engineer until earlier priority applications are processed, the 150-day period set in law will not begin to run until the earlier applications are processed. A member asked if anyone had received a refund due to their application taking more than 150 days. Other questions were raised concerning the Groundwater Management District No. 3 (GMD) applications and the time taken to process applications. Mr. Rolfs stated that no one has requested a refund at this point. He explained that the GMD had over 150 applications and that there were still approximately 50 to be processed. He reiterated that the 150-day time limit did not begin when the application was received, but when all prior applications had been completely processed. Each application is given an order of priority as it is received and is processed after all applications filed prior to it have been completely processed. He explained that if the applicant requested a refund, the refund would be made and the application returned. Applicants seeking refunds would lose their priority place on the list.

Committee members expressed concern regarding the forfeiture of their place on the priority list, stating that this was not the Legislature's intention when passing the statute. The intent, members said, was to provide an incentive to the agency to process the applications in a timely manner. Chairman Holmes stated that he would request an opinion from the Attorney General on the matter.

Members noted that in KAR 5-14-10 (e)(1), the civil penalty authorized could be decreased but not increased, as the penalty was already set at the maximum amount.

Mr. Rolfs next spoke to the proposed rule and regulation noticed for hearing on Kansas Chemigation Safety Law. KAR 4-20-5, waterline check valves. He stated that the purpose of the regulation was to separate the use of check valves for chemigation from the water regulations for easier reference and clarifications. There being no questions, Chairman Holmes thanked Mr. Rolfs and Mr. Pope for their appearance before the Committee.

Jennifer Springer, Behavioral Sciences Regulatory Board, was introduced by Chairman Holmes to speak to the proposed rules and regulations as noticed for hearing. KAR 102-1-3a, application for licensure by examination; application for temporary license; KAR 102-1-3b, application for licensure based on reciprocity; KAR 102-2-2b, application for licensure based on reciprocity; KAR 102-2-2c, applicants for LBSW or LMSW license; waiver of examination requirement on the basis of reciprocity; KAR 102-3-4b, application for licensure based on reciprocity; KAR 102-4-4b, application for licensure based on reciprocity; and KAR 102-5-4b, application for licensure based on reciprocity.

There were no questions for Ms. Springer and Chairman Holmes thanked her for her presentation before the Committee.

The Chairman introduced Larry Buening, Executive Director, Board of Healing Arts, to explain the proposed rules and regulations noticed for hearing on naturopathy. KAR 100-72-7, registration renewals; continuing education.

In response to questions from Committee members, Mr. Buening stated that the continuing education requirements for naturopathy were similar to those for medical doctors and chiropractors. He explained that approved courses for continuing education will be selected from courses rated by the National Advisory Council for Naturopathy.

Mr. Buening continued with the explanation of proposed rules and regulations noticed for hearing on occupational therapy. KAR 100-54-1, revoked; KAR 100-54-2, education requirements; KAR 100-54-3, examinations; KAR 100-54-4, fees; KAR 100-54-5, unprofessional conduct; defined; KAR 100-54-6, license; temporary license; renewal; late renewal; KAR 100-54-7, continuing education; license renewal; and KAR 100-54-8, reinstatement; expired and revoked licenses.

Mr. Buening introduced Tuck Duncan who, he said, represents the occupational therapists. Mr. Buening responded to several general questions concerning the length of a continuing education hour, *i.e.*, 50 minutes or 60 minutes, and the need to expand the manner in which reading professional literature is given continuing education credit to include electronic formats. (See KAR 100-54-7 of the proposed rules and regulations.)

Mr. Buening continued with the discussion of the proposed rules and regulations noticed for hearing on physical therapy. KAR 100-29-9, registration renewal; continuing education; and KAR 100-29-10, lapsed registrations and certifications; reinstatement.

Committee members pointed out some inconsistencies between the language in the naturopathy regulations and the physical therapy regulations, and Mr. Buening stated that

they would look at the two proposals and address those necessary changes to make them consistent. The inconsistency centers on the inclusion or exclusion of words "or its equivalent" or similar expressions. (For contrast, see KAR 100-29-9 and KAR 110-72-7.) After responding to some general questions, the Chairman thanked Mr. Buening for his appearance before the Committee.

Chairman Holmes recessed the Committee until 1:30 p.m.

Afternoon Session

The meeting was reconvened at 1:30 p.m. and Chairman Holmes recognized Danny Vopat, Staff Attorney, Office of the State Bank Commissioner, to address the proposed rules and regulations noticed for hearing. KAR 75-6-33, record retention by licensees under the Uniform Consumer Credit Code, and KAR 17-24-4, record retention for licensees doing mortgage business.

There were no questions concerning the proposed rules and regulations; however, the Committee did suggest that, in the notice of hearing on proposed rules and regulations, the Department's website should be added as a contact point for interested parties. Chairman Holmes thanked Mr. Vopat for his presentation.

Tracy Diel, Executive Director, Racing and Gaming Commission, was recognized by the Chairman to discuss the proposed rules and regulations noticed for hearing concerning simulcasting. KAR 112-18-9, duties of receiving facility; KAR 112-18-11, emergency procedures; and KAR 112-18-18, failure to merge.

In response to a question regarding KAR 112-18-18, failure to merge, Mr. Diel commented that it does not happen often, but when it does happen, it may affect a large number of races during a short period of time. As a follow-up question, a member asked why the track could not continue to take bets during that time, since the race is proceeding, Mr. Diel stated it is against the law in Kansas, as continuing to bet would be seen as "off track betting." There being no other questions, Mr. Diel was thanked for appearing before the Committee.

Chairman Holmes recognized Lorne Phillips, Director, Center for Health and Environment Statistics, to speak to the proposed rules and regulations noticed for hearing on vital statistics. KAR 28-17-6, fees for copies, abstracts, and searches.

Dr. Phillips stated that temporary regulations went into effect July 1, 2003, and these proposed permanent regulations noticed for hearing are identical to the temporary regulations. The regulations, he said, are the result of HB 2423, passed by the 2003 Legislature, and relate to funding programs through fees rather than from the State General Fund. A fee increase of \$1.00 on all vital records was recommended by the Legislature.

Dr. Phillips answered questions of a general nature from Committee members. Chairman Holmes thanked Dr. Phillips for his appearance before the Committee.

Chairman Holmes introduced Bill Bider, Director of the Bureau of Waste Management, and John Mitchell to address the proposed rules and regulations noticed for hearing by the Department of Health and Environment, Bureau of Waste Management (Attachment 2). KAR 28-29-300, definitions; KAR 28-29-302; KAR 28-29-304, construction and demolition (C&D) landfill design; KAR 28-29-308, construction and demolition (C&D) landfill operations; KAR 28-29-321, construction and demolition (C&D) landfill closure and postclosure care; and KAR 28-29-325, construction and demolition (C&D) landfill permits.

Mr. Bider gave a general overview of the proposed rules and regulations and stated that these separate regulations were created to cover only C&D landfills. He stated that Kansas now has 130 C&D landfills and 30 additional solid waste landfills that accept construction and demolition materials. Mr. Mitchell explained the individual rules and regulations and stood for questions.

A member expressed concern about KAR 28-29-300, page 2, paragraph (7) (b), discussing the resolution of conflicts between KAR 28-29-12 and KAR 28-29-23 and this regulation, and suggested that the agency check on KAR 28-29-12 and KAR 28-29-23 to see if there is any reference to which requirements take preference in them. Mr. Mitchell stated that he would see that the change would be made.

In response to a question concerning asphalt and concrete, Mr. Mitchell stated that these are classified as clean rubble and do not require a permit for disposal. The Chairman called attention to KAR 28-29-302, page 6, indicating that the definitions contained there were not alphabetized. Mr. Mitchell stated that this could be done without any problem.

In that same regulation, and elsewhere in the regulations proposed for hearing, concern was raised on the choice of a 100-year floodplain as a restriction for construction. Mr. Mitchell said that level was consistent with other solid waste regulations which use the 100-year floodplain. Support for raising the level to a 500-year floodplain was expressed, as well as the comment made that the 100-year requirement in other rules and regulations be reviewed.

It was suggested that the term "all weather roads" in KAR 28-29-304 (c)(2) would mean concrete or asphalt. Such a requirement would make these regulations more restrictive than county requirements for their roads. Mr. Bider stated that the Department did not intend for this to be more restrictive and the meaning of the term will be reviewed.

The Committee expressed appreciation for the excellent economic impact statement and, there being no further questions, Chairman Holmes thanked Mr. Bider and Mr. Mitchell for their presentations.

Harry Bossi, State Employee Health Care Commission, was introduced by Chairman Holmes to present the proposed rules and regulations noticed for hearing (Attachment 3). KAR 108-1-4, local unit of government employee health care benefits plan.

Mr. Bossi explained that the Health Care Commission had received written requests for eligibility to be expanded to include several units in the definition of "local unit." This change would allow the inclusion of community mental health centers, groundwater management districts, rural water supply and public wholesale water supply districts, and county extension councils and extension districts. Committee members inquired how these groups had been selected. Mr. Bossi stated that there is an application process and that all requirements had been met for this group. Mr. Bossi was thanked for his appearance before the Committee.

Chairman Holmes recognized Duane Johnson, State Librarian, to address the Committee concerning a request that the state health care benefit plan be further expanded to include local library employees (Attachment 4). Mr. Johnson stated that he had appeared before at a public hearing in 2002, and believed that the library employees would be included the next time the Commission proposed amendments to the regulation. Because they were not included in these proposed rules and regulations, Mr. Johnson asked that the Committee recommend to the Health Care Commission that local library employees be included in the health care benefit plan. He responded to general questions concerning private insurance availability, the number of persons that would be interested in acquiring the state insurance, and if this inclusion would affect the private small employer insurance market. It was suggested by the Committee that the State Employee Health Care Commission give serious consideration to including the librarians under the proposed rules and regulations at the public hearing.

Mr. Bossi told Mr. Johnson that he would like to receive additional information from the libraries concerning the number of employees that would be requesting inclusion, prior to the public hearing, in order for the request to be considered.

Chairman Holmes thanked Mr. Johnson for his comments.

Deletria L. Nash, staff attorney for the Kansas Insurance Department, was introduced by Chairman Holmes to address the proposed rules and regulations noticed for hearing by the Kansas Insurance Department (Attachment 5). KAR 40-3-48, insurance companies managing general agents; definitions; requirements; penalties.

Ms. Nash answered questions about the proposed changes. She agreed that on page 2 of the regulation, in subsection (d)(1), the term "bond" should be changed to "policy." The Committee also was interested as to why the liability insurance for managing general agents was being reduced from \$1,000,000 to \$100,000, when most policies for individuals were being increased. Ms. Nash stated that the reduction was based on the National Association of Insurance Commissioners regulation on this topic. She explained that the federal government has been urging states to have more uniformity among states or the federal government will take over insurance regulation. The Chairman thanked Ms. Nash for her comments.

Anne Haught, Department of Human Resources, Division of Workers Compensation, was recognized to speak to the proposed rule and regulation noticed for hearing, KAR 51-9-7, fees for medical and hospital services.

Committee members asked why the regulation was being adopted at this time, since the effective date is much later. Ms. Haught replied that the additional time between the hearing and the effective date will give all providers ample notice of the change of fees. Ms. Haught was thanked for her appearance before the Committee.

Cheryl Magathan was introduced by Chairman Holmes to speak to the proposed rule and regulation noticed for hearing by the Real Estate Appraisal Board. KAR 117-5-2, provisional classification; supervised experience requirements.

Ms. Magathan stated that the purpose of the change is to more clearly define "good standing" as it relates to the provisional training supervisory appraiser. The members had no questions related to the regulation, but a member asked why there was no indication on the notice of how a copy of the proposed regulation could be obtained. She stated that she would check into this matter. Chairman Holmes thanked Ms. Magathan for her presentation.

Chairman Holmes recognized David Lake, Administrator, Board of Emergency Medical Services, to address the proposed rules and regulations noticed for hearing. KAR 109-5-4, renewing expired certification; KAR 109-7-1, schedule of fees.

Reviewing KAR 109-7-1, in subsection (b)(4), a member asked whether the fee of \$80 should be underlined as new material, and in subsection (f)(2), whether \$100 also should be underlined. Mr. Lake stated that he would check on these and make the necessary corrections. There being no further questions, Mr. Lake was thanked for his appearance.

Chairman Holmes recognized Jack Rickerson, Director of the Division of Personnel Services, Department of Administration, to speak to the proposed rule and regulation noticed for hearing, KAR 1-6-21, candidates for regular positions.

Mr. Rickerson stated that this proposed regulation changes the way state agencies approach the recruitment selection process. Under the new proposed regulation, veterans would be guaranteed an interview by an agency if they qualified for the position. Upon answering general questions from Committee members, Mr. Rickerson was thanked for his comments.

COMMITTEE COMMENTS ON PROPOSED RULES AND REGULATIONS

Department of Health and Environment. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning vital statistics and solid waste - construction and demolition landfills. After discussion, the Committee had no comment on the vital statistic regulations, but expressed the following comment regarding solid waste - construction and demolition landfills.

KAR 28-29-300. In subsection (b), the requirements of KAR 28-29-12 or KAR 28-29-23 should be made consistent with KAR 28-29-300 through 325. In subsection (h), alphabetize the definitions.

KAR 28-29-304. In subsection (c)(2), is the requirement that on-site facility roads be of "all weather construction" practical?

General Comment. The Committee suggests that, for new applications for a construction and demolition landfill, the facility be located outside the 500-year floodplain. If legislation is necessary to establish this floodplain for all landfills, the appropriate standing committees should be asked to give attention to the change.

Kansas Racing and Gaming Commission. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning simulcasting - duties of receiving facility, emergency procedures, and failure to merge. After discussion, the Committee had no comment.

Bank Commissioner. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning record retention requirements for mortgage businesses and licensees of the Uniform Consumer Credit Code. After discussion, the Committee had no comment.

Insurance Department. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning managing general agents. After discussion, the Committee expressed the following comment.

KAR 40-3-48. In subsection (d)(1), change "bond" to "policy." The Committee also would like an explanation as to why there is a proposed decrease in the level of errors and omissions coverage.

Kansas Real Estate Appraisal Board. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning provisional classifications - supervised experience requirements. After discussion, the Committee had no comment; however, if the agency has a website, proposed rules and regulations should be available at that location.

Department of Human Resources - Division of Workers Compensation. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning fees for medical and hospital services. After discussion, the Committee had no comment.

Behavioral Sciences Regulatory Board. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning requirements for out-of-state applicants for licensure in psychology, social work, professional

counseling, master's level psychology, and marriage and family therapy. After discussion, the Committee had no comment on the regulations, but expressed its appreciation for the manner in which the Board exercises its regulatory responsibilities.

Board of Healing Arts. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning naturopathy - registrations and continuing education; occupational therapy - education requirements, examinations, fees, temporary licensure renewal, continuing education, unprofessional conduct, and reinstatement; and physical therapy - registration renewal, continuing education, and lapsed registrations and certifications. After discussion, the Committee expressed the following comments.

KAR 100-29-9. In subsection (a)(2), the words "or its equivalent" are struck; however in KAR 100-72-7, subsection (c), and in KAR 100-54-7, subsection (d), those or similar words remain. The Committee suggests that the regulations be consistent by deleting the words or similar words "or its equivalent."

KAR 100-54-7. In subsection (g)(3), the Committee recommends the language be broadened to include professional literature provided by any type of "electronic" media.

Department of Administration. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning veterans' preferences. After discussion, the Committee had no comment on the regulations but expressed its appreciation for the interview allowance for veterans.

State Employee Health Care Commission. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning eligibility requirements - local units of government employee health care benefits plans. After discussion, the Committee expressed the following comment.

KAR 108-1-4. The Committee requests that the State Employee Health Care Commission consider the request of the State Librarian to include library employees (local, district, and regional) in KAR 108-1-4.

Board of Emergency Medical Services. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning fees and renewing expired certificates. After discussion, the Committee expressed the following comment.

KAR 109-7-1. In subsection (b)(4), should the \$80 fee be underscored as new language? And, in subsection (f)(2), should the \$40 fee be underscored as new language?

Department of Agriculture - Division of Water Resources. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning the Kansas Water Appropriation Act and the Kansas Chemigation Safety Law. After discussion, the Committee had no comment on the chemigation regulation, but expressed the following comments on the water appropriation regulations.

KAR 5-1-1. In subsection (pp), are small businesses and residences excluded from the definition of "Industrial use"? Are they excluded by some other regulation? If not, should they be excluded?

KAR 5-1-12. Concerning the issue of waterflow meters, does the Department know whether the meters failed because of a design flaw or some mechanical failure? Since the Department requires meters to be certified, does the Department have any liability if the meters failed because of a design flaw? Have the models of failed meters been removed from the approved list? What would be the economic impact if all failed meters needed to be replaced?

KAR 5-3-4c. The Committee will request an Attorney General's opinion to determine whether the Department correctly interprets the Legislature's intent regarding the forfeiture of the application fee for failure to timely process an application, and the retention of the completed application with the priority it received upon its filing.

KAR 5-14-10. Regarding imposition of civil penalties, the Department must recognize that, in subsection (e)(1), the penalty could only be decreased, as the regulation already sets the penalty at the maximum allowed, thereby precluding any upward adjustment.

Chairman Holmes announced that the next meeting would be October 8, 2003, for a one-day meeting. The meeting was adjourned at 4:50 p.m.

Prepared by Judy Glasgow
Edited by Melissa Calderwood and Bill Wolff

Approved by Committee on:

October 8, 2003