

MINUTES

JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS

April 7-8, 2008
Room 519-S—Statehouse

Members Present

Senator Vicki Schmidt, Chairperson
Representative Carl Holmes, Vice-Chairperson
Senator Karin Brownlee
Senator Ralph Ostmeyer
Senator Chris Steineger
Representative John Faber
Representative Joe Patton
Representative Jan Pauls
Representative Arlen Siegfroid
Representative Mark Treaster
Representative Ed Trimmer

Members Absent

Senator Donald Betts

Staff Present

Raney Gilliland, Kansas Legislative Research Department
Jill Shelley, Kansas Legislative Research Department
Sharon Wenger, Kansas Legislative Research Department
Kenneth Wilke, Office of the Revisor of Statutes
Nobuko Folmsbee, Office of the Revisor of Statutes
Judy Glasgow, Committee Assistant

Others Present

Chris Tymeson, Kansas Department of Wildlife and Parks
John House, Department of Social and Rehabilitation Services
Patrick R. Hubbel, Burlington Northern Santa Fe
Brian Bolen, Department of Social and Rehabilitation Services
Randy Stookey, Kansas Department of Agriculture
Gary Meyer, Kansas Department of Agriculture
Daniel Tuggle, Kansas Department of Agriculture

Erin Hoestje, Kansas Securities Commission
Rick Fleming, Kansas Securities Commission
Austin Hayden, Hein Law Firm
Craig Thompson, Kansas Department of Health and Environment
Lane Hemsley, Kansas Board of Pharmacy
Chris Ross Baze, Kansas Department of Health and Environment
Richard Cram, Kansas Department of Revenue
Tom Hatten, Department of Revenue
Kathleen Smith, Department of Revenue
Mary A. Murphy, Kansas Department of Health and Environment
Carol Williams, Governmental Ethics Commission
Jan Holt, Governmental Ethics Commission
Deanna Lieber, Kansas State Department of Education
Cindy White, Kansas Department of Health and Environment
Scott Heidner, Gaches, Braden, Barbee and Assoc.
Sandy McAdam, Kansas Department of Health and Environment
Gail Hansen, Kansas Department of Health and Environment
Sean Miller, Capitol Strategies
Doug Lawrence, Capitol Consulting Group
Ron Seeber, Hein Law Firm
George Wengert, Ruffin Companies
Mary Feighny, Office of the Attorney General
Patrick Martin, Racing and Gaming Commission
Robert Krehbiel, Racing and Gaming Commission

**Monday, April 7
Morning Session**

Chairperson Vicki Schmidt called the meeting to order at 9:05 a.m. on April 7, 2008.

The Chairperson asked for action on the minutes for the February 15, 2008, meeting that were before the Committee. *Senator Ostmeyer moved to approve the minutes as presented, Representative Trimmer seconded the motion; the motion passed.*

The Chairperson welcomed Chris Tymeson, General Counsel, to address the proposed rules and regulations noticed for hearing by the Kansas Department of Wildlife and Parks. KAR 115-2-3a, cabin camping permit fees and KAR 115-8-1, department lands and waters: hunting, fur harvesting, and discharge of firearms.

Mr. Tymeson stated that KAR 115-2-3a adds two new locations within the fisheries and wildlife division for cabins at Atchison and McPherson. KAR 115-8-1 places into regulation through the use of a reference document special restrictions and provisions related to department lands and waters that are currently in place through the use of posted notice. The Committee had no questions on these rules and regulations.

Mr. Tymeson continued by explaining exempt rules and regulations KAR 115-25-7, antelope; open season, bag limit, permits, and KAR 115-25-9, deer; open season, bag limit, and permits.

There were no questions from the Committee on the exempt rules and regulations, and the Chairperson thanked Mr. Tymeson for his appearance before the Committee.

John House, General Counsel, was recognized by the Chairperson to speak to the proposed rules and regulations noticed for hearing by the Department of Social and Rehabilitation Services (Attachments 1 and 2). KAR 30-64-24, revoked, and KAR 30-63-32, case management.

Mr. House stated that KAR 30-63-32 is a new regulation to replace revoked regulation 30-64-24. It is being developed to more efficiently align MR/DD case management provider standards with the issuance of the SRS license and to implement changes necessitated by a federal change in the case management funding mechanism under Medicaid.

In response to a question from a Committee member, Mr. House stated KAR 30-63-32 would not change the number of persons needed to maintain these services. The Committee requested a letter of inquiry be issued to the Department of Social and Rehabilitation regarding the change in how checks were cut and how this results in a zero fiscal change within the agency and whether this was a federal mandate. Chairperson Schmidt thanked Mr. House for appearing before the Committee.

Chairperson Schmidt recognized Susan Somers, Executive Director, to speak to the proposed rules and regulations noticed for hearing by the Board of Accountancy. KAR 74-4-7, continuing professional education requirements; KAR 74-4-8, continuing professional education programs; requirements; KAR 74-4-9, continuing professional education controls and reporting; and KAR 74-4-10, continuing education requirements for renewal of initial or reinstated permits.

Ms. Somers stated the purpose of these proposed rules and regulations was clarification of existing language and elimination of unnecessary language. A Committee member noted that in KAR 74-4-8, page 2, (7), that the date "July 1, 2007" should be deleted and the sentence clarified. Ms. Somers stated this could be done. KAR 74-4-9 also eliminates the requirement to submit certain documents with permit renewals to accommodate the online renewal process. In response to a question from a Committee member, Ms. Somers stated the Board will audit 25 percent of all renewals each year and those renewing must provide all documentation at that time. After answering all questions from the Committee, the Chairperson thanked Ms. Somers for her presentation.

Richard Cram was introduced by the Chairperson to speak to the proposed rules and regulations noticed for hearing by the Kansas Department of Revenue. KAR 92-12-114, determining transportation income within a unitary group; KAR 92-12-140, definitions; KAR 92-12-141, tax credit agreement; KAR 92-12-142, tax credit application; KAR 92-12-143, quarterly reports; KAR 92-12-144, reallocation of credits; KAR 92-12-145, transfer of tax credits; and KAR 92-19-70, revocation.

Mr. Cram stated that KAR 92-12-114 provides the formula to be used in determining transportation income within a unitary group. Mr. Cram stated that this formula is based on a three-factor formula base. This rule and regulation is not changing the method that is being used at the present time. He noted that currently the Department uses the formula as outlined in guidelines, and it is now including them in rules and regulations. The Committee requested that a letter be issued by the agency stating that this rule and regulation will result in the same formula that is being used now, and there will be no additional changes resulting in a tax increase.

Mr. Cram continued with reviewing KAR 92-12-140 through KAR 92-12-145, stating these were a result of 2007 HB 2237, deferred maintenance at post-secondary institutions. A question was raised as to why stocks and bonds did not have a specific time frame to be converted into cash the way personal property and real property had. A question also was raised concerning personal property and how the valuation was derived. Members wondered if the property had been inherited, how would the cost to the donor be determined. The Committee also noted that personal property left by inheritance also should be converted into cash. Several members questioned how a foundation within the university would be able to transfer money to the university for deferred maintenance and whether there was a mechanism in place by which the foundation would receive money to pay its expenses. The Committee

questioned how the fair market value would be determined and if this could be the selling price because sale of personal property had to be completed within six months. There was a question from the Committee on how this would work during a period of recession. In KAR 92-12-144 there was a concern from the Committee about the reshuffling of allocations in the third quarter, since many individual taxpayers wait until the last quarter to designate tax credit gifts. A concern was raised by a Committee member concerning how the money could be followed to be sure that it was expended for the purpose for which the credit had been given. After responding to all questions and comments from the Committee, the Chairperson thanked Mr. Cram for his appearance before the Committee.

Randy Stookey, staff counsel, was welcomed by the Chairperson to speak to the proposed rules and regulations noticed for hearing by the Department of Agriculture. KAR 4-13-25, bulk pesticide storage and handling of pesticides; definitions; KAR 4-13-25c, location, design, and construction requirements of a bulk pesticide storage facility; KAR 4-13-25d, secondary containment for bulk pesticide storage; KAR 4-13-25e, requirements for mixing and loading pads for bulk pesticides; KAR 4-13-25f, requirements for storage containers and appurtenances for bulk pesticides; KAR 4-13-25j, bulk pesticide storage facility inspection and maintenance requirements; KAR 4-13-25m, registration of bulk pesticide storage facilities; and KAR 4-13-25n, registered bulk pesticide storage facilities; change of owner or person operating.

Mr. Stookey stated that these proposed changes are required to address ownership changes of bulk pesticide storage facilities. In addition, they clarify construction materials and inspection frequencies and should allow Kansas to maintain primacy for enforcement of pesticide secondary containment rather than the federal Environmental Protection Agency's recent rules under the Federal Insecticide, Fungicide and Rodenticide Act preempting Kansas law.

In KAR 4-13-25 staff asked the conferee for the definitions or guidelines of the term "imminent threat to public health" and "environmental damage" since they were being used by the agency and whether some type of guideline or definition may need to be established. Staff stated that in KAR 4-13-25, page 3, paragraph (1) and (o), the "a" was omitted from the reference to KSA 2-2438(a). A Committee member had some concern that facilities had already spent sizeable amounts to upgrade their facilities to bring them into compliance and this would cause a hardship on them. Mr. Stookey stated that these rules and regulations would not apply to facilities until they made changes to update their facilities or in the case where a new facility was being built, then all of these regulations would apply. The Committee expressed concern that there was no indication how the rules and regulations were to be grandfathered in over time.

Chairperson Schmidt welcomed Erin Hoestje, Associate General Counsel, to speak to the proposed rules and regulations noticed for hearing by the Office of the Securities Commissioner (Attachment 3). KAR 81-5-7, exchange exemption; KAR 81-7-2, statements of policy for specific types of securities offerings; KAR 81-14-1, registration procedures for investment advisers and investment adviser representatives; KAR 81-14-5, dishonest and unethical practices of investment advisers, investment adviser representatives, and federal covered investment advisers; and KAR 81-14-9, custody of client funds or securities; safekeeping; financial reporting; minimum net worth; bonding.

Ms. Hoestje explained that changes were needed to clarify the regulations, to respond to the changes in the names of several stock exchanges, to account for inflation, and to require a portion of the registration process be done via the nationwide Investment Adviser Registration Depository (IARD). After responding to all questions from the Committee, Ms. Hoestje was thanked by Chairperson Schmidt for appearing before the Committee.

The Chairperson recessed the meeting until 1:30 p.m.

Afternoon Session

The Chairperson reconvened the meeting at 1:30 p.m.

Craig Thompson, Bureau of Environmental Field Services, was recognized by the Chairperson Vicki Schmidt to speak to the proposed rule and regulation noticed for hearing by the Department of Health and Environment (KDHE) (Attachment 4). KAR 28-16-28g, surface water register.

Mr. Thompson stated that the proposed amendment is in response to the requirements of KSA 82a-2001, KSA 82a-2004 and changes to the Kansas Surface Water Register due to the Use Attainability Analysis (UAA) findings. KDHE adopted by reference a new Kansas Surface Water Register dated December 19, 2007, to adopt recreational uses and other designated uses determined by completed UAAs. Several members of the Committee requested a copy of the map from KDHE dated December 29, 2007. Mr. Thompson will provide these to members. A request was made by a member that the classification of streams 1253 and 1259 be reevaluated. Mr. Thompson stated that they were scheduled, but a right of way access problem had held up the reinspection. After Mr. Thompson responded to all questions, Chairperson Schmidt thanked Mr. Thompson for his presentation before the Committee.

Chairperson Schmidt welcomed Deanna Lieber, General Counsel, to speak to the proposed rules and regulations noticed for hearing by the Kansas State Department of Education. KAR 91-1-200, definition of terms; KAR 91-1-201, type of licensure; KAR 91-1-203, licensure requirements; KAR 91-1-204, licensure of out-of-state and foreign applicants; KAR 91-1-205, licensure renewal requirements; KAR 91-1-207, renewal of certificates issued before July 1, 2003; KAR 91-1-209, additional endorsements; KAR 91-1-210, license extension based upon military service; KAR 91-1-220, technical education certificate; KAR 91-1-221, technical education special needs certificate; KAR 91-19-1, definitions; and KAR 91-19-6, student teacher contracts, liabilities, and responsibilities.

In KAR 91-1-200, page 1, (d), staff noted that the sentence was unclear as to whether the person would teach by means other than a traditional college-based program or whether the teacher was trained by other than a traditional college-based program. Ms. Lieber stated that she would take this back to the Board and they would look at this again. In KAR 91-1-201, staff noted that on page 5, (j) (1) there is a conflict between what the paragraph states and the reference in S.B.R. (State Board Regulation) 91-1-203 (h)(2). After responding to all questions, Chairperson Schmidt thanked Ms. Lieber for her appearance before the Committee.

Carol Williams was recognized by the Chairperson to address the proposed rules and regulations noticed for hearing by the Governmental Ethics Commission. KAR 19-20-4, disclosures required on political advertising; KAR 19-20-5, use of public funds, machinery, equipment, and supplies; and KAR 19-27-2, contributions and other receipts.

Ms. Williams responded to several questions of a general nature concerning political advertising that requires a disclosure statement. There were several questions concerning the "INK." account that some legislators have. Ms. Williams stated that she would check with Jeff Russell, Legislative Services, and get back to the Committee. Ms. Williams reviewed the Statement of Substantial Interest form that must be completed by April 30, 2008. Staff noted that the reference to KSA 25-4156 does not directly mention the handling of e-mail. Ms. Williams stated that in KAR 19-20-5 the reference to use of public funds applies only to the Wichita School District. Staff noted that the regulation should be clarified to include the specific area that is covered. After Ms. Williams responded to all questions from the Committee, the Chairperson thanked Ms. Williams for her presentation.

Lane Hemsley, General Counsel, was recognized by Chairperson Schmidt, to address the proposed rules and regulations noticed for hearing by the Kansas Pharmacy Board. KAR 68-11-2, fees for premises registrations and permits; and KAR 68-7-14, prescription labels.

Mr. Hemsley stated that KAR 68-11-2 proposes a new registration fee for each place of business that sells durable medical equipment. Mr. Hemsley stated that this rule and regulation was the result of the passage of SB 11 in 2007. The Committee had general questions concerning this rule and regulation. In KAR 68-7-14, a question was raised on page 1, (2) concerning the word "prescriber." It was suggested that the term be more specific since it could include several different persons in the case of a Physician's Assistant or Advanced Registered Nurse Practitioner under a supervising practitioner. Mr. Hemsley stated that he would take this concern back to the Board. After responding to all questions from the Committee, Mr. Hemsley was thanked for his appearance before the Committee.

Chairperson Schmidt welcomed Melissa Wangemann, Counsel, to speak to the proposed rules and regulations noticed for hearing by the Secretary of State. KAR 7-21-1, storage of voting equipment; KAR 7-21-2, voting equipment security; KAR 7-21-3, revoked; KAR 7-21-4, manual count of damaged or defective paper ballots; KAR 7-23-13, revoked; KAR 7-37-2, revoked; KAR 7-38-2, revoked; KAR 7-45-1, modified shifts for election board workers; and KAR 7-45-2, oversight of authorized poll agents.

Ms. Wangemann reviewed the rules and regulations for the Committee members. There were no questions.

Melissa Wangemann continued her presentation on additional proposed rules and regulations noticed for hearing by the Secretary of State. KAR 7-17-1, definitions; KAR 7-17-4, fees; KAR 7-17-11, filing office data entry; KAR 7-17-19, errors in filing; KAR 7-17-21, searches; KAR 7-17-22, search logic; and KAR 7-19-24, unofficial searches.

Staff noted that in KAR 7-17-19, the history section needs to be updated. Also staff noted that the effective date for adoption should be after July 1, 2008. After she responded to all questions and comments, Ms. Wangemann was thanked for her presentation before the Committee.

The Chairperson adjourned the meeting until April 8, 2008, at 9:00 a.m.

Tuesday, April 8 Morning Session

Dr. Gail Hansen was introduced by the Chairperson to speak to the proposed rule and regulation noticed for hearing by the Kansas Department of Health and Environment, Bureau of Child Care and Health Facilities. KAR 28-1-20, immunizations; schools, child care facilities, family day care homes, and preschool or child care programs operated by a school.

Dr. Hansen stated that KAR 28-1-20 revises minimum vaccinations for children to enter Kansas schools and minimum vaccinations for children and adolescents in child care facilities, family day care homes, and preschool or daycare programs operated by a school. Staff noted that in paragraph one line 3 the term "either of the following" should be replaced with a word or phrase similar to "one of the following." The Committee noted there should be a definition of "susceptible" as used in paragraph (b). Dr. Hansen was thanked for her presentation before the committee.

Chris Ross Baze, Director of Child Care Licensing, also was introduced to address proposed rules and regulations noticed for hearing by the Kansas Department of Health and Environment. KAR

28-4-117, health care requirements for children under 16 years of age; KAR 28-4-120, family day care home certificate of registration; KAR 28-4-121, required immunizations for children under 16 years of age; and KAR 28-4-430, health practices; illness and abuse; general health requirements for staff.

Ms. Ross Baze responded to general questions concerning required tests and immunizations for children under 16 years of age. She explained the need for plans regarding the care of sick children and providing quiet areas, stating that sometimes children become sick at the facility and there needs to be a place for them to be away from the other children. Staff noted that in order to make the rules and regulations uniform the term "child care facility" should be used throughout. After Ms. Ross Baze responded to all questions from the Committee, Chairman Schmidt thanked Ms. Ross Baze for her appearance.

Chairman Schmidt announced that the proposed rules and regulations that had been scheduled for hearing by the Kansas Racing and Gaming Commission had been withdrawn and Mary Feighny of the Kansas Attorney General's Office; Patrick Martin, Assistant Attorney General, Kansas Racing and Gaming Commission; and Robert Krehbiel, Kansas Racing and Gaming Commission, would address the Committee about the withdrawal of these proposed rules and regulations.

Ms. Feighny explained to the Committee that as she was reviewing the proposed rules and regulations that covered licensing the casino, she found that there was no authority in the statute to license a manager. She stated that the act authorizes establishing certification requirements for an entity, officers, directors, and key employees, but not licensure. The certification process requires that they undergo a background check and, once the entity and people were certified, the entity would be permitted to go ahead and operate. Proof of this authority would be some type of letter or licensure document. After meeting with Ken Wilke and Nobuko Folmsbee, Mary Feighny agreed that there might not be authority for the Racing and Gaming Commission to license a casino entity. Another issue raised by the Attorney General's Office was if the state owns and operates a lottery, why would the state be licensing itself, in essence, to manage the casinos. The thought was that the relationship between the state and the casino manager should be embodied in the contract between the lottery and the manager. A casino would be controlled through a contract. On March 31, a letter was sent to the Racing and Gaming rejecting its rules and regulations that purport to license a casino entity. Because of that letter, any rules and regulations that had been previously approved by the Attorney General's office purporting to licensing a casino entity were rejected. At this point, Ms. Feighny believes that Racing and Gaming has the authority to regulate casinos only through a contract. She noted that Racing and Gaming can develop regulations for certification of key persons in casinos and contractors with the casinos. She stated that the statute tries to create the relationship: the lottery contracts with the casino manager, but racing and gaming oversee the actual operation of the casino itself.

Ms. Feighny noted that one of the problems is the difference between an operator and a manager. The Attorney General's Office thinks that the words are synonymous, but officials with the Racing and Gaming do not believe this. The state cannot give up the power to operate, but can give up the power to manage. She stated that is why it is so important to have the rules and regulations written correctly, so the state does not authorize a licensee to operate.

A question was asked concerning what the time frame was for approval of the Woodlands contract. Mr. Martin stated that Woodlands has indicated that it would be five months after the issuance of the contract. He stated that the Woodlands understands that it is proceeding at its own risk. Bob Krehbiel stated that the race track could open prior to the Supreme Court ruling, but one of the things in the contract is that there is a constitutional issue being argued and that its operations would cease in the event the Supreme Court rules that the act is unconstitutional.

Mr. Martin stated that the agency is still moving ahead with negotiating contracts and one will be reviewed around the end of April. The Committee was concerned that, by going ahead with the

contract prior to the ruling by the Kansas Supreme Court as to whether SB 66 was constitutional, it is important to notify the group entering into the contract that all costs associated with the contract would be at its expense and the state could not be sued for these expenses.

A question was raised about who will look at the contract entered into and determine whether it conforms with SB 66. Mary Feighny stated that this would be the Lottery Commission, which will enter into the contract with the casino entity. The Lottery Review Board has been set up to review the contracts as a nonpartisan group, then the contracts go to the Racing and Gaming Commission for background approval.

A question was raised by Chairperson Schmidt concerning the role of the Administrative Rules and Regulations Committee and if there would be any role for the Committee in reviewing rules and regulations. Mr. Krehbiel stated that it was his understanding that the parties are trying to understand the differences and the issues to be sure that they can arrive at the right answer. Ms. Feighny stated that the statute requires rules and regulations over certain areas concerning certification so the Committee would be involved in that portion of the review process.

The Committee had a question concerning the difference between certification and licensing and how the statute defines it. Ms. Feighny stated there was statutory authority for credentialing and certifying employees and contractors for persons rather than entities.

One of the Committee members suggested that the regulations could be changed by taking out "gaming licensing" and inserting "certifying the facility manager" and have the contract reference that term. The contract would state that regulations would have to be followed or it would be a material breach of the contract.

A question was raised about what would happen to any moneys paid to the state for a casino if SB 66 is found to be unconstitutional, and whether the state would keep the money as liquidated damages. The Committee learned this would be determined by what is in the contract.

Senator Brownlee had questions that concerned the Star Bond issue with the casinos. Ms. Feighny stated that the Attorney General's office did not issue a decision on that because of pending litigation. A suit has been filed in Shawnee County District Court and that court will make the decision based on the facts in each proposal and then apply the law.

Senator Brownlee requested the Committee issue a letter to the Lottery Commission and to the Racing and Gaming Commission stating that Administrative Rules and Regulations Committee members believe that the contract should include a clause that if the court rules that the act is unconstitutional, the state would not be liable for any costs that had been incurred by the entity. Senator Schmidt stated that it also should include a reference that anything that the state has gained from these contracts should remain with the state.

Ms. Feighny felt that the Committee should think about whether the Committee should write a letter, and called the Committee's attention to Section 31(e) of SB 66, which applies to all members of the Legislature and full time employees.

This section of law states:

(e) No state or local official shall influence, or attempt to influence, by use of official authority, the decision of the Kansas lottery commission, lottery gaming facility review board of Kansas racing and gaming commission pursuant to this act; the investigation of a proposal for a lottery gaming facility or racetrack gaming facility pursuant to this act; or any proceeding to enforce the provisions of this act or rules

and regulations preceding to enforce the provisions of this act or rules and regulations of the Kansas lottery commission or Kansas racing and gaming commission. Any such attempt shall be reported promptly to the attorney general.

(f) Willful violation of this section is a class A misdemeanor.

Ms. Feighny stated that this section would prohibit this Committee from sending a letter to the Kansas Lottery or the Kansas Racing and Gaming Commission setting out items that should be included in the contract as this could be construed as the Committee using its official authority to influence the agency.

Chairperson Schmidt stated that the Committee minutes could reflect the Committee's discussion concerning this issue and a copy of the minutes could be forwarded to the agencies. Ms. Feighny stated that the Attorney General's Office did have a request for an official opinion by the Racing and Gaming Commission on Section 31(e).

Representative Siegfroid expressed his belief that the Committee should not be intimidated by the interpretation of Section 31(e) of 2007 SB66, and this was not the intention of the Legislature when it was written. He felt that the letter should be written expressing the concerns of the Committee as this was what the Committee normally does during a review. He felt that this was a flagrant violation of the separation of powers of government.

After a lengthy discussion by the Committee, it was agreed that a letter to the Lottery Commission and to the Racing and Gaming Commission be drafted by staff instructing Racing and Gaming to include a clause in the contract stating that the state would not have any liability for costs incurred by the party if the bill was found to be unconstitutional and have the Committee review it at its next meeting.

A request was made by the Committee that the qualifications and experience of those persons who are serving as consultants for the Racing and Gaming Commission and the Lottery Review Board concerning 2007 SB 66 be provided to the Committee.

It was requested by a Committee member that the Attorney General's Office furnish a copy of the Attorney General's response to the question regarding Section 31(e) of 2007 SB 66 to all legislators and full-time employees so that they are aware of what is in this section and the Attorney General's interpretation.

Representative Siegfroid requested that the tape covering this section of the meeting be held until notification by the Committee.

The next meeting for the committee will be at *sine die*, May 29, 2008.

Committee Comments on Proposed Rules and Regulations

Kansas Board of Accountancy. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning continuing professional education requirements; continuing professional education programs, requirements; continuing professional education controls and reporting; and continuing education requirements for renewal of initial or reinstated permits and had the following comment.

KAR 74-4-8. In subsection (b)(7), the Committee suggests that the Board consider striking language referring to July 1, 2007, to make it consistent with other rules and regulations in this series where this language was eliminated.

Kansas Department of Agriculture. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning bulk pesticide storage and handling of pesticides, definitions; location, design, and construction requirements of a bulk pesticide storage facility; secondary containment for bulk pesticide storage; requirements for mixing and loading pads for bulk pesticides; requirements for storage containers and appurtenances for bulk pesticides; bulk pesticide storage facility inspection and maintenance requirements; registration of bulk pesticide storage facilities; and registered bulk pesticide storage facilities, change of owner or person operating and had the following comments.

KAR 4-13-25. In subsections (o)(1) and (o)(5), the Committee believes there is a typographical error and the reference should be made to KSA 2-2438a, not to KSA 2-2438. The Committee also is concerned with the new language in subsection (s) in that the regulation does not appear to contain the criteria for what would constitute "an imminent threat to public health or safety or could cause environmental damage." Please review and determine whether criteria or a definition should be developed.

KAR 4-13-25m. The Committee questions the authority of the agency to register bulk pesticide storage facilities. Please review.

Concern. The Committee is concerned as to how the proposed regulations impact existing facilities. There appears to be no provision for grandfathering in existing facilities. Please review and revise if necessary.

Kansas Department of Social and Rehabilitation Services. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning case management and revocation and had the following comment.

KAR 30-63-32. The Committee is concerned about the lack of change in financing commensurate with the change in the regulation. The Committee asks why change the regulation if no cost savings are realized or if there is no potential for cost savings in the future. The Committee believes there should be a review in the portion of the regulation which indicates whether this rule and regulation was a federal mandate. Please review and comment.

Kansas Department of Education. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning definition of terms; type of licensure;

license requirements; licensure of out-of-state and foreign applicants; licensure renewal requirements; renewal of certificates issued before July 1, 2003; additional endorsements; license extension based upon military service; technical education certificate; technical education special needs certificate; definitions; and student teacher contracts, liabilities, and responsibilities and had the following comments.

KAR 91-1-200. In subsection (d), the Committee suggests that the definition of "alternative teacher education program" be clarified to more clearly define the meaning of alternative preparation, i.e. is this a teaching method or a method of training teachers?

KAR 91-1-201 and KAR 91-1-203. Provisions of 91-1-201(j)(1) and 91-1-203(h)(2) are inconsistent as to which party is to submit the progress report. Please clarify.

Kansas Department of Wildlife and Parks. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning cabin camping permit fees and department land and waters, hunting, furharvesting, and discharge of firearms and had no comment.

Kansas Board of Pharmacy. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning prescription labels and had the following comment.

KAR 68-7-14. The Committee believes that more clarity would be helpful in this regulation especially when it comes to the requirements for mid-level practitioners such as physician assistants and ARNPs. Please clarify.

Kansas Board of Pharmacy. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning fees for premises registrations and permits and had no comment.

Kansas Department of Health and Environment. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning the Surface Water Register and had no comment.

Kansas Department of Health and Environment. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning immunizations, schools, child care facilities, family day care homes, and preschool or child care programs operated by a school; health care requirements for children under 16 years of age; family day care home certificate of registration; required immunizations for children under 16 years of age; and health practices, illness, and abuse; general health requirements for staff and had the following comments.

KAR 28-1-20. In subsection (a), the Committee believes that the word "either" should be replaced with the word "any" or something similar.

KAR 28-4-117. The Committee observed that the throughout this series the term "facility" and "child care facility" are used interchangeably. The Committee believes that one term or the other should be used uniformly.

Office of the Securities Commissioner. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning exchange exemption; statements of policy for specific types of securities offerings; registration procedures for investment

advisers and investment adviser representatives; dishonest and unethical practices of investment advisers, investment adviser representatives, and federal covered investment advisers; and custody of client funds or securities, safekeeping, financial reporting, minimum net worth, bonding and had no comment.

Kansas Department of Revenue. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning determining transportation income within a unitary group; definitions; tax credit agreement; tax credit application; quarterly reports; reallocation of credits; transfer of tax credits; and revocation and had the following comments.

KAR 92-12-114. The Committee asks for assurance from the agency that the effect of this regulation is just a matter of placing policy into regulation and that it will not result in any additional tax liability.

KAR 92-12-141. The Committee is concerned with the time frame of the agreements and the time when the public hearing is held and wonders how the agency plans to address the shortness of the time frame.

KAR 92-12-142. The Committee is concerned that this regulation does not address the situation if an institution were to exceed the cap. Please review and amend as necessary.

KAR 92-12-144. The Committee is concerned that the regulation allows the tax credits to be reclaimed at the end of the third quarter. The Committee believes that many individuals do not make donation decisions until the last quarter of the year. Please review and amend to address this concern.

Comment. The Committee is concerned with the issue of placing a value on the donation at the lesser of the fair market value or value when acquired, when the purchase value is below current market value or the item was inherited. The Committee is concerned that some donations may have been held for some period of time or may have been inherited and therefore the value used for the tax credit would be artificially low.

Comment. The Committee is concerned that the money for which the credit is given be expended for the intended purpose. What mechanisms are in place to assure that the money gets used by the institutions for the authorized purposes?

Request and Suggestion. The Committee requests an explanation of the time frames outlined for the exchanges. In addition, the Committee suggests that the Department require that donations of stocks and bonds be liquidated immediately upon donation so that the money may be used for its intended purpose.

Kansas Secretary of State. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning definitions; fees; filing office data entry; errors in filing; searches; search logic; and unofficial searches and had the following comment.

Comment. The Committee is aware of legislation (2008 SB 449) which would fix the authority of the Secretary of State to promulgate rules and regulations dealing with aspects of the Uniform Commercial Code. This legislation contains a "savings clause" for existing rules and regulations. The Committee questions the authority to

adopt these rules and regulations until after the time the bill would go into effect knowing the statutory defect.

Kansas Secretary of State. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning storage of voting equipment; voting equipment security; manual count of damaged or defective paper ballots; modified shifts for election board workers; oversight of authorized poll agents; and revocations and had no comment.

Kansas Governmental Ethics Commission. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning disclosures required on political advertising; use of public funds, machinery, equipment, and supplies; and contributions and other receipts and had the following comments.

KAR 19-20-5. The Committee is concerned with the use of the phrase "public funds." Is this term defined or could it be clarified to give more guidance as to what may be included in the term? Please respond.

Question. The Committee raised a question with respect to legislative use of INK accounts and the proper use of these accounts for political activity. Please respond to this issue in writing.

Prepared by Judy Glasgow
Edited by Raney Gilliland, Sharon Wenger,
and Jill Shelley

Approved by Committee on:

May 28, 2008

(Date)

