

## MINUTES

### JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS

October 8, 2003  
Room 526-S—Statehouse

#### Members Present

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

#### Members Absent

Senator Dwayne Umbarger

#### Staff Present

William Wolff, Kansas Legislative Research Department  
Raney Gilliland, Kansas Legislative Research Department  
Mitch Rice, Office of the Revisor of Statutes  
Judy Glasgow, Secretary

#### Others Present

Nialson Lee, Kansas Department of Social and Rehabilitation Services  
Reid Stacey, Kansas Department of Social and Rehabilitation Services  
Steve Solomon, The Farms, Inc.  
Ron Stark, Kansas Dental Board  
Randy Forbes, Kansas Dental Board  
Kevin Robertson, Kansas Dental Association  
Ron Gaches, Kansas Dental Hygienists Association  
Andy Sanchez, Kansas Association of Public Employees  
Ron Sieber, Hein Law Firm  
Tracy Diel, Kansas Racing and Gaming Commission  
Leslie Kaufman, Kansas Farm Bureau  
Laura Graham, Kansas Department of Revenue/Alcohol Beverage Control

Pete Bodyk, Kansas Department of Revenue/Alcohol Beverage Control  
Vera Gannaway, Governmental Ethics Commission  
Carol Williams, Governmental Ethics Commission  
David Owen, Homeless Come Home  
Rocky Vacek, Kansas Board of Barbering  
Susan Somers, Kansas Board of Accountancy  
Tony Folsom, Board of Tax Appeals  
Ann Haught, Department of Human Resources  
Steve Kelly, Department of Commerce  
Ron Smith, Department of Commerce  
Chris Tymeson, Kansas Department of Wildlife and Parks  
Amy Thornton, Kansas Department of Wildlife and Parks  
Cheryl Magathan, Real Estate Appraisal Board

**October 8, 2003  
Morning Session**

Chairman Holmes called the meeting to order at 10:10 a.m. Action was called on the minutes for the meeting of August 28, 2003. *Senator Clark moved to approve the minutes as presented, Representative Howell seconded the motion. The motion carried.*

Chairman Holmes recognized Nialson Lee, Department of Social and Rehabilitation Services (SRS), to speak to the proposed rule and regulation noticed for hearing concerning prior authorization of pharmaceutical products. KAR 30-5-64, prior authorization.

Mr. Lee responded to several general questions concerning the fact that the list for drugs requiring prior authorization is unorganized and hard to follow. He stated that the medical providers are given a drug list which shows only the preferred drugs. There being no further questions, Chairman Holmes thanked Mr. Lee for his appearance before the Committee.

Randy Forbes was introduced by Chairman Holmes to speak to the proposed rules and regulations noticed for hearing by the Kansas Dental Board. KAR 71-1-1; KAR 71-1-2; KAR 71-1-3; KAR 71-1-8; KAR 17-1-10; KAR 71-1-11; KAR 71-2-1; KAR 71-2-4; KAR 71-2-9; KAR 71-2-12; KAR 71-3-5 and KAR 71-4-3 be revoked; and KAR 71-1-15, dental record-keeping requirements; and KAR 71-6-1, definitions.

Mr. Forbes introduced Ron Sterk, who has just taken over the duties of Executive Director of the Kansas Dental Board. Mr. Forbes explained the proposed changes in KAR 71-6-1 were to clarify the issue of "direct supervision." There were no questions concerning these proposed rules and regulations and Chairman Holmes thanked Mr. Forbes for his presentation before the Committee.

Chairman Holmes introduced Rocky Vacek, Kansas Board of Barbering, to address the proposed rules and regulations noticed for hearing (Attachments 1 and 2). KAR 61-4-2, renewal of licenses; KAR 61-7-1, fees.

Mr. Vacek explained that the fee increase in KAR 61-7-1 was the first in 13 years and is necessary now because the Board is experiencing a negative balance. He noted that the purpose of KAR 61-4-2 was to cleanup and clarify the language of the existing regulation. In response to a question by a member about fees for a barber license and a shop license, Mr. Vacek stated that, if

a person was the shop owner and also a barber, he would need to obtain both licenses. Staff noted that in KAR 61-7-1, several paragraph numbering problems needed to be corrected, *e.g.*, to show 1 through 6. Mr. Vacek noted that a new economic statement was being provided in response to questions about projected revenue over the next several years.

Mr. Vacek was thanked for appearing before the Committee by the Chairman.

Chairman Holmes introduced Tracy Diel, to address the proposed rules and regulations noticed for hearing by the Kansas Racing and Gaming Commission. KAR 112-4-1, occupation licenses.

Mr. Diel stated that the purpose of this proposed regulation was to change the age requirement to 18 at greyhound racetrack facilities for licensed assistant trainers, which would make it consistent with the age requirement at horse racetrack facilities. Mr. Diel answered several general questions from Committee members concerning the necessity of all persons who are allowed on the backside of the track to be licensed. There being no further questions, Mr. Diel was thanked for his presentation before the Committee.

Cheryl Magathan was introduced by Chairman Holmes to address the proposed rules and regulations noticed for hearing by the Kansas Real Estate Appraisal Board. KAR 117-9-1, temporary practice.

Ms. Magathan stated that the change was needed to correct an oversight which did not address the matter of an appraiser from another state being in "good standing" as a condition for being issued a temporary license in Kansas. She answered Committee members' questions as to the number of appraisers in Kansas who would be subject to a disciplinary or summary order, stating that there was probably around 15 to 20 at this time, meeting a requirement for consent agreement or summary order; a majority of these are due to minor deviations. Ms. Magathan added that there are approximately 7 to 10 appraisers licenses that are revoked in a year. Chairman Holmes thanked the conferee for her appearance before the Committee.

Chairman Holmes recognized Ann Haught, Research Attorney, to speak to the proposed rules and regulations noticed for hearing by the Department of Human Resources, Division of Workers Compensation. KAR 51-9-17, release 1 standards for trading partner profiles; submission of data; first reports of injury. (Kansas EDI Release I Implementation Guide is available from the Department of Human Resources.)

Ms. Haught explained to members the new electronic filing system and stated that no new information was being requested by this method of reporting than was previously required. She stated that the opportunity for errors would be reduced by having the entities that must report accidents complete the electronic data interchange themselves. Staff suggested that since this was a volunteer program, a statement could be made at the beginning of the regulation to the effect that those who wish to do so may complete the form electronically. After answering all questions, Ms. Haught was thanked for her presentation before the Committee.

Tony R. Folsom, Executive Director, General Counsel, Board of Tax Appeals, was recognized by Chairman Holmes to address the proposed rules and regulations noticed for hearing. KAR 94-2-4, filing procedure and time limits; KAR 94-2-19, facsimile filing; KAR 94-2-20, electronic mail filing; and KAR 94-2-21, filing fees.

Mr. Folsom answered general questions on KAR 94-2-21, concerning the exemption of agriculture appraisals but no exemption for small business entities.

A member suggested that both facsimile filing (KAR 94-2-19) and electronic mail filing (94-2-20) could be authorized in a single regulation. In response to questions from members concerning whether or not the fees would discourage filing of certain types of tax appeals, and whether there was a cap in place for the fees, Mr. Folsom stated that there was no cap and he believed it is possible that certain types of appeals would be discouraged. If fees were raised further, he said it definitely would have an affect on future tax appeal filings. Staff noted that, if it was the Board's intention to adopt the Supreme Court ruling in KAR 94-2-20, it should be as of a certain date.

Members questioned whether this increase in fees would generate the necessary funds for the Board's budget, Mr Folsom stated that at the 2003 legislative hearings, the Board of Tax Appeals had stated that it was their belief that this increase would not raise the \$300,000 necessary to make their budget. He added that the Board would go before the 2004 Legislature for supplemental budget dollars if it becomes necessary. In response to a question regarding membership, Mr. Folsom stated that there are now three members of the Board of Tax Appeals, and one of those positions is vacant.

There being no further discussion, Chairman Holmes thanked Mr. Folsom for appearing before the Committee.

Chairman Holmes recognized Susan Somers, Executive Director, Kansas Board of Accountancy, to speak to the proposed rules and regulations noticed for hearing. KAR 74-1-1, type of examination; KAR 74-1-2, determining and reporting examination grades; KAR 74-1-3, retaking the examination and granting of credits; KAR 74-1-6, refund of examination fees; KARA 74-1-8, administration of examination; cheating; KAR 74-2-1, applications for examination; KAR 74-2-4, revoked; 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; KAR 74-5-202, auditing standards; KAR 74-11-6, definitions; KAR 74-11-7, renewal of a firm's registration; and KAR 74-12-1, fees.

Ms. Somers explained that these proposed rules and regulations were needed to implement the computer-based examination which will take effect in 2004. A member noted that in KAR 74-1-9, line 5, the word "and" should be changed to "or" to accomplish the regulation's intent. To the question of the effective date of the proposed rules and regulations, Ms. Somers explained that the new regulations would take effect around the middle of November, which would be after the last written examination had been given for this year, and be in place for the computer-based examination in 2004. There being no further questions, Ms. Somers was thanked for her presentation before the Committee.

Pete Bodyk, Operations Officer, Alcohol Beverage Control Division, Department of Revenue, was recognized by Chairman Holmes to address the proposed rules and regulations noticed for hearing by the Department of Revenue. KAR 14-13-9, transactions prohibited, agreements and deliveries by retailer for sale or resale off licensed premises, registration of vehicle.

Mr. Bodyk responded to general questions concerning the issuance of temporary permits. In response to a question about the Wyandotte hearing on Sunday sales, Mr. Bodyk stated that the issue is in the Court of Appeals; and a continuance has been granted for filing written arguments until January or February. There may be no decision until after the end of the legislative session. There being no further questions, Chairman Holmes thanked Pete Bodyk and Laura Graham for appearing.

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

### **Afternoon Session**

The meeting was reconvened at 1:30 p.m. and Chairman Holmes recognized Carol Williams, Executive Director, Governmental Ethics Commission, to address the proposed rules and regulations noticed for hearing. KAR 19-2-2, advisory opinion; KAR 19-20-4, disclosures required on political advertising; KAR 19-40-5, contracts; KAR 19-60-3, definitions; and KAR 19-63-6, lobbyist's records.

Committee members suggested that in KAR 19-20-4, page 2 section (7)(B), the term "county treasurer" be changed to a generic form since this language is to be used as an example. Staff questioned the expanded citation, KSA 25-4156(b)(91)(A)-(C), as it could become obsolete if any referenced numbers or letters were to be changed. Further, staff suggested that the history sections be updated on all proposed regulations to 2002 Supplemental citations.

Ms. Williams answered more general questions from members on the information that is required on specific documents for campaign materials and what would be considered a fund-raiser invitation. There being no further questions, Chairman Holmes thanked Ms. Williams for her appearance before the Committee.

Rod Bieker, State Board of Education, was introduced by Chairman Holmes to speak to the proposed rules and regulations noticed for hearing by the Kansas Board of Education. KAR 91-1-201, type of licensure; KAR 91-1-203, licensure requirements; KAR 91-1-206, professional development plans for license renewal; and KAR 91-1-213, vocational-technical certificates.

After answering some general questions from Committee members, Mr. Bieker was thanked for his presentation.

Chairman Holmes introduced Steve Kelly, Deputy Secretary Director of Business Development, to address the proposed rules and regulations noticed for hearing by the Department of Commerce (Attachment 3). KAR 110-8-1, eligibility; KAR 110-8-2; KAR 110-8-3, presentations to certified capital investors; KAR 110-8-4, certification of capital formation companies; KAR 110-8-5, Investment by certified CFCs in qualified Kansas businesses; KAR 110-8-6, accrual and payment of tax credits; KAR 110-8-7 reserved; KAR 110-8-8, annual report and recertification; KAR 110-8-9, reporting material changes in operation; KAR 110-8-10; decertification; and KAR 110-8-11, public records and confidentiality.

Mr. Kelly explained that these are new regulations resulting from legislation passed in the 2002 Session of the Legislature, and amended by the 2003 Session, authorizing the Capital Formation Company Act. In response to questions, Mr. Kelly said that Kansas Technology Enterprise Corporation (KTEC) entities were eligible to form a certified Capital Formation Company (CFC), but would have to meet the same requirements in terms of raising capital. In KAR 110-8-2 paragraph (2) line three, a member pointed out that the word "of" should be changed to "or". Staff had questions about the definition of "trade secret" and suggested that the Department double check the Kansas Open Records Act for consistency with KSA 74-8225 as it addressed the issue of trade secrets.

Chairman Holmes thanked Mr. Kelly for his appearance before the Committee.

Chris Tymeson, Wildlife and Parks Commission, was recognized by Chairman Holmes to speak to the proposed rules and regulations noticed for hearing. KAR 115-1-1, definitions; and KAR 115-2-1, amount of fees.

Committee members discussed with Mr. Tymeson the implications of the Department's definition of "domesticated wildlife" as used in the definition of "Pets" in KAR 115-1-1. It was suggested that the definition may be too broad. In this regard, Staff added the Commission may want to review KSA 21-4313 and KSA 2-1001 for guidance.

There being no further questions, Mr. Tymeson was thanked for his presentation.

Chairman Holmes introduced Marla Rhoden, Department of Health and Environment, to address the proposed rules and regulations noticed for hearing concerning medication aides. KAR 28-39-60 and KAR 28-39-70, revoked; KAR 28-39-169a, medication aide; 28-39-169b, state medication aide test and KAR 28-39-169c, medication aide continuing education.

Ms. Rhoden responded to questions from Committee members on KAR 28-39-169b, page 2, (5), allowing the use of a bilingual dictionary while taking the state test. She stated that prior to taking the test the applicant must pass an eighth grade reading proficiency test in English.

Marla Rhoden continued addressing the proposed rules and regulations noticed for hearing concerning nurse aides. KAR 28-39-164, definitions; KAR 28-39-165, nurse aide training program; KAR 28-39-166; nurse aide course instructor; KAR 28-39-167; out-of-state and allied health training endorsement for nurse aide; and KAR 28-39-168, state nurse aide test.

A member suggested that a definition be included for the term "simulated laboratory" as it is used in KAR 28-39-165, page 3 (C).

Ms. Rhoden continued with a review of the proposed rules and regulations noticed for hearing by the Department of Health and Environment concerning home health aides. KAR 28-39-171, KAR 28-39-172; KAR 28-39-173; and KAR 28-39-174, revoked. KAR 28-51-100, definitions; KAR 28-51-108, home health aide services; KAR 28-51-113, home health aide training program; KAR 28-51-114, home health aide course instructors; KAR 28-51-115; allied health training endorsement for home health aide; and KAR 28-51-116, state home health aide test eligibility.

Ms. Rhoden and Martha Ryan answered several general information questions concerning home health care and Medicaid, and whether family members could be trained and paid to assist a patient in their home. There being no further questions, Chairman Holmes thanked Ms. Rhoden and Ms. Ryan for their appearance before the Committee.

## COMMENTS ON PROPOSED RULES AND REGULATIONS

**Board of Accountancy.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning examinations, continuing education, auditing standards, renewals, and fees. After discussion, the Committee expressed the following comment:

KAR 74-1-8. In subsection (a)(10), change the "and" to "or."

**Department of Social and Rehabilitation Services.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning prior authorization of pharmaceutical products. After discussion, the Committee had no comment.

**Kansas Dental Board.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning record keeping, definitions, and revocations. After discussion, the Committee had no comment.

**Board of Barbering.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning licensing procedures and fees. After discussion, the Committee expressed the following comment:

KAR 61-7-1. The regulation is badly formatted. There is no subsection (a) nor are there any number entries 2.) through 5.)

**Kansas Racing and Gaming Commission.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning occupation licenses. After discussion, the Committee had no comment.

**Real Estate Appraisal Board.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning temporary practice. After discussion, the Committee had no comment.

**Department of Revenue.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning retail liquor dealers. After discussion, the Committee had no comment.

**Division of Workers Compensation.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning electronic data interchange. After discussion, the Committee expressed the following comment:

KAR 51-9-17. In subsection (a), consider adding language that would indicate that the regulation applies to those who voluntarily file electronically.

**Board of Tax Appeals.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning proceedings of the Board. After discussion, the Committee expressed the following comments:

KAR 94-2-19 and 20. Consider combining these two regulations into one allowing for electronic filing.

General Comment. Why is farmland exempt from the filing fee when other commercial property is required to pay the fee based on valuation?

**Governmental Ethics Commission.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning advisory opinions, disclosures, contracts, lobbyists' records, and definitions. After discussion, the Committee expressed the following comment:

KAR 19-20-4. In subsection (a)(7)(B), the example should be made generic, *i.e.*, treasurer rather than county treasurer.

**Department of Education.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning types of licenses, licensure requirements, professional development plans for licensure renewal, and vocational-technical certificates. After discussion, the Committee had no comment.

**Department of Commerce.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning the Certified Capital Formation Company Act. After discussion, the Committee expressed the following comments:

KAR 110-8-2. In subsection (a)(2), third line, change "of" to "or."

KAR 110-8-11. In subsection (b), consider clarifying what information submitted under the Act is confidential.

**Department of Wildlife and Parks.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning definitions, fees, and park permit pricing. After discussion, the Committee expressed the following comment:

KAR 115-1-1. The definition of "pet" in subsection (a)(43) seems overly broad. See the definition of that term in KSA 21-4313 and KSA 2-1001 for guidance.

**Department of Health and Environment.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning home health agency licensure, home health aides, and licensure of adult care homes-nurse aides and medication aides. After discussion, the Committee expressed the following comments:

KAR 28-39-165. In subsection (d)(4)(C), consider defining "simulated laboratory." In subsection (f), consider placing a period after the first "(d)" and deleting the remainder of the sentence.

Chairman Holmes announced that the next meeting would be November 20, 2003, with the addition of November 21, if a second day is needed. The meeting was adjourned at 4:40 p.m.

Prepared by Judy Glasgow  
Edited by Bill Wolff

Approved by Committee on:

November 20, 2003

(date)