

MINUTES

JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS

December 6, 2004
Room 123-S—Statehouse

Members Present

Senator Dwayne Umbarger, Chairman
Representative Carl Holmes, Vice Chairman
Senator Karin Brownlee
Senator Bill Buntin
Representative Eric Carter
Representative Jerry Henry
Representative Jan Pauls
Representative Candy Ruff
Representative Sharon Schwartz

Members Absent

Senator Don Betts
Senator Chris Steineger
Representative Andrew Howell

Staff Present

Raney Gilliland, Kansas Legislative Research Department
Melissa Calderwood, Kansas Legislative Research Department
Kenneth Wilke, Revisor of Statutes Office
Diana Lee, Revisor of Statutes Office
Judy Glasgow, Committee Secretary

Conferrees

Nialson Lee, Kansas Department of Social and Rehabilitation Services
Cheryl Magathan, Kansas Real Estate Appraisal Board
Julie Ehler, Kansas Department of Agriculture
Greg Foley, Kansas State Conservation Commission
Mary Feighny, Office of the Attorney General
Richard Cram, Kansas Department of Revenue
Dr. Lorne Phillips, Kansas Department of Health and Environment

Ron Seeber, Hein Law Firm
Evan Sumner, Kansas Department of Agriculture
Leslie Kaufman, Kansas Cooperative Council
Trevor Wohlford, Kansas Board of Tax Appeals
Tom Hatten, Kansas Department of Revenue
Scott Carlson, Kansas State Conservation Commission

Vice Chairman Carl Holmes called the meeting to order, December 6, 2004 at 1:45 p.m. He recognized Nialson Lee to speak to the proposed rules and regulations noticed for hearing by the Kansas Department of Social and Rehabilitation Services. KAR 30-5-64, prior authorization.

Mr. Lee stated that all drugs included in this prior authorization list regulation are for calcium channel blockers. There were no questions from Committee members regarding the changes. A member did suggest that the notice include the statement that e-mail comments would be accepted by the agency regarding the hearing. Mr. Lee stated that he would take the suggestion back to the Department. Mr. Lee was thanked for his appearance before the Committee.

Cheryl Magathan was introduced by Vice Chairman Holmes to address the proposed rules and regulations noticed for hearing by the Kansas Real Estate Appraisal Board. KAR 117-6-3, education, obtaining course approval; KAR 117-7-1, fees; and KAR 117-8-1, uniform standards of professional appraisal practice.

In review of KAR 117-6-3, page 3, staff suggested that a clarification be made to indicate "courses that have been developed by the appraisal foundation and approved by the Kansas Real Estate Appraisal Board," since the board is the only body authorized to approve courses. A Committee member noted that in KAR 117-7-1, the economic impact statement and regulation do not agree and should be corrected before the public hearing. Ms. Magathan stated this would be done, noting that there is a \$25 federal fee due along with the Kansas renewal fee, making a total due of \$225. The Committee also recommended the notice of hearing include a statement that the Board will accept comments by e-mail regarding the proposed hearing.

The Vice Chairman asked for action on the Committee minutes for October 5, 2004. *Representative Pauls moved that the minutes be approved as presented, and Representative Schwartz seconded the motion. The motion carried.*

Julie Ehler, Staff Attorney, Kansas Department of Agriculture, appeared before the Committee to speak to the proposed rules and regulations noticed for hearing by the Kansas Department of Agriculture. KAR 4-28-1, definitions; KAR 4-28-2, adoption by reference; KAR 4-28-3, fees; mobile unit; KAR 4-28-4, fees; application for food vending machine company; KAR 4-28-5, fees; food processing plant; KAR 4-28-6, fees; retail food store; KAR 4-28-7, fees; food service establishment; KAR 28-36-1, revoked; KAR 28-36-32, revoked; KAR 28-36-60, revoked; and KAR 28-36-120, revoked.

Ms. Ehler stated that the reason for these proposed rules and regulations was Executive Reorganization Order (ERO) No. 32, which transferred these duties from the Kansas Department of Health and Environment to the Kansas Department of Agriculture. She stated that these regulations cover the fee structure and definitions used by the Kansas Department of Health and Environment and do not increase the fees.

Staff raised a question about mobile retail ice cream vendors and stated that the Department should look at changing the statute to cover products of less than 10 percent butter fat, since these

do not appear to be covered at this time. In regard to KAR 4-28-3, a Committee member stated that the language should be changed to "each mobile retail ice cream unit" to correspond with the proposed definition in KAR 4-28-1. A question was raised concerning the Schwan's Fine Foods trucks, since they carry ice cream products along with other frozen food products. Ms. Ehler stated that she would have to check into this situation and get back to the Committee. Concern was expressed by the Committee whether the Department of Agriculture would have sufficient funds to operate the program since it began overseeing it in October 2004, but does not collect fees until January 2005. Staff suggested that ERO No. 32 be referenced in the regulations that were being revoked to indicate the Department of Agriculture's authority to revoke Department of Health and Environment regulations. After answering all of the Committee's questions, Vice Chairman Holmes thanked Julie Ehler for her presentation before the Committee.

Greg Foley, Executive Director, Kansas State Conservation Commission (SCC), was recognized by the Vice Chairman to review the proposed rules and regulations noticed for hearing by the SCC (Attachment 1). KAR 11-11-1, definitions; KAR 11-11-2, eligible areas; KAR 11-11-3, application and review; KAR 11-11-4, payment; KAR 11-11-5, transition to dry land; KAR 11-11-6, dismissal of water right; and KAR 11-11-7, petition for reconsideration.

Mr. Foley gave a general overview of the proviso authorizing the proposed regulations which cover the administration of a grant program targeted to retire irrigation water rights. The Irrigation Transition Assistance Program is a result of action by the 2004 Kansas Legislature, which directed the SCC to develop regulations under the authority of KSA 2-1915 and KSA 2-1919 to receive and disburse irrigation assistance grant funds. Mr. Foley stated that many comments have been received from interested parties concerning these proposed regulations. The Committee asked if the comments received to date would be made available at the public hearing, and Mr. Foley stated that this would be done.

Committee members had several questions concerning these regulations, since no money has been appropriated to fund the program and the program was created by proviso. Mr. Foley stated that the Legislature directed the agency to develop and adopt rules and regulations before March 1, 2005, to implement the pilot program for irrigation transition grants.

In KAR 11-11-3, a Committee member requested that on page 2, paragraph (2) the term "past period" needed to be clarified to designate a specific time period. Also on page 3, (k) the sentence should be changed to read "10 percent of the irrigated acres in the county shall" in order to clarify which acres are to be counted. In KAR 11-11-4, page 1, (3) Committee members questioned how multiple water rights on one well would be handled when the water right is dismissed and its priority forfeited. Mr. Foley responded to general questions regarding the time frame for transition to dry land and the selection of three years needed to establish this cover. He stated that the three-year period was chosen to provide flexibility in order to get people to enroll. A Committee member requested that in KAR 11-11-6, paragraph (b), the language be changed to state "chief engineer shall have been requested by the commission." In KAR 11-11-7, paragraph (c), third line, a Committee member suggested that it be changed to read, "The final decision of the commission shall state each reason for this determination." After answering general questions from Committee members on the regulations, Mr. Foley was thanked for appearing before the Committee.

Vice Chairman Holmes recognized Mary Feighny, Assistant Attorney General, to address the proposed rules and regulations noticed for hearing by the Office of the Attorney General. KAR 16-1-7, fees; KAR 16-4-2, continuing professional education requirements; KAR 16-4-3, continuing professional education programs; requirements; KAR 16-4-4, continuing professional education; documentation; and KAR 16-6-1, training in the handling of firearms.

Ms. Feighny stated that three of the regulations implement the new eight-hour continuing education requirement for private detective licensees, as directed by the 2004 Kansas Legislature. There being no questions from Committee members, Vice Chairman Holmes thanked Mary Feighny for her presentation before the Committee.

Richard Cram appeared before the Committee to speak to the proposed rules and regulations noticed for hearing by the Kansas Department of Revenue (Attachment 2). KAR 92-19-49b, returned goods; KAR 92-19-49c, refund applications; refund claims; required forms; KAR 92-19-49d, review of refund applications; processing of refund claims; KAR 92-19-81, abatement of final tax liabilities; KAR 14-14-12, revoked; and KAR 92-19-49a, revoked.

Mr. Cram explained that unless there are consequences for submitting an inadequately documented refund claim, the claimant has no incentive to respond in a timely manner to the Department's information requests. In response to a question from a Committee member, Mr. Cram went through the refund process, stating that this would prevent an incomplete claim from being filed at the deadline and accruing interest during the time it took to correctly complete the claim, reducing the interest earned. Staff noted in KAR 92-19-49d (B) there is no subsection (d) in KSA 79-3650. Mr. Cram responded to general questions raised by the Committee. Vice Chairman Holmes thanked Mr. Cram for appearing before the Committee.

Dr. Lorne Phillips, Kansas Department of Health and Environment, was recognized by the Vice Chairman to address the proposed rules and regulations noticed for hearing by the Kansas Department of Health and Environment. KAR 28-17-1, definitions; KAR 28-17-6, fees for copies, abstracts, and searches; KAR 28-17-20, corrections to certificates and records; and KAR 28-17-22, enforcement of Uniform Vital Statistics Act.

Committee members questioned KAR 28-17-1, page 1, (1) (A) under definitions, "The individual was born outside the United States for trust territories of the United States," (2) "An individual who was born abroad," and that these terms be clarified to better designate the difference in the terms. Dr. Phillips responded to several general questions from Committee members. After all questions were answered, Vice Chairman Holmes thanked Dr. Phillips for appearing before the Committee.

After discussion by Committee members, the next meeting of the Committee was set for January 4, 2005. The meeting adjourned at 5:15 p.m.

Committee Comments on Proposed Rules and Regulations

Kansas Real Estate Appraisal Board. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning uniform standards of professional appraisal practice; education, obtaining course approval; fees. After discussion, the Committee expressed the following comments.

KAR 117-6-3. In subsection (d), consider clarifying the authority given to the Appraisal Foundation to approve courses. Consider using the phrase "deemed to be approved by the board if the course is registered with the board."

KAR 117-7-1. The explanation in the notice provided to the Committee does not reflect the inclusion of the extra fee paid to the federal government. Consider

addressing this issue at the public hearing on this regulation. The Economic Impact statement does not reflect the federal allocation.

Kansas Department of Agriculture. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning definitions; adoption by reference; fees, mobile unit; fees, application for food vending machine company; fees, food processing plant; fees, retail food store; fees, food service establishment; revocations. After discussion, the Committee expressed the following comments.

KAR 4-28-1. The Committee is concerned with what is covered under the mobile retail ice cream vendors definition. It appears that this definition does not address a frozen dessert that has less than 10 percent butter fat and questions whether this was intended.

KAR 4-28-2. The Committee is concerned whether this regulation is in conflict with other regulations or whether it perhaps supersedes other regulations.

KAR 4-28-3. The Committee questions whether vendors providing frozen food products in addition to ice cream products would be subject to this fee.

KAR 4-28-4. The Committee is concerned about the correct style for the term "dollar." The Committee notes that both the word and the dollar sign are used in this set of regulations.

General Comment. The Committee is concerned that in the revoked regulations the history section should include a reference to Executive Reorganization Order (ERO) 32 to clarify the agency's authority for revocation of regulations which were initially adopted by another agency.

General Comment. The Committee is concerned that the Economic Impact Statement needs additional information on the agency and the industry being regulated.

General Comment. The Committee is concerned that there will be a need for additional legislation to clarify the lines of authority in certain statutes between the Kansas Department of Health and Environment and the Kansas Department of Agriculture, relating to ERO 32.

Kansas State Conservation Commission. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning definitions; eligible areas; application and review; payment; transition to dry land; dismissal of water right; petition for reconsideration. After discussion, the Committee expressed the following comments.

KAR 11-11-1. Consider clarification of the definition of "local entity."

KAR 11-11-2. In subsection (a)(1), change the "and" that follows the semicolon to "or."

KAR 11-11-3. In subsection (d)(5) and (f)(2), clarify the period of time for which water usage information will be examined. In subsection (k), consider using the phrase

"that no more that 10 percent of the irrigated acres in a county shall be eligible for this program."

KAR 11-11-4. The Committee is concerned that the regulation does not address the situation that might arise when there is more than one water right associated with a single point of diversion.

KAR 11-11-6. The Committee believes that in subsection (a), the sentence should read "Each water right for which payment is received from the program shall have been dismissed by the chief engineer, and the priority of the water right shall have been forfeited." The Committee suggests the same change for subsection (b).

KAR 11-11-7. The Committee believes that language should be added to indicate that the decision of the Commission should be final if, after 30 days, there is no petition for reconsideration of a Commission decision.

General Comment. The Committee is concerned that state agencies may have been eligible for payments if money had been available for this program during FY 2005. Also, the Committee is interested in knowing whether water that is part of a water bank would be eligible for participation in this program.

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

Kansas Attorney General. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning fees; continuing education requirements; continuing professional education programs, requirements; continuing professional education, documentation; training in the handling of firearms. After discussion, the Committee 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 definitions; fees for copies, abstracts, and searches; corrections to certificates and records; enforcement of Uniform Vital Statistics Act. After discussion, the Committee had the following comment.

KAR 28-17-1. In subsection (d), consider clarifying the definition of the term "abroad" and consider including the federal definition.

Kansas Department of Revenue. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning returned goods; refund applications, refund claims, required forms; review of refund applications, processing of refund claims; abatement of final tax liabilities; revocations.

KAR 92-19-49d. In subsection (a)(1), the Committee is concerned that the statute of limitations may preclude refunds of sales or compensating use taxes. In particular, the language used appears to conflict with the last sentence in KSA 2003 Supp. 79-3650(b). Also, in (b)(1)(c), there is a reference to KSA 79-3650 (d), which does not exist.

Prepared by Judy Glasgow
Edited by Melissa Calderwood

Approved by Committee:

January 4, 2004
(date)