

MINUTES

JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS

July 15, 2003
Room 519-S—Statehouse

Members Present

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

Members Absent

Senator Chris Steineger
Senator Duane Umbarger, Vice Chair
Representative Candy Ruff

Staff Present

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

Others Present

Robert Haley, Kansas Department of Transportation
Evelyn Fitzpatrick, Kansas Department of Transportation
Dale Jost, Kansas Department of Transportation
J. P. Small, Kansas Department of Transportation

Sam McFarran, Kansas Department of Administration, Division of the Budget
Twila Drybread, Kansas Department of Administration, Division of the Budget
Debra Duncan, Kansas Animal Health Department
George Teagarden, Kansas Animal Health Department
Lee Palmer, Kansas Farm Bureau/Kansas Agricultural Alliance
Ron Seeber, Hein Law Firm
Tracy Diel, Kansas Racing and Gaming Commission
Diane Dykstra, Kansas Department of Social and Rehabilitation Services
Dennis Priest, Kansas Department of Social and Rehabilitation Services
Nialson Lee, Kansas Department of Social and Rehabilitation Services
Mike Tate, Kansas Department of Health and Environment
Bret Holman, Kansas Department of Health and Environment
Erik Sartorius, City of Overland Park
Sonya Allen, Office of State Bank Commissioner
Gwen Hill, Office of State Bank Commissioner
Karl Mueldener, Kansas Department of Health and Environment
Ron Hein, Kansas Restaurant and Hospitality Association
Deletria Nash, Kansas Insurance Department
Craig Van Anylst, Kansas Insurance Department
Kelly Benedict, Polsinelli Shalton & Welte P. C.
Tom Hatten, Kansas Department of Revenue
Chris Tymeson, Kansas Department of Wildlife and Parks
Janet Chubb, Kansas Secretary of State

Morning Session

Chairman Holmes called the meeting to order at 10:00 a.m., July 15, 2003. Action was called for on the minutes of the May 29-30, 2003 meeting. Chairman Holmes noted that on page 3, paragraph 2, line 8, the fourth word from the end should be changed from "If" to "It." Also on page 8, fourth paragraph, the third line should read "August 29 primary and August 28, if two days are necessary," and the last line should read "December 16 primary and December 17, if two days are necessary." On page 10, under KAR 28-45-28, the word "leek" should be changed to "leak." *Representative Pauls moved to approve the minutes as amended; Representative Schultz seconded. Motion carried.*

The Chairman recognized Robert Haley, Kansas Department of Transportation (KDOT) to discuss the proposed rules and regulations noticed for hearing (Attachment 1). KAR 36-40-1, definitions; KAR 36-40-2, application and supporting documents; KAR 36-40-3, transportation project eligibility; KAR 36-40-4, fund use; KAR 36-40-5 financial assistance agreement requirements; KAR 36-40-6, interest rate and servicing fees; KAR 36-40-7, repayment of financial assistance; KAR 36-40-8, approved project statements; KAR 36-40-9, approved project costs; accounting requirement.

The Committee expressed some concern about the time frame between when the design is completed and actual construction begins, especially if there has been an

extended time between the design and start of construction. A member suggested that the plans should be rechecked to see if they meet current safety rules when construction is started. Mr. Haley stated that he would check with the Department on this and get back to the Committee.

Staff suggested that the term "licensed professional engineer" be included in the definition section for clarification purposes. In response to a question staff raised as to whether or not there was a conflict of interest due to the fact that the applicant provides the licensed professional engineer to do the inspection of the materials and project, Mr. Haley stated that he did not believe there would be any. A member raised a further concern relating to the use of minority contractors and whether federal guidelines apply. Mr. Haley said that the state acts as the agent for the federal government to ensure these guidelines are met. There being no further questions, Chairman Holmes thanked Mr. Haley for his appearance before the Committee.

Debra Duncan was welcomed by Chairman Holmes to discuss the proposed rules and regulations noticed for hearing by the Animal Health Department. KAR 9-18-2, inspection premises; KAR 9-18-3, inspection generated by a complaint; KAR; 9-19-1, and KAR 9-19-2 through KAR 9-19-11, revoked; KAR 9-19-12, adoption by reference; KAR 9-25-2, indoor housing facilities; KAR 9-25-3; sheltered housing facilities; KAR 9-25-5, primary enclosures; KAR 9-25-6, cleaning, sanitization, housekeeping, and pest control; KAR 9-25-12, age of animal; and KAR 9-26-1, euthanasia methods.

Ms. Duncan stated these new regulations were being proposed so that Kansas would comply with U. S. Department of Agriculture regulations. She stated that in KAR 9-25-12 the word "offer" in the first sentence was being deleted since many breeders offered animals for sale even before they were born. The change would not cause any problems.

Staff noted that the term "commissioner" should be used rather than "livestock commissioner," since this is the term defined in the statute. A member questioned the enforcement of the humidity level requirement, as the term "humidity extreme" was not defined. He recommended that the term be defined for clarification. A concern was expressed regarding KAR 9-25-6, page 2, (4)(c) concerning pest control. A member recalled an inspector requiring a breeder to move a wood pile some distance from the building that was heated with the wood. The member commented that perhaps there were more reasonable ways to deal with pests. She suggested the language be rewritten to be more specific as to what is required and what limits the discretion of the inspectors in these types of situations.

Ms. Duncan answered general questions from Committee members concerning the proposed rules and regulations. There being no further questions, the Chairman thanked her for appearing before the Committee.

Chairman Holmes introduced Tracy Diel, Kansas Racing and Gaming Commission, to speak to the proposed rules and regulations noticed for hearing. KAR 112-3-11, racing operation and parimutuel wagering; KAR 112-8-4, withdrawals and scratches and KAR 112-8-5, schooling.

Mr. Diel stated that these regulations all add the word "live" to distinguish live racing from simulcast racing.

There were no questions from the Committee and Chairman Holmes thanked Mr. Diel for his presentation before the Committee.

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

Afternoon Session

Chairman Holmes called on Dennis Priest, Program Administrator, Department of Social and Rehabilitation Services (SRS), to explain the proposed rules and regulations noticed for hearing on the public assistance program. KAR 30-4-39, responsibilities of applicants and recipients; KAR 30-4-55, cooperation; and KAR 30-4-110, income.

In response to questions from Committee members, Mr. Priest explained that the requirement for monthly reporting is being removed for the Temporary Assistance for Families (TAF) recipients to coordinate with the food stamp program for certain households with TAF members. The latter program is on a six-month reporting schedule. Mr. Priest explained that recipients will report changes as they occur and those changes will take effect immediately, resulting in savings to the Department. The change in regulations will make it less cumbersome and less complicated for recipients and improve efficiency for both recipients and staff.

There being no other questions, Chairman Holmes thanked Mr. Priest for his presentation before the Committee.

Nialson Lee was recognized by Chairman Holmes to speak to the proposed rules and regulations noticed for hearing by SRS. KAR 30-5-64, prior authorization. Mr. Lee stated that the proposed change is to add five drug classes to the list for prior authorization, anti-psoriatics: alefacept; antiretroviral: enfuviride; anti-rheumatics: leflunomide, infliximab, anakinra, adalimumab, etanercept; cervical dystonias: botulinum toxins A and B; and osteoporosis: teripavatidel.

A question was raised by a member, noting that the public hearing had been held prior to the Committee's hearing (July 14, 2003). He asked if there had been any public comment about the proposed changes. Mr. Lee stated that there were no public comments. Chairman Holmes thanked Mr. Lee and asked that SRS keep Legislative Research staff apprized of future amendments to this regulation, since changes are on a 30-day notice cycle.

Chairman Holmes called on Mike Tate to address the proposed rules and regulations noticed for hearing by the Kansas Department of Health and Environment (KDHE), Bureau of Water. KAR 28-16-28b, definitions and KAR 28-16-28e, surface water quality criteria (Attachment 2).

Mr. Tate explained that the proposed rules and regulations were the result of Substitute for Senate Substitute for HB 2219, passed by the Kansas Legislature in 2003. He stated that the basic changes in the proposed regulations were the use of E. coli bacteria, rather than fecal bacteria, in determining human pathogens, and increasing the number of samples to be taken. Mr. Tate answered general questions concerning the scheduling of samples and the required five samples to be taken over the period of 30 days.

Staff noted that in the history section of KAR 28-16-28e, it should be changed to 2003 Senate Substitute for Substitute HB 2219. After answering all Committee questions, Chairman Holmes thanked Mr. Tate for his appearance before the Committee.

Gwen Hill, Office of the State Bank Commissioner, was introduced by Chairman Holmes to speak to the proposed rules and regulations noticed for hearing. KAR 17-24-1, signed acknowledgment; contents and KAR 17-8-1, financial subsidiaries.

The Committee had no questions about the proposed regulations and Chairman Holmes thanked Ms. Hill for appearing before the Committee.

The Chairman recognized Sonya Allen to speak to the proposed rules and regulations noticed for hearing by the Office of the State Bank Commissioner. KAR 75-6-34, balloon payment on consumer loans secured by motor vehicles.

Ms. Allen responded to questions from Committee members about the disclosure statement and if it would be clear to the creditor. After discussion, it was determined that because the statement was on a separate paper containing only the disclosure information, it would be sufficiently clear.

Chairman Holmes called on Marla Rhoden to address the proposed rules and regulations noticed for hearing by KDHE. KAR 28-38-18, licensing examinations and KAR 28-38-19, qualification for licensure.

Staff noted that a correction in the history section under KSA 65-3503 was needed. Ms. Rhoden was thanked for her presentation by Chairman Holmes.

Lesa Roberts, Director of the Bureau of Consumer Health, introduced Mary Glassburner to speak to the proposed rules and regulations noticed for hearing by KDHE. KAR 28-36-30, fees.

Ms. Roberts explained that these changes raise the fees charged to food service establishments from \$130 to \$200 annually.

Ronald Hein, representing the Kansas Restaurant and Hospitality Association, appeared to comment on the proposed rule and regulation KAR 28-36-30 (Attachment 3). Mr. Hein stated that SB 100, passed in the 2001 Legislative Session, raised the cap on licensing fees from \$100 to \$200. He stated that after reviewing the proposed increases, the Kansas Restaurant and Hospitality Association is concerned that the fee is being taken to the cap. A more appropriate approach, he said, would be a phased-in fee increase.

In response to questions by Committee members concerning the budget restraints and how many inspectors could be brought on board with the additional money raised by the fee increase, Ms. Roberts stated that the amount raised by this increase would be \$728,000 each year. She said currently, there were three positions vacant that could be filled using the fee income. Additionally, she mentioned the need to upgrade the computer system used to handle the inspections. Committee members suggested the funds for the computer upgrade could be spread over a three-year period and then be phased out. Mary Glassburner responded to several general questions about the proposed rules and regulations. Chairman Holmes thanked Ms. Roberts and Ms. Glassburner for their presentations.

Chairman Holmes recognized Deletria Nash, Kansas Insurance Department, to speak to the proposed rules and regulations noticed for hearing (Attachment 4). KAR 40-1-48, risk-based capital instructions for managed care organization; KAR 40-4-1, accident and health insurance; individual policies; rate filings; requirements and KAR 40-5-110, same; supervision of credit insurance operations.

The Committee had no questions concerning these proposed rules and regulations. Ms. Nash was thanked by the Chairman for her presentation before the Committee.

Chris Tymeson was recognized by Chairman Holmes to discuss the proposed rules and regulations noticed for hearing by the Department of Wildlife and Parks. KAR 115-2-1, amount of fees; KAR 115-21-1, guides; permit application, examination, and restrictions; and KAR 115-21-2, guides; reporting requirements.

Mr. Tymeson noted that these proposed changes remove the reference to fishing for guide permits, since they are no longer required. Committee members suggested that the word "hunting" be inserted in the "resident commercial guide permit" title. Chris Tymeson responded to several general questions concerning lifetime permits and requirements. Chairman Holmes thanked Mr. Tymeson for his appearance before the Committee.

Janet Chubb was welcomed by Chairman Holmes to speak to the proposed rules and regulations noticed for hearing by the Secretary of State. KAR 7-16-1, information and services fee; and 7-16-2, technology communication fee.

Ms. Chubb stated that temporary regulations were effective on July 1, 2003, because of the critical funding issues of the office and will be implemented on August 1, 2003. Ms. Chubb stated that, with the passage by the 2003 Legislature of SB 239, which began a phase-out of general fund appropriations for the operation of the office, a fee fund was established and the Secretary of State was authorized to charge fees related to the providing of information and services. In response to several questions from members, Ms. Chubb explained that the legislation did not set the fees; rather, the Secretary had done an exhaustive study of the work of the agency and developed the fees based on the costs associated with the work, which would be added to the fee already being charged. She stated that the fee schedule for use by the general public will show only one fee for each service. Members were concerned that a cost analysis of the services performed had not been done and should be completed before computing the fee increases of the magnitude proposed in the regulations.

Chairman Holmes thanked Janet Chubb for her presentation before the Committee.

Tom Hatten, attorney and tax specialist, Office of Policy and Research, was recognized by Chairman Holmes to address the proposed rules and regulations noticed for hearing by the Department of Revenue. KAR 92-21-7, 92-21-8, 92-21-10, 92-21-16, 92-21-17, revoked; KAR 92-19-73, membership fees and dues; 92-19-81; abatement of final tax liabilities; and 92-21-14, place of business.

Mr. Hatten stated that the proposed revocations are the result of the new destination-based sourcing legislation passed in the 2003 Legislature. Committee members expressed concern about revoking the regulations during the interim, since there were still questions about enforcing the new destination sourcing tax. It was explained that because of the law passed this last session, the old law and the related rules and regulations are no longer applicable and enforceable; thus, the proposal to revoke the regulations. Due to concern over what might happen with the destination sourcing tax, should there be legislative action to repeal or change its enforcement, a member recommended that the repeal of the existing rules and regulations be delayed.

COMMENTS ON PROPOSED RULES AND REGULATIONS

Department of Social and Rehabilitation Services. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning medical assistance—prior authorization and the public assistance program—responsibilities of applicants and recipients, cooperation, and income. After discussion, the Committee had no comment.

Department of Wildlife and Parks. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning guides. After discussion, the Committee expressed the following comment.

KAR 115-2-1. In subsection (e), and wherever else, consider adding the word "hunting" to specify in the regulation the reference is to a hunting guide.

Department of Health and Environment. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning food service establishment fee regulation, surface water quality standards, and the Board of Adult Care Home Administrators. After discussion, the Committee had no comment on the surface water quality standards regulations or the regulations applicable to adult care home administrators. The Committee expressed the following comment regarding fees for food service establishments.

KAR 28-36-30. The Committee suggests that the Department consider establishing a fee that generates sufficient moneys to fund three inspector

positions and to fund one-third of the cost of the computer system, the latter to be funded over a three-year period and then phased out.

Racing and Gaming Commission. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning racing operations and parimutuel wagering, withdrawals and scratches, and schooling. 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 licensing mortgage companies, auto loan programs containing balloon payments, and financial subsidiaries. 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 risk-based capital instructions, accident and health insurance, and supervision of credit insurance operations. After discussion, the Committee had no comment.

Department of Transportation. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning the transportation revolving loan program. After discussion, the Committee expressed the following comment.

KAR 36-40-1. In subsection (i)(1)(B), does the language create a conflict of interest since the applicant selects the licensed professional engineer who is to observe the work performed and test the materials used in the approved project?

KAR 36-40-3. The Committee is concerned that there may be a considerable amount of time pass between the design of a project and the funding and starting of the project, so that the original design is outdated. Is there a provision for requiring that the latest design standards available be those used at the time a project is started?

Animal Health Department. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning the Pet Animal Act. After discussion, the Committee expressed the following comments.

General Comment. Since the word "commissioner" is defined as the livestock commissioner, consider simply using the term "commissioner" throughout the regulations.

KAR 9-25-2. In subsection (b), consider adding a definition of "humidity extremes."

KAR 9-25-6. Could the language regarding pest control be more specific and include other methods of pest removal, e.g., raising off of the ground wood used for heating, as opposed to moving the wood some distance from the place of use?

Secretary of State. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning information and service fees and technology and communication fees. After discussion, the Committee expressed the following comment.

General Comment. The Committee is concerned that the fees proposed raise serious issues of equity to the users or purchasers of the agency's services and publications. To minimize the inequities, the Committee suggests the Secretary apply a cost accounting analysis to each of the fee areas to determine fees more in line with the cost of each service or publication.

Department of Revenue. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning local sales taxes. After discussion, the Committee expressed the following comment.

Concerning the revocation of KAR 92-21-7, 8, 10, 16, and 17, the Committee suggests that, given the level of controversy surrounding the implementation of the new destination-based sourcing legislation, the Department delay these revocations until July 1, 2004.

Chairman Holmes announced, after discussion with Committee members, that the next meeting would be held August 28, 2003, and if a second day was needed it would be August 29, 2003. The meeting was adjourned at 5:05 p.m.

Prepared by Judy Glasgow
Edited by Melissa Calderwood and Bill Wolff

Approved by Committee on:

August 28, 2003