

## MINUTES

### JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS

April 27, 2004  
Room 241-N—Statehouse

#### Members Present

Senator Dwayne Umbarger, Chairman  
Representative Carl Holmes, Vice Chairman  
Senator Stan Clark  
Senator Chris Steineger  
Representative Jerry Henry  
Representative Jan Pauls  
Representative Candy Ruff  
Representative Sharon Schwartz

#### Members Absent

Senator Karin Brownlee  
Senator Don Betts  
Representative Andrew Howell  
Representative Dan Williams

#### Staff Present

William G. Wolff, Kansas Legislative Research Department  
Raney Gilliland, Kansas Legislative Research Department  
Kenneth Wilke, Revisor of Statutes Office  
Judy Glasgow, Committee Secretary

#### Others Present

Tina Alder, Kansas Department of Agriculture, Division of Water Resources  
James Bagley, Kansas Department of Agriculture, Division of Water Resources  
Lee Rolfs, Kansas Department of Agriculture, Division of Water Resources  
Leslie Kaufman, Kansas Coop Council  
Julie Ehler, Kansas Department of Agriculture  
Scott Schwarz, Kansas Department of Agriculture  
Ron Seeber, Hein Law Firm  
Sandy McAdam, Kansas Department of Health and Environment  
Martha L. Cooper, Kansas Department of Health and Environment  
Jim Edwards, Kansas Association of School Boards  
Laura Kelly, Kansas Recreation and Parks Association  
Stuart Little, Boys and Girls Club  
John Oliphant, Boys and Girls Club  
Mark Nordstrom, Boys and Girls Club  
Kathy Damon, YMCA

Fath Loretto, Department of Administration  
Liz Post, Department of Administration  
Mark Stock, Department of Administration  
Randy Forbes, Kansas Dental Board  
Larry Williamson, Kansas Dental Board  
Kelli Benintendi, Kansas Board of Healing Arts

## Morning Session

Chairman Umbarger called the meeting to order at 10:10 a.m.

The Chairman recognized Lee Rolfs, Department of Agriculture, Division of Water Resources, to speak to the proposed rules and regulations noticed for hearing by the Department of Agriculture and the Chief Engineer. KAR 5-3-5o, amending water use reports; KAR 5-17-1, definitions for water banking; KAR 5-17-2, application to deposit a water right into a water bank or withdraw a deposit; KAR 5-17-3, contract for deposit of a water right; KAR 5-17-4, application to lease water; KAR 5-17-5, contract to lease water; KAR 5-17-6, conditions on the term permit to exercise a contract to lease water; KAR 5-17-7, contract to deposit water in a safe deposit account; KAR 5-17-8, depositing water in a safe deposit account; KAR 5-17-9, term permit to use water that was deposited in a safe deposit account; KAR 5-17-10, water bank charter proposal; KAR 5-17-11, annual reports of water banks; KAR 5-17-12, water use reports; KAR 5-17-13, enforcement; KAR 5-17-14, water flowmeters; KAR 5-17-15, private sale or lease of water right facilitated by a water bank; KAR 5-17-16, priority of use of water rights and permits; KAR 5-17-18, reimbursable and nonreimbursable costs; and KAR 5-17-17, waste of leased water and safe deposit account water.

Mr. Rolfs gave a brief overview of the Water Bank Act passed by the Legislature in 2003. The act established a flexible water use plan by allowing the establishment of water banks in water districts with a provision that water use would be reduced by 10 percent.

A member had a concern about KAR 5-17-1, and whether members in good standing would include right holders who have over pumped their allowance. He asked if such individuals would be considered in violation by the Chief Engineer and, therefore, ineligible for participation in a water bank. Mr. Rolfs stated that the Division will take a look at tightening up the criteria in this area. Further, a concern was raised regarding how the 85 percent net consumptive figure was arrived at, and if it was the same for all groundwater areas. Mr. Rolfs stated that this figure was chosen as a reasonable overall average without doing detailed analysis.

A question was raised as to whether individuals, corporations, or public entities would be eligible to join the water bank and to lease water; Mr. Rolfs stated that there were no restrictions or discrimination on who would be eligible. Staff noted that in KAR 5-17-10, in subsection (a) (10), no penalties were included for failure to meet the 10 percent cut in net amount of water consumed.

Concerning KAR 4-17-11, a member asked if there was any place on the report to record different types of crops being raised on the land since the amounts of water needed to grow them differs considerably. Mr. Rolfs indicated no, but that the comment would be reviewed and given consideration.

Several members were concerned about the dates that were selected for the ten-year base for water use and felt that there should be some type of guideline for selecting the base for establishing new water banks. Mr. Rolfs stated that he would take these items back to the Division

for consideration. After responding to other general questions from Committee members, Mr. Rolfs was thanked by the Chairman for his presentation before the Committee.

Chairman Umbarger recognized Julie Ehler, Department of Agriculture, to speak to the proposed rules and regulations noticed for hearing by the Department of Agriculture. KAR 4-11-2, definitions; KAR 4-11-3, egg containers: requirements for marking and labeling; KAR 4-11-6, revoked; KAR 4-11-7, revoked; KAR 4-11-8, sampling requirements; and KAR 4-11-0, inspection fee.

In response to a question about farmers who have small flocks and sell eggs direct without grading, Ms. Ehler stated that there was an exemption for those persons and these proposed rules and regulations would not change that exemption. A member suggested that in order to make the egg exemption clearer, KSA 2-2508 should be included in KAR 4-11-14. Staff inquired whether or not the agency had a copy of the AMS 56, published July 20, 2000, for reference purposes. Ms. Ehler stated that the copy she had was dated April 6, 1995, so she would check to be sure the correct date was referenced. There is a copy of the April 6, 1995, report available

There being no other questions for Ms. Ehler, she was thanked for her appearance.

Guen Easley, Assistant Attorney General, Office of the Kansas State Fire Marshal, was introduced by Chairman Umbarger to speak to the proposed rules and regulations noticed for hearing by the Office of the Kansas State Fire Marshal (Attachment 1). KAR 22-1-2, compliance with certain building codes; and KAR 22-1-7, code footprint.

Staff suggested that the term "Kansas-licensed design professional" should be clarified as a licensed architect or licensed engineer licensed by the Board of Technical Professions. A member also suggested that the terms "R-1" and "R-2" be defined as multiple-family residences with more than two families. Mr. Rick Fay answered questions concerning the economic impact statement, stating that there will be no cost to the State Fire Marshal.

There being no further questions, Chairman Umbarger thanked Guen Easley and Rick Fay for appearing before the Committee.

Chairman Umbarger recessed the meeting for lunch.

### **Afternoon Session**

The meeting was reconvened at 1:45 p.m. Vice Chairman Holmes introduced Doug Farmer, Department of Health and Environment, to speak to the proposed rules and regulations noticed for hearing concerning after-school and drop-in programs. KAR 28-4-576, definitions; KAR 28-4-577, terms of temporary permit or license; KAR 28-4-578, licensure; amended license; exceptions, notification; renewal; KAR 28-4-583, access to the premises; safety of off-premises activities; KAR 28-4-585, building and outdoor premises; KAR 28-4-587, staff qualifications; professional development; staffing requirements; KAR 28-4-590, health-related requirements; KAR 28-4-591, food preparation, service, safety, and nutrition; KAR 28-4-700, definitions; KAR 28-4-701, licensure, application; renewal; KAR 28-4-702, inspections; investigations; KAR 28-4-703, record keeping; KAR 28-4-704, attendance policy; supervision; and KAR 28-4-705.

Mr. Farmer responded to several questions of a general nature concerning the inclusion of youth to age 18 and the fee schedule used by the drop-in program. He stated that the fee schedule referred to in the statute is the maximum allowed, not the set fee, and that drop-in age is covered in

KSA 65-503. There being no further questions, Mr. Farmer was thanked for his appearance before the Committee.

Chairman Umbarger recognized Jim Edwards, Kansas Association of School Boards, to speak to the proposed rules and regulations. Mr. Edwards stated that there was one item that needed to be modified in KAR 28-4-578, page 2, subsection (b) (6), the word "consecutive" needs to be added between "four" and "hours." Sandy McAdam agreed that this had been omitted by mistake and that it would be reinserted.

Mr. Farmer and Mr. Edwards were thanked for their assistance with the review.

Lisa Jones, Associate General Counsel, was recognized by the Chairman to speak to the proposed rules and regulations noticed for hearing by the Kansas Board of Regents concerning community colleges (Attachment 2). KAR 88-26-1, definitions; KAR 88-26-2, accreditation; KAR 88-26-3, admissions; KAR 88-26-4, credit; KAR 88-26-5, graduation requirements; KAR 88-26-6, approval of programs; KAR 88-26-7, residence determination: out-district students and out-of-state or foreign students; KAR 88-26-8, determination of student tuition for residency purposes; KAR 88-26-9, review of student tuition determination; KAR 88-26-10, residence appeal board; KAR 88-26-11, review of residence appeal board determination; KAR 88-26-12, out-district tuition for certain students; KAR 88-26-13, review of out-district tuition determination; KAR 88-26-14, approval of out-district courses; KAR 88-26-15, review of program or out-district course disapproval; KAR 88-26-16, out-district courses disapproved for community college operating grant purposes.

A question was raised concerning KAR 88-26-8 as it relates to Kansas students who may graduate from out-of-state high schools, but who are Kansas residents, and the rate of tuition that would be charged. Mr. Bob Masters responded that the intent was for these students to qualify as Kansas residents. Equally, the Committee commented on the wording that appears to make non-resident aliens who graduate from a Kansas high school also eligible for the reduced tuition. He said the Board would review the language on those points.

Ms. Jones next spoke to the proposed rules and regulations noticed for hearing by the Kansas Board of Regents concerning Washburn University. KAR 88-27-1, out-district tuition and KAR 88-27-2, review of out-district tuition determinations; KAR 91-8-2; KAR 91-8-15; KAR 91-8-16; KAR 91-8-17; KAR 91-8-26; KAR 91-8-30; KAR 91-8-31; KAR 91-8-32; KAR 91-8-33; KAR 91-9-11; KAR 91-25-1a; KAR 91-25-1c; KAR 91-25-2; KAR 91-25-3a; KAR 91-25-17; KAR 91-25-18; KAR 91-25-19, revoked.

There being no questions, Chairman Umbarger thanked Lisa Jones and Bob Masters for their presentation before the Committee.

Chairman Umbarger introduced Mark Stock, Division of Facilities Management, Kansas Department of Administration, to speak to the proposed rules and regulations noticed for hearing by the Kansas Department of Administration pertaining to parking (Attachment 3). KAR 1-45-18, definitions and application of regulations; KAR 1-45-19, application for a parking contract and issuance of a parking permit; KAR 1-45-20, parking permit required; KAR 1-45-23, parking restrictions; and KAR 1-45-24, violations and enforcement.

Mr. Stock stated that there were three main reasons for these changes: to reduce fines; to modify the appeal process; and to clean up and clarify the regulations. Mr. Stock answered several questions concerning the issuance of parking permits and the fines imposed for parking violations. Particularly, a member was of the opinion that the fines should not be reduced as proposed. He asked how many tickets had been issued before the temporary regulations became effective and how many have been issued since the temporary regulation became effective.

A member asked what the penalty would be for a fourth violation if the car was not towed or otherwise immobilized. The member suggested that on the fourth violation, the agency have the discretion of a fine, if immobilizing or towing of the vehicle were not an option. There being no further questions, the Chairman thanked Mr. Stock for appearing before the Committee.

Chairman Umbarger introduced Chris Tymeson to speak to the proposed rules and regulations noticed for hearing by the Department of Wildlife and Parks. KAR 115-3-2, rabbits, hares, and squirrels; legal equipment, taking methods, and possession; and KAR 115-18-10, importation and possession of certain wildlife; prohibition, permit requirement, and restrictions.

There were no questions concerning the rules and regulations and Chairman Umbarger thanked Mr. Tymeson for his presentation before the Committee.

Dennis Priest was recognized by Chairman Umbarger to speak to the proposed rules and regulations noticed for hearing by the Department of Social and Rehabilitation Services. KAR 30-4-90, eligibility factors specific to the GA program. Members had no questions specific to the proposed rules and regulations; however, a member recommended that the notice of the hearing include the website address of the Department where the proposed rules and regulations can be obtained. There being no further questions, Mr. Priest was thanked for his appearance before the Committee.

Chairman Umbarger introduced Larry Williamson to speak to the proposed rules and regulations noticed for hearing by the Kansas Dental Board regarding specialist certificates, advertising, the duty of dental hygienists to notify the Board, and extended care permits. KAR 71-2-11, revocation or suspension of specialist certificate; KAR 71-3-2, permitted advertising; KAR 71-3-4, duty to notify the Board of residence and office addresses; and KAR 71-3-9, extended care permits.

There being no specific questions, Chairman Umbarger thanked him for his presentation.

Kelli Benintendi was introduced by Chairman Umbarger to speak to the proposed rules and regulations noticed for hearing by the Board of Healing Arts. KAR 100-72-8, naturopathic formulary; and KAR 100-72-9, written protocol.

Ms. Benintendi answered general questions from members concerning the written order by a physician and the general protocol for individual drugs. Committee members noted that on page 2, in subsection (c), amino acids should be corrected to subsection (d) and the following subsections changed accordingly. Chairman Umbarger thanked Ms. Benintendi for her presentation before this Committee.

## 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 public assistance - eligibility factors specific to the GA program. After discussion, the Committee had no comment on the proposed rule and regulation, but requested that the Department, if it does not already do so, make proposed rules and regulations available on the Department Internet website and reflect the address in the notice of hearing.

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

KAR 1-45-24. In subsection (a)(1)(D), the language is unclear as to the penalty to be imposed upon a third violation. Does the "shall" indicate that the vehicle in violation will be immobilized or removed, or does the Secretary have some other option? If the vehicle is not immobilized or removed, what is the penalty for a third offense?

**Board of Healing Arts.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning naturopathic doctors. After discussion, the Committee expressed the following comment.

KAR 100-72-8. Correct the outline structure of the regulation beginning with subsection (c).

**Kansas Dental Board.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning specialist certificates, advertising by dental hygienists, and duty of dental hygienists to notify the Board, and extended care permits. 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 rabbits, hares, and squirrels - legal equipment, taking methods and possession, and importation and prohibitions of certain wildlife. After discussion, the Committee had no comment.

**State Fire Marshal.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning compliance with certain building codes and code footprint. After discussion, the Committee expressed the following comment.

KAR 22-1-7. In subsection (a)(1)(B) and (a)(3), the term "Kansas-licensed design professional" is used. Please define the term. In (a)(4)(F), change "R-1 or R-2," to "multi-family" if that is the more appropriate term.

**Division of Water Resources.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning water banking. After discussion, the Committee expressed the following comment.

KAR 5-17-1. In subsection (a)(1), delete "(b)." In subsection (b), consider imposition of some type of penalty within the definition of "good standing," for those persons who have over pumped their water right. Perhaps, beginning with the test year and moving forward, those who have over pumped should not be allowed to participate in a water bank. In subsection (f), give consideration in the definition of "representative past period," to persons who have been granted a water right subsequent to the establishment of the representative past period. In subsection (c), the meaning would be clearer if the word "such" was substituted for the word "the" in the last sentence and in the opening sentence of the next paragraph.

KAR 5-17-10. Should there be a penalty imposed for a breach of the lease agreement between the water bank and the lessee?

KAR 5-17-11. In subsection (o), consider requiring a listing of the type of crops grown, as well as the number of acres irrigated, for each type of crop during the previous calendar year.

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

KAR 4-11-14. In the adoption by reference, check the date of the material being adopted. Additionally, rewrite the second-to-last sentence to reflect that certain egg sales are exempt from the regulations.

**Department of Health and Environment.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning school-age programs and drop-in programs. After discussion, the Committee expressed the following comment.

KAR 28-4-578. In subsection (b)(6), clarify that the reference is to four "consecutive" hours per day.

**Board of Regents.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning community colleges and Washburn University. After discussion, the Committee expressed the following comment.

KAR 88-26-8. In subsection (b)(2), clarify, for the purposes of determining payment of in-state tuition, the status of non-resident graduates of Kansas high schools, and the status of Kansas resident graduates of out-of-state high schools. In this same subsection, does the proposed language allow individual community colleges to determine which students pay in-state tuition, including illegal and undocumented graduates of Kansas high schools? If community colleges have this authority, do other Regents institutions have the same authority?

Chairman Umbarger announced that the next meeting would be May 27, Sine Die. There being no further business, the meeting was adjourned.

Prepared by Judy Glasgow  
Edited by Bill Wolff

Approved by Committee on:

May 27, 2004  
(date)