

MINUTES

JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS

August 24, 2004
Room 514-S—Statehouse

Members Present

Senator Dwayne Umbarger, Chairman
Representative Carl Holmes, Vice-Chairman
Senator Karin Brownlee
Senator Bill Bunten
Senator Chris Steineger
Representative Eric Carter
Representative Jerry Henry
Representative Jan Pauls
Representative Sharon Schwartz

Members Absent

Senator Don Betts
Representative Andrew Howell
Representative Candy Ruff

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, Secretary

Others Present

Randy Forbes, Optometry Board and Pharmacy Board
Tom Bruno, KATS
Jeff Bottenberg, Polsinelli, Shalton, and Welte
Deletria L. Nash, Kansas Insurance Department
Gary Robbins, Kansas Optometry Association
Larry Buening, Board of Healing Arts
Mark Stafford, Board of Healing Arts
Mack Smith, Kansas State Board of Mortuary Arts
Ron Seeber, Hein Law Firm
Ron Smith, Kansas Department of Commerce
Patricia Platt, Kansas Department of Revenue
Edie Martin, Kansas Department of Revenue

Sandy McAdam, Kansas Department of Health and Environment
Karl Mueldener, Kansas Department of Health and Environment
Dave Waldo, Kansas Department of Health and Environment
Kelly Kelsey, Kansas Department of Health and Environment
Steve Frost, Kansas Department of Health and Environment
Nialson Lee, Kansas Department of Social and Rehabilitation Services

MORNING SESSION

Vice-chairman Carl Holmes called the meeting to order August 24, 2004 at 10:15 a.m., stating that Chairman Umbarger was in another meeting that had been continued from August 23, and would join the Committee as soon as that meeting adjourned.

Vice-chairman Holmes introduced Randy Forbes, an attorney representing the Kansas Board of Optometry, to speak to the proposed rules and regulations noticed for hearing by the Kansas Board of Optometry, KAR 65-5-12, reinstatement of license and KAR 65-5-5, revoked.

Mr. Forbes answered general questions concerning the present policy for reinstatement. Committee members recommended that the Board's e-mail address be provided and comments from the public be accepted by e-mail. Mr. Forbes stated that this would be provided in the future. The Vice-chairman thanked Mr. Forbes for his appearance before the Committee.

Deletria Nash, staff attorney for the Kansas Insurance Department, was introduced by Vice-chairman Holmes, to speak to the proposed rule and regulation noticed for hearing by the Kansas Insurance Department (Attachment 1). KAR 40-3-52, fire and casualty insurance; mobile homes; rates and charges.

Committee members questioned the use of actual costs rather than replacement costs, noting that with this regulation there would never be replacement coverage available to mobile home owners. Ms. Nash stated that she would take this concern back to the Department for consideration. Committee members also recommended that an e-mail address be provided and that the Department accept comments by e-mail. Ms. Nash was thanked for her presentation before the Committee.

Vice-chairman Holmes recognized Lisa Jones, Associate General Counsel, Kansas Board of Regents, to speak to the proposed rule and regulation noticed for hearing by the Kansas Board of Regents (Attachment 2). KAR 88-16-5b, certification and registration fees.

Lisa Jones introduced Dr. Pat Anderson who responded to Committee questions, stating that this regulation would cover six schools that currently are operating and issuing degrees in Kansas. Committee members requested that the economic impact statement be amended to show the actual amount that would be realized by the fees. Ms. Jones stated that this would be six times \$1,400.00, or \$8,400.00 and this would be added to the economic statement before the public hearing. Vice-chairman Holmes thanked Ms. Jones and Dr. Anderson for their appearance before the Committee.

Mark Stafford, General Counsel for the Kansas Board of Healing Arts, was introduced by Vice-chairman Holmes to speak to the proposed rules and regulations noticed for hearing by the Board of Healing Arts. KAR 100-15-2, revoked; KAR 100-15-2a, continuing education requirement; KAR 100-15-2b, documentation of continuing education; KAR 100-15-2c, requirements for continuing education activities; credit; and KAR 100-15-2d, continuing education using distance-learning media.

Staff suggested that in KAR 100-15-2a, there should be a cross reference to KAR 100-15-2c, to clarify the category one type training and the increased hours required. Mr. Stafford answered

general questions from Committee members concerning the length of time required to retain documentation of training by the applicant. Mr. Stafford stated that a specific number of audits are selected randomly each year to verify the training. These are done as internal audits, with the agency requesting the written documentation be forwarded to the Board. Committee members raised several concerns about KAR 100-15-2d, and suggested that all of subsection (c) be deleted. Mr. Stafford stated that he would take these comments back to the Board. Mr. Stafford was thanked for his presentation before the Committee.

Vice-chairman Holmes asked for action on the July 9, 2004 Committee minutes. *Representative Pauls moved to approve the July 9, 2004 minutes as presented, Representative Henry seconded the motion. The motion carried.*

Vice-chairman Holmes again introduced Randy Forbes to speak to the proposed rule and regulation noticed for hearing by the Kansas Pharmacy Board. KAR 68-1-3a, qualifying pharmaceutical experience.

Mr. Forbes responded to general questions concerning the proposed rule and regulation raised by the Committee members. Vice-chairman Holmes thanked Randy Forbes for his appearance before the Committee.

Debra Billingsley, Executive Director, also was introduced by Vice-chairman Holmes to speak to the proposed rule and regulation noticed for hearing by the Kansas Pharmacy Board. KAR 68-1-3a, qualifying pharmaceutical experience.

Ms. Billingsley answered questions from Committee members regarding the proposed changes. Committee members suggested that the Board include its e-mail address in the notice of hearing and accept e-mail comments for consideration. Vice-chairman Holmes thanked Ms. Billingsley for her presentation.

Vice-chairman Holmes recognized Mack Smith, Executive Secretary of the Kansas State Board of Mortuary Arts, to speak to the proposed rules and regulations noticed for hearing. KAR 63-1-4, examination; KAR 63-3-21, general requirements relating to prefinanced funeral agreements; KAR 63-5-1, definition of unprofessional or dishonorable conduct; and KAR 63-6-1, continuing education requirements.

Mr. Smith stated that KAR 63-1-4 reflects changes from the National Mortuary Board. Staff questioned whether these proposed changes had been approved by the Insurance Commissioner. Mr. Smith stated that a verbal discussion had taken place with the Commissioner and that she had seen no problem with them, but a meeting would be scheduled with her prior to the public hearing. In KAR 63-3-21, Committee members stated that a sentence should be added in (b) to ensure that it reflects the current wording in the statute.

There being no further discussion, Mr. Smith was thanked for his appearance before the Committee.

Staff noted that a set of proposed rules and regulations had been added to the agenda since the time of mailing to Committee members since the public hearing is scheduled before the Committee's next meeting. The Committee discussed the receipt of the proposed rule and regulation and if a procedure should be implemented to handle any future situations of this kind. Staff stated that only two agencies have a 30-day window for hearings and this has never happened before. Committee members decided that the agency should be apprised of the Committee's hearing dates so they can better schedule their notices.

The meeting was recessed by the Vice-chairman until 1:30 p.m.

AFTERNOON SESSION

Vice-chairman Holmes reconvened the meeting at 1:35 p.m. and called on Ron Smith, Attorney, Department of Commerce, to speak to the proposed rules and regulations noticed for hearing by the Department of Commerce (Attachment 3). KAR 110-8-1; 110-8-2; 110-8-3; 110-8-4; 110-8-5; 110-8-6; KAR 110-8-8; KAR 110-8-9; KAR 110-8-10; and KAR 110-8-11, revoked.

Mr. Smith explained that the Kansas Economic Growth Act of 2004 enacted the Angel Investor Tax Credit Program which replaced the Certified Capital Formation Company Act. These rules and regulations are no longer needed. The Committee suggested that the Department include its e-mail address in the notice of hearing and accept e-mail comments on the proposed rules and regulations. There being no further comments, Mr. Smith was thanked for his appearance before the Committee.

Vice-chairman Holmes recognized Richard Cram, Office of Policy and Research, to speak to the proposed rule and regulation noticed for hearing by the Department of Revenue (Attachment 4). KAR 92-26-4, filing of quarterly reports; deadline.

Mr. Cram responded to general questions concerning the production of ethyl alcohol in Kansas raised by Committee members. A Committee member pointed out an error in the attached chart for the 2nd quarter in the fiscal year 2004 under current production. Mr. Cram stated that this would be corrected before the public hearing. The Committee also recommended that the Department's e-mail address be provided in the notice of hearing and suggested that the Department accept e-mail comments from the public. After all questions were answered, Mr. Cram was thanked for his appearance before the Committee.

Vice-chairman Holmes recognized Nialson Lee to speak to the proposed rule and regulation noticed for hearing by the Kansas Department of Social and Rehabilitation Services (SRS). KAR 30-5-64, prior authorization.

Mr. Lee explained that the proposed rule and regulation added new drugs to the prior authorization list for nonsteroidal, anti-inflammatory drugs and HMG-COA reductase inhibitors. Committee members noted that this regulation only had been received the day before the hearing and that in order to avoid possible conflicts with the dates for public hearing, the Department needs to coordinate with Committee staff about future hearing dates since the Committee is not meeting on a monthly schedule. Mr. Lee stated that he would take this information back to the Department. The Committee also recommended that SRS include its e-mail address in the notice and accept comments from the public by e-mail. Vice-chairman Holmes thanked Mr. Lee for his presentation before the Committee.

Vice-chairman Holmes recognized Dave Waldo, Kansas Department of Health and Environment (KDHE), Division of Environment, to address issues that the Committee had raised during the May 27 hearing concerning rules and regulations of the Safe Drinking Water Act. Mr. Waldo addressed the economic statement with the Committee on the National Primary Drinking Water Rules, Supplemental Regulatory Impact Statement (Attachment 5). Mr. Waldo reviewed the supplemental fiscal impact statement on each of the nine federal Environmental Protection Agency (EPA) requirements of the EPA. He stated that statewide costs have now been estimated and are included in the "Summary of Estimated Costs" table included as part of the attachment. This information was in response to the Committee's request. Mr. Waldo responded to general questions from Committee members concerning the report.

Mr. Waldo addressed the Committee concerning the costs and benefits of state regulation versus EPA implementation of the National Primary Drinking Water Regulatory Program (Attachment 6). Mr. Waldo reviewed the table showing the number of plants and the cost difference between EPA

and Kansas implementing the National Primary Drinking Water Regulatory program. He responded to questions from the Committee concerning the figures. The Committee members noted their appreciation to the Department of Health and Environment for providing the requested information to the Committee and for furnishing the detailed fiscal impact statement before implementing the proposed rules and regulations.

Mr. Waldo was thanked for his appearance and presentation before the Committee.

A question was raised by staff from KDHE concerning the proposed rules and regulations heard by the Committee in July on hazardous waste monitoring fees. It was the consensus of Committee members that upon receipt of a letter by Committee staff addressing the issues raised at the July hearing, the agency could proceed with action on the proposed rules and regulations.

Vice-chairman Holmes stated that because of conflicts, the next meeting of the Committee would be held October 5, 2004. The meeting was adjourned.

Committee Comments on Proposed Rules and Regulations

Board of Healing Arts. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning continuing education requirements. After discussion, the Committee expressed the following comments.

KAR 100-15-2a. Cross reference the definition of "qualified continuing education" located in KAR 100-15-2c.

KAR 100-15-2b. Consider the addition of e-mail address in (2)(A).

KAR 100-15-2d. Consider the elimination of subsection (c) since the language appears to be unnecessary.

Board of Examiners in Optometry. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning reinstatement of license. After discussion, the Committee had no comment.

Kansas Insurance Department. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning mobile home fire and casualty insurance. After discussion, the Committee expressed the following comment.

KAR 40-3-52. The Committee expressed concern about the absence of language regarding replacement value coverage. It appears from the regulation that replacement value coverage would no longer be available to Kansas consumers. Consider the addition of a phrase such as "unless a replacement policy is in place" in order to clarify that existing replacement value coverage is not excluded.

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 expressed the following comment.

General comment. The Committee expressed concern about the timing of the 30-day notice and asked the agency to coordinate with the staff of the Legislative Research Department on regulations which have a 30-day comment period so that the

Administrative Rules and Regulations Committee will have the opportunity to review the regulations without calling a special meeting.

Kansas Board of Regents. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning certification and registration fees. After discussion, the Committee expressed the following comment.

General comment. The economic impact statement could be more complete regarding the impact on the institutions addressed by the regulation.

Kansas State Board of Pharmacy. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning qualifying pharmaceutical experience. After discussion, the Committee had no comment.

State Board of Mortuary Arts. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning examination; prefinanced funeral agreements; unprofessional conduct; and continuing education. After discussion, the Committee expressed the following comment.

KAR 63-3-21. Consider adding language which would require written notice of the obligation to repay the Department of Social and Rehabilitation Services as provided for by statute.

General comment. The Committee notes that Insurance Commissioner approval is necessary before adoption of the regulation.

Kansas Department of Commerce. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning revocation of regulation regarding capital formation companies. After discussion, the Committee had no comment.

Kansas Department of Revenue. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning ethyl alcohol producer quarterly report filing. After discussion, the Committee had no comment.

Prepared by Judy Glasgow
Edited by Raney Gilliland and
Melissa Calderwood

Approved by Committee on:

October 5, 2004
(Date)