

MINUTES

JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS

October 9, 2001
Room 514-S—Statehouse

Members Present

Representative Melvin Neufeld, Chairman
Senator Dwayne Umbarger, Vice Chairman
Senator Karin Brownlee
Senator U. L. "Rip" Gooch
Senator Chris Steineger
Representative Carl Holmes
Representative Bill Light
Representative Laura L. McClure
Representative Janice Pauls
Representative L. Candy Ruff

Members Excused

Senator Stan Clark
Representative Tony Powell

Staff Present

Bill Wolff, Kansas Legislative Research Department
Trevor Steinert, Kansas Legislative Research Department
Ken Wilke, Office of the Revisor of Statutes
Pat Kahler, Secretary

Others Present

David Williams, Kansas Corporation Commission
Diana Edmiston, Kansas Corporation Commission
Tom Day, Kansas Corporation Commission
Tim Bruno, Gaches, Braden, Barbee, & Associates
Clint Riley, Kansas Department of Wildlife and Parks
Anne Spiess, Kansas City Regional Association of Realtors
Sherry Diel, Kansas Real Estate Commission
Bill Yanek, Kansas Association of Realtors

Helen Pedigo, Governor's Office
Judy Lambert, Kansas Public Employees Retirement System
Rob Woodard, Kansas Public Employees Retirement System
Joan Hancock, Kansas Public Employees Retirement System
Tom Burgess, National Rifle Association
Mike Burgess, Kansas Sportsmen's Alliance
Phil Bradley, Kansas Licensed Beverage Association
Bob Longino, Kansas Department of Revenue
Julie Hein, Dietetic Association of Kansas
Terry Davis, Department of Social and Rehabilitation Services
Reid Stacey, Department of Social and Rehabilitation Services
Barb Conant, Kansas Trial Lawyers Association
Bill Brady, Kansas Governmental Consulting
Patricia Maben, Kansas Department of Health and Environment
Kim Hursh, Kansas Department of Human Resources, Division of Workers Compensation
Christy Lane, Kansas Department on Aging
Gale Smith, Kansas Department on Aging
Tracy Diel, Kansas Racing and Gaming Commission
Dr. Terry Tracy, Department of Human Resources

Morning Session

The meeting was called to order by Chairman Neufeld at approximately 10:00 a.m. *Representative Pauls moved, seconded by Representative Holmes, that the minutes from the August 7, 2001, meeting be approved as written. The motion carried.*

Diana Edmiston and David Williams were present to speak to the proposed rules and regulations noticed for hearing by the Kansas Corporation Commission (Attachment 1). KAR 82-3-111, temporarily abandoned wells; penalty; plugging; 82-3-120, operator or contractor licenses: application; financial responsibility; denial of application; penalty; 82-3-120a is being revoked; 82-3-123, well bore; commingling of production; 82-3-304, tests of gas wells, penalty; and 82-3-312, gas allowables and drilling unit.

There was discussion regarding KAR 82-3-111, temporarily abandoned wells; penalty; plugging. Ms. Edmiston said a well with the electricity disconnected would not be exempt from the regulation, showing the well was temporarily abandoned. Through the experience of the field workers, a complete abandonment usually follows. A member asked the conferee to consider a revision of the regulation and not allow the disconnect of electricity to be considered automatically an abandonment of a well. Another member suggested a better way to determine abandonment would be to check on the payment of taxes on the property.

There was further discussion on subsection (a) and whether an additional 90 days would be allowed after the 365 days had expired, and, also, if a new form must be filled out. Ms. Edmiston said that could be subject to interpretation and would clarify the regulation.

KAR 82-3-120, operator or contractor licenses: application; financial responsibility; denial of application; penalty. A member expressed uncertainty about what must be displayed on each rig, an identification tag or licence.

Speaking to a concern of a member on subsection (f)(1), the conferee said the Department is working out settlement agreements with operators that include the admission of a violation, with penalties. She added the Commission has adopted the procedure as an order.

Ms. Edmiston responded to many other informational questions from the members of the Committee.

David Williams continued the review on KAR 82-3-123, 82-3-304, and 82-3-312 for the Committee (Attachment 2). There were no concerns regarding the proposed regulations.

The Chairman thanked Ms. Edmiston and Mr. Williams for their review.

Clint Riley came before the Committee to review the proposed rules and regulations noticed for hearing by the Kansas Department of Wildlife and Parks (Attachment 3). KAR 115-21-1, guides; permit application, examination, and restrictions; 115-21-2, guides; reporting requirements; 115-21-3 is being revoked; 115-21-4, guides; use of department lands and waters; and 115-22-1, sport shooting ranges; generally accepted operating practices.

Mr. Riley informed the Committee the regulations result from legislation enacted in the 2001 Session of the Legislature dealing with commercial hunting and fishing guides.

When reviewing KAR 115-21-2, a member was troubled about the wording in subsection (h). Mr. Riley said a guide should know and inform members of the hunting party of the rules in Kansas. If a guide fails to report a violation, the guide would be liable for said violation. A member hoped, when a report is made, there would be the opportunity for the guide to state whether there had been an accidental situation or an actual violation. Staff asked if "learning of the violation" could be by hearsay. Mr. Riley said the Department would look into the question.

At the conclusion of the review, Mr. Riley was given an expression of thanks.

The Chairman welcomed Sherry Diel to speak to the proposed rule and regulation noticed for hearing by the Kansas Real Estate Commission. KAR 86-1-10, approval of courses of instruction; procedure.

Ms. Diel told the Committee that the Commission has always required a closed book, proctored examination with a 70 percent pass rate requirement. She said a third option had been requested to add an Internet-based distant education option that would eliminate the proctored requirement, but would be closed book with a 70 percent pass rate. Members of

the Committee questioned the reliability of an individual, not proctored, taking a closed book examination at home.

There were no other comments regarding the regulation and Ms. Diel was thanked for the review.

Joan Hancock, Judy Lambert, and Rob Woodard reviewed the proposed rules and regulations in Article 5 and Article 9 noticed for hearing by the Kansas Public Employees Retirement System (KPERS) (Attachment 4). KAR 80-5-19, partial lump sum option; death of member; 80-5-20, partial lump sum option; commencement of monthly benefits; 80-5-21, partial lump sum option; recovery of debt owed by member to system; 80-5-22, partial lump sum option; actuarial assumptions used in calculating partial lump sum distribution; 80-9-1, common stock investment program; and 80-9-2, alternative investment program.

There were no concerns. The Chairman thanked Ms. Hancock for her presentation.

Robert Longino was present to speak to the proposed rule and regulation noticed for hearing by the Kansas Department of Revenue (Attachment 5). KAR 92-24-23, bond.

Mr. Longino described the bond requirement for liquor licensees or applicants and noted that the proposed change arises from discussions in the 2001 Legislature regarding the need for bonding of persons who have been compliant with the law for a minimum period of time.

Julie Hein of Hein and Weir, Chartered, presented a letter of support of the regulation on behalf of the Kansas Restaurant and Hospitality Association (Attachment 6).

There were no questions or concerns about the regulation. The Chairman gave Mr. Longino an expression of thanks for his review.

Afternoon Session

Terry Davis was welcomed to review the proposed rules and regulations noticed for hearing in Article 5 and Article 6 for the Department of Social and Rehabilitation Services (SRS). KAR 30-5-76, scope of coverage and reimbursement for services for qualified Medicare beneficiaries; and 30-5-100, scope of dental services.

Staff noted that the following rules and regulations submitted for public hearing and provided the Committee for review have been withdrawn from the process: KAR 30-6-88, disabled individuals with earned income; determined eligibles, 30-6-103, determined eligibles; protected income levels; 30-6-107, property exemption; 30-6-109, personal property; and 30-6-112, income exempt from consideration as income and as a cash asset.

Mr. Davis said the regulations clarify the reimbursement rates that Medicaid provides for persons who qualify as a Qualified Medicare Beneficiary (QMB) and who are also qualified for Medicaid payments.

Reid Stacey reviewed KAR 30-5-100, scope of dental services. He said the regulation was being brought before the Committee for clarification. The agency now is using dental codes enabling dentists to bill for services more efficiently.

There were no concerns. Mr. Davis and Mr. Stacey were thanked for coming before the Committee.

Patricia Maben was welcomed to speak to the proposed rules and regulations noticed for hearing by the Kansas Department of Health and Environment (KDHE). KAR 28-34-1a, definitions; 28-39-144, definitions; and 28-39-155, physician services.

When reviewing KAR 28-39-155, physician services, Ms. Maben explained that the change in federal law allows Advanced Registered Nurse Practitioners (ARNP) and Physician Assistants (PA) to perform some of the functions of a physician in a certified nursing facility. The agency proposed in 1993 to have similar language in the state regulations. There were some questions, at that time, of how the Nurse Practice Act was written. Since then there have been changes in the Nurse Practice Act, *i.e.*, prescription privileges for certain licensees of the Board of Nursing, that allow for the elimination of language in KAR 28-39-155 (d).

Ms. Hein responded with a letter in support of KAR 28-39-144 and 28-34-1a for the Dietetic Association of Kansas ([Attachment 7](#)). Staff noted that the adoption of these rules and regulations addressed the need of the dietary managers for recognition as opposed to a more formal state recognition through the credentialing process leading to registration or licensure.

There were no concerns or questions for Ms. Maben or Ms. Hein. Thanks were expressed for their presentations.

Ken Hursh came before the Committee to speak to the proposed rule and regulation noticed for hearing by the Kansas Department of Human Resources, Division of Workers Compensation. KAR 51-9-7, fees for medical and hospital services.

Dr. Terry Tracy said, in answer to a question, that the agency does not use Medicare as a benchmark for most medical reimbursement rates. In most areas, the state exceeds Medicare payments by 20 to 25 percent.

No concerns were expressed by the Committee. Mr. Hursh and Dr. Tracy were thanked for coming before the Committee.

Tracy Diel came before the Committee to review the rules and regulations noticed for hearing by the Kansas Racing and Gaming Commission. KAR 112-18-11, emergency

procedures; 112-10-3, practicing veterinarians; 112-10-6, bleeder list; and 112-17-4, financial resources, fair association, and horsemen's nonprofit organization applicant.

There was considerable member-conferee discussion on KAR 112-18-11 and how wagering would be handled as a consequence of the loss of video or audio signal in a simulcast situation. There were no concerns about the regulation.

When looking at KAR 112-17-4, financial resources, fair association, and horsemen's nonprofit organization applicant, a member requested assurance that reports required to be provided by the Commission, and being deleted as a requirement, are not being filed with the Board of Agriculture. The member asked that a letter be written to the Secretary of Agriculture asking if these reports are required by statute, and if not, should the law be changed.

At the conclusion of the review, Mr. Diel was thanked for his presentation.

Christy Lane and Gale Smith were present to speak to the temporary rules and regulations for the Kansas Department on Aging regarding the Kansas Senior Pharmacy Assistance Program. KAR 26-11-1, eligibility, 26-11-2, benefit limitations; and 26-11-3, priority of funding.

Ms. Lane told the members that these regulations are temporary because Secretary Hubble wanted to implement the program before permanent regulations could be adopted, thus allowing the implementation of the program and payment of benefits before the end of the year.

A member said, regarding KAR 26-11-1, there are problems for counties adjoining other states, because persons come to Kansas to take advantage of Kansas benefits. Ms. Smith explained the person would have to go through the process that SRS has set up for acceptance into the program. In future years, changes may need to be made before a person can become eligible. The member asked that, if the program is initiated again, a definition of Kansas resident be added to the regulation.

A member expressed frustration that the Legislature had taken credit for creating a pharmacy assistance program for seniors, but in reality used the funds for the program for other programs leaving a small amount for a temporary, short-term program.

After answering questions from the Committee, Ms. Lane and Ms. Smith were thanked for their presentation.

Comments on Proposed Rules and Regulations

Kansas Corporation Commission. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning the

conservation of crude oil and natural gas. After discussion, the Committee expressed the following comment.

- KAR 82-3-111. As discussed, turning off the electricity to a well should not be considered as evidence the well is abandoned; however, non-payment of property tax may be a good indicator of abandonment. After the allowed 365 days has expired, does the operator have another 90-day period in which to comply with the regulation? Clarify.

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

- KAR 115-21-1. The Committee appreciates the advance notice of the Department's intention to change this regulation and the Committee supports the changes proposed. As a reminder, however, the Department's hearing must be on the regulation published for hearing. That regulation then can be amended and filed as amended incorporating the changes presented to the Committee.
- KAR 115-21-1. The reporting requirement in Subsection (h) is troublesome as written. Perhaps the requirement to report violations by a guide should be limited to those that are intentional and blatant violations actually witnessed by the guide. Is the 24-hour period for reporting a sufficient time allowance?

Kansas Real Estate Commission. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning registrations and examinations. After discussion, the Committee expressed the following comment.

- General Comment. The Committee has no comment on KAR 86-1-10 as proposed. However, it has concern about the issue that might arise at the public hearing regarding Internet testing. While the Committee has supported agencies in making information available electronically and using the electronic media for examination and testing, scoring and open- or closed-book issues do come into play and must be dealt with appropriately.

Kansas Public Employees Retirement System. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning partial lump sum payments and investment. 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 the liquor drink tax bond. After discussion, the Committee had no comment.

Department of Social and Rehabilitation Services. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning qualified Medicare beneficiaries and dental services. After discussion, the Committee had no comment.

Department of Health and Environment. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning certified dietary managers and supervising physician protocols. After discussion, the Committee had no comment.

Department of Human Resources. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning the Workers Compensation Schedule of Medical Fees. After discussion, the Committee had no comment.

Kansas Racing and Gaming Commission. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning animal health, fair associations, and simulcasting. After discussion, the Committee had no comment.

- General Comment. The Committee has no comment on KAR 112-17-4; however, the Committee has directed a letter to the Secretary of Agriculture to determine whether the reports required by law are necessary to that agency.

The next meeting of the Committee will be on November 5-6, 2001.

The meeting adjourned at 4:00 p.m.

Prepared by Pat Kahler and Bill Wolff

Approved by Committee on:

November 5, 2001