

MINUTES

JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS

December 11, 2001
Room 514-S—Statehouse

Members Present

Representative Melvin Neufeld, Chairman
Senator Karin Brownlee
Senator Stan Clark
Senator U. L. "Rip" Gooch
Senator Chris Steineger
Representative Carl Holmes
Representative Laura L. McClure
Representative Janice Pauls
Representative L. Candy Ruff

Members Absent

Senator Dwayne Umbarger, Vice Chairman
Representative Bill Light
Representative Tony Powell

Staff Present

Bill Wolff, Kansas Legislative Research Department
Raney Gilliland, Kansas Legislative Research Department
Ken Wilke, Revisor of Statutes Office
Pat Kahler, Secretary

Others Present

Sandy McAdam, Kansas Department of Health and Environment
Brian Busby, Kansas Department of Health and Environment
Christine Mennicke, Kansas Department of Health and Environment
John Mitchell, Kansas Department of Health and Environment
John C. Bottenberg, Deffenbaugh Industries, Inc.
George Teagarden, Kansas Animal Health Department
Mike Hutfles, Kansas Governmental Consulting
Faith Loretto, Department of Administration

Sheryl Weller, Department of Administration
Dale Brunton, Department of Administration
Clint Riley, Kansas Department of Wildlife and Parks
Rebecca Sanders, Kansas Insurance Department
Jeremy Anderson, Kansas Insurance Department
Phyllis Gilmore, Board of Behavioral Sciences
Stuart Little, Kansas Community Correction Association
Jane Nohr, Kansas Bureau of Investigation
Cindy Schueler, Kansas Bureau of Investigation
Clint Patty, Board of Optometry Examiners
Derenda Mitchell, Department of Agriculture
Ron White, Department of Agriculture
Linden Appel, Department of Corrections
Robert Sanders, Department of Corrections
Holly Zane, Department of Corrections
Judy Moler, Kansas Association of Counties
Theresa Cummings, Kansas Community Corrections Association

Morning Session

The meeting was called to order by Chairman Neufeld at 10:00 a.m. *Senator Clark moved, seconded by Representative Ruff, that the minutes from the November 5-6, 2001, meeting be approved as written. The motion carried.*

The Chairman welcomed John Mitchell to speak to the proposed rules and regulations noticed for hearing by the Department of Health and Environment in Article 29 and Article 55. KAR 28-29-18 is being revoked; 28-29-29, waste tire processing and disposal standards; 28-29-2201, insurance for solid waste disposal areas and processing facilities; 28-55-3, procedures for review of polychlorinated biphenyl (PCB) facility permit applications; and 28-55-5, standards for PCB facilities.

He explained that KAR 28-29-18 was out-of-date and was being revoked. The coverage limits were set in the 1980s and would not be practical at this time. To replace the revocation, the new regulation KAR 28-29-2001 was before the Committee. The regulation would set forth the general requirements for operators of solid waste disposal areas or processing facilities to provide evidence of insurance coverage for third party liability claims. Also, the regulation would provide minimum coverage limits for accidental occurrences. In addition, the new rule is for local governments subject to the Kansas Tort Claims Act and allows a financial test alternative to purchased insurance for private corporations.

When reviewing 28-29-2001, staff suggested an additional sentence in the introductory paragraph stating "except as provided in subsection (d)."

KAR 28-29-29, waste tire processing and disposal standards. A member asked that subsection c)(3) be written to allow for recycling of steel belts from tires or any other reusable materials with any non-recyclable materials being disposed of in the landfill.

Mr. Busby was given an expression of thanks for the review.

Representing the Animal Health Department was Livestock Commissioner George Teagarden, who spoke to the proposed rules and regulations noticed for hearing in Article 29, Cervidae. KAR 9-29-12, definitions; 9-29-13, requirements to participate in the voluntary chronic wasting disease program; 9-29-14, program levels; and 9-29-15, affected herds.

He told the members that these regulations were requested by the elk industry in Kansas. Since chronic wasting disease (CWD) was found in Kansas, the commercial value of elk products, e.g., antlers in velvet, has been significantly reduced. With the implementation of these regulations, the industry will have a better chance to demonstrate that there is no CWD in individual herds whose owners participate in the voluntary program.

A discussion took place on KAR 9-29-15, affected herds. A member questioned whether KSA 47-617 provided sufficient authority to allow for the purchase of animals with moneys from the State General Fund to be sacrificed. The member suggested the Livestock Commissioner review the law and report to the Committee should it need to be broadened to encompass more animals.

After answering informational questions for the Committee, thanks were extended to Mr. Teagarden for his review.

Dale Brunton came before the Committee to speak to the rule and regulation noticed for hearing by the Department of Administration in Article 16, Travel Reimbursement (Attachment 1). KAR 1-16-18, subsistence allowance.

There were no comments expressed by the Committee. Mr. Brunton was thanked for his review.

Clint Riley was welcomed to speak to the proposed rules and regulations noticed for hearing by the Department of Wildlife and Parks. KAR 115-9-4, hunting or fur harvester license purchase; 115-11-1, controlled shooting areas; license application, issuance priority, and reporting; and 115-11-2, controlled shooting areas; operational requirements.

KAR 115-9-4, hunting or fur harvester license purchase. There was discussion about animal control officers in small communities and whether they would be required to take the fur harvester class in order to carry out their duties gathering stray animals. Mr. Riley said regulations on this topic are in the discussion stage. If the Department considers formulating a regulation, consideration should be given to small communities when the regulations are drafted.

Mr. Riley was thanked for his review.

Rebecca Sanders spoke to the proposed rule and regulation noticed for hearing by the Kansas Insurance Department (Attachment 2). KAR 40-1-46, privacy of consumer financial and health information.

There were no concerns regarding the regulation. Chairman Neufeld expressed his thanks to Ms. Sanders for the presentation.

Afternoon Session

Phyllis Gilmore was welcomed to speak to the proposed rules and regulations noticed for hearing by the Board of Behavioral Sciences in Article 2. KAR 102-2-3, fees; and 102-2-4b, continuing education approval for providers.

Ms. Gilmore told the members that the regulations were modified for pre-approved providers for one-year of continuing education programs as this was something the social workers wanted and something the Board could provide for them.

At the close of the presentation, Ms. Gilmore was thanked for coming before the Committee.

Jane Nohr and Cindy Schueler came before the Committee to speak to the proposed rules and regulations noticed for hearing by the Kansas Bureau of Investigation (Attachment 3, Attachment 4). KAR 10-12-1, dissemination of conviction records; 10-13-1, right to review and challenge decisions; 10-20-2a, procedures for reporting; 10-21-1, definitions; 10-21-2, purpose of DNA identification; 10-21-3, procedural compatibility with the FBI; 10-21-4, expungement; 10-21-5, maintenance; and 10-21-6, collection of samples for DNA databank procedures.

KAR 10-12-1, dissemination of conviction records. A member asked Ms. Nohr to review subsections (j) and (l) and the other proposed regulations to ascertain whether the reference to KSA 22-4901 should be inserted. Another member questioned the new wording in subsection (g), "not contain any personal information" noting that in and of itself, DNA material is very personal information. The member suggested the Bureau clarify what it means by "personal information."

In subsection (d) of KAR 10-21-2, purpose of DNA identification, a member proposed that the last word in the subsection should be changed to "or."

A member asked the conferee to add "pardon" to the list in KAR 10-21-4 (c).

KAR 10-21-6, collection of samples for DNA databank procedures. There was discussion about the form used by the agency and adopted by reference in the regulation. Staff suggested the regulation could be reworded to say "as prescribed by the director" in subsection (a) thereby removing the need to adopt the form by reference and to amend the regulation each time the form was amended.

At the conclusion of the discussion and there being no other comments, the Chairman thanked Ms. Nohr and Ms. Schueler for their review.

The Committee welcomed Clint Patty to speak to the proposed rule and regulation noticed for hearing for the Board of Examiners in Optometry. KAR 65-4-3, fees.

A member challenged the completeness of the economic impact statement. Mr. Patty was asked to amend the statement for the public hearing and final filing in a manner that conveys the projected costs to individuals resulting from the higher fees.

There were no further comments from the Committee and Mr. Patty was thanked for his review.

Ron White and Derenda Mitchell came before the Committee to review the proposed rules and regulations noticed for hearing by the Department of Agriculture. KAR 4-25-2, record retention; 4-25-3, return of documents; 4-25-4, storage space; exception; 4-25-5, storage liability reports; 4-25-6, Secretary's right to seal bins and weigh grain; 4-25-7, public warehouse receipts; form; 4-25-8, scale tickets; inbound form; 4-25-9, scale tickets; outbound form; 4-25-10, grain bank grain; 4-25-11, allowance to licensed warehouses for the purpose of handling and storage of dry edible beans; 4-25-12, financial statements; 4-25-13, appraisals; 4-25-14, successor agreement; KAR 4-25-15, definition of 12-month period; 4-25-16, fees and charges; 4-25-17, transfer of grain between public warehouses; and 4-25-18, credit for unexpired portion of license on new or amended license.

KAR 25-1-3 through 25-1-6; 25-1-12; 25-1-15; 25-1-19; 25-1-20 through 28; 25-2-4; 25-3-2 through 25-3-6; 25-3-8; 25-3-10 through 25-3-13; 25-3-15 through 25-3-17; 25-4-4; and 25-5-1 are being revoked.

Ms. Mitchell explained that the proposed regulations are a shift of regulations from the defunct Grain Inspection Department to the Department of Agriculture as prescribed by the Legislature. Many of the Grain Inspection Department's rules and regulations had not been amended since the 1960s and 1980s. She informed the members that, in addition to the changes proposed in the regulations, the Department of Agriculture was ready to make certain additional changes, for example, in KAR 4-25-9 (b)(3) "depositor" would be changed to "customer." She told the Committee that there were some substantive changes to the proposed regulations, but no policy changes.

Mr. White continued the review by telling the Committee that the grain storage capacity in Kansas was 493 million bushels in 1972. Today, there is a 413 million bushel capacity which encompasses 490 locations.

A member requested Mr. White to add "photo copy of the check" or "evidence of the negotiable instrument" to KAR 4-25-2 (a)(3).

KAR 4-25-7, public warehouse receipts; form. A member asked that "his" be replaced to say "the depositors order" in the last sentence.

KAR 4-25-8, scale tickets; inbound form. A Committee member proposed that subsection (b) be rewritten to say "each ticket shall include lines for the following items" for clarity.

KAR 4-25-9, scale ticket; outbound form. The conferee was asked to change "depositor" to "customer" in (b)(3).

There was discussion on KAR 4-25-13, appraisals, with staff asking whether subsection c) could be construed to mean the end of the fourth year. Staff proposed using

" the fourth anniversary date of completion of the appraisal" as more explicit as to when the appraisal was completed.

When reviewing KAR 4-25-15, definition of 12-month period, there was a suggestion made to replace "preceding July 1 of each year" to "commencing July 1 of each year."

There were many informational questions answered by the conferees. At the conclusion of the discussion, Mr. White and Ms. Mitchell were given an expression of thanks from the Committee.

Linden Appel, Robert Sanders, and Holly Zane came before the Committee to speak to the proposed rules and regulations noticed for hearing by the Department of Corrections. KAR 44-11-111, definitions; 44-11-112 is being revoked; 44-11-113, comprehensive plan; comprehensive plan review; 44-11-114 and 44-11-115 are being revoked; 44-11-119, local programs; 44-11-120, cash match for other grant funds; 44-11-121, fiscal management; required reporting; reimbursements; 44-11-122 is being revoked; 44-11-123, changes in the comprehensive plan and budget; 44-11-124 is being revoked; 44-11-127, prohibition of use of state community corrections funds; maintenance and documentation of funds; 44-11-129, unexpended funds; 44-11-130, use of grant funds for real estate acquisition and capital construction; use of grant funds for the purchase of property and supplies; 44-11-131, use of grant funds for remodeling or renovation; 44-11-132, use of grant funds to contract for services; 44-11-133, use of grant funds to purchase jail space; 44-11-134 is being revoked; and 44-11-135, use of grant funds for copyrights and patents; research projects.

Mr. Appel began his presentation by telling the Committee that in KAR 44-11-11 (b), "governing authority" would be changed to "planning unit." He also said that KAR 44-11-134 would not be revoked as planned because it was not an obsolete regulation; rather it had not been applied properly.

KAR 44-11-113, comprehensive plan; comprehensive plan review. Mr. Appel told the members that subsection (a), second sentence, "submitted to the secretary on or before" would be added, subsection (c) would read "a copy of this resolution," and the last sentence would have the addition of "interlocal draft or agreement executed at that time."

KAR 44-11-119, local programs. A question arose regarding subsection (c), with the community corrections agency submitting notice to the Department of an advisory board meeting. It was suggested that the subsection c) be reworded to indicate the notice of the meeting must be received at least one business day before a scheduled meeting."

KAR 44-11-127, prohibition of use of state community corrections funds; maintenance and documentation of funds. Mr. Appel explained that subsection (e) was existing general policy and the Department wanted the wording added to the regulation.

After an extensive question-answer session and no further comments were made regarding the regulations, Mr. Appel, Mr. Sanders, and Ms. Zane were thanked for their presentation.

Judy Moler, Kansas Association of Counties (KAC), spoke to the Committee about reservations regarding the regulations. She pointed out that the Rules and Regulations Filing Act, KSA 77-416, requires agencies whose proposed rules and regulations might

have a fiscal impact on certain entities, to submit the draft regulations to the entities for comment. The Department of Corrections did not comply with the requirement and she requested the review be postponed until the KAC had more time to examine the regulations (Attachment 5).

Theresa Cummings, Kansas Community Corrections Association, appeared before the Committee stating the Association was strongly opposed to giving the state control over income generated through local fees (Attachment 6).

A copy of the bill draft concerning the State Fire Marshall establishing a hazardous materials incident response program was given to the members of the Committee. *Senator Clark moved, seconded by Senator Brownlee, that the proposed bill be introduced into the 2002 Session of the Legislature as a Senate Bill. The motion carried.*

COMMENTS ON PROPOSED RULES AND REGULATIONS

Department of Wildlife and Parks. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning controlled shooting areas and attesting to completion of a fur harvester course. 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 solid waste management. After discussion, the Committee expressed the following comments.

- KAR 28-29-2201. Add to the beginning of the second sentence "Except as provided in subsection (d)" to remove any contradiction between that sentence and subsection (d).
- KAR 28-29-29. Rewrite subsection (c)(3) to "all recyclable materials to be reclaimed rather than requiring all residue to be disposed of in a landfill".

Animal Health Department. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning the voluntary chronic wasting disease surveillance program. After discussion, the Committee expressed the following comment.

- General Comment. As discussed with the Committee, review the Livestock Commissioner's authority to indemnify with state resources owners of animals sacrificed because of disease. Is current law broad enough to cover the diseases addressed in this regulation and others? Please report to the Committee the results of your review along with any recommendation you have for change.

Department of Administration. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning travel reimbursement. 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 the privacy of consumer financial and health information. After discussion, the Committee had no comments.

Behavioral Sciences Regulatory Board. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning social workers. After discussion, the Committee had no comment.

Kansas Bureau of Investigation. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning DNA identification. After discussion, the Committee expressed the following comments.

- KAR 10-21-1. If appropriate, in subsection (j) and (l) add the statutory citation KSA 22-4901 *et seq.* In subsection (g), rewrite to make clear what is intended by "personal information" that is not to be provided.
- KAR 1-21-2. In subsection (d), change "and" to "or."
- KAR 10-21-4. Add "pardon" to the list of actions for expungement.
- KAR 10-21-6. Delete the form adopted by reference and substitute language to the effect "on a form prescribed by the Director."

Board of Examiners in Optometry. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning fees. After discussion, the Committee expressed the following comment.

Economic impact statement. The statement is incomplete and should be revised to reflect the amount of revenue that will be generated and the number of individuals who will be paying the fees prescribed.

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

- KAR 4-25-2. Subsection (a)(2) should allow for copies of cancelled checks.
- KAR 4-25-5. How frequently are these records used by the Secretary? Is it necessary that they continue to be stored?
- KAR 4-25-7. In the last line of the regulation, change "his" to "depositor."
- KAR 4-25-9. In subsection (b)(3), change "depositor" to "customer" as suggested by the Department and make the other changes proposed by the agency.

Department of Corrections. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning community corrections. After discussion, the Committee expressed the following comments.

- KAR 44-11-111. In subsection (b), and wherever else necessary in the body of regulations, delete "planning unit" and insert "governing authority."
- KAR 44-11-119. In subsection (c), rewrite to make clear the notice is to be received at least one working day prior to the scheduled meeting.
- Compliance with the Rule and Regulation Filing Act. The proposed rules and regulations must be submitted to specified municipalities as required by KSA 77-416 (b)(4). Upon submission to and comment by the municipalities, the economic impact statement should be amended to reflect any costs to the municipalities as a result of the adoption of the proposed rules and regulations.

The next meeting of the Joint Committee will be on Friday, January 11, 2002. The meeting adjourned at 5:00 p.m.

Prepared by Pat Kahler
Edited by William G. Wolff

Approved by Committee on:

January 11, 2002