

MINUTES

JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS

August 7, 2001
Room 514-S—Statehouse

Members Present

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

Members Excused

Senator Dwayne Umbarger, Vice Chairman
Senator Stan Clark
Representative Bill Light
Representative Tony Powell
Representative L. Candy Ruff

Staff Present

Bill Wolff, Kansas Legislative Research Department
Amory Lovin, Kansas Legislative Research Department
Ken Wilke, Office of the Revisor of Statutes
Theresa Kieman, Office of the Revisor of Statutes
Pat Kahler, Secretary

Others Present

Travis Sawyer, Office of Planning and Policy Coordinator, Department of Social and
Rehabilitations Services
Mary Feighny, Attorney General's Office

Susan Somers, Board of Accountancy
Julie Hein, Hein & Weir
Sandy McAdam, Kansas Department of Health and Environment
Stan Peterson, Board of Technical Professions
Betty Rose, Board of Technical Professions
Faith Loretto, Department of Administration
Joe Fritton, Department of Administration
Mark Stoack, Department of Administration
Sheryl Weller, Department of Administration
Dale Brunton, Department of Administration
David Lake, Board of Emergency Medical Services
Donald White, Board of Emergency Medical Services
Lorne Phillips, Kansas Department of Health and Environment
Steve Paige, Kansas Department of Health and Environment
Diane Glynn, Board of Nursing
Melissa Wangemann, Secretary of State's Office
Sheila Walker, Department of Revenue
Jim Keller, Department of Revenue

Morning Session

The Chairman, Representative Melvin Neufeld, called the meeting to order at approximately 9:00 a.m. *Senator Gooch moved, seconded by Representative McClure that the minutes from the June 18, 2001, and July 2, 2001, meetings be approved as written. The motion carried.*

The Chairman welcomed Susan Somers to speak to the proposed rules and regulations noticed for hearing by the Kansas Board of Accountancy. KAR 74-4-3a, permit renewal; 74-4-4, experience requirement for permits; 74-4-8, continuing education programs; requirements; 74-5-2, definitions; 74-5-202, auditing standards; 74-5-205, professional standards; 74-5-302, records; 74-5-404a, use of CPA designation while performing non-attest services; 74-7-3, revocable living trusts; 74-11-6, definitions; 74-11-7, peer review required; 74-11-8 thru 74-11-14 are being revoked; 74-11-15, peer review oversight; and 74-12-1, fees.

Ms. Somers told the Committee that her proposed rules and regulations contained some clean up, some updating, and some revocations.

KAR 74-11-6, definitions. At the recommendation of a member of the Committee, the conferee said the definitions in the regulation would be put in alphabetical order upon final filing.

KAR 74-12-1, fees. There was a discussion on why the fees were being changed. And, in that regard, a member of the Committee asked Ms. Somers to revise the economic impact statement to reflect any loss or increase of revenue as a result of the changes in the fees.

At the close of the review, Ms. Somers was thanked by the Chairman.

Lorne Phillips was welcomed to speak to the proposed rules and regulations noticed for hearing by the Kansas Department of Health and Environment concerning vital statistics. KAR 28-17-6, fees for copies and searches.

Mr. Phillips conveyed to the members that KAR 28-17-6, fees, was necessitated by the enactment of SB 343 which created the Vital Statistics Maintenance Fee Fund that would provide financing to support the Vital Statistics Integrated Information System. He said there was a substantial increase of requests for copies of vital records in the past eight years.

The Committee asked Mr. Phillips to revise the economic impact statement to include the specific information provided to the Committee at the time of the review, *i.e.*, the number of records, revenue generated, State General Funds involved, and the use of bonds to get the upgrade underway.

Steve Paige, Kansas Department of Health and Environment, continued the review on proposed rules and regulations noticed for hearing concerning food service establishment fees, food processing plants fees, and retail food store fees. KAR 28-36-30, fees; 28-36-60, fees; and 28-36-120, fees. He said the proposed increase in fees result from legislation enacted in the 2001 Session of the Legislature and are intended to defray the cost of licensing and inspecting food establishments, food processing plants, and retail food stores.

There was an informational discussion, but no comments regarding the proposed regulations. The Committee commended Mr. Paige on the well written economic impact statement and thanked him for the review.

Diane Glynn presented testimony on the proposed rules and regulations noticed for hearing in Article 17 for the Kansas State Board of Nursing (Attachment 1). KAR 60-12-106, license renewal; 60-3-111, inactive license; and 60-13-112, authorization renewal.

There were no comments or discussion and Ms. Glynn was given an expression of thanks for her presentation.

The Secretary of State was represented by Melissa Wangemann, legal counsel, who spoke to the proposed rules and regulations noticed for hearing. KAR 7-17-1, definitions; 7-17-2, delivery of records; 7-17-3, forms; 7-17-4, fees; 7-17-5, methods of payment; 7-17-6, overpayment and underpayment of fees; 7-17-7, filing officer's duties deemed ministerial; 7-17-8, notification of defects; 7-17-9, defects in filing; 7-17-10, deadline to refuse filing; 7-17-11, filing office data entry; 7-17-12, status of parties upon filing initial financing statement; 7-17-13, status of parties upon filing an amendment; 7-17-14, status of party upon filing an

assignment; 7-17-15, status of party upon filing a continuation statement; 7-17-16, status of parties upon filing a termination statement; 7-17-17, status of parties upon filing a correction statement; 7-17-18, deadline for filing a continuation statement; 7-17-19, errors in filing; 7-17-20, notice of bankruptcy; 7-17-21, searches; 7-17-22, search logic; 7-17-23, search reports; and 7-17-24, transition searches; 7-39-1, uniform partnership act; filing fees; and 7-19-1 thru 7-19-7 are being revoked.

She explained that the proposed regulations pertain to the revised Article 9 of the Uniform Commercial Code (UCC) that was drafted by the National Conference of Commissioners on Uniform State Laws and enacted by the Kansas Legislature. The UCC has been adopted by all 50 states and all but four states have implemented the revised Article 9 as of July 1, 2001. Ms. Wangemann noted that KAR 7-19-1 through 7-19-7 are proposed for revocation because the authority for the regulations was eliminated with the enactment of the revised Article 9.

KAR 7-17-9, defects in filing. A member of the Committee suggested the wording in subsection (a) could be written in a more concise and clarifying manner.

When reviewing the economic impact statement on KAR 7-39-1, a member asked the conferee to revise the statement to show the decrease in revenue the agency expects as a result of the adoption of this regulation.

Ms. Wangemann was thanked for her participation.

Sheila Walker and Jim Keller were greeted by the Committee to speak to the proposed rule and regulation noticed for hearing by the Department of Revenue (Attachment 2). KAR 92-52-9, definitions and 92-52-9a, moving violations; suspension or restriction of driving privileges.

KAR 92-52-9, definitions. There was considerable member-conferee discussion on subsection (b) and the use of the wording “manipulating the mechanical or electrical equipment of a vehicle.” Members asked whether an intoxicated person who simply sat in a vehicle and turned on the radio could be charged with violating the regulation. Mr. Keller said the language was taken from existing language in the earlier version of the regulation. He emphasized that there would have to be a conviction before this regulation would be violated. He said “operate means to drive, drive means to move” and the courts have said, before a person is charged with a driving under the influence (DUI) violation, a vehicle must be moved.

Ms. Walker told the members that the agency was going to recommend the inclusion of additional Kansas statutes to the list already contained in the regulation (Attachment 3). Staff suggested the addition could be made at the end of the list and wording “or any other Kansas statute which specifically provides that a violation thereof or a conviction thereof” also could be added to cover any statute not listed in the proposed regulation.

Staff questioned the wording in KAR 92-52-9a (a), (b), (c), and (d) suggesting that the language could be read to mean that there had to be three violations in a single violation before action could be taken. Ms. Walker admitted that the language could be read that way but has not been so interpreted to this point. She said the regulation would be clearer if each subsection would be written "if a person commits one or more moving violations on three separate occasions within a 12 month period." She then asked the Committee for any additional recommendations on this point.

At the conclusion of the review, the Chairman thanked Ms. Walker and Mr. Keller for explaining the proposed rules and regulations and answering questions.

Afternoon Session

Betty Rose introduced Stan Peterson to speak to the proposed rules and regulations noticed for hearing by the Board of Technical Professions. KAR 66-6-1, seal; 66-6-4, professional conduct; 66-10-12, surveying experience of a character satisfactory to the board; 66-10-13, geology experience of a character that is satisfactory to the board; and 66-14-5, computation of credit.

Mr. Peterson informed the Committee that the Board has decided that the stricken language in KAR 66-6-4 (c) should be left in because there are many disciplines within the profession of engineering. Since there is a need for definition by practice, education, and experience of the person's qualifications to practice engineering, the proposed stricken language in subsection (d), "competence by virtue of education or experience" would be retained.

Concerning KAR 66-10-12, surveying experience of a character satisfactory to the board, Mr. Peterson said the proposed language in subsection (b)(5) would be deleted in the final regulation. Further, while the agency was going to reinsert the stricken word "guidelines" in subsection (b), the Committee recommended that the proposed word "requirements" is a better choice from a regulatory stand point.

Mr. Peterson and Ms. Rose were thanked for the presentation.

Representing the Department of Administration was Dale Brunton to review the proposed rule and regulation noticed for hearing in Article 18 (Attachment 4). KAR 1-18-1a, mileage rates.

There were no concerns regarding the proposed regulation. Mr. Brunton was thanked for his review.

Joe Fritton, Department of Administration, reviewed KAR 1-45-1, general provisions; 1-45-7, fees and charges; and 1-45-7a, parking fees for state parking garage.

There were numerous questions regarding state parking charges and available parking space, but no comments on the proposed regulations. Mr. Fritton, too, was thanked for his presentation.

The Chairman welcomed Don White and David Lake to speak to the proposed rule and regulations for the Board of Emergency Medical Services (Attachment 5). KAR 109-9-1, instructor-coordinator certification; 109-9-4, requirements for acceptance into an instructor-coordinator initial course of instruction; 109-10-1, curriculum approval; and 109-11-10, emergency medical technician-basic bridge course.

Mr. Lake said, when reviewing KAR 109-9-1, instructor-coordinator certification, that a course is required for training of an instructor-coordinator which limits the person to being a primary instructor of the first responder and EMT basic courses. The next level would have required an additional one or two-day training program that would apply to the needs of the advanced level courses. The proposed regulation would allow the person to opt-out to the one or two-day course.

A discussion took place with Mr. White regarding KAR 109-9-1(b)(4) and the use of the term "adult education." Members could not see the relationship between the degree in adult education and the information base required to be an instructor. A member of the Committee suggested that the term "adult education" be defined for the purposes of these regulations. Mr. White contended that a person who has a baccalaureate degree, master's degree, or doctorate in adult education would be better qualified to teach than a person who lacked training and education in the teaching of adults.

As the proposed rules and regulations relate to bridging, the Chairman expressed the opinion that the bridging program was very beneficial for small communities and the Board should be commended for its actions in this regard.

Mr. White and Mr. Lake were thanked for coming before the Committee and for their review.

COMMENTS ON PROPOSED RULES AND REGULATIONS

Board of Accountancy. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning permits to practice, code of professional conduct, firm registration, peer review, and fees. After discussion, the Committee expressed the following comments.

- KAR 74-11-6. Alphabetize the definitions.

- KAR 74-12-1. The economic impact statement should show the loss of revenue to the Board and the anticipated gain in revenue as a result of the changes in fees. Update for final filing.

Department of Health and Environment. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning vital statistics and food service establishments—fees. After discussion, the Committee expressed the following comments.

- KAR 28-17-6. The economic impact statement on this regulation concerning vital statistic fees should be redrafted for final filing to include specific information as described to the Committee, *i.e.*, the number of records, revenue generated, State General Fund contribution, bonding.
- KAR 28-36-120. The Committee commends the staff and Department for the completeness of the economic impact statement related to food service fees.
- General Comment. When available, the Committee requests receipt of any agreement among state agencies that regulate and coordinate inspections of entities subject to the jurisdiction of more than one agency, *e.g.*, Department of Health and Environment and the Department of Agriculture.

Kansas State Board of Nursing. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning license renewals. After discussion, the Committee had no comment.

Secretary of State. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning Article 9, Uniform Commercial Code, electronic filing, and fees. After discussion, the Committee expressed the following comments.

- KAR 7-17-9. The wording of subsection (a) is confusing. Rewrite for clarity.
- KAR 7-39-1. The economic impact statement should reflect the decrease in revenue.

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

- KAR 92-52-9. Review the case law related to "operating a vehicle" and determine whether a definition of the term is necessary to clarify the application of the regulation. Also, after adding the other statutes regarding moving violations, consider the following: "or any other Kansas statute that specifically provides that conviction for a violation of such statute is a moving violation."
- KAR 92-52-9a. In subsection (a) clarify that if the person "commits one or more moving violations . . .," the penalties apply.

Board of Technical Professions. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning professional practice, experience, and continuing education. After discussion, the Committee had no comment on the proposed rules and regulations except to express the preference for the word "requirement" rather than "guideline."

Department of Administration. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning mileage rates and parking. After discussion, the Committee had no comment.

Board of Emergency Medical Services. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning instructor/coordinators, curricula, and course approvals. After discussion, the Committee expressed the following comments.

- KAR 109-9-1. In subsection (b)(3), clarify the meaning of "adult education."
- General Comment. The Committee appreciates the Board's development and implementation of the bridging program and recognizes its favorable impact in rural areas and on small communities.

The Committee decided that, if a September meeting were necessary, it would be held on Tuesday, September 11. Staff would notify members if the September meeting could be cancelled.

The meeting was adjourned at 3:00 p.m.

Prepared by Pat Kahler and Bill Wolff

Approved by Committee on:

October 9, 2001