

MINUTES

JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS

January 4, 2005
Room 514-S—Statehouse

Members Present

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

Members Absent

Senator Don Betts
Representative Eric Carter
Representative Candy Ruff

Staff

Raney Gilliland, Legislative Research Department
Melissa Calderwood, Legislative Research Department
Kenneth Wilke, Revisor of Statutes Office
Diana Lee, Revisor of Statutes Office
Gary Deeter, Committee Secretary

Conferees

Chris Tymeson, Chief Legal Counsel, Kansas Department of Wildlife and Parks
Rod Bieker, General Counsel, Kansas State Board of Education
Ron Grant, Kansas Department of Revenue
Carmen Alldritt, Director, Division of Motor Vehicles, Kansas Department of Revenue
Jane Nohr, Assistant Attorney General, Kansas Bureau of Investigation
Janna Dunbar, Agritourism Program Manager, Kansas Department of Commerce
Nialson Lee, Health Care and Medical Policy, Kansas Department of Social and Rehabilitation Services

Cheryl Magathan, Public Service Executive, Kansas Real Estate Appraisal Board
Larry Williamson, Executive Director, Kansas Dental Board
Melissa Wangemann, Legal Counsel, Kansas Secretary of State
Jack Rickerson, Director of Personnel Services, Kansas Department of Administration
Andy Sanchez, Executive Director, Kansas Association of Public Employees
Wade Bowie, Legal Counsel, Kansas Juvenile Justice Authority

Others Attending

See attached list.

Morning Session

The meeting was called to order at 9:20 a.m. Chris Tymeson, Chief Legal Counsel, Kansas Department of Wildlife and Parks, commented on proposed changes in Kansas Administrative Regulations (KAR). Regarding KAR 115-18-1, wildlife rehabilitation permits, he said permit holders who care for orphaned and injured wildlife had asked for more specific standards in order to protect wildlife from unscrupulous handlers. He stated that KAR 115-4-6 and 115-4-6a separate firearm and archery for deer management unit boundaries and exempt landowners from deer management programs. He listed these further proposed changes: KAR 115-15-1, which designates endangered species within the state; KAR 115-15-2, those species in need of conservation; and KAR 115-2-1, which sets fee schedules for licenses and permits, establishes an elk permit, realigns wild turkey permits, and raises out-of-state deer permit fees. One member expressed concern that fee increases augment the Department's revenues without being offset in the following year's legislative budget process.

Mr. Tymeson commented that KAR 115-3-2, 115-5-1, 115-20-1, and 115-20-2 all deal with prohibiting hunting using night vision equipment; KAR 115-7-2 would allow an individual to use three fishing poles; and KAR 115-25-14 adds a lake at Fort Riley to a state program which, with federal assistance, repays cities and counties for lost revenue when they discontinue fees for access to certain lakes. The Vice Chairman suggested that alphabetizing the names of lakes would facilitate members being able to locate specific ones.

Mr. Tymeson listed other proposed changes: KAR 115-18-7, 115-4-11, and 115-11-2, all of which separate wild turkey permits from big game permits; and 115-9-4, accepting attestation as sufficient proof of a certificate of completion for bowhunting or furharvesting. Answering a member's question, Mr. Tymeson said that the landowner deer management program is a three-year pilot study to encourage nonresident deer hunting on a large-block landowner's land; he noted that professional guides have increasingly brought out-of-state hunters to Kansas during deer season.

Rod Bieker, General Counsel, Kansas State Board of Education, presented two proposed changes in regulations: KAR 91-15-1, eliminating the requirement that employee and student conduct policies be filed with the State Board; and KAR 91-35-1 through 91-35-4, regulations which have no effect since the state laws authorizing them have been repealed and were proposed for revocation.

Motion was made by Representative Pauls and seconded that the minutes for the Committee's December 6, 2004, meeting were approved. Motion carried.

Ron Grant, Kansas Department of Revenue (KDOR), stated that SB 147 passed by the 2004 Legislature included a tax credit for business equipment and that KAR 92-12-113 establishes regulations for this tax credit, requiring documentation if the credit is over \$500. He then introduced Carmen Alldritt, Director, Division of Motor Vehicles, KDOR, who commented on KAR 92-51-34a, which extends the current Kansas license plate for one year. Answering questions, Ms. Alldritt said new plates cost the state \$5.6 million to manufacture. She said the Department is aware of the proposal to add \$5 to each license plate fee, with the resultant funds allowing free access to city and county parks and the state park system (\$4 to Wildlife and Parks, \$1 to relevant city/county entities).

Jane Nohr, Assistant Attorney General, Kansas Bureau of Investigation (KBI), explained that KAR 10-22-1 is being modified to accommodate HB 2869, which mandates that field tests for controlled substances be admissible as evidence in a preliminary examination. Answering questions, Ms. Nohr said three field test kits are widely used and that the chemical properties of each can be presented without specifying a manufacturer. She said that response to the new law from law enforcement officials has been positive. She replied that the training of officers in the use of the kits includes warnings about using outdated chemicals. She stated that use of the test as evidence helps to establish probable cause. A member suggested that the requirement language of subsection (b) is vague and could be struck.

Janna Dunbar, Agritourism Program Manager, Kansas Department of Commerce, reviewed proposed regulations developed from SB 334, the Agritourism Promotion Act (Attachment 1). She noted that all the following regulations deal with the need for registration and liability insurance for agritourism businesses: KAR 110-12-1, definitions; KAR 110-12-2, outlining the registration procedure; KAR 110-12-3, the liability insurance and costs eligible for tax credits; KAR 110-12-4, the procedure for receiving tax credits; KAR 110-12-4(b), establishing that registration is valid for five years; KAR 110-12-5, requiring new registration if the agritourism business changes activities; and KAR 110-12-6, requiring a warning notice within a contract and on-site. Ms. Dunbar included a sample of the registration form, the K33 tax credit document, and a map of the identified 611 agritourism locations in the state (Attachment 2). Answering a question, Ms. Dunbar said the tax credit would apply for the first five years. She noted that if an agritourism business did not charge a fee, the state's insurance would not apply. Staff suggested that working days [110-12-2 (b)] needed to be more clearly defined. A member suggested using the term "business days." Regarding 110-12-2 (c), staff noted that if the registration form is a public record, the Department does not have the authority to make it a closed record.

Nialson Lee, Health Care and Medical Policy, Kansas Department of Social and Rehabilitation Services, presented KAR 30-3-81u, which creates a new hospital group to accommodate out-of-state hospitals, which are not eligible for the provider assessment program.

Cheryl Magathan, Public Service Executive, Kansas Real Estate Appraisal Board, explained that KAR 117-2-2a, 117-3-2a, 117-4-2a, and 117-5-2a are being proposed in response to complaints by experienced appraisers that newly licensed appraisers are supervising trainees without having sufficient experience to give proper training. She said that the regulations stipulate that only certified appraisers can supervise, that a minimum of two years of experience is required before an appraiser can train others, and that limits are established on the number of trainees supervised. A member commented that in subsection (b) of each regulation, the term "good standing" should not refer to a term ("certification") but to a person. Staff noted that the educational requirements of KSA 58-4109 (c) and (d) deal with an applicant, not a supervisor, and suggested the regulation link to KSA 58-4109 and also the implementing statute KSA 58-4103.

Larry Williamson, Executive Director, Kansas Dental Board, presented an amendment to a regulation (KAR 71-2-2, branches of dentistry) that eliminates unnecessary language and adds a

definition of a speciality that did not previously exist, bringing Kansas' regulations into conformity with nationally recognized definitions. Answering a question, Mr. Williamson said that dentofacial orthopedics is a sub-set of orthodontics. Staff suggested that the definition reflect its subordination.

Melissa Wangemann, Legal Counsel, Secretary of State, testified that because the Kansas corporate code was revised during the 2004 Legislative Session (SB 29), the new law delegates the authority to set fees for corporate filings to the Secretary of State; thus, KAR 7-34-2, which establishes corporate filing fees. She noted that the Secretary of State did not raise filing fees, but that the new law took the authority for setting fees out of statute and into regulations

Afternoon Session

Jack Rickerson, Director of Personnel Services, Kansas Department of Administration, reviewed 64 proposed amendments to regulations. He said that KAR 1-1-1 gives an overview of changes in regulations that reflect the effort of Personnel Services to decentralize authority, build partnerships among agencies, and create an effective, diverse, responsible, and quality workforce. A member questioned the use of the word "diverse", wondering if the word conveyed new information or was simply a popular buzz word. Staff noted that adding "associated guidelines" to (a) may exceed the regulation's statutory authority and suggested that any guidelines be adopted by reference. Regarding KAR 1-2-9, which allows delegation by the appointing authority, members also questioned to what extent down the organizational chart authority could statutorily be delegated. KAR 1-2-25 and 1-2-25a distinguish between overtime compensatory time and holiday compensatory time. Mr. Rickerson gave brief comments about the following: KAR 1-2-30, designated positions, is being revoked; KAR 1-2-31 defines the term demotion; KAR 1-2-43a defines an incumbent as an employee; KAR 1-2-44 adds holiday compensatory time; KAR 1-2-46 clarifies length of service. Staff noted that subsection (b) should read "or" and not "and."

Mr. Rickerson continued his comments: KAR 1-2-74 broadens circumstances for which administrative leave is granted; KAR 1-2-84a and 1-2-84b, which define a manager, are being revoked; KAR 1-2-97 defines unclassified service; KAR 1-3-2, reciprocal agreements with other agencies, is being revoked as duplicative; KAR 1-4-2, the required annual position review is being eliminated as unnecessary; and KAR 1-4-3 is being broadened to give the employee more responsibility in describing his/her position. Staff suggested that the word "prepare" on the second line be reinstated.

Mr. Rickerson resumed his comments: KAR 1-4-5 allows the appointing authority to classify a newly-created position; KAR 1-4-7 replaces the term "employee" with the term "incumbent"; KAR 1-4-8 allows the appointing authority to decide the reallocation of an incumbent; KAR 1-5-7 allows retroactive compensation adjustments; KAR 1-5-8 removes the time limit for hiring a person above the pay grade; KAR 1-5-9 deals with pay for temporary employees; KAR 1-5-14 grants authority to increase pay within an agency; KAR 1-5-15 (demotion) and KAR 1-5-19c (pay grade) give more flexibility in making adjustments to pay; and KAR 1-5-20 (pay decreases) is being subsumed into KAR 1-5-19c.

A member requested the Committee discuss allowing individuals to respond by e-mail to notices of public hearings on proposed changes to regulations. Staff noted that agencies have followed a *de facto* policy of accepting e-mailed public comments without statutory authority. The Chairman stated that the Committee will allow agencies to accept e-mailed comments for a year and urged agencies to include an e-mail address in their public notices of hearings.

Mr. Rickerson resumed comments on proposed changes in regulations: KAR 1-5-24 adds wider scope to qualifying circumstances for overtime and increases the maximum compensatory time an employee may accrue from 120 hours to 240 hours. Answering a question, he said the amendments meet the provisions of the Fair Labor Standards Act. Continuing, he commented on: KAR 1-5-30, which addresses benefits for employees activated to military duty; KAR 1-6-2, recruitment, which updates language to include electronic recruiting systems; KAR 1-6-8, which allows decentralization in choosing selection instruments; KAR 1-6-27 and 1-6-29, which give greater flexibility in handling demotions and acting assignments. Staff noted that allowing acting assignments to continue beyond one year may conflict with KSA 75-4315a, which limits such assignments to 12 months.

Commenting on KAR 1-6-32, Mr. Rickerson said the regulation deals with drug screening and changes the applicable position from “designated” to “safety-sensitive.” Further, KAR 1-7-3, dealing with a probationary period, distinguishes between a new and a current employee in a new job. He said KAR 1-7-10 removes centralized oversight on performance reviews and allows an agency greater flexibility in developing appropriate instruments to measure performance, while KAR 1-7-11 deals with an employee’s right to appeal a performance review. KAR 1-7-12 clarifies the appeals procedure. Mr. Rickerson said that KAR 1-8-2 through KAR 1-8-6 deal with training procedures, decentralizing the process, eliminating pan-agency training standards, and changing the term “supervisory” to “leadership” in 1-8-6. Regarding KAR 1-9-1, he commented that changes give more authority for an agency to allow flex time. A member questioned the use of “exempt employee” in subsection (d) without a definition for the term. Staff suggested that, because the word “overtime” is eliminated, the regulation cross-reference the Fair Labor Standards Act.

Mr. Rickerson continued: KAR 1-9-2 allows an employee to work a holiday and bank it for use at a later date. A member noted that because the regulation uses the term “legal holiday” without clarification, it does not follow KSA 35-107, 60-206, and 65-206, suggesting that the regulation reference the statutorily designated holidays in Kansas. Commenting further, Mr. Rickerson noted that: KAR 1-9-13 defines holiday compensatory time; KAR 1-9-14 stipulates how compensatory time can be transferred to another agency; KAR 1-9-19 changes the title dealing with administrative leave; KAR 1-9-19a clarifies language regarding drug testing of employees; KAR 1-9-20 eliminates the exit interview; KAR 1-9-22 expands job-injury leave; KAR 1-9-23 requires the recording of shared leave be centralized and monitored by Personnel Division. Answering a question, Mr. Rickerson said shared leave information is closed because it is considered a personnel record.

Commenting further, Mr. Rickerson explained that: KAR 1-9-27 is being revoked as a redundant restatement of the Family and Medical Leave Act of 1993; KAR 1-10-6 (dismissal, suspension, demotion), KAR 1-10-7 (relief from duty), KAR 1-10-10 (violation of the Civil Service Act), and KAR 1-10-11 (violations regarding state employee benefits) are being revoked because the disciplinary process in Kansas is primarily governed by the provisions of the Civil Service Act; KAR 1-11-1 eliminates centralized reporting when a person abandons his/her position; KAR 1-11-3 revokes the redundant reporting requirement upon the death of an employee; KAR 1-12-1 eliminates the centralized oversight of grievance procedures; and KAR 1-12-2 stipulates that a grievance appeal decision stops with the Secretary of the Kansas Department of Administration.

Mr. Rickerson outlined two new regulations: KAR 1-13-1a defines the content of information in an employee’s personnel records, and KAR 1-13-1b states what can be disclosed from those records. Staff noted that KSA 44-119a provides a different list and suggested the regulation be revised to be consistent with the statute. Mr. Rickerson proposed two final amended regulations: KAR 1-14-8, the computation of layoff scores; and KAR 1-14-11, streamlining the furlough policy of state employees. Members discussed what effect an extended furlough would have on a member’s KPERs (Kansas Public Employees Retirement System) benefits and health insurance, or both.

Andy Sanchez, Executive Director, Kansas Association of Public Employees, commended the Department of Administration for its review of the rules and regulations above, but expressed concern that the changes are so sweeping in their scope, especially in implementing a policy of decentralization, that further study is needed before the regulations are adopted, since the changes impinge on principles of civil service and could make accountability less likely (Attachment 3). He said the Association has expressed many of these concerns in (Attachment 4). The Committee discussed having further hearings on the regulations by the Committee on Ways and Means and Appropriations.

Wade Bowie, Chief Counsel, Kansas Juvenile Justice Authority (JJA), noting that the proposed regulations are the first ones created by the agency, said that, except for Articles 1 and 2, the regulations mirror those governing the Kansas Department of Corrections (KDOC), even duplicating KDOC's numbering system. He expressed gratitude to the legislative staff for their assistance in developing the regulations. Noting that JJA's constituent population covers the ages ten to twenty-three, Mr. Bowie said that KAR 123-1-101 presents definitions. Staff suggested that the regulation include KSA 76-3203 in the authorizing section. Mr. Bowie, commenting on KAR 123-2-105, which gives the duties of superintendents, said the superintendent is given the same authority as an adult-prison warden. Regarding KAR 123-5-106, use of restraint, staff noted that consistency would suggest that instead of using "JJA employees," the regulation would state "agency employees."

Mr. Bowie said the regulations, modeled after the KDOC regulations, follow these broad categories: Article 1, general administration; Article 2, facilities management; Article 5, offender management; Article 12, offender conduct and penalties; Article 13, offender disciplinary procedures; Article 15, offender grievance procedures; Article 16, offender injury and property claims.

The categories are sub-divided as follows: KAR 123-2-110, internal management policies; KAR 123-5-101, definition of names; KAR 123-5-111, disposition of contraband; KAR 123-5-112, clinical services; KAR 123-5-505, visitation; KAR 123-12-101, offender clothing; KAR 123-12-102, personal cleanliness; KAR 123-12-103, body markings; KAR 123-12-104, care of living quarters; KAR 123-12-105, unsafe or unsanitary practices; KAR 123-12-106, hair standards; KAR 123-12-107, safety devices; KAR 123-12-201, use of personal property; KAR 123-12-202, personal entertainment devices; KAR 123-12-203, theft; KAR 123-12-204, taking without permission; KAR 123-12-205, unauthorized dealing and trading; KAR 123-12-206, debt adjustment and debt collection; KAR 123-12-207, gambling; KAR 123-12-208, misuse of state property; KAR 123-12-209, entering into contracts; KAR 123-12-210, accounts; KAR 123-12-301, fighting; KAR 123-12-302, noise; KAR 123-12-303, lying; KAR 123-12-304, disobeying orders; KAR 123-12-305, insubordination; KAR 123-12-306, intimidating a person; KAR 123-12-307, avoiding an officer; KAR 123-12-308, improper use of food; KAR 123-12-309, kitchen utensils and shop tools; KAR 123-12-310, dining room misconduct; KAR 123-12-311, intoxication; KAR 123-12-312, stimulants, sedatives, drugs, narcotics; KAR 123-12-313, sexually explicit material; KAR 123-12-314, sexual intercourse or sodomy; KAR 123-12-315, lewd acts; KAR 123-12-317, falsifying documents; KAR 123-12-318, disruptive behavior; KAR 123-12-319, riot or incitement to riot; KAR 123-12-321, conduct regarding visitors and the public; KAR 123-12-322, arson; KAR 123-12-323, assault; KAR 123-12-324, battery; KAR 123-12-325, offender's religious or group activity; KAR 123-12-327, interference with restraints; KAR 123-12-328, limitations on personal relationships; KAR 123-12-401, programs; KAR 123-12-501, answering calls and movement; KAR 123-12-502, responsibility for head counts; KAR 123-12-503, restricted areas; KAR 123-12-504, interference with cell operations; KAR 123-12-505, restriction; KAR 123-12-505b, medical restriction; KAR 123-12-506, official name or alias; KAR 123-12-601, mail; KAR 123-12-602, posting notices and distributing written materials; KAR 123-12-702, legal assistance by offenders; KAR 123-12-801, bulletin boards which publish facility orders; KAR 123-12-901, dangerous contraband; KAR 123-12-902, less dangerous contraband; KAR 123-12-1001, violations of statutes and regulations; KAR 123-12-1002, violations of internal management policy; KAR 123-12-1101, anticipatory and facilitating offenses; KAR 123-12-1201, increased penalty for involving or victimizing an offender under 16; KAR 123-12-1202, conviction of four offenses in six months; KAR 123-12-

1301, Class I offenses; KAR 123-12-1302, Class II offenses; KAR 123-12-1303, Class III offenses; KAR 123-12-1306, use of restitution; KAR 123-12-1308, disciplinary segregation; KAR 123-13-101, disciplinary procedure established; KAR 123-13-101a, waiver of rights; KAR 123-13-103, prosecution by outside agency; KAR 123-13-105, disciplinary administrator; KAR 123-13-106, administration of oaths; KAR 123-13-201, disciplinary report; KAR 123-13-201b, summary judgment procedure; KAR 123-13-202, amendment of charge; KAR 123-13-203, criminal prosecution and disciplinary hearing; KAR 123-13-306, offender responsibilities; KAR 123-13-307, administrative review of requests for witnesses; KAR 123-13-401, hearings; KAR 123-13-402, hearing continuance; KAR 123-13-403 and KAR 123-13-404, conducting disciplinary hearings; KAR 123-13-405a, calling witnesses; KAR 123-13-406, disposition; KAR 123-13-408, assistance from staff; KAR 123-13-409, standard of proof; KAR 123-13-501, preservation of reports; KAR 123-13-502a, hearing record; KAR 123-13-505, copy of record provided to offender; KAR 123-13-506, time limit for preparation of record; KAR 123-13-507, docket; KAR 123-13-508, reports in file; KAR 123-13-509, disciplinary case log; KAR 123-13-601, serving disciplinary segregation sentence; KAR 123-13-602, credit for disciplinary segregation sentence; KAR 123-13-603, absence from facility; KAR 123-13-610, collection of restitution; KAR 123-13-701, administrative review; KAR 123-13-702, appeal to superintendent in Class III offense cases; KAR 123-13-703, appeal to commissioner in Class I and II offense cases; KAR 123-13-704, commissioner's final review on appeal; KAR 123-13-706, administrative review board; KAR 123-13-707, errors; KAR 123-15-101, KAR 123-15-101a, KAR 123-15-101b, and KAR 123-15-102, offender grievance procedures; KAR 123-15-104, reprisals prohibited; KAR 123-15-105, records; KAR 123-15-105a, annual review; KAR 123-15-106, emergency grievance procedure; KAR 123-15-201, special problems; KAR 123-16-102, reporting loss or damage to property; KAR 123-16-105, personal property at offender's own risk.

Staff asked if Article 13 regulations were in conflict with KSA 77-603 and suggested that language might be added to exempt JJA. Staff also asked if case records were considered Corrections' records, citing KSA 38-1607 and 1608. Mr. Bowie replied that such records were considered Corrections' records.

The meeting was adjourned at 5:24 p.m. A further meeting was scheduled for Monday, January 10, at 9:00 a.m. in Room 514-S of the Statehouse.

Prepared by Gary Deeter
Edited by Melissa Calderwood and Raney Gilliland

Approved by Committee on:

January 21, 2005

(date)