

**MINUTES OF THE
ADMINISTRATIVE RULES REVIEW COMMITTEE**
May 11, 1999 - 9:00 a.m. - Room 305 State Capitol

Members Present:

Sen. Howard A. Stephenson, Cochair
Sen. David Ure, Cochair
Sen. Eddie "Ed" P. Mayne
Sen. Howard C. Nielson
Rep. Judy A. Buffmire
Rep. James R. Gowans
Rep. Martin R. Stephens

Members Excused:

Sen. Mike Dmitrich
Sen. L. Alma Mansell
Rep. John E. Swallow

Staff Present:

Mr. Arthur L. Hunsaker,
Research Analyst
Ms. Esther D. Chelsea-McCarty,
Associate General Counsel
Ms. Barbara A. Teuscher,
Legislative Secretary

Note: A list of others present and copies of materials distributed in the meeting are on file in the Office of Legislative Research and General Counsel.

1. Call to Order and Approval of Minutes of Meeting Held April 26, 1999 - Chair Stephenson called the meeting to order at 9:05 a.m.

Rep. Ure moved that the minutes of the April 26 meeting be approved. The motion passed unanimously.

2. R622-2 Use of the Great Seal of the State of Utah (May 1 Bulletin, p. 84) - Mr. Kent Bishop, Office of Planning and Budget, introduced the issue and explained that a clarification could be made in the rule to make it clear that the \$5 fee is administrative and not subject to the requirements of Section 63-38-3.2.

Gary Doxey, Governor's legal counsel, explained the legal history, including case law, surrounding the making of rules by elected officials. Rep. Stephens asked where the statutory authority is for the Lt. Governor to write rules. There is no general rulemaking grant. Sen. Stephenson pointed out one specific grant, Section 36-11-404, that does require the Lt. Governor to write rules regarding lobbyist disclosure and regulation. Rep. Stephens then suggested that this should be resolved through legislation and expressed concern with the potential for a gradual assumption of power on the part of the executive branch unless the authority issue is clarified.

Ms. Chelsea-McCarty said the Administrative Rulemaking Act requires rules to be written under certain circumstances, and that the statute should perhaps be clarified so that agencies cannot defend their rulemaking by claiming they have to write rules whenever they take action that fits the requirements for rulemaking.

MOTION: Rep. Stephens moved to have staff prepare legislation that addresses fees and the authority to write rules regarding the Great Seal. The motion passed unanimously.

MOTION: Rep. Stephens moved to have the issue of implicit rulemaking authority as it relates to agency rulemaking raised in a future committee meeting. The motion passed unanimously.

Chair Stephenson asked for a progress report on the lobbyist disclosure and regulation rules. Ms. Jones confirmed that the rules are being prepared. Chair Stephenson asked the Lt. Governor's Office to also look at lobbying of executive and judicial branch officials.

3. Interpretation of Similar Rule Requirements Across Agencies (Existing Rules) - Deborah Tilley, Tillie Time Day Care, distributed a handout (untitled), which listed her concerns with specific rules of the Bureau of Health Facility Licensure. Johnny Anderson, Utah Private Child Care Association, said R430-110-7 requires that records be available for examination at each facility, whereas the State Office of Education requires only that records be at one location for ease of review. Rep. Stephens suggested that on the application for child care licensure, it could state that one location for ease of record examination would be adequate.

Mr. Doug Springmeyer, legal counsel, Bureau of Health Facility Licensure, said there is a process in place and that a hearing on the rule is scheduled. Mr. Springmeyer pointed out that there is no inconsistency in the rules since education has no rules. Mr. Warren Gaddis, Food and Nutrition, State Office of Education, said they are interpreting federal rules to accommodate their annual record inspection needs.

Ms. Tilley and Mr. Anderson explained further issues of concern regarding department rules. Sen. Stephenson clarified the committee's role and scope of authority. Rep. Buffmire urged that these issues be taken up with the department and the appropriate interim committee. Calvin Bird, representing a child care center, expressed concern with the need to have a level playing field for child care centers.

4. R850-40-1600 Easement Assignments - Kevin Carter, School and Institutional Trust Lands Administration, said the current easement fee seems at times to present an undue burden. Rep. Ure said rule language stating that the director "may consider" certain factors in determining whether to make the fee adjustment should read "shall." Rep. Gowans said that as long as it reads "may," the director could be accused of playing favorites.

David Terry, Director, School and Institutional Trust Lands Administration, said industry came to the agency with this request. Chair Stephenson asked what oversight their board has in these situations. Mr. Carter said the board can overturn issues appealed to them by a party, and added that an overturn would have some impact on future decisions. Rep. Ure said he is not concerned with who is administering the program now, but with how it will be administered in the future. Mr. Terry acknowledged this concern and said they could change the rule to "shall" and it probably wouldn't make a big difference. He said he would take the issue back to the board and

share the minutes of the board discussion with committee members.

5. Committee Business - Possible items for the next meeting include a progress report on R523-1-19 Prohibited Items and Devices on the Grounds of Public Mental Health Facilities; fines and penalties assessed by the Department of Environmental Quality in connection with S.B. 18, 1999 General Session; and R884-24P-27, April 15 Utah State Bulletin.

6. Adjourn - Rep. Buffmire moved adjourn the meeting at 11:28 AM. The motion passed unanimously with Rep. Stephens absent.

