

**MINUTES OF THE
ADMINISTRATIVE RULES REVIEW COMMITTEE**
Tuesday, November 20, 2001 – 9:00 a.m. – Room 305 State Capitol

Members Present:

Sen. Howard A. Stephenson, Senate Chair
Rep. David Ure, House Chair
Sen. Mike Dmitrich
Sen. Ed Mayne
Sen. Michael G. Waddoups
Rep. Judy A. Buffmire
Rep. James R. Gowans
Speaker Martin R. Stephens
Rep. John E. Swallow

Members Absent:

President Al Mansell

Staff Present:

Mr. Arthur L. Hunsaker, Research Analyst
Ms. Susan Creager Allred, Associate General Counsel
Ms. Cassandra Bauman, Legislative Secretary

Note: A list of others present and a copy of materials can be found at <http://www.image.le.state.ut.us/imaging/history.asp> or contact the Office of Legislative Research and General Counsel.

1. Call to Order and Approval of Minutes

Chair Ure called the meeting to order at 9:13 a.m.

MOTION: Sen. Mayne moved to approve the minutes of August 28, October 9, and October 30, 2001 meetings. The motion passed unanimously with Sen. Waddoups and Rep. Swallow absent for the vote.

2. Rules of the Judicial Conduct Commission

Rep. Katherine Bryson explained that the JCC (Judicial Conduct Commission) is made up of three attorneys, who are bar commissioners; two judges, one of whom is nonvoting; four legislators, two from each house; and two citizens. She explained that the JCC meets once a month and that the JCC's work is mostly done on a confidential basis. Rep. Bryson indicated that the JCC was established to review complaints of judicial misconduct and to determine whether sanctions should be issued. She stated that there are four types of sanctions: (1) informal reprimands, (2) formal reprimands, (3) censures or suspensions, and (4) involuntary retirements.

Rep. Bryson explained four specific cases where the rules of the JCC are not consistent with statute, and in one case, the Utah Constitution:

- (1) *Utah Constitution*, Article VIII, Section 13, states "After its review, the Supreme Court shall, as it finds just and proper, issue its order implementing, rejecting, or modifying the commission's order." Whereas, R595-1-15(B) reads "Rejection by Supreme Court. If the Supreme Court rejects the agreement, the admission shall be withdrawn and cannot be used against the respondent in any proceedings."
- (2) *In re Worthen*, 926 p. 2nd 853 (Utah 1996) lists materials the JCC should provide to the Supreme Court. R595-1, the JCC rules, leave out some of these materials.
- (3) Section 78-8-105 requires that "during the course" of a JCC investigation, it must report "information upon which a reasonable person might conclude that a member of the state bar has

violated one of the Rules of Professional Conduct" to the Utah State Bar, but R595-1-11(D)(1) states that this report is made "Upon the conclusion of a full investigation." (See also (D)(1)(f).)

- (4) Section 78-8-107(1)(b)(i) requires the Commission to "immediately" refer any non-frivolous allegation of misdemeanor or felony misconduct and any relevant information "to the local prosecuting attorney having jurisdiction," but R595-1-11(D) states that the report is to be made "Upon the conclusion of a full investigation." (See also R595-1-11(D)(1)(d) and (e).)

Chair Ure inquired how the Supreme Court enforces the Commission's responsibilities. Mr. Jerry D. Howe, Research Analyst, Office of Legislative Research and General Counsel, explained that *Utah Constitution*, Article VIII, Section 13, provides that the Supreme Court oversees the JCC by reviewing Commission recommendations to ensure that penalties are neither too strict nor too lenient.

Rep. Bryson distributed "Judicial Conduct Commission Boiler Plate Language in Stipulations with Judges."

Mr. Steve Stewart, Executive Director, JCC, stated that the rules need to be in compliance with statute. He indicated that, once H.B. 285, Judicial Conduct Commission Amendments and Supreme Court Oversight of Judges, 2000 General Session, was passed, the JCC had to completely rework its rules. He stated that the concept is to provide "discipline by consent." He agreed that areas of inconsistency with rule and statute need to be reviewed.

MOTION: Speaker Stephens moved that staff prepare a list of specific JCC rules that are out of compliance with statute or the Utah Constitution for the next Committee meeting and that those rules be placed on the sunset list in the 2002 General Session unless the rules are amended.

Sen. Stephenson requested that the JCC recommend changes in statute that might enhance the process of disciplining judges, if any are found when reviewing the JCC rules that are out of compliance with statute.

Committee discussion followed. The motion passed unanimously with Rep. Swallow absent for the vote.

3. R746-331 Determination of Exemption of Mutual Water Companies

Mr. David L. Thomas, Chief Civil Deputy, Summit County Attorney's Office, Summit County, explained that this issue relates to recent Summit County litigation. He stated that Summit County has had many water problems and that a water concurrence ordinance was passed. He indicated that one of the mutual water companies was not regulated by the PSC (Public Service Commission) and it challenged the ordinance. Mr. Thomas stated that the mutual water company had the characteristics of a public utility and that it should not be exempt from PSC regulation. He explained that Subsection 54-2-1(27) defines a water corporation as "every corporation or person, their lessees, trustees, and receivers owning, controlling, operating, or managing any water system for public service within this state." He indicated that it does not include private irrigation companies that are engaged in distributing water solely to "stockholders or towns, cities, counties, water conservancy districts, improvement districts, or other governmental units created or organized under any general or special law of this state." Mr. Thomas stated that the statute appears to give the PSC regulatory authority over all water entities involved in distributing water other than governmental entities, with the exception of private irrigation companies. He stated that R746-331 states that culinary water systems are exempt from regulation. He indicated that this was not the intent of the statute.

Mr. Sandy Mooy, Legal Counsel, PSC, distributed "Garkane Power Co., Inc. v. Public Service Commission." He provided background on the issue, referring to Centerville Power Association v. Public Service Commission. He explained that a mutual water company is not a public utility. He stated that the exemption in the PSC rules was not based on the definition of a water corporation, but a public utility. Mr. Mooy clarified that a mutual water company does fit the definition of a utility, but not a public utility. He stated that the Legislature concluded that water companies providing culinary services were not addressed in the statute.

Committee discussion followed. Speaker Stephens suggested that Summit County meet with the PSC and work out the issues. Chair Ure requested that the issue be brought back before the Committee in January.

4. R501-12-6 Foster Parent Requirements

Sen. D. Chris Buttars, Executive Director, Utah Boys Ranch, provided an overview on the issue as presented in the August 28, 2001 meeting. He explained that families with foster children should not be limited to a total of six children in the home, but that the determination should be made on a case by case. He requested that the Committee consider placing the rule on the sunset list.

Ms. Becky Oakley, Chair, Division of Child and Family Services Board, distributed a report by the Foster Care Requirements Review Committee. She stated that the review committee heard testimony from foster parents and workers. She indicated that the review committee decided to retain the six children threshold. She stated that a foster family can apply for a waiver to foster additional children after the family has reached the six children limit, indicating that the Office of Licensing grants the majority of waiver applications. Ms. Oakley also stated that Utah statute limits the review of parenting capabilities, referring to Section 62A-2-106. She indicated that the statutory authority to review foster homes thoroughly is very limited.

Rep. John Swallow stated that there should not be a limit on the number of children in a family and that foster children are part of the family they are fostered by. Speaker Stephens indicated that he would support the elimination of a defined limit on the number of children in a foster home. He stated that many of the attempts the State has made to help children have actually hurt the child welfare system.

Sen. Buttars explained that adequate rules need to be in place for proper placement of foster children. He stated that the limitation of children in a family is wrong. He expressed the opinion that further statutory authority may need to be created to authorize adequate screening of foster families.

MOTION: Sen. Waddoups moved that R501-12-6(B)(2)(d) be placed on the sunset list. Sen. Mayne asked Sen. Waddoups to amend the motion to include placing this item on the agenda for January. Sen. Waddoups agreed to the amendment. Committee discussion followed. The motion passed with Rep. Buffmire voting in opposition, and with Speaker Stephens absent for the vote.

MOTION: Rep. Buffmire moved to adjourn the meeting. Due to the need to discuss committee business, she withdrew the motion.

5. Committee Business

A. Dates of Future Meetings

The next meeting is tentatively scheduled for Tuesday, December 11, 2001 at 9:00 a.m. in room 305.

B. Items for Next Meeting

No additional items were discussed.

6. Adjourn

MOTION: Rep. Buffmire moved to adjourn the meeting. The motion passed unanimously with Speaker Stephens absent for the vote. Chair Ure adjourned the meeting at 11:40 a.m.