

MINUTES

JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS

May 31, 2001
Room 231-N—Statehouse

Members Present

Representative Melvin Neufeld, Chairman
Senator Dwayne Umbarger, Vice Chairman
Senator Karin Brownlee
Senator Stan Clark
Senator U.L. "Rip" Gooch
Representative Carl Holmes
Representative Bill Light
Representative Laura L. McClure

Members Excused

Senator Chris Steineger
Representative Janice Pauls
Representative L. Candy Ruff
Representative Tony Powell

Staff Present

Bill Wolff, Kansas Legislative Research Department
Deb Hollon, Kansas Legislative Research Department
Ken Wilke, Office of the Revisor of Statutes
Pat Kahler, Secretary

Others Present

Bill Henry, Kansas Governmental Consulting
Mike Tate, Kansas Department of Health and Environment

Jim Rudeen, Kansas Department of Health and Environment
Sandy McAdam, Kansas Department of Health and Environment
Chris Rasmussen, Kansas Department of Health and Environment
Clint Riley, Kansas Department of Wildlife and Parks
Karl Mueldener, Kansas Department of Health and Environment
Rebecca Sanders, Kansas Insurance Department
Marlyn Burch, Kansas Insurance Department

Senator Brownlee moved, seconded by Representative Holmes, that the minutes from the April 24, 2001 meeting be approved as written. The motion carried.

Clint Riley was welcomed by the Chairman to speak to the proposed rules and regulations noticed for hearing by the Department of Wildlife and Parks. KAR 23-1-11 and 23-8-27 are being revoked; 115-8-1, department lands and waters: hunting, furharvesting, and discharge of firearms; 115-8-5 is being revoked; 115-8-8, swimming; 115-8-12, stocking or releasing of wildlife; 115-8-16 and 115-8-18 are being revoked; 115-8-20, construction, littering, and prohibited activities; 115-8-21, special events; permit requirements and procedures; department lands and waters; 115-8-17, educational bird hunt permit; application, permit, and general provisions; 115-20-1, crows; legal equipment, taking methods, and possession; and 115-20-2, certain wildlife; legal equipment, taking methods, possession, and license requirement.

Mr. Riley explained that the revocations of KAR 23-1-11, 23-8-27, and 115-8-5 have been proposed due to the Governor's mandate to clarify current and revoke unnecessary rules and regulations.

When reviewing KAR 115-8-1 (c), a member was concerned that the wording would restrict a conservation officer from firing a handgun on department lands or waters. Mr. Riley explained that other regulations would give that authority.

Answering a member's question on subsection (a) dealing with a "posted notice," the conferee said the Department, if challenged by someone who had received a ticket for violating a posted notice, would first scrutinize whether adequate notice was posted. Depending upon how a posted area is to be lawfully used, he noted that more than one notice may need to be posted, e.g., a notice that a property is open for hunting, a second notice stating only bow hunting was allowed. Ultimately, the courts would decide in a particular case whether clear notice had been posted.

Concerning KAR 115-18-17, Mr. Riley told the Committee that this regulation has taken over a year to promulgate with the purpose of bird hunts taking place outside upland bird seasons. He said some organizations, i.e., hunter safety programs and the Outdoors Woman Program, have asked for hunts for educational purposes.

KAR 115-20-2, certain wildlife; legal equipment, taking methods, possession, and license requirement. A member was concerned that subsection (c)(14) is overly specific as to legal methods of taking the listed wildlife.

The members and Mr. Riley discussed numerous other issues. At the conclusion of the review, Mr. Riley was thanked for coming before the Committee.

The Chairman welcomed Rebecca Sanders, Kansas Insurance Department, to speak to the revocations of KAR 40-5-106, 40-5-111, and 40-7-6.

Ms. Sanders said KAR 40-5-106 is being revoked because KSA 16a-4-203 provides sufficient oversight of consumer credit forms that are used (Attachment 1). KAR 40-5-111 is being revoked because KSA 40-2404(8) provides the Department sufficient authority to protect Kansas consumers against violations of the Unfair Trade Practices Act (Attachment 2). And, KAR 40-7-6 is being revoked because the section of the law being implemented by the regulation has been repealed making the regulation unnecessary.

Ms. Sanders was thanked for the presentation.

Karl Mueldener introduced Mike Tate to review the proposed rules and regulations noticed for hearing by the Department of Health and Environment (KDHE) in Article 16. KAR 28-16-28b, definitions; 28-16-28c, general provisions; 28-16-28d, surface water use designation and classification; 28-16-28e, surface water quality criteria; 28-16-58, definitions; and 28-16-60, development of draft permit.

Mr. Mueldener began the review by saying the proposed regulations set the uses of and define the quality standards for surface water and waste water within the state. He said this will be an annual process because streams will be reviewed to assure that their use is accurately set. The set of regulations proposed by the Environmental Protection Agency (EPA) raised concerns for KDHE and others because of the high costs that would be incurred with a subsequent small benefit to the environment. In the summer of 2000, KDHE and the EPA reviewed the issues that were in contention and tentatively agreed on steps to be taken to resolve those issues. He said a complete review of all the streams in Kansas will be performed by 2007.

Mr. Tate continued the review by giving the Committee a copy of the 2001 Water Quality Standards Scheme—EPA/KDHE Memorandum Of Understanding (Attachment 3) and a copy of the Kansas Antidegradation Policy (Attachment 4). He commented that discussions with the EPA included permitting, but not water quality standards. The EPA has no purview over commenting on or disapproving permitting issues unless given to them for water quality standards. The Department, he said, is trying to establish two implementation procedures: one dealing with permitting issues and one dealing with the intricacies of water quality standards. The only regulations that must be submitted to EPA will be water quality standards.

When looking at KAR 28-16-28b, definition, a question was raised by a member regarding the waste water discharged from a city treatment plant. Concern was expressed that waste water discharge would be considered a stream. As information to a member's inquiry on a related matter concerning a stream cleanup, the conferee said the Department assesses the number of pollutants then decides how many pollutants would be allowed for safety.

It was pointed out that KAR 28-16-28c, general provisions, subsection (c)(2) has an error in the next to the last sentence; 28-26-28d(c)(2) should read 28-16-28d(c)(2). The conferee also was asked to review the proposed regulations making sure all the adoptions by reference were correct and complete and that there is no conflict in KAR 28-16-58 between the state and federal use of the term "navigable water."

After answering many other informational questions for the Committee, Mr. Mueldener and Mr. Tate were given an expression of thanks for the review.

The Committee discussed and established the following meeting dates: July 2, August 6-7, September 10-11, October 8-9, November 5-6, and December 10-11, 2001.

Dr. Wolff gave the members the *Report on Oversight Activities of the Joint Committee on Administrative Rules and Regulations* for their information regarding what agencies had been reviewed from April 1999 to April 2001, including comments to the agencies regarding the proposed rules and regulations.

A brief discussion ensued regarding the status of the Agricultural Remediation Board as a state agency and whether the Board could adopt administrative rules and regulations. *Senator Clark moved, seconded by Representative Holmes, that the Chairman request an opinion of the Attorney General seeking clarification of whether the Board is a state agency, has authority to adopt rules and regulations, and whether "standards and procedures" fall within the definition of a "rule and regulation."* Motion Carried.

COMMENTS ON PROPOSED RULES AND REGULATIONS

Insurance Department. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning credit insurance and violations of the Unfair Trade Practices Act. 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 surface water quality standards. After discussion, the Committee expressed the following comments.

- KAR 28-16-28c. In subsection (c)(2), correct the regulation citation to read 28-16-28d(c)(2). Further, the Committee believes that waste water discharge should not become a classified stream.
- KAR 28-16-58. In subsection (b)(5), review to make certain that the definition of "navigable waters" as adopted by reference from the federal law does not conflict with the meaning of the term in Kansas law.

Department of Wildlife and Parks. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning Department lands and waters, special permits, and crows. After discussion, the Committee expressed the following comment.

- KAR 115-20-2. In subsection (c)(14), consider deleting all after smoke.

The meeting adjourned at 5:00 p.m.

Prepared by Pat Kahler
Edited by Deb Hollon and Bill Wolff

Approved by Committee on:

August 7, 2001

(Date)