

## MINUTES

### JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS

October 2, 2006  
Room 519-S—Statehouse

#### Members Present

Senator Vicki Schmidt, Chairperson  
Representative Carl Holmes, Vice-Chairperson  
Senator Karin Brownlee  
Senator Ralph Ostmeyer  
Representative Jan Pauls  
Representative Arlen Siegfroid  
Representative Josh Svaty  
Representative Mark Treaster

#### Members Absent

Senator Donald Betts  
Senator Chris Steineger  
Representative Lance Kinzer  
Representative Sharon Schwartz

#### Staff Present

Raney Gilliland, Kansas Legislative Research Department  
Martha Dorsey, Kansas Legislative Research Department  
Melissa Calderwood, Kansas Legislative Research Department  
Kenneth Wilke, Revisor of Statutes' Office  
Judy Glasgow, Secretary

#### Others Present

Ron Seeber, Hein Law Firm  
Dennis Priest, Kansas Department of Social and Rehabilitation Services  
Denise Kelly, Kansas Department of Social and Rehabilitation Services  
Chris Tymeson, Kansas Department of Wildlife and Parks  
John P. Smith, Kansas Department of Credit Unions  
Charles Sexton, Office of the Attorney General  
Camille Nohe, Office of the Attorney General  
Charles Klebe, Office of the Attorney General  
M. L. Korphage, Kansas Corporation Commission, Conservation Division

Allison Herring, Kansas Corporation Commission, Conservation Division  
Tom Day, Kansas Corporation Commission  
Richard Cram, Kansas Department of Revenue

### **Morning Session**

Senator Vicki Schmidt, Chairperson, called the meeting to order at 9:05 a.m. on October 2, 2006.

Chairperson Schmidt recognized Richard Cram, Director of Policy and Research, to speak to the proposed rule and regulation noticed for hearing by the Department of Revenue. KAR 92-13-9, motor fuel permits and emergency authorization.

Mr. Cram stated that this proposed rule and regulation was the result of HB 2878 passed by the Legislature during the 2006 Session. He noted that the regulation was changed to allow the issuance of three motor fuel permits for the same vehicle at one time.

Staff questioned how the limit of three permits at one time was determined, because staff believed the intent of the Legislature was to allow permits to be issued in multiples of three but not limited to three. Mr. Cram stated that he would review this information with the agency. The Committee noted that if the Department had a website, it should be listed in the notice and that a statement should be included in the notice that the Department would accept comments by e-mail. After responding to questions of a general nature from Committee members, Chairperson Schmidt thanked Mr. Cram for his presentation before the Committee.

Dennis Priest, Assistant Director for the Program of Economic Employment, was recognized by the Chairperson, to speak to the proposed rule and regulation noticed for hearing by the Kansas Department of Social and Rehabilitation Services. KAR 30-4-64, work program requirements.

Mr. Priest stated that the changes in the regulation are a result of the Deficit Reduction Act of 2006, which reauthorized the federal Temporary Assistance for Needy Families (TANF) program. A Committee member noted that on page 2, (A), the term "person who is pregnant should be changed to "pregnant female." It also was noted that the word "who" should be inserted after "20" in that same paragraph. A Committee member suggested that on page 5 (3), the phrase "or secretary's designee" be added after "secretary." The Committee also noted that there was no economic impact statement included. The Committee recommended that the department's notice of hearing also include the statement that "e-mail comments would be accepted" and include the e-mail address. There being no other questions or comments, Mr. Priest was thanked for his appearance before the Committee.

Chairperson Schmidt asked for action on the minutes of the September 6, 2006, Committee meeting. *Representative Treaster moved that the minutes be approved as presented, Senator Brownlee seconded the motion. The motion carried.*

Chairperson Schmidt introduced Don Jordan, Commissioner, to address the proposed rules and regulations noticed for hearing by the Juvenile Justice Authority (Attachment 1). KAR 123-6-101, definitions; KAR 123-6-102, application of good time credits; KAR 123-6-103, awarding and withholding good time credits for confined offenders; KAR 123-6-104, time lost on escape; KAR 123-6-105, good time credit rate; and KAR 123-6-106, sentences to the age of 22 1/2.

Mr. Jordan stated that these rules and regulations were a result of discussion during the last legislative session on how much good time credit should be available to juveniles. After meeting with judges, district and county attorneys, community corrections officials, and other stakeholders it was determined that the maximum good time available should be 30 percent, not to go below any mandatory minimum sentence.

In response to questions from the Committee, Mr. Jordan stated that the new regulations will apply only to offenders convicted after the date of adoption of the regulations. He noted that the language used in these rules and regulations was the same language used by the Kansas Department of Corrections. The Committee suggested that the website be included in the notice of hearing and that the notice indicate that the agency will accept e-mail comments on the regulations from interested parties. Mr. Jordan was thanked for appearing before the Committee.

B. Lane Hemsley was recognized by Chairperson Schmidt to speak to the proposed rules and regulations noticed for hearing by the Kansas Pharmacy Board. KAR 68-16-1, definitions; KAR 68-16-2, requirements for participation by physicians, pharmacies, hospitals and nonprofit clinics; KAR 68-16-3, donation of cancer drugs; KAR 68-16-4, dispensing requirements; KAR 68-16-5, handling fees; KAR 68-16-6, distribution of donated cancer drugs; KAR 68-16-7, sale of donated drugs; KAR 68-16-8, recordkeeping requirements; and KAR 68-16-9, forms.

Mr. Hemsley stated that these new regulations were the result of legislation passed during the 2005 Legislative Session. Staff suggested that the agency may need to look at KSA 65-1636 to check what authority the Board of Pharmacy has concerning these regulations and there may need to be some revisions to the statute to allow adoption of these proposed rules and regulations. Staff recommended that in KAR 68-16-1, the reference to KSA subsections be removed so that the regulation does not have to be updated if there are any additions or deletions to the statute. In response to a question from the Committee on how the public will be notified, Mr. Hemsley stated that each drug repository location will post a notice visible to the public. Concern was raised by the Committee that KAR 68-16-7(b) includes no disciplinary action provisions in the event of a violation if the repository is not licensed by the Board of Pharmacy. A concern was raised that the rules and regulations make no reference to the requirements of low income or economic levels to qualify for the program. In KAR 68-16-8, a concern was expressed by the Committee that there was no requirement for the Board of Pharmacy to receive and maintain copies of the required forms. The Committee questioned whether additional legislative action would be needed to correct these deficiencies. It was the consensus of the Committee that the Board of Pharmacy respond to the Committee on how it would like to handle the necessary corrections to these rules and regulations. The Committee did recommend that the notice of hearing include the agency's e-mail address and if it would accept comments on the proposed regulations by e-mail from interested parties. The Chairperson thanked Mr. Hemsley for his appearance before the Committee.

Chairperson Schmidt recognized Chris Tymeson, Chief Counsel, to speak to the proposed rules and regulations notice for hearing by the Kansas Department of Wildlife and Parks. KAR 115-2-1, amount of fees; KAR 115-2-2, motor vehicle permit fees; KAR 115-2-3a, cabin camping permit fees; KAR 115-7-1, fishing; legal equipment, methods of taking, and other provisions; KAR 115-7-4, fish; processing and possession; KAR 115-7-8, bass fishing tournaments; KAR 115-16-5, wildlife control permit; operational requirements; KAR 115-18-12, trout permit; requirements, restrictions, and permit duration; KAR 115-18-18, hand fishing permit; requirements, restrictions, and permit duration; KAR 115-18-19, paddlefish permit; requirements, restrictions, and permit duration; KAR 115-18-20, tournament bass pass; requirements, restrictions, and pass duration; KAR 115-20-5, dangerous regulated animals; primary caging requirements; KAR 115-20-6, dangerous regulated animals; registered designated handler; KAR 115-25-6, turkey; spring season, bag limit, permits, and game tags (exempt); and KAR 115-25-14, fishing; creel limit, size limit, possession limit, and open season (exempt).

Mr. Tymeson stated that KAR 115-2-2 reduces all annual and daily motor vehicle permits to one-half of the current value for a period of one year unless extended by the Legislature. KAR 115-7-8, KAR 115-18-18, KAR 115-18-19, and KAR 115-18-20 are new rules and regulations. KAR 115-20-5, and KAR 115-20-6, are the result of legislation passed by the 2006 Legislative Session, concerning dangerous regulated animals. KAR 115-25-6 and KAR 115-25-14 are exempt regulations concerning open seasons of turkey and fishing. After responding to general questions from the Committee, Mr. Tymeson was thanked for his appearance before the Committee.

Rocky Vacek, Administrator, was recognized by the Chairperson to address the proposed rule and regulation noticed for hearing by the Board of Barbering. KAR 61-7-1, fees.

Mr. Vacek stated this rule and regulation was being adopted to increase agency revenue since fees had not been raised in many years. Committee members noted that the economic statement did not reflect the amount the increased fees would generate. Mr. Vacek answered Committee questions concerning the Board's budget and reason for large increases. Staff stated that if the agency wanted the effective date to be January 1, 2007, then it needed to state this in the regulation, otherwise it would be effective upon publication. After discussion by Committee members concerning the large increase reflected in the regulation, it was suggested that the agency make more frequent but smaller increases in the future. Committee members noted that the notice of hearing did not contain the e-mail address or the fact that the agency would accept comments on the regulations by e-mail. Chairperson Schmidt thanked Mr. Vacek for his presentation before the Committee.

Larry Buening, Executive Director, was recognized by Chairperson Schmidt to speak to the proposed rules and regulations noticed for hearing by the Board of Healing Arts. KAR 100-22-6, notice to the public of licensure; KAR 100-15-5, continuing education requirement; and KAR 100-15-6, documentation of continuing education.

In response to questions from the Committee concerning KAR 100-22-6, Mr. Buening stated that it was the Board's decision to require a posting of a notice of which agency has regulatory authority over locations that maintain an office for the practice of the healing arts. Committee members had questions concerning why the Board felt the posted notice was necessary and what specifically the notice should include. After replying to all the Committee's questions, Chairperson Schmidt thanked Mr. Buening for his appearance before the Committee.

The Chairperson recessed the meeting at 12:45 p.m.

### **Afternoon Session**

Chairperson Schmidt reconvened the meeting at 1:55 p.m. She recognized John Smith, Administrator, to speak to the proposed rules and regulations noticed for hearing by the Department of Credit Unions. KAR 121-5-1, definitions; KAR 121-5-3, deteriorating condition; KAR 121-7-1, incidental powers; KAR 121-8-1, unsafe or unsound practice; and revocation.

Mr. Smith stated that KAR 121-8-1 was being modified to set out more specifically the acts which would constitute an "unsafe or unsound practice." The Committee noted that a website address should be included and whether or not the agency would accept comments on the proposed regulations by e-mail. After responding to all questions from the Committee, Mr. Smith was thanked for his appearance before the Committee by the Chairperson.

Chairperson Schmidt introduced Lee Rolfs, to address the proposed rule and regulation noticed for hearing by the Department of Agriculture, Northwest Kansas Groundwater Management District Board No. 4. KAR 5-24-10, exemptions for up to 15 acre-feet of groundwater.

Mr. Rolfs and David Pope, Chief Engineer, responded to questions of a general nature from Committee members and stated that this regulation would not allow any new water usage but redistribute the allotted amount to different uses. Staff noted that on page 2, (B), the reference to the "type of beneficial use" should be used consistently throughout the regulation. Chairperson Schmidt thanked Mr. Rolfs and Mr. Pope for their appearance before the Committee.

Chairperson Schmidt recognized Camille Nohe, Assistant Attorney General, to speak to the proposed rule and regulation noticed for hearing by the Office of the Attorney General. KAR 16-11-8, restraining order; effect of; procedure.

Camille Nohe and Chuck Sexton, Director of the Concealed Carry Unit, responded to questions from the Committee. Staff pointed out that there is a discrepancy between the definition of "24 hours" on page 2, paragraph (3) and how it is used on page 2, paragraph (d). The Committee also noted that in paragraph (f) of the second page, there should be a way to rescind the revocation other than court order, if it is found that it has been issued incorrectly. A Committee member noted that page 3 paragraph (k) line one should be "shall" instead of "may." Ms. Nohe and Mr. Sexton were thanked for their appearance before the Committee by the Chairperson.

M. L. Korphage, Director of the Conservation Division of the Kansas Corporation Commission, was introduced by Chairperson Schmidt to speak to the proposed rules and regulations noticed for hearing by the Kansas Corporation Commission (Attachment 2 and Attachment 3). KAR 82-3-101, definitions; KAR 82-3-206, assessment; KAR 82-3-305, gas to be metered; and KAR 82-3-307, gas conservation assessment.

Mr. Korphage gave a history of the level of production of gas and oil and how the fees were assessed to maintain the appropriate level of funding for regulatory oversight by the Conservation Division. After responding to several questions from Committee members, Mr. Korphage was thanked for his presentation by the Chairperson.

Patty Clark, Deputy Secretary, was recognized by Chairperson Schmidt to speak to the proposed rules and regulations noticed for hearing by the Department of Commerce (Attachment 4). KAR 110-14-1, allocation of tax credit to program contributors; and KAR 110-14-2, tax credit.

Ms. Clark gave an overview of the Individual Development Account Program Act (IDA) to the Committee. This program allows eligible families and individuals the opportunity to establish special savings accounts administered by community-based organizations. These deposits may be matched by charitable contributions made by donors to individual development account reserve funds managed by qualified community-based organizations. She responded to several questions from the Committee. Chairperson Schmidt thanked Ms. Clark for her appearance before the Committee.

Chairperson Schmidt called on Kenneth Wilke, to discuss the proposed bill requested by the Committee concerning the facilities for the treatment of alcoholism and intoxication (Attachment 5). After reviewing the bill with the Committee, it was the Committee's request that the bill be amended on page 2, Sec. 2, to exempt proposed rules and regulations coming before the Committee for review from being authorized by statute and in compliance with the provisions of statute. Mr. Wilke stated that he would make the corrections and bring the proposed bill back to the Committee at the next meeting.

Mr. Gilliland went over the form letter sent to agencies for review by Committee members. This is the letter sent out to each agency after the Committee reviews the proposed rules and regulations and sets forth the recommendations made by the Committee. Committee members made several suggestions concerning the organization and content outline to clarify and emphasize the Committee's requested changes and suggestions. The Committee requested that staff notify any agency that came before the Committee in August and has not responded to the follow-up letter to appear before the Committee at the November meeting to notify the Committee of its action concerning the proposed rules and regulations.

The meeting was adjourned by Chairperson Schmidt. The next meeting was tentatively set for November 20, 2006.

### **Committee Comments on Proposed Rules and Regulations**

**Kansas Department of Revenue.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning motor fuel permits and emergency authorization and had the following comments.

KAR 92-13-9. The Committee believes the statute states that the permits are to be sold in multiples of three and not limited to three as required in the proposed regulation.

Comment. Please include in your notice a website address and an indication that comment on the regulations would be accepted via e-mail.

**Kansas Department of Social and Rehabilitation Services.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning work program requirements and had the following comments.

KAR 30-4-64. In (a)(4)(A), consider the addition of the word "who" after "20." In subsection (d)(3), please consider the addition of language allowing the approval of services by a designee of the secretary. In addition, consider rephrasing language in the regulation from "a person who is pregnant" to "a female who is pregnant."

**Kansas Board of Pharmacy.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning definitions; requirements for participation by physicians, pharmacies, hospitals and nonprofit clinics; donation of cancer drugs; dispensing requirements; handling fees; distribution of donated cancer drugs; sale of donated drugs; record keeping requirements; and forms and had the following comments.

KAR 68-16-1. Consider the removal of the subsection letter references in the definitions since a future statutory change could require amendments to this regulation.

KAR 68-16-3. The Committee believes that these cancer drugs could be compromised at any time in the donation process and receipt process for the

dispenser. The Committee requests the Board provide information as to what steps are taken to protect these drugs at all points from tampering.

Comment. The Committee is concerned that the Board does not have authority to impose its authority on certain entities which might become cancer drug dispensers, such as nonprofit clinics. Does the Board believe additional authority is necessary?

Question. The Committee believes that the primary focus of the legislation was to provide cancer drugs to those who cannot afford them. The regulations appear to allow the dispensing of these drugs to any person, whether or not the person can afford them or has insurance coverage. Did the Board consider this issue in the development of these regulations?

Comment. The Committee believes these regulations may conflict with other provisions of the Pharmacy Act, particularly those provisions which require drugs to be sold or distributed by pharmacies or pharmacists, including persons acting under the immediate and personal direction and supervision of a pharmacist. (See KSA 65-1636.) Did the Board consider whether these regulations conflict with the statutory provisions of the Kansas Pharmacy Act?

KAR 68-16-7. The Committee questions the authority of the agency to impose penalties under the Kansas Pharmacy Act. Please review the authority to use the Pharmacy Act penalties for violations of the statute dealing with the cancer drug program. Also, what would happen if there is a violation with respect to the cancer drug program, but there is not a violation under the Kansas Pharmacy Act?

KAR 68-16-8. The Committee questions the authority of the agency to require the maintenance of records for five years.

Request. The Committee asks the agency to include in its notice the agency website address and to indicate that comments to the regulations would be accepted via e-mail.

Request. The Committee also requests that the agency come to the Committee with any statutory changes it believes are necessary to implement this program.

**Kansas Juvenile Justice Authority.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning definitions; application of good time credits; awarding and withholding good time credits for confined offenders; time lost on escape; good time credit rate; and sentences to the age of 22½ and had the following comments.

KAR 123-6-103. In subsection (a), please review the language "from the sentence begins date to the date of the initial good time award" to be sure the grammar is correct and is stated as intended.

Comment. Please consider the impact granted good time credits has on juveniles. Consider having more time with them now may have a positive impact on the individuals in the long run.

Comment. Please be sure to indicate a website address in your notice and to indicate in the notice that comments on the regulations are accepted via e-mail.

**Kansas Department of Wildlife and Parks.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning amount of fees; motor vehicle permit fees; cabin camping permit fees; fishing, legal equipment, methods of taking, and other provisions; fish, processing and possession; bass fishing tournaments; wildlife control permit, operational requirements; trout permit, requirements, restrictions, and permit duration; hand fishing permit, requirements, restrictions, and permit duration; paddlefish permit, requirements, restrictions, and permit duration; tournament bass pass, requirements, restrictions, and pass duration; dangerous regulated animals, primary caging requirements; and dangerous regulated animals, registered designated handler and had the following comments.

KAR 115-2-2. The Committee notes the annual motor vehicle permit fee should be \$17.25 and not \$17.75.

KAR 115-7-1. The Committee questions the need for the words "and while" in subsection (a)(5)(B).

**Kansas Board of Barbering.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning fees and had the following comments.

KAR 61-7-1. The effective date of January 1, 2007 should be included as part of the regulation. In addition, the Committee believes that the Economic Impact Statement should be revised to include the amount of new money estimated to be generated by the fee increases. Lastly, the Committee believes that the fee increases are excessive and that some effort should be made to adjust the increases. The Committee suggests smaller increases on a more frequent basis.

Comment. Please include in your notice your website address and indicate that comments on the regulation are accepted via e-mail.

**Kansas Board of Healing Arts.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning notice to the public of licensure; continuing education requirement and documentation of continuing education and had the following comment.

KAR 100-22-6. The Committee believes that this regulation is not clear in terms of what is to be included on the notice or the purpose of the notice. In addition, the Committee questions the statutory authority to promulgate this regulation.

**Kansas Attorney General's Office.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning restraining order, effect of, procedure and had the following comments.

KAR 16-11-8. The Committee believes that clarification is needed between the definition of the term "24 hours" and the use of the term in subsection (d). In addition, in subsection



(k), the Committee believes the "may" actually should be "shall." Further, the Committee believes that clarity needs to be included as to what is supposed to happen if the order of revocation is rescinded at the agency level and whether the hearing officer has the authority to rescind the order. Finally, the Committee is concerned in that "immediate action" really does not occur and that in certain cases several days could pass before action is taken by the Attorney General's Office.

**Kansas Department of Agriculture.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning exemptions for up to 15 acre-feet of groundwater and had the following comment.

KAR 5-24-10. In subsection (b)(2)(A), consider adding the word "beneficial" between the words "new" and "use."

**Kansas Department of Credit Unions.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning definitions; deteriorating condition; incidental powers; and unsafe or unsound practice and had the following comment.

Comment. Please include in your notice your website address and indicate that comments on the regulation are accepted via e-mail.

**State Corporation Commission.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning definitions; assessment; gas to be metered; and gas conservation assessment and had the following comment.

Economic Impact Statement. Please update the Economic Impact Statement to include information on the amount of money projected to be collected by the imposition of the new fee amounts, such as the fiscal information provided to the Committee.

**Kansas Department of Commerce.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning allocation of tax credit to program contributors; and tax credit and had the following comment.

KAR 110-14-2. The Committee questions the authority of the agency to divide up the maximum amount of tax credits available to community-based organizations into \$100,000 increments. The agency should consider coming to the Legislature for statutory amendments to reflect this policy.

Prepared by Judy Glasgow  
Edited by Raney Gilliland and  
Melissa Calderwood

Approved by Committee on:

44732 (11/29/06 11:18 AM)  
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(Date)