

MINUTES

JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS

August 28, 2002
Room 514-S—Statehouse

Members Present

Senator Dwayne Umbarger, Chairman
Representative Melvin Neufeld, Vice Chairman
Senator Karin Brownlee
Senator Stan Clark
Senator U. L. "Rip" Gooch
Senator Chris Steineger
Representative Carl Holmes
Representative Bill Light
Representative Laura L. McClure
Representative Janice Pauls
Representative Tony Powell
Representative L. Candy Ruff

Staff Present

William G. Wolff, Kansas Legislative Research Department
Raney Gilliland, Kansas Legislative Research Department
Ken Wilke, Revisor of Statutes Office
Judy Glasgow, Committee Secretary

Others Present

Lou Saadi, Kansas Department of Health and Environment
Cory Lambrecht, Kansas Department of Health and Environment
Krista Gasperich, Kansas Department of Health and Environment
Tom Morey, Kansas Department of Health and Environment
Barry Brooks, Kansas Department of Health and Environment
Lesa Roberts, Kansas Department of Health and Environment
Deletria Nash, Kansas Insurance Department
Ed Sable, Kansas Insurance Department
James Clark, Kansas Securities Commission
Sandy McAdam, Kansas Department of Health and Environment
Robert Bostrom, Kansas Department of Health and Environment

Bob Hoard, Kansas State Historical Society
Paula Lentz, Kansas Corporation Commission
M. L. Korphage, Kansas Corporation Commission
Diana Edmiston, Kansas Corporation Commission
Leslie Kaufman, Kansas Farm Bureau
Dan Riley, Kansas Department of Agriculture
James Bagley, Kansas Department of Agriculture
Thomas L. Huntzinger, Kansas Department of Agriculture
Tina Alder, Kansas Department of Agriculture
Jim Hamilton
J. Phil Benfer
Tom Sim, Kansas Department of Agriculture
Sarah Kessinger, Harris News
Stan Peterson, Board of Technical Professions
Betty Rose, Board of Technical Professions
Larry Buening, Board of Healing Arts
Sherry Diel, Kansas Real Estate Commission
Susan Somers, Kansas Board of Accounting

Morning Session

The meeting was called to order by Chairman Umbarger at 9:10 a.m. Chairman Umbarger recognized Lou Saadi, Kansas Department of Health and Environment, Center for Health and Environmental Statistics, to speak to the proposed rules and regulations noticed for hearing. KAR 38-17-6, fees for copies, abstracts, and searches. This change is a result of passage in the 2002 Legislative Session of HB 2718 and HB 2666 which, taken together, allow for the issuance of abstracts of vital records and a fee increase of \$1.00 for death certificates and abstracts.

In answer to Committee members' questions about what information would be included on the abstract, Ms. Saadi stated a decision had not been made yet, but the information would be very limited as compared to that contained on the certificate. She stated that this change would allow persons who file the death certificates to be able to file them electronically. Committee members had several questions regarding some of the terms used in the regulation relating to death certificates, *e.g.*, delayed birth and fetal death.

There being no further questions by members, the Chairman thanked Ms. Saadi for appearing before the Committee.

Robert Bostrom, Kansas Department of Health and Environment, appeared before the Committee to review the proposed rules and regulations noticed for hearing. KAR 28-14-1, fees for analysis of samples from public water supply systems; and 28-14-2, schedule of fees.

Mr. Bostrom stated that KAR 28-14-2 had not been updated since 1993 and a number of changes have occurred on the federal level regarding the kinds and types of analysis that need to be done on public water supplies. He stated that this revision also

allows the change in fees to reflect the current costs of analysis. Committee members suggested that the economic statement be amended to reflect the amount of revenue generated by the increase in fees and that the items listed in the proposed regulations should be alphabetized throughout.

Since samples other than water samples from public water supplies are tested at the laboratory, staff suggested that a clarification may be needed as the regulation as written would seem to apply to all samples taken. After answering general questions from members, Mr. Bostrom was thanked for his appearance before the Committee.

The Chairman recognized Tom Morey, Kansas Childhood Lead Poisoning Prevention, to speak to the rules and regulations proposed by Kansas Department of Health and Environment. KAR 28-72-1, definitions; 28-72-2, general requirements for licensure and certification; 28-72-3, fees; 28-72-4, training provider accreditation; 28-72-4a, curriculum requirements for training providers; 28-72-4b, training provider accreditation; reciprocity; 28-72-4c, training provider accreditation; refresher training course; 28-72-5, application process and requirements for the certification of lead inspectors; 28-72-6, application process and requirements for the certification of risk assessors; 28-72-7, application process and requirements for the certification of lead abatement workers; 28-72-8, application process and requirements for the certification of lead abatement supervisors; 28-72-9, application for the certification of project designers; 28-72-10, application process and licensure renewal requirements for lead activity firms; 28-72-11, renewal of lead occupation certificates; 28-72-12, application process and requirements for reapplication after certificate expiration; 28-72-13, work practice standards; general standards; 72-28-14, work practice standards; inspection; 28-72-15, work practice standards; lead hazard screen; 28-72-16, work practice standards; risk assessment; 28-72-17, work practice standards; elevated blood lead level investigation risk assessments; 28-72-18, work practice standards; lead abatement; 28-72-18e, work practice standards; postabatement clearance procedures; 28-71-19, work practice standards; collection and laboratory analysis of samples; and 28-72-21, work practice standards; recordkeeping.

Mr. Morey and Barry Brooks, Kansas Department of Health and Environment, responded to general questions concerning Environmental Protection Agency reduced level requirements stating that tolerance levels were reduced in areas where child contact is most likely, *i.e.*, in window troughs and on floors. In response to questions from members, Mr. Morey stated that the number of children affected has decreased, but the cases with higher elevated blood levels have increased. He stated that the budget of \$1,200,000, is funded by grants, fees generated, and from federal funding which appears to be consistent until 2010. Committee members noted that the economic impact statement should be revised to reflect the additional funds generated.

Committee staff suggested some changes in the history sections and some cross referencing that could be done to materials previously adopted by reference.

Mr. Morey and Mr. Brooks were thanked for their review before the Committee.

Chairman Umbarger recognized Deletria Nash, Kansas Insurance Department, for review of the proposed rule and regulation noticed for hearing (Attachment 1), KAR 40-1-34, unfair claims settlement practices.

Ms. Nash noted that the changes provide an alternative method for insurance companies to use in obtaining data for determining values of vehicles.

Ms. Nash and Ed Sable answered questions from Committee members who indicated that it was difficult to follow exactly what was being changed and what was being preserved in the regulation based on the format of the regulation. Further, members asked for the rationale behind the 25-mile radius provision to be used as the local market. Some members noted that, especially in western Kansas, it might be difficult to find vehicles of comparable model and value within that radius. The conferees said that if no comparable vehicle could be identified within that radius, the company simply had to note that fact.

The Committee suggested that the history section be updated to reflect recent amendments.

There being no further questions, the Chairman thanked Ms. Nash and Mr. Sable for appearing before the Committee.

Robert Hoard, State Archeologist, Kansas State Historical Society, was recognized by Chairman Umbarger, to review the proposed rules and regulations noticed for hearing, KAR 126-1-1, unmarked burial site registry and 126-1-2, permits for excavation, study, display, and reinternment.

Mr. Hoard responded to questions from Committee members in regard to criteria used in determining whether or not to list a site on the registry. He stated that the regulation had been worded broadly to allow the agency to consider additional evidence in making the determination, while trying not to make it too broad. There being no further questions, the Chairman thanked Mr. Hoard for his presentation before the Committee.

Paula Lentz, Kansas Corporation Commission, was recognized by the Chairman to review a proposed motor carrier rule and regulation noticed for hearing, KAR 82-4-22, insurance requirements.

Ms. Lentz stated that the proposed regulation was drafted to correct an inconsistency in how certain insurance carriers are allowed to operate in Kansas. She stated that this change will allow cargo insurance carriers who are not registered in Kansas to obtain a power of attorney through the Insurance Commissioner and still provide insurance to motor carriers who register with the Kansas Corporation Commission. This is consistent with how liability insurance carriers operate.

There were no questions and Chairman Umbarger thanked Ms. Lentz for her review.

Diana Edmiston, Senior Assistant General Counsel, Kansas Corporation Commission was welcomed by Chairman Umbarger to review the proposed rules and regulations noticed for hearing (Attachment 2), (Attachment 3), and (Attachment 4). KAR 82-3-101, definitions; 82-3-600, pit permits; penalty; application approval; 82-3-601a, pit construction; sensitive groundwater areas; reporting; 82-3-601b, sensitive groundwater areas; exception procedure; 82-3-602, time limitation; penalty; closure of pits; closure forms; drilling fluid management; waste transfer; surface restoration; 82-3-603, spill notification and cleanup; penalty; lease maintenance; 82-3-604, discharges into emergency pits and diked areas; removal of fluids;

penalty; 82-3-606, chemical dumping prohibited; penalty; and 82-3-607, disposal of dike and pit contents.

Ms. Edmiston stated that the proposed regulations eliminate the use of antiquated terminology, provide a definition of a "spill" within the spill notification regulation, prohibit the dumping of certain waste products to include oil field dikes, and eliminate redundancy within the regulations.

A Committee member asked several questions relating to the definition of "fluid" particularly since the definition contained a reference to gas. The member was concerned that those gases used for the recovery of oil remained available for use under the proposed regulations. It was recommended that for the sake of consistency the agency take a look at how the terms "natural gas," "fluids," and "gas well" are being defined and used in the regulations.

On a related matter, Mr. Korphage answered questions concerning who has jurisdiction over a spill under certain circumstances. He noted that the Commission's authority was limited to the oil and gas field generally, while the Department of Health and Environment was responsible for spills in the transport of oil and gas beyond the field.

Committee staff suggested there were several changes in the history section that could be made to cite statutes that were being implemented rather than authorized the regulation. Additionally, staff pointed out two instances where language should be changed relating to the approved methods of testing which seem to state a requirement on the one hand, but allow for an alternative on the other.

There being no further questions, Ms. Edmiston and Mr. Korphage were thanked for appearing before the Committee.

Senator Steineger moved to approve the minutes of July 10, Representative Holmes seconded the motion, the motion passed. Senator Brownlee stated that she would like to reconsider the approval of the minutes so that they could be amended to include the Committee's comments concerning the Department of Social and Rehabilitation Services' intention to issue licenses to case managers. She commented that this had been a major concern to Committee members at the hearing. After discussion it was the consensus of the Committee to amend the minutes of July 10, 2002. Senator Steineger withdrew his motion, Representative Holmes withdrew the second to approve the minutes for July 10, 2002.

Senator Brownlee moved to amend the July 10 minutes as previously stated, Senator Steineger seconded the motion, Motion carried.

Afternoon Session

The Chairman recognized Dan Riley, Department of Agriculture, to review the rules and regulations as noticed for hearing in KAR 5-3-26, closed townships in Pawnee and Buckner drainage basins; 5-16-1, definitions; 5-16-2, fee to establish flex account and apply for term permit; 5-16-3, establishing a flex account; 5-16-4, conditions on the term permit;

5-16-5, maximum annual quantity of water authorized by term permit; 5-16-6, flex accounts and term permits; and 5-16-7, conditions under which a base water right may be exercised.

Tom Huntzinger, Division of Water Resources of the Department of Agriculture, and Dan Riley responded to questions from Committee members concerning water storage and watersheds. It was suggested by members that the use of township names in the title of the regulation should be retained, as it was a help in reading the regulations and identifying areas affected.

Mr. Riley answered questions concerning flex accounts and current practices from Committee members. Committee staff noted that the history section in 5-16-2 should be changed to reflect amendment.

Mr. Riley continued with the review of rules and regulations noticed for hearing for KAR 4-14-1, revoked; 4-14-2, revoked; 4-14-3, revoked; 4-15-1, revoked; 4-15-2, revoked; 4-15-3, revoked; 4-15-4, live plant definition, exclusions; 4-15-5, live plant dealer license fee; 4-15-6, plant pest emergency response fund fee; 4-15-7, live plant dealer licensing exemptions; 4-15-8, fees for the inspection of live plants, plants and plant products, bees, beekeeping equipment, and regulated articles; 4-15-9, fees for the certification of live plants, plants and plant products, bees, beekeeping equipment, and regulated articles; 4-15-10, pest freedom standards; 4-15-11, civil penalty; complaint; 4-15-12, answer to the complaint; 4-15-13, criteria to determine dollar amount of proposed civil penalty; 4-15-14, informal settlement; and 4-18-1, revoked.

Mr. Riley noted that these regulations will change the scope of compliance and enforcement work in the area of plant pests from zero tolerance to one that sets accepted levels of risk for certain tests and plants. He and Tim Sim from the Plant Protection and Weed Control Program, answered questions from Committee members concerning the acceptable tolerance limits for pests. Several members indicated that a 75 percent incidence rate for some pests, e.g., in certain plants, was too high. Further, a member questioned the requirement for licensure for those who do under \$10,000 worth of business and handle out-of-state plants. Staff, too, asked the conferees to identify the authority for limiting the licensing exemption to those who sell only Kansas plants. Mr. Riley indicated that the Secretary has authority under the statute to establish additional conditions for licensure exemptions.

Staff also called attention to the history section in KAR 4-15-8, suggesting that it include reference to seed wash analysis and smut fungi.

Finally, Mr. Riley reviewed the proposed rules and regulations noticed for hearing by the Department of Agriculture regarding fees. KAR 4-1-17, registration fee; 4-4-2, inspection fee; 4-13-9, report of address, name, or personnel change by business; 4-13-20, pesticide business license, renewal, and uncertified employee fees; 4-13-21, government agency registration and renewal fees; 4-13-22, application fee for commercial applicator's certificate; 4-13-23, examination fees; 4-13-24, certified private applicator's certificate fee; 4-13-33, pest control technician registration and renewal fees; and 4-19-1, registration fee.

Mr. Riley stated that primary change in all these regulations is to increase the fees. Committee members suggested that the wording in KAR 4-4-2 be changed back to that in

the existing regulation as related to "tons." Staff suggested that the termination date referred to in the regulations should be more clearly defined.

There being no further questions, Chairman Umbarger thanked Mr. Riley, Mr. Huntzinger, and Mr. Sims for their review before the Committee.

Chairman Umbarger recognized Larry Buening to review the proposed rules and regulations noticed for hearing by the Board of Healing Arts (Attachment 5). KAR 100-11-1, amount; and 100-49-4, fees.

Mr. Buening stated that these fees, applicable to the professions of medicine and surgery, osteopathic medicine and surgery, chiropractic, and podiatry, became effective as temporary regulations in August 2002.

He continued the review of rules and regulations noticed for hearing by the Board of Healing Arts, KAR 100-28a-1, fees; and 100-29-7, fees. Mr. Buening answered general questions from Committee members as these regulations pertained to physician assistants and physical therapists.

Lastly, Mr. Buening reviewed proposed rules and regulations noticed for hearing by the Board of Healing Arts concerning athletic trainers. KAR 100-69-3, examination; 100-69-9, practice protocols; 100-69-10, registration renewals; continuing education; and 100-69-11, reinstatement; canceled and revoked registration.

Committee members and staff suggested several changes in wording that would clarify the regulations, specifically including a definition section with terms in alphabetical order. There being no further questions, Mr. Buening was thanked for appearing before the Committee.

Chairman Umbarger recognized Stan Peterson and Betty Rose who appeared before the Committee to review the proposed rules and regulations noticed for hearing by the Board of Technical Professions (Attachment 6). KAR 66-8-4, land surveyor examinations; 66-9-5, surveying curriculum approved by the Board; 66-10-1, architectural experience of a character satisfactory to the Board; 66-10-9, engineering experience of a character that is satisfactory to the Board; 66-10-10b, surveying experience required of a graduate in a four-year related science curriculum other than land surveying or engineering; 66-10-13, geology experience of a character that is satisfactory to the Board; 66-11-1a, intern geologist defined; 66-11-1b, intern land surveyor defined; 66-11-5, admission requirements for fundamentals of land surveying examination; and 66-14-6, exemptions.

Committee staff suggested that some language clarification be made in KAR 66-8-4 to indicate that the wording applied only to land surveyors. Staff further noted in KAR 66-11-1a and 66-11-1b that the history sections should be updated to include KSA 74-7035.

In response to questions from Committee members, Mr. Peterson and Ms. Rose stated that requiring all experience to be after graduation would not have a great impact on applicants since most students only work for one summer and that work would count for less than three months' experience.

There being no further questions, Chairman Umbarger thanked Mr. Peterson and Ms. Rose for their presentation before the Committee.

Sherry C. Diel appeared before the Committee to review the proposed rules and regulations noticed for hearing by the Kansas Real Estate Commission (Attachment 7) KAR 86-1-19, submission of supporting documentation with application; and 86-3-15, reporting of information.

Ms. Diel answered general questions from Committee members concerning expanding the reporting of criminal offense when applying for a license and renewal. A Committee member suggested that the wording in KAR 86-3-15 regarding "any company owned in whole or in part by the licensee" should be limited to real estate interests of the applicant, as opposed to all stock holdings of the applicant, which was not the intent of the regulations.

The Chairman thanked Ms. Diel for her presentation before the Committee.

Chairman Umbarger recognized Susan Somers who appeared before the Committee to review the rules and regulations noticed for hearing by the Kansas Board of Accountancy (Attachment 8). KAR 74-4-7, continuing professional education requirements; 74-4-8, continuing professional education programs; requirements; 74-4-9, continuing professional education controls and reporting; 74-5-101, independence; 74-5-102, integrity and objectivity; 74-5-202, auditing standards; 74-5-302, records; 74-5-401, acts discreditable to the profession; 74-5-406, firm names; 74-7-4, firm registration; sole proprietors; 74-11-6, definitions; and 74-11-7, renewal of a firm's registration.

Ms. Somers stated that KAR 74-4-7, 74-4-8, and 74-4-9 all relate to continuing professional education and contain the changes adopted by the American Institute of Public Accountants and the National Association of State Board of Accountancy, and conform Kansas regulation to the standards used nationwide.

Ms. Somers answered questions of a general nature from Committee members concerning certified public accountants regulated by the Board and public accountants who are not regulated in Kansas. Chairman Umbarger thanked Ms. Somers for her presentation before the Committee.

COMMENTS ON PROPOSED RULES AND REGULATIONS

Department of Health and Environment. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning public water supplies, vital statistics, and childhood lead poisoning prevention. After discussion, the Committee expressed the following comments.

KAR 28-17-6. Concerning vital statistics, since the statutes define stillbirth and since fetal death is not defined, consider whether there is a need to continue issuing a certificate or abstract for a stillborn death.

KAR 28-14-2. Regarding the analysis of samples from public water supplies, the Committee asks the agency to review various subjects to alphabetize the components contained therein.

Concerning lead poisoning:

KAR 28-72-4a. Since adoption by reference of materials must be done as of a date certain and cannot be done by a generic reference to the latest version of that material, simply refer to the regulation in which the original adoption by reference is made. (This issue arises throughout the set of regulations.)

KAR 28-72-18e. In subsection (h), second line, first full sentence, either delete the word "abatement" or make the reference to the "postabatement" report.

Board of Healing Arts. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning fees, athletic trainers, and podiatrists. After discussion, the Committee had no comment on the proposed fee regulations and expressed the following comment regarding podiatrists.

KAR 100-69-10. Consider taking the definitions in subsection (g)(1) and placing them in alphabetical order in a new definition section.

Insurance Department. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning unfair claims settlement practices. After discussion, the Committee expressed the following comments.

KAR 40-1-34. Section 3 of the model regulation refers to Section 2 of the model Unfair Trade Practices Act. A new subsection should be added to the regulation, similar to subsection (c) which makes the Section 2 reference KSA 40-2402, and amendments thereto.

General Comment. It seems unnecessary to state that various sections are "new and reads as follows."

Kansas State Historical Society. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning unmarked burial sites. After discussion, the Committee had no comment.

State Corporation Commission. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning motor carriers and conservation of crude oil and natural gas. After discussion, the Committee had no comment on the motor carrier regulation and expressed the following comments regarding conservation of crude oil and natural gas.

KAR 82-3-101. In subsection (a)(32), in the definition of "fluid," or wherever the term "fluid" is used in the regulations, make certain that the term includes those gases, including natural gas, that are used in the secondary or tertiary recovery of oil.

In subsection (a)(68), in the definition of "spill," review the items included to ensure that items not under the Commission's jurisdiction are included, *e.g.*, pipelines.

In subsection (a)(80)(E), in the definition "Gas well," are methane gas wells in coal beds included?

KAR 82-3-601a and 602. Rewrite these regulations to clarify the reporting requirements in such a manner as to allow for the alternative provided in each of the regulations to the specific requirements.

KAR 82-3-603. The Committee recommends that the Commission establish a minimum spill that would trigger the reporting requirements of this regulation.

Chief Engineer, Division of Water Resources. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning appropriation rights and multi-year flex accounts. After discussion, the Committee had no comment on the multi-year flex accounts and expressed the following comment regarding appropriation rights.

KAR 5-3-26. The Committee suggests that the Chief Engineer continue the practice of identifying counties in the title of the regulation to assist the reader in establishing the location of the entity (township) affected by the regulation.

Department of Agriculture. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning fees and plants and plant products. After discussion, the Committee had no comment on the proposed revocation of Articles 14, 15, and 18, rules and regulations and expressed the following comments regarding plants and plant products.

KAR 4-15-7. What is the Secretary's authority to further limit the statutory licensing exemption for any person selling less than \$10,000 by adding the further requirement that sales be only of Kansas-produced live plants? Additionally, under the statute, are not all sellers, regardless of the original source of the plants sold, exempt from licensing if their sales are less than \$10,000?

KAR 4-15-10. The Committee has some concern on the pest freedom standards. Particularly, the Committee suggests that the tolerance level for bagworm infestations should be lowered, perhaps to a level of 25 percent.

Board of Technical Professions. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning examinations, curriculum, experience, and interns. After discussion, the Committee expressed the following comments.

KAR 66-8-4. In subsection (d), clarify that the license is for a land surveyor.

Real Estate Commission. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning examination and registration and reporting of certain information. After discussion, the Committee expressed the following comment.

KAR 86-3-15. In subsection (a)(1), review the language to ensure that it applies only to real estate entities and brokers or companies subject to Commission jurisdiction.

Board of Accountancy. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning continuing professional education, code of professional conduct, firm registration, and peer review program. After discussion, the Committee expressed the following comment.

KAR 74-5-401. The new term "discreditable to the profession" needs to be tied to the statutory language that speaks to a permit holder's fitness to practice as a certified public accountant.

The next meeting will be October 7, at 10.00 a.m. The meeting was adjourned at 4:55 p.m.

Prepared by Judy Glasgow
Edited by William G. Wolff

Approved by Committee on:

October 7, 2002