

MINUTES

JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS

November 5-6, 2001
Room 514-S—Statehouse

Members Present

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

Members Excused

Senator Dwayne Umbarger, Vice Chairman
Representative Bill Light

Staff Present

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

Others Present

Linda Peterson, Kansas Agricultural Remediation Board
Mary Jane Stattelman, Kansas Agricultural Remediation Board
Rod Bieker, Kansas Department of Education
Susan Hilbert, Kansas Department of Education
Martha Gage, Kansas Department of Education
Alexa Pochowski, Kansas Department of Education
Peg Dunlap, Kansas National Education Association

Kathy Boyer, Kansas Department of Education
Paula Lentz, Kansas Corporation Commission
Mike Hoeme, Kansas Corporation Commission
Patrick Mulvihill, Kansas Insurance Department
Rebecca Sanders, Kansas Insurance Department
Larrie Ann Lower, Kansas Association of Health Plans
Brian Cox, Kansas Department of Revenue
Linden Appel, Kansas Department of Corrections
Charles Simmons, Secretary, Kansas Department of Corrections
Kelly Fetrow, Office of Attorney General
Juliene Maska, Office of Attorney General
Christy Davis, Kansas State Historical Society
Robert Eskildsen, Office of State Bank Commissioner
Sonya Allen, Office of State Bank Commissioner
Gwen Hill, Office of State Bank Commissioner
Kevin Glendenning, Office of State Bank Commissioner
Daniel Thompson, Office of State Fire Marshal
Mark Stafford, Board of Healing Arts
Mary Blubaugh, Kansas State Board of Nursing
Constantine Cotsoradis, Kansas Department of Agriculture
Barbara Hodgson, Kansas Department of Agriculture
Phil Wilkes, Kansas Department of Revenue
Tom Laing, InterHab
John House, Department of Social and Rehabilitation Services
Elizabeth Phelps, Department of Social and Rehabilitation Services

November 5, 2001
Morning Session

The meeting was called to order by Chairman Neufeld at 10:00 a.m. *Representative Holmes moved, seconded by Representative Pauls, that the minutes from the October 9, 2001, meeting be approved as written. The motion carried.*

The Chairman welcomed Mary Jane Stattelman and Linda Peterson to speak to the proposed rules and regulations noticed for hearing by the Kansas Agricultural Remediation Board (KARB). KAR 125-1-1, definitions; 125-1-2, application; 125-1-3; application process; 125-1-4, multiple eligible persons; 125-1-5, appeal process; 125-1-6, eligible corrective action costs; 125-1-7, ineligible costs; 125-1-8, payment of corrective action costs; and 125-1-9, conflict of interest.

Ms. Stattelman told the Committee that the proposed regulations are in place as temporary and the Board requests that they be approved as permanent.

A member was uncertain about the use of the word "contiguous" in KAR 125-1-1(f). The conferee explained the statute defines "site" to include the area within a one-half mile radius of a release.

KAR 125-1-2, application. A concern was brought to the conferees attention that the economic impact statement did not include the monetary cost of reimbursement for projects allowed in the time frame from July 1, 1997 to September 1, 2001. She explained that the Board prioritizes claims on a fair and equitable basis and determined projects in the period before the effective date of the act should be eligible as they were designated for remediation by the Department of Health and Environment under an earlier program. The member reiterated the concern regarding the reimbursement for a prior remedial action and asked for a list of everyone who was eligible for reimbursement, including the dollar amounts, from July 1, 1997, to July 1, 2000. She said, when the Kansas Department of Health and Environment approves a plan, there is no pecuniary amounts assigned, but she did assure the member that she would try to obtain the requested information.

Staff suggested, in subsection (b), that the filing deadline date for a claim be clarified.

KAR 125-1-5, appeal process. The conferee explained, in answer to a member's inquiry regarding subsection (b), that the Board has continually followed the Uniform Arbitration Act and wants to continue the use because it is less adversarial, and leads to a quicker resolution yet provides a fair and equitable treatment of the parties. The member was concerned that there may be a higher standard of review set forth than for an agency review under the Kansas Administrative Procedure Act. He commented that he agreed with the use of arbitration, but thought the language of the regulation should be rewritten to remove any conflict with the Kansas Act for Judicial Review and Civil Enforcement of Agency Actions, to cite the uniform arbitration act statutes, to refer to arbitration not mediation, and finally, treat arbitration as a reconsideration of the initial administrative decision of the Board. The petitioner could then take an appeal to the district court.

While reviewing the regulations, a member asked the conferee to revise the economic impact statements on KAR 125-1-5, 125-1-6, 125-1-7 and 125-1-8, showing an estimate of where money was available, who would be potentially eligible, and how money would be utilized.

After answering many informational questions, and at the conclusion of the presentation, Ms. Stattelmann was thanked for the review.

Rod Bieker was introduced to the Committee to speak to the proposed rules and regulations noticed for hearing by the Department of Education. KAR 91-1-146a, through 91-1-146e are being revoked; 91-1-206, professional development plans for license renewal; 91-1-215, in-service education definitions; 91-1-216, procedures for promulgation of in-service education plans; approval by state board; area professional development centers; in-service programs; 91-1-217, in-service education professional development council; 91-1-218, awarding of professional development points; and 91-1-219, expenditures for an in-service education program.

Mr. Bieker told the Committee that KAR 91-1-70a is being amended to up-date the National Council on the Accreditation of Teacher Education Standards used to accredit teacher education institutions and make the 2001 standards applicable.

A member requested the conferee add to the economic impact statement for KAR 91-1-217 the costs to each district for the training of in-service council members.

Mr. Bieker was thanked for coming before the Committee.

Paula Lentz was introduced to speak to the proposed rules and regulations noticed for hearing by the Kansas Corporation Commission. KAR 82-4-3, motor carrier safety regulations; and 82-4-26a, certain private motor carriers exempt from obtaining commission authority.

Ms. Lentz informed the Committee that the proposed regulations correct an error made during the 2001 Legislative Session. KAR 82-4-3 will adopt the safety fitness standards of 49 CFR Part 385 thereby eliminating from regulation the occasional transportation of personal property by private motor carriers. She pointed out "sunflowers" would be added to KAR 82-4-3(a)(6)(A) and the strike type in subsection (a)(11) would be eliminated.

No other comments were expressed and thanks were extended to Ms. Lentz for the review.

Rebecca Sanders was welcomed to the Committee to speak to the proposed rule and regulation noticed for hearing by the Kansas Insurance Department (Attachment 1). KAR 40-1-48, risk-based capital instructions for managed care organizations.

There were no concerns regarding the regulation. Ms. Sanders was thanked for her review.

Brian Cox came before the Committee representing the Department of Revenue to review the proposed rule and regulation KAR 92-51-40 noticed for revocation which would have provided a charge for identification cards and placards for disabled persons.

After some member-conferee discussion, no concerns were conveyed to the conferee. Mr. Cox was given an expression of thanks for his presentation.

Afternoon Session

The Chairman welcomed Linden Appel and Charles Simmons, Secretary, to speak to the proposed rules and regulations noticed for hearing by the Kansas Department of Corrections (Attachment 2). KAR 44-12-103, tattoos, body piercing, and body markings; 44-12-105, unsanitary practices; 44-12-106, hair standards and appearance; 44-12-107, use of safety devices; 44-12-201, registration and use of personal property; 44-12-202, radios, televisions, musical instruments, and other sound equipment; 44-12-203, theft; 44-12-204, taking without permission; 44-12-205, unauthorized dealing and trading; 44-12-210; accounts; 44-12-303, lying; 44-12-305, insubordination or disrespect to officers or other employees; 44-12-306, threatening or intimidating any person; 44-12-307, avoiding an officer; 44-12-309, kitchen utensils and shop tools; 44-12-310, misconduct in dining room; 44-12-312, use of stimulants, sedatives, unauthorized drugs, or narcotics, or the misuse or hoarding of authorized or prescribed medication; 44-12-313, (no title); 44-12-314, sexual activity, aggravated sexual activity; sodomy; aggravated sodomy; 44-12-318, disruptive

behavior; 44-12-320 is being revoked; 44-12-321, conduct regarding visitors or the public; 44-12-325, inmate activity; limitations; 44-12-326 is being revoked; 44-12-327, interference with restraints; and 44-12-328, undue familiarity.

KAR 44-12-401, work performance; 44-12-501, answering calls or passes; 44-12-503, restricted area and unauthorized presence or out-of-place in assigned domicile; 44-12-504, interference with cell operation and visibility; 44-12-505b, medical restriction; 44-12-601, mail; 44-12-602, posting notices; 44-12-702, legal assistance by inmates; 44-12-801, bulletin boards; 44-12-902, less dangerous contraband; 44-12-1002, violation of published orders; 44-12-1306, use of restitution; 44-12-1307, fines and restitution, imposition and collection; limits.

KAR 44-13-101, disciplinary procedure established, general description of system; 44-13-104 is being revoked; 44-13-105, the disciplinary administrator and hearing officers; 44-13-106, administration of oaths; designation of persons authorized; 44-13-201, disciplinary report and written notice; 44-13-201b, summary judgment procedure; 44-13-202, amendment of the charge; 44-13-302a and 44-13-304 are being revoked; 44-13-306, inmate responsibilities; 44-13-307, administrative review of requests for witnesses; denial of requests; issuance of summons; voluntary nature of witness appearance; 44-13-401, hearing within certain time; notice to inmate; time and place of hearing; 44-13-401a is being revoked; 44-13-402, continuing the hearing; recesses; time limits; extensions; 44-13-403, conducting the disciplinary hearing; 44-13-404, presence of inmate and presence of charging officer at disciplinary hearings; officer statements in lieu of testimony; 44-13-405a, calling witnesses; 44-13-406, disposition; 44-13-408, representation by counsel or assistance from staff; 44-13-409, standard of proof.

KAR 44-13-501, preservation of all reports; 44-13-502a, hearing record; 44-13-506, preparation of the record in 10 working days; 44-13-507, docket; 44-13-508, disciplinary reports in file; 44-13-509, disciplinary case log; 44-13-601, serving sentence; 44-13-603, absence from facility; 44-13-610, collection of fines; 44-13-701, administrative review; 44-13-702, appeal on the record to the warden of the facility in class III offense cases; 44-13-703, appeal on the record to secretary of corrections in class I and II offense cases only; 44-13-704, secretary of corrections' final review on appeal; 44-13-705 is being revoked; 44-13-706, administrative review board to review and make recommendations; 44-13-707, harmless error, plain error.

KAR 44-14-101, 44-14-102, 44-14-201, 44-14-202, 44-14-301 through 44-14-318 are being revoked.

KAR 44-15-101, inmate or parolee grievance procedure; informal resolution; formal levels; 44-15-101a, grievance procedure distribution; orientation; applicability; remedies; advisory committee; investigation; 44-15-102, procedure; 44-15-201, special kinds of problems; KAR 44-16-102, reporting loss or damage to property; 44-16-103 and 44-16-104 are being revoked; 44-16-105, property at own risk; 44-16-106 through 44-16-108 are being revoked.

The conferee reviewed all the proposed regulations, noting where policy had been added to or changed.

Mr. Appel told the members that KAR 44-12-103 has been amended with the addition of subsection (b) dealing with body piercing. A concern was raised about the medical officer being authorized to allow the piercing of an inmate's body. The member suggested perhaps the language could be rewritten to allow for a medical exception to the overall prohibition of body piercing if there was a finding of "medical necessity."

Staff suggested inserting the wording "property and services" to KAR 44-12-205(a) after selling, and buying, to be consistent with wording in the other regulations.

Regarding KAR 44-12-313, Secretary Simmons explained to the members that any materials contained in subsection (b) would not be considered an offense if those items could be purchased at a book store. He added that there are limitations on how much an inmate can spend on subscriptions and the limitations impact what materials can be ordered, *e.g. Playboy* or *Penthouse* magazine. He said this type of material is not contained in the facility library. Mr. Appel was made aware that there was no title for the proposed regulation.

KAR 44-12-503, restricted area and unauthorized presence or out-of-place in assigned domicile. A member of the Committee suggested changing the wording to "Each inmate shall be aware of" in subsection (a), instead of "make that person aware."

Time was given for the discussion of KAR 44-12-505b, medical restriction. Mr. Appel said inmates would be issued color coded badges allowing the personnel to restrict food intake if there was a medical problem, *i.e.*, diabetes, high blood pressure. By the use of the restrictions and keeping persons out of the hospital or an outside clinic, the state may save money.

Mr. Appel told the Committee that KAR 44-12-902, less dangerous contraband, was added to subsections (d) and (e), adding that the regulation would explicitly state that trash, in any form, would not be allowed.

A member suggested reinsertion of "in" to the second sentence of KAR 44-12-1307, fines and restitution, imposition and collection.

It was brought to the conferee's attention that "The" was not stricken from subsection (a), fourth sentence, of KAR 44-13-105.

Continuing with the review of the regulations, a member asked the conferee to revise KAR 44-13-202 because there was no subsection (b), making the lettering out of sequence.

Discussion followed on KAR 44-13-306, inmate responsibilities. This regulation was to make inmates more responsible for responding to disciplinary reports. Mr. Appel said, in answer to a member's inquiry, a translator would be available for a Spanish speaking person. As of January 2002, a Spanish translation of the report would be available.

KAR 44-13-307, administrative review of requests for witnesses; denial of requests; issuance of summons; voluntary nature of witness appearance. A member requested subsection (b) should state the "disciplinary administrator or hearing officer" instead of staff member for clarification.

KAR 44-13-402, continuing the hearing; recesses; time limits; extensions. Mr. Appel told the Committee that subsection (a) was poorly worded. He wants the regulation to explicitly state that more than one continuance could be granted. As information for the Committee, he said there are over 20,000 disciplinary violations per year. Inmates are fined and the moneys help defray the costs for hearing officers. A member asked for the fiscal impact to the state, the cost estimates, and number of staff involved in the hearing process.

KAR 44-13-701, administrative review. A member asked the conferee to consider adding "secretary or designee" to subsection (a) in lieu of the warden to conform with the other regulations. The member also asked that the other regulations be checked for uniformity. Mr. Appel informed the Committee that 44-13-701 will be renumbered to 44-13-703, KAR 44-13-704 will be 44-13-701, 44-13-703 will be 44-13-702, 44-13-702 will be 44-13-703, 44-13-701 will be 44-13-703.

At the conclusion of the extensive review, Mr. Appel and Secretary Simmons were thanked for coming before the Committee.

The meeting recessed at 4:30 p.m.

**November 6, 2001
Morning Session**

The Chairman called the meeting to order at 9:00 a.m. He greeted Juliene Maska who spoke to the proposed revocations in Article 7, Article 8, Article 10, Article 11, and Article 13 for the Office of the Attorney General (Attachment 3). KAR 16-7-1 through 16-7-9; 20-8-1 through 20-8-4; 20-10-1 and 20-10-2; 20-11-1 and 20-1-2; 20-13-2 and 20-13-3 are being revoked.

She said, at the request of Governor Bill Graves' Executive Order 00-03, the Attorney General reviewed all regulations to clear the books of out-dated and cumbersome regulations. The procedural items being revoked will be incorporated into internal guidelines.

Ms. Maska was thanked for coming before the Committee.

Christy Davis was introduced to the Committee to review the proposed rules and regulations in Article 5, the state rehabilitation tax credit program, noticed for hearing by the Kansas State Historical Society KAR 118-5-1, definitions; 118-5-2, authorizing a local government as a reviewing entity; 118-5-3, certifications; 118-5-4, application; 118-5-5, standards for certifying a qualified historic structure; 118-5-6, standards for certifying a qualified historic structure within a historic district; 118-5-7, requirements for certifying a qualified rehabilitation plan; 118-5-8, rehabilitation project phases; 118-5-9, review; and 118-5-10, fees.

She said HB 2128, enacted in the 2001 Session of the Legislature, created a 25 percent state income tax credit on qualified rehabilitation expenses on a qualified historic structure. This legislation is being implemented by the proposed rules and regulations.

Staff asked the conferee to review the adoption by reference in KAR 118-5-3 and determine if the most recent CFRs published in July 1, 2001, should not be the proper citation. Also, staff suggested, in KAR 118-5-4, application, the conferee adopt the date of the hardbound CFRs in subsection (a)(2) and change the adoption of Part 1 in subsection (d)(5) to only the 14 pages used by the Historical Society.

Many information questions were answered by the conferee dealing with historic structures. At the conclusion of the review, Ms. Davis was thanked for the presentation.

Daniel Thompson came before the Committee to review the proposed rules and regulations noticed for hearing for the State Fire Marshal's Office. KAR 22-24-1, definitions; 22-24-2, team response areas; 22-24-3, adoption by reference; 22-24-4, qualifications of team members; 22-24-5, composition of teams; 22-24-6, responsibilities of teams; 22-24-7, reporting and documentation; 22-24-8, emergency preplanning; 22-24-9, emergency response assistance; 22-24-10, review and evaluation of response; 22-24-11, supplies, equipment, and vehicles for hazardous materials response teams; 22-24-12, equipment for chemical assessment teams; 22-24-13, emergency response criteria and dispatch; 22-24-14, cost recovery; 22-24-15, coordinating emergency response activities; 22-24-16, liability; 22-24-17, workers compensation; and 22-24-18, advisory committee.

Mr. Thompson told the Committee that the proposed regulations would allow the State Fire Marshal's Office to establish and oversee regional response units throughout the state.

The conferee explained that under KAR 22-24-12, equipment for chemical assessment teams, teams would be comprised of local persons designated by the Fire Marshal's Office. This regulation would require three trained personnel available within one-hour or less of an incident. Larger cities having established teams would be available to help other communities. The state would be divided into seven regions with two response units in each region, a hazardous materials response unit and a chemical assessment team. These units would be funded through the Fire Marshal's Fee Fund, with some fees paid by insurance companies.

A member asked Mr. Thompson to include a definition of hazardous materials in KAR 22-24-1, definitions, or consider using the reference to KSA 48-904(h).

Members of the Committee expressed the opinion that, while the subject matter of the rules and regulations was an area for concern and regulation, the proposed regulations exceed the authority of the Fire Marshal's Office. Since many other regulatory bodies have jurisdiction in these areas, the Committee commented that the issue of regulation should be returned to the Legislature for further consideration.

Representative Pauls moved, seconded by Senator Clark, that a bill be drafted that would take the issues of the proposed rules and regulations and place them in bill form for

future review by the Committee and possible introduction for consideration by the 2002 Legislature. The motion carried.

After an extensive question and answer period, Mr. Thompson was thanked for the presentation.

Chairman Neufeld welcomed Kevin Glendenning and Sonya Allen to speak to the proposed rules and regulations noticed for hearing by the State Bank Commissioner. Mr. Glendenning reviewed KAR 17-24-2, mortgage business fees.

Mr. Glendenning was asked to clarify the use of "amendment" in subsection (g).

Sonya Allen continued the review for the State Bank Commissioner. KAR 17-11-14, directors' meetings; 17-11-18, loans; documentation requirement; 17-11-19, charged-off assets; records; 17-11-21, appraisals and evaluations; KAR 17-16-2, application; contents; 17-23-1, definitions; 17-23-3, administration of fiduciary powers; 17-23-6, funds awaiting investment or distribution; 17-23-8, self-dealing; 17-23-9, custody of investments; 17-23-11, collective investment; 17-23-14, time of notification for securities transactions; and 17-23-15, securities trading policies and procedures.

KAR 17-23-1, definitions. Staff suggested the Commissioner consider adopting by reference the "Uniform Gifts to Minors Act" and the "Uniform Transfers to Minors Act."

When looking at KAR 17-23-8, self-dealing, staff proposed "the" be added to subsection (b)(1)(B) before potential liability.

KAR 17-23-11, collective investment, subsection (b)(4)(A) should be rewritten to say "except to the following" instead of "according to the following," making the regulation clearer.

Following further discussion, no other concerns were expressed. The Chairman thanked Mr. Glendenning and Ms. Allen for coming before the Committee.

Mark Stafford, Board of Healing Arts, was present to review the proposed rule and regulation noticed for hearing in Article 27. KAR 100-27-1, supervision of light-based medical treatment.

There were no questions or concerns and the Chairman thanked Mr. Stafford for the presentation.

The Chairman welcomed Mary Blubaugh to speak to the proposed rules and regulations noticed for hearing for the Kansas State Board of Nursing (Attachment 4). KAR 60-11-116, reinstatement of certification; 60-13-103, school approval requirements; and 60-13-110, reinstatement of authorization.

There were no concerns or recommendations given by the Committee. Ms. Blubaugh was thanked for her presentation.

Afternoon Session

Constantine Cotsoradis came before the Committee to review the proposed rules and regulations noticed for hearing by the Department of Agriculture. KAR 99-8-8 and 99-8-9 are being revoked; 99-9-1 and 99-10-1 are being revoked; KAR 99-25-1, adoption by reference, exceptions; availability of copies; 99-25-3, certificate of conformance; 99-25-4, continuing education requirements for technical representatives; 99-25-6, notification of nonconforming weighing or measuring device; 99-25-7, reporting requirements; 99-25-9, adoption by reference; KAR 99-26-1, fees; KAR 99-27-2, civil penalty; complaint; 99-27-3, answer to complaint; 99-27-4, informal settlement; 99-27-5, adjusting the amount of the proposed civil penalty; KAR 99-30-2, registration form; 99-30-3, conformance with handbook 44; 99-30-4, minimum required equipment; 99-30-5, removal of rejection tags; 99-30-6, placed-in-service report; KAR 99-31-2, registration form; 99-31-3, conformance with handbook 44; 99-31-4, minimum required equipment; 99-31-5, removal of rejection tags; 99-31-6, placed-in-service report; KAR 99-40-1 is being revoked; 99-40-3, invoice disclosure requirements for wholesalers and distributors of gasolines; KAR 99-40- 21 through 99-40-47; 99-40-100, 99-40-101, 99-40-104 and 99-40-105 are being revoked.

Mr. Cotsoradis said the subjects being revoked either are contained in other regulations or are no longer necessary.

A member asked Mr. Cotsoradis to revise the economic impact statement for 99-26-1 to show the projected revenue for the Department and the numbers of persons affected by the regulation.

The Committee was troubled that KAR 99-30-2, registration form, required a person's Social Security Number in subsection (b). The conferee said KSA 74-139, enacted in the 1998 Session of the Legislature, requires the Social Security Number to be used on the form.

An inquiry was made regarding KAR 99-30-5(c) and why only a facsimile was being accepted for an inspection or test report. The conferee said the Department was requiring the inspection report to be submitted to the agency as a hard copy, which is standard procedure.

At the conclusion of the review, Mr. Cotsoradis was thanked for the presentation.

The Chairman welcomed Phil Wilkes, Administrator of Charitable Gaming, to speak to the proposed rules and regulations in Article 23 noticed for hearing by the Department of Revenue regarding bingo. KAR 92-23-10, verification of winners; 92-23-15, bingo trust accounts; 92-23-16, cashing of prize checks; 92-23-17, bond required for bingo distributors; 92-23-18, due date of tax return by bingo distributors; 92-23-19, bingo; persons selling refreshments or performing janitor work; 92-23-20, bingo; house rules; 92-23-21, bingo; reduction in value of prizes; 92-23-22, bingo; limitations on number of games and daily prize limit; 92-23-23, bingo; procedure for correction if wrong number called; 92-23-25, bingo; multiple winners; 92-23-26, bingo; refreshments; 92-23-29, bingo; minimum number of cards to play regular games; 92-23-30, bingo; instant bingo; 92-23-31, bingo; use of hard cards

commencing July 1, 2003; 92-23-38, bingo; books and records; inspection and preservation; 92-23-38a, disputed bingo game; and 92-23-40, advertising.

Mr. Wilkes informed the Committee that the only kind of charitable gaming in Kansas was bingo, and no review or updating of regulations has been undertaken for approximately eight years.

KAR 92-23-15, bingo trust account. A member thought the writing of a check was unusual procedure for making a payment from the trust account. The conferee replied that, when the accounts are audited, the transactions are traceable by the Department through the bank's microfilm.

As information for the Committee, he said KAR 92-23-17 through 92-23-26, 92-23-29 and 92-23-30 are new regulations and have been written to correspond with existing practices.

Reviewing KAR 92-23-26, bingo; refreshments, Mr. Wilkes told the members he was not sure whether the agency wanted establishments to offer refreshment discounts to players not to visitors in an effort to discourage a person from coming to a parlor but not playing bingo.

KAR 92-23-31, bingo; use of hard cards commencing July 1, 2003. Mr. Wilkes said the agency is still looking for feedback from the public at the hearing in January 2002. He does not want to eliminate county fairs or other organizations from using hard cards only once or twice a year.

At the completion of the review, Mr. Wilkes was thanked for his presentation.

Coming before the Committee to speak to the proposed rules and regulations noticed for hearing in Article 64 was Elizabeth Phelps, Department of Social and Rehabilitation Services. KAR 30-64-20, contracting community developmental disability organizations; requirements; enforcement actions; 30-64-22, implementation responsibilities of CDDOs; 30-64-23, single point of application, determination and referral; 30-64-30, statewide service access list; 30-64-31, council of community members; 30-64-32, dispute resolution; and 30-64-34 is being revoked.

Ms. Phelps conveyed to the members that three sources were instrumental in bringing forward the changes in the proposed regulations: Community Developmental Disability Organizations (CDDOs), service providers, providers associations, advocacy group representatives, as well as service system representatives; current practices within the developmental disabilities service system; and legislative changes to the Developmental Disability Reform Act from the 2001 Session of the Legislature.

KAR 30-64-20, contracting community developmental disability organization; requirements; enforcement actions. A member asked that the definition of "Commission" be added to reflect the current organizational structure of the Department.

Staff pointed out some potential issues with the internal cross references used in KAR 30-64-23 and 31 and asked the conferee to check them and change if necessary.

The Chairman thanked Ms. Phelps for her review.

Tom Laing, InterHab, gave the members a letter addressing and identifying some key policy questions regarding the proposed regulations as viewed from his perspective (Attachment 5).

COMMENTS ON THE PROPOSED RULES AND REGULATIONS

Kansas Agricultural Remediation Board. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning the agricultural remediation fund administration. After discussion, the Committee expressed the following comment.

- KAR 125-1-2. The Committee is concerned that the inclusion of a retroactive period will have a negative effect on the fund. The Committee encourages the Board to rethink retroactivity to 1997.
- In subsection (b), clarify the filing deadline date for a claim.
- KAR 125-1-5. In subsection (b), the inclusion of arbitration would seem to add another level for resolving conflicts which may be in conflict with the Kansas Act for Judicial Review and Civil Enforcement of Agency Actions (KSA 77-601 *et seq.*). While the Committee does not oppose the use of arbitration, it suggests the subsection be rewritten citing the Uniform Arbitration Act statutes (KSA 5-401 *et seq.*), referring to arbitration not mediation, and treating the arbitration as a reconsideration of the initial administrative decision of the Board. After arbitration and the issue of a final order of the Board, the petitioner could then take an appeal to the district court.
- Economic impact. The economic impact statement submitted with the regulations is incomplete. Include the number of potentially eligible persons and the moneys available to allocate for remediation projects.

Department of Education. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning inservice education and institutional accreditation. After discussion, the Committee expressed the following comment.

- SBR 91-1-217. The economic impact statement should be more specific, including more detail on the number of districts affected and the costs on the districts. Include an aggregate total dollar impact.

Kansas Corporation Commission. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning motor carriers. After discussion, the Committee expressed the following comment.

- General Comment. The Committee supports the changes proposed during the review and looks forward to their inclusion in the final adoption of the regulations.

Kansas Insurance Department. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning risk-based capital instructions for managed care organizations. After discussion, the Committee had no comment.

Department of Revenue. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning handicapped placards and identification cards, and bingo. After discussion, the Committee had no comment.

Department of Corrections. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning inmate conduct and penalties; disciplinary procedures; grievance procedure for inmates; and reporting and claims. After discussion, the Committee expressed the following comment.

- KAR 44-12-103. Consider changing "medical officer" to "person licensed to practice medicine and surgery," and other medical personnel (dentists) authorized for such practice under KSA 65-1940 *et seq.* Also, consider making the allowance for body piercing based upon some demonstrated medical necessity.

Attorney General. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning the Crime Victims Assistance Fund and the Protection from Abuse Act. After discussion, the Committee had no comment except to inquire whether, upon the revocation of these regulations, there are related statutes that can be repealed.

Kansas State Historical Society. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning the state rehabilitation tax credit program. After discussion, the Committee expressed the following comment.

- General Comment. The Committee wonders whether the Society has the authority to differentiate between projects eligible for the tax credit based upon federal or state statutory requirements.

State Fire Marshal. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning hazardous materials response teams. After discussion, the Committee expressed the following comment.

- General Comment. The Committee strongly suggests the Fire Marshal not adopt as final the proposed rules and regulations and await further legislative action that clarifies the Fire Marshal's authority to act in the area of hazardous materials. The Committee directs staff to draft such clarifying legislation for its future review.

Bank Commissioner. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning documentation requirements, charter applications, trust supervision, and mortgage business. After discussion, the Committee expressed the following comments.

- KAR 17-23-8. In subsection (b)(1)(B), at the end of the first clause, insert the word "contingent or potential" before the word "liability."
- KAR 17-23-11. Check the language at the bottom of page 2 and the top of page 3 for duplication.

State Board of Healing Arts. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning light-based medical treatment. After discussion, the Committee had no comment.

State Board of Nursing. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning Advanced Registered Nurse Practitioners and Nurse Anesthetists. After discussion, the Committee had no comment.

Department of Agriculture. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning weights and measures. After discussion, the Committee expressed the following comments.

- General Comment. Consider expanding reporting and filing options to include electronic means as well as fax or written communications.
- KAR 99-26-1. The economic impact statement needs to include total revenues as well as the number of entities to whom the fee applies.

Department of Social and Rehabilitation Services. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning developmental disabilities. After discussion, the Committee expressed the following comments.

- KAR 30-64-20. Define "Commission" to reflect the current organizational structure.
- KAR 30-64-23 and 31. Check and correct if necessary the internal cross references.

The next meeting is scheduled for December 10 and 11, 2001. If the meeting is to be one-day only, the meeting will be on Tuesday, December 11.

The meeting was adjourned at 4:30 p.m.

Prepared by Pat Kahler and Bill Wolff

Approved by Committee on:

December 11, 2001