

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

ADMINISTRATIVE RULES COMMITTEE

Monday, December 4, 2006
Pioneer Room, State Capitol
Bismarck, North Dakota

Senator Jerry Klein, Vice Chairman, called the meeting to order at 8:00 a.m. He welcomed new committee members appointed to replace previous committee members whose terms of office have recently ended.

Members present: Senators Jerry Klein, Tom Fischer, Layton W. Freborg, Gary A. Lee, Constance Triplett; Representatives Randy Boehning, Chuck Damschen, David Drovdal, Mary Ekstrom, Rod Froelich, Glen Froseth, Gil Herbel, Kim Koppelman, Jon O. Nelson, Blair Thoreson, Don Vigasaa, Dwight Wrangham

Members absent: Senator John M. Andrist; Representative Duane DeKrey

Others present: See Appendix A

It was moved by Representative Nelson, seconded by Senator Fischer, and carried on a voice vote that the minutes of the September 14, 2006, committee meeting be approved as distributed.

SECRETARY OF STATE

Vice Chairman Klein called on Mr. Alvin A. Jaeger, Secretary of State, for presentation of testimony relating to a mixed fighting style competition rule carried over for consideration from the previous committee meeting. A copy of Mr. Jaeger's prepared testimony is attached as Appendix B.

Mr. Jaeger said the rule in question prohibits a ticket to a mixed fighting style contest to be sold for more than the price printed on the ticket. He said the rule is identical to a rule contained in the rules of boxing competitions that has existed since 1997. Mr. Jaeger said the committee carried over consideration of the rule because a ticket scalping bill was defeated in 1999. He said the 1999 bill was House Bill No. 1058 and was much broader in application. He said the 1999 bill that was defeated would have prohibited ticket scalping for admission to any entertainment or amusement to which the general public is admitted. He requested that the committee allow the rule to become effective to match the provision in the boxing rules.

The committee took no action with regard to the rule carried over for consideration from the previous committee meeting. In response to a question from the vice chairman, committee counsel said if the committee takes no action, the rule becomes effective January 1.

AGRICULTURE COMMISSIONER

Vice Chairman Klein called on Mr. Jeff Weispfenning, Deputy Agriculture Commissioner, for testimony relating to industrial hemp rules adopted by the Agriculture Commissioner. A copy of Mr. Weispfenning's prepared testimony is attached as Appendix C.

Mr. Weispfenning said the industrial hemp rules were adopted to implement 1999 legislation and provide details of a state regulatory scheme to the federal Drug Enforcement Administration relating to growing of industrial hemp. He said current Drug Enforcement Administration drug policy forbids growing industrial hemp but allows possession of finished hemp goods.

Mr. Weispfenning said the Department of Agriculture received 524 comments on the industrial hemp rules during the hearing process. He said 511 of the comments were very much alike. He summarized the comments received. He said the industrial hemp rules outline a licensing procedure, producing and handling requirements for farmers, reporting requirements for farmers, research requirements, enforcement procedures, and prohibitions. He said the rules provide that a license issued by the Agriculture Commissioner is not effective until the licensee also receives a registration from the Drug Enforcement Administration to import, produce, or process industrial hemp. He said at this time it does not appear likely that the Drug Enforcement Administration will issue these registrations.

In response to a question from Representative Nelson, Mr. Weispfenning said the delay from 1999 to 2006 to get industrial hemp rules in place is primarily because the Department of Agriculture could not get any response or reaction from the Drug Enforcement Administration. Representative Nelson asked whether the Drug Enforcement Administration has had a change in philosophy regarding growing of industrial hemp. Mr. Weispfenning said there has not been much change in the attitude of the Drug Enforcement Administration. He said other states are also trying to move forward to allow production of industrial hemp and combined efforts of several states might help to change the attitude of the Drug Enforcement Administration.

DEPARTMENT OF FINANCIAL INSTITUTIONS

Vice Chairman Klein called on Mr. Timothy Karsky, Commissioner, Department of Financial Institutions, for testimony relating to rules adopted by the department to make changes in regulation of credit unions. A copy of Mr. Karsky's prepared testimony is attached as Appendix D.

Representative Wrangham inquired as to how the definition of home office for credit unions under the rules will apply to relocating a credit union's home office. Mr. Karsky said the change in the definition relates to the 2005 legislation on establishing branches of credit unions. He said the legislation limited branches of credit unions to a radius of 75 miles from the credit union home office. Representative Wrangham asked whether the rule would make it easier to move a credit union home office. Mr. Karsky said the rules and legislation would allow a credit union home office to be moved within a 75-mile radius but the 75-mile radius from the original home office location would remain as the maximum distance in which the home office could be located. He said previous rules and law allowed a home office move of up to 50 miles, which allowed a "leap frog" effect that would allow several consecutive 50-mile moves.

Mr. Greg Tschider, North Dakota Credit Union League, Bismarck, said the league supports the rules as submitted. He reviewed the previous rules and current law and rules regarding the 75-mile radius from the credit union home office for the field of membership. He said the new law establishes a field of membership within a 75-mile radius of existing credit union home offices. He said that 75-mile area is the only area in which the home office could be relocated.

Senator Lee asked how the rules would affect a credit union operating offices in Minot and Fargo. Mr. Tschider said that credit union would keep those existing fields of membership and the home office could be located in either of those fields of membership. He said it would be unlikely that the credit union would relocate to the Fargo area because the great majority of members of the board are from the Minot area.

Representative Nelson asked how credit union mergers would affect the field of membership of the preexisting credit unions. Mr. Tschider said a credit union merger would join both previous fields of membership. Representative Nelson asked where the home office would be located after a merger. Mr. Tschider said the home office could be located anywhere within the two previous fields of membership but the merger would not change the 75-mile radius of those fields of membership.

STATE DEPARTMENT OF HEALTH

Vice Chairman Klein called on Mr. Tom Bachman, Division of Air Quality, State Department of Health, for

testimony relating to air pollution control rules adopted by the department. A copy of Mr. Bachman's prepared testimony is attached as Appendix E.

Senator Klein asked whether the rules prohibition on burning when fire danger is in the extreme category would apply to everyone in the state. Mr. Bachman said the burning prohibition applies to everyone in the state and if an individual starts a fire when fire danger is in the extreme category, it would be a violation of these rules.

Representative Koppelman asked how the average person would know if fire danger is in the extreme category. Mr. Bachman said when fire danger is in the extreme category in the state, information is usually given through the media and with weather reports. He said information is also available to the public by contacting local fire control officials. Representative Koppelman asked what penalties would apply to violations of the burning rules. Under the rules, Mr. Bachman said, a penalty could be assessed of up to \$10,000 per day. He said that is the maximum penalty and would apply only to the worst offenders.

Representative Wrangham said the open burning statutes used the word knowingly or willingly to describe culpability of an individual and require an awareness of fire danger before burning penalties would apply. He asked whether that standard is in the rules. Mr. Bachman said that standard is not specifically included but the statutory provision would control in cases of applying penalties for burning violations.

INSURANCE COMMISSIONER

Vice Chairman Klein called on Mr. Charles Johnson, General Counsel, Insurance Department, for testimony relating to health insurance pool rules adopted by the Insurance Commissioner. A copy of Mr. Johnson's prepared testimony is attached as Appendix F. Mr. Johnson said the rules allow groups to form a cooperative to self-insure for health insurance purposes to implement 2005 Senate Bill No. 2347.

STATE BOARD OF ANIMAL HEALTH

Vice Chairman Klein called on Ms. Beth Carlson, Deputy State Veterinarian, for testimony relating to nontraditional livestock rules adopted by the State Board of Animal Health. A copy of Ms. Carlson's prepared testimony is attached as Appendix G.

Representative Froseth said there are several deregulated species under the rules. Ms. Carlson said pheasants were the primary species of concern with regard to deregulation and there is general agreement that there is no disease issue with releases of pheasants. She said other exempt animals are listed in North Dakota Administrative Code (NDAC) Section 48-12-01.1-02.

Representative Froelich asked whether North Dakota has a healthy population of deer and elk being

raised by growers. Ms. Carlson said there has been no evidence of chronic wasting disease, which is the primary concern for these animals.

In response to a question from Representative Ekstrom, Ms. Carlson said venomous snakes are subject to special rules provisions regarding possession and handling under NDAC Section 48-12-02.1-01(5).

Vice Chairman Klein called on Mr. Gary Geske, nontraditional livestock grower, Enderlin, for comments on the rules. Mr. Geske said these rules represent a huge improvement over what was previously in place. He said for nontraditional livestock producers, insurance coverage will be a growing concern. He said he had to get rid of mountain lions he was raising because insurance premiums became prohibitive.

Vice Chairman Klein called on Mr. Shawn Schafer, State Board of Animal Health, for comments on the nontraditional livestock rules. Mr. Schafer said he raises whitetail deer and is a member of the State Board of Animal Health. He said nontraditional livestock growers are not trying to avoid rules but intend to try to improve the rules. He said health of animals is a major concern of growers. He said the

rules changes adopted by the State Board of Animal Health clean up many issues of concern to growers.

STATE WATER COMMISSION

Vice Chairman Klein called on Mr. Lee Klapprodt, State Water Commission, for testimony relating to rules adopted by the State Water Commission. A copy of Mr. Klapprodt's prepared testimony is attached as Appendix H.

Mr. Klapprodt said one significant change in the rules is the extension of time to complete a water supply project after notification of approval of funding of the project. He said during times of drought, there is an increased demand on contractors which makes it difficult to find a contract or contractor to complete a water supply project within the time allowed.

Vice Chairman Klein said the next meeting would be held in March.

The meeting was adjourned at 9:45 a.m.

John Walstad
Code Revisor

ATTACH:8