

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

ADMINISTRATIVE RULES COMMITTEE

Tuesday and Wednesday, February 22-23, 2000
Roughrider Room, State Capitol
Bismarck, North Dakota

Representative William R. Devlin, Chairman, called the meeting to order at 10:00 a.m.

Members present: Representatives William R. Devlin, Rex R. Byerly, Duane DeKrey, Mary Ekstrom, Bette Grande, Pam Gulleson, George J. Keiser, Kim Koppelman, Stacey L. Mickelson, Jon O. Nelson, Darrell D. Nottestad, Sally M. Sandvig, Blair Thoreson; Senators John Andrist, Tom Fischer, Jerry Klein, Deb Mathern, Bob Stenehjerm, Rich Wardner

Member absent: Representative LeRoy G. Bernstein

Others present: See Appendix A

It was moved by Senator Fischer, seconded by Representative Mickelson, and carried on a voice vote that the minutes of the previous meeting be approved as distributed.

ADMINISTRATIVE AGENCIES PRACTICE ACT REVISION

Chairman Devlin called on committee counsel for discussion of the Administrative Agencies Practice Act revision as discussed at the previous meeting. Committee counsel said the Administrative Agencies Practice Act is codified as North Dakota Century Code (NDCC) Chapter 28-32. He said this chapter deals with rulemaking and administrative hearings. He said his suggestion at the previous meeting of dividing the chapter into two new chapters to address these topics would require amending hundreds of references to Chapter 28-32 in the Century Code. He said a bill draft to eliminate Chapter 28-32 and replace it with two new chapters would be 200 or more pages long.

Committee counsel said an option that would avoid an extremely lengthy bill draft would be to consider retaining but renumbering and rearranging existing provisions within NDCC Chapter 28-32. He said this would be useful because sections in existing law have grown into long sections that cover numerous topics, which makes it difficult for a reader to find relevant provisions.

The chairman said he would discuss with committee counsel an approach to revision within existing NDCC Chapter 28-32. He said perhaps a recommendation can be presented at the next committee meeting.

Representative Byerly said one area of concern to him is the issue of what constitutes an emergency for rulemaking purposes. He said he would like the committee to receive information at the next meeting on existing law and interpretations on this issue to allow the committee to consider whether more definite criteria can be established as to what constitutes an emergency for rulemaking purposes.

ADMINISTRATIVE RULES COMMITTEE MEETING NOTICE TO INTERESTED PARTIES

Chairman Devlin called on committee counsel for discussion of the issue raised at the previous committee meeting regarding possible ways to inform interested parties of the time when the Administrative Rules Committee will consider rules of agencies. Committee counsel said the options would be to put the burden on the agency to inform interested parties when the Administrative Rules Committee will consider rules or to put the burden on interested parties to find this information for themselves. He said existing law puts the burden on interested parties to learn when the Administrative Rules Committee will meet to consider rules.

Committee counsel said the Department of Human Services has followed a practice that is not required by law but is of benefit to interested parties. He said the department reviews administrative rulemaking procedure for the benefit of those in attendance at rulemaking hearings. He said this review covers how the process works from the outset of rulemaking through the review by the Administrative Rules Committee. He said with this information interested parties may follow through on rules by contacting the Legislative Council office to find the meeting time for Administrative Rules Committee consideration of rules in which the parties are interested.

Committee counsel said the Legislative Council maintains a mailing list for Administrative Rules Committee meeting notices and maintains a web site on which information is available, including meeting notices and agendas.

Committee counsel said an issue for consideration is how to identify parties who should be extended the courtesy of notice of Administrative Rules Committee meetings. He said if an individual attends a public

hearing on administrative rules or submits written comments on rules within the comment period, that would be reasonable grounds to identify the person as one who should receive information about Administrative Rules Committee consideration of those rules. He said it may be feasible to distribute information to persons in attendance at administrative rules hearings and to those who file written comments on administrative rules. He said information could advise interested parties about the rules process and how to become informed of when the Administrative Rules Committee will meet to consider the rules.

Senator Andrist said there should be some obligation for an agency to try to notify concerned parties of when rules will be considered by the Administrative Rules Committee.

Representative Keiser said the Administrative Rules Committee may not be getting a clear picture of the concerns of the public regarding rulemaking activity. He said notifying the public in general seems ineffective. He said individuals who appear at a public hearing or submit written comments on rules are identifiable as interested parties and should be entitled to advice on how to determine when the Administrative Rules Committee will consider rules in which they are interested. He said he thinks the agency should be required to mail notice to individuals who have appeared at a public hearing or submitted written comments on rules regarding the time when the Administrative Rules Committee will consider those rules.

Representative Nelson said it appears there is a need for more information to the public of when the Administrative Rules Committee will consider rules. He said he agrees that individuals who appeared at a public hearing or submitted written comments should merit special consideration in receiving information on Administrative Rules Committee meetings.

Chairman Devlin requested the Legislative Council staff to prepare a bill draft for consideration at the next committee meeting requiring that an agency provide notice of Administrative Rules Committee consideration of rules to individuals who appeared at the public hearing or submitted written comments on those rules. Committee counsel said agencies receive notice of an Administrative Rules Committee meeting approximately one month in advance and an agenda for the meeting approximately two weeks in advance. He said agencies may express concern with the time-frame for providing notice to interested parties.

Senator Stenehjem said useful information could be made available if agencies are required to file comments received during public hearings or comment periods when the agency files rules with the Legislative Council for publication. He suggested preparation of a bill draft to require filing of comments.

AGRICULTURE COMMISSIONER

Chairman Devlin called on Mr. John Leppert, Plant Services Division, Department of Agriculture, for comments on February 2000 noxious weed rules. A copy of Mr. Leppert's prepared testimony is attached as Appendix B.

Representative Nottestad asked how the classification as a noxious weed will affect domestic purple loosestrife on private property and in nurseries in the state. Mr. Leppert said effective January 1, 1998, nurseries were prohibited from selling purple loosestrife under state law. He said the Department of Agriculture is encouraging people with purple loosestrife in yards to watch those plants to prevent spreading of seeds.

Representative Koppelman said the testimony indicates that purple loosestrife was designated as a noxious weed by "declaration" of the Agriculture Commissioner in 1996. He asked what is the legal status of a declaration as contrasted with an administrative rule. Mr. Leppert said he cannot answer the question because it is a legal issue. Representative Koppelman requested Mr. Leppert find out the answer to the question for the committee.

GAME AND FISH DEPARTMENT

Chairman Devlin called on Mr. Paul Schadewald, Chief, Administrative Services Division, Game and Fish Department, for comments on department rules on fishing contests and falconry. A copy of his prepared testimony is attached as Appendix C.

Senator Stenehjem asked how many fishing tournaments would pay the maximum \$5,000 fee. Mr. Schadewald said only the Devils Lake tournament would be subject to the maximum fee.

Senator Klein asked whether the \$5,000 cap on fees for fishing tournaments would affect local fundraising tournaments. Mr. Schadewald said the fee cap would not affect local tournaments, and he pointed out that conservation fees collected for fishing tournaments go back into improvements in the area where the tournament was held.

STATE DEPARTMENT OF HEALTH

Chairman Devlin called on Mr. Murray G. Sagsveen, State Health Officer, for comments on rules adopted by the State Department of Health. Mr. Sagsveen said four sets of rules were adopted by the department governing embalming of bodies, rabies control, reportable health conditions, and school immunization. He presented separate testimony on each set of rules. Copies of his prepared testimony are attached as Appendices D, E, F, and G.

Senator Stenehjem said the rabies control rules require reporting only by a doctor or veterinarian. He said there may be rural areas in which a person possibly exposed to rabies may not have access to a doctor or veterinarian. Mr. Mike Mullen, Legal Counsel, State Department of Health, said in areas where

a doctor or veterinarian is not available, the individual would be likely to receive a referral to a doctor or veterinarian. Senator Stenehjem said consideration should be given to altering the rules for situations such as he described. Mr. Mullen said that would be considered.

HIGHWAY PATROL

Chairman Devlin called on Major John Grasl, Highway Patrol, for comments on Highway Patrol rules. A copy of Major Grasl's prepared testimony is attached as Appendix H. Major Grasl introduced Mr. Doyle F. Schulz, Director, Motor Carrier Division, Highway Patrol, for presentation of a portion of the testimony.

Representative Mickelson said he sponsored legislation in 1999 that was the basis for the rules on safety standards for passenger contract carriers. He said the rules did a good job covering the topics required by the bill. He said in working on the bill, proponents thought the rules would fill in appropriate levels of insurance requirements for passenger contract carriers. He said he thinks more public debate may be necessary to determine the proper level of insurance for passenger contract carriers.

Representative Devlin said it appears from the testimony that the Attorney General's office has advised the Highway Patrol that it lacks power to set required levels of insurance coverage.

In response to a question from Representative Mickelson, Major Grasl said the Highway Patrol is not structured for, or experienced at, setting insurance coverage levels.

Senator Stenehjem asked whether the Highway Patrol establishes insurance requirements by rule for any other vehicle operators. Major Grasl said he believes there may be insurance requirements for extrawide loads.

In response to a question from Representative Byerly, Major Grasl said he would provide the committee a copy of the letter from the Attorney General's office.

Chairman Devlin called on Ms. Rosellen Sand, General Counsel, Attorney General's office, for comments on the Highway Patrol rules. Ms. Sand said the letter from the Attorney General's office did not state the Highway Patrol lacks authority to set a minimum standard for insurance for passenger contract carriers. She said she believes the Highway Patrol has been given adequate legislative authority to establish minimum insurance requirements. She said beyond the legal question of authority to set minimum standards is the policy question of what the dollar amounts of the standards will be. She said the authorizing legislation did not specify the dollar amounts of insurance coverage and the decision of the Highway Patrol is a policy decision in that respect. She said the Highway Patrol was legally authorized to establish insurance levels as it did and could have set

higher levels but was not legally required to do so. She said the letter to the Highway Patrol from the Attorney General's office suggested the policy question on the dollar amount of insurance coverage might best be left to legislative determination.

Chairman Devlin called on Mr. John Risch, North Dakota Legislative Director, United Transportation Union, for comments on the Highway Patrol rules. A copy of his prepared testimony is attached as Appendix I. Mr. Risch asked that the Highway Patrol be requested to reopen hearings on the proper level of insurance for contract passenger carriers.

Chairman Devlin called on Mr. Schulz who reviewed the remaining portion of the testimony contained in the prepared testimony distributed by Major Grasl.

BOARD OF INDIAN SCHOLARSHIPS

Chairman Devlin called on Mr. Cornelius Grant, Member, Board of Indian Scholarships, for testimony relating to rules of the board. A copy of Mr. Grant's prepared testimony is attached as Appendix J.

INSURANCE COMMISSIONER

Chairman Devlin called on Ms. Susan Anderson, Legal Counsel, Insurance Department, for testimony on two sets of rules adopted by the Insurance Commissioner. A copy of Ms. Anderson's prepared testimony is attached as Appendix K.

Representative Byerly said the testimony indicates the department met with insurance industry representatives and made some rules changes to meet concerns but not all concerns were resolved. He asked Ms. Anderson to elaborate on the unresolved concerns. Ms. Anderson said there was industry concern that some of the rules adopted exceed statutory authority of the commissioner. She said the commissioner's staff believes there was adequate statutory authority for the rules adopted.

Representative Byerly said the rules allow the commissioner to hire experts on demutualization issues. He said he is concerned the rules appear to set no limits on what the Insurance Commissioner could spend on such experts and the company would be liable for these costs. Ms. Anderson said the rules specifically require use of an expert be deemed reasonable and necessary. She said demutualization can be an extremely complicated transaction, so expert assistance is sometimes necessary. She said insurers seeking authorization to demutualize should budget for costs of the process, including necessary expert analysis, in seeking authorization.

Representative Keiser said the Legislative Assembly has rejected several attempts to incorporate National Association of Insurance Commissioners model legislation proposals. He said some of these rules seem to incorporate proposals that look like National Association of Insurance Commissioners proposals that have been rejected. He asked whether

he is correct in this reading. Mr. Vance Magnuson, Insurance Department, said there are many National Association of Insurance Commissioners model laws covering various aspects of insurance law. He said much of existing North Dakota insurance law is based on National Association of Insurance Commissioners approaches. He said he does not think the holding company act has been introduced in North Dakota.

Chairman Devlin called on Mr. Tom Smith, Bismarck attorney representing insurance companies, for comments on the Insurance Commissioner rules. Mr. Smith said there have been several bills considered and several bills passed in North Dakota based on National Association of Insurance Commissioners recommendations. He said status as National Association of Insurance Commissioners recommendations does not mean it is bad legislation. He said the National Association of Insurance Commissioners was formed so states could work together to develop uniformity of regulation of insurance. He said this is important because without uniform state insurance laws, federal intervention would result. He said the insurance industry wants uniformity to a large extent in state regulation. He said there is very little guidance in statute on demutualization issues, so the rules are viewed as necessary. He said there is almost no chance that demutualization will occur in North Dakota within the next two years. He said this may be an issue that will be reviewed in the 2001 legislative session. He said the only National Association of Insurance Commissioners rule in this group of rules is with regard to Regulation XXX, regarding valuation of life insurance policies. He said this regulation is important to level the playing field for all insurers and to guarantee adequate insurance company reserves to protect policy owners.

Representative Koppelman said the rules appear to grant some powers to the Insurance Commissioner. He asked whether Mr. Smith has concerns with this authority. Mr. Smith said these rules are based on a statute giving the Insurance Commissioner a mandate to make demutualization rules. He said this is an area in which the insurance industry had concerns. He said he believes the Legislative Assembly will address these issues in more detail.

Representative Keiser said North Dakota Administrative Code (NDAC) Section 45-02-02-05 eliminates the nonresident agent distinction. He said that was a position supported by National Association of Insurance Commissioners legislation that was defeated. Mr. Smith said one of the concerns was with regard to the countersignature law and that is unaffected by this rule change.

Representative Gulleason asked whether the insurance industry is comfortable with these rules. Mr. Smith said he represents several groups in the insurance industry, and they do not have great problems with these rules. He said domestic insurers are

supportive of mutual company rules but have some minor concerns with demutualization rules. He said the minor concerns are not deemed significant because there is virtually no chance a demutualization will occur before the next legislative session.

BOARD OF ANIMAL HEALTH

Chairman Devlin called on Dr. Larry A. Schuler, State Veterinarian, for testimony relating to Board of Animal Health rules. A copy of Dr. Schuler's prepared testimony is attached as Appendix L.

Senator Klein said concern has been expressed to him about the coverage of these rules. He said the concern of the Board of Animal Health is with disease in elk, but the rule covers all cervidae. He asked whether this coverage is too broad. Dr. Schuler said the rule does cover several species of cervidae besides elk. He said the rules allow waiver of assessments for species at minimal risk. He said the rules will probably be revised in the future to specifically exempt species at little or no risk of chronic-wasting disease.

Chairman Devlin called on Mr. Peter Lies, Lies Game Farm, for comments on the Board of Animal Health rules. A copy of his prepared testimony is attached as Appendix M.

In response to a question from Representative Devlin, Mr. Lies said he did not participate in the hearings on these rules. He said he was serving as a member of the Nontraditional Livestock Council at the time but did not hear anything about these rules during the process.

Representative Byerly asked Dr. Schuler whether it would be appropriate to change the rules now if the board does not intend to require assessments for some species. Dr. Schuler said it would take some time to change the rules, and the board is working on related rules.

Senator Wardner asked Mr. Lies how the rule affects his game farm. Mr. Lies said he cannot go out of state to buy an animal. He said waivers he has requested in the past have not been granted and the 10-day notice requirement for importation creates a problem. He said it is virtually impossible to know before an auction which animals will be purchased, and the State Veterinarian has up to 10 days to notify the applicant of the results of a risk assessment. He said this makes it impossible to participate in an auction because the results of the risk assessment must be received by the buyer before the auction.

Senator Wardner asked Dr. Schuler whether a waiver would be granted for fallow deer to be purchased outside the state. Dr. Schuler said a waiver would be granted, and the veterinarian doing work on a certificate would contact the Board of Animal Health and be informed about the waiver.

Chairman Devlin called on Mr. Shawn Schafer, North Dakota Deer Ranchers, for comments on the Board of Animal Health rules. Mr. Schafer said the

problem he sees with the rules is that the application is overly broad because it applies to all cervidae, and the rules do not specify that an assessment is to be specifically for chronic-wasting disease. He said the rules should be limited to apply to elk and specifically state that assessments are to be for chronic-wasting disease.

Dr. Schuler said the next draft of the rules will take care of the concerns expressed by Mr. Schafer. He said Mr. Lies made a request for a waiver which was denied by the board because the request was for a waiver from all nontraditional livestock rules.

BOARD OF PHARMACY

Chairman Devlin called on Mr. Howard C. Anderson, Jr., R.Ph., Executive Director, State Board of Pharmacy, for testimony on rules adopted by the board. A copy of Mr. Anderson's prepared testimony is attached as Appendix N.

REAL ESTATE COMMISSION

Chairman Devlin called on Mr. Dennis D. Schulz, Secretary-Treasurer, Real Estate Commission, for comments on rules adopted by the commission. A copy of his prepared testimony is attached as Appendix O.

Representative Nelson asked whether the rules changes would allow a broker to get all continuing education credit through distance learning. Mr. Schulz said a broker could get all continuing education through distance learning except two mandatory courses during each two-year cycle. He said this means all but six hours during each two-year cycle could be obtained through distance learning.

Chairman Devlin called on Mr. Claus Lembke, North Dakota Association of Realtors, for comments on the Real Estate Commission rules. Mr. Lembke said the Association of Realtors worked with the commission on development of the rules and finds them very workable and acceptable.

DEPARTMENT OF HUMAN SERVICES

Chairman Devlin called on Ms. Coral Mahler, Legal Counsel, Department of Human Services, for testimony relating to rules adopted by the department. Ms. Mahler said three sets of ratesetting rules were adopted by the department relating to residential treatment centers for children, nursing home care, and basic care facilities. Copies of her prepared testimony regarding ratesetting for residential treatment centers for children and ratesetting for nursing home care are attached as Appendices P and Q. Ms. Melissa Hauer, Legal Counsel, Department of Human Services, presented testimony of the department on ratesetting for basic care facilities. A copy of her prepared testimony is attached as Appendix R.

Representative Byerly said it is extremely complicated to try to determine the amount a nursing home would be eligible to receive in reimbursement. He

asked whether there is a chart or something the department could provide to him to allow easier determination of the reimbursement amounts and rules. Ms. Barb Fischer, Medical Services Division, Department of Human Services, said the department has a summary that should assist in this regard.

Chairman Devlin called on Ms. Leslie Oliver, Legal Counsel, Long Term Care Association, for comments on the Department of Human Services reimbursement rules. Ms. Oliver said the association has several concerns with these rules. She said the rules have been changed to classify housekeeping as an indirect care cost. She said the problem with this rule is that it reclassifies and changes reimbursement for housekeeping duties performed by nursing personnel, and in those cases reimbursement is unfairly determined. She said this issue is presently being appealed.

In response to a question from Representative Devlin, Ms. Fischer said the appeal will be handled through the Office of Administrative Hearings and must be held within 120 days of the filing of the appeal. She said the hearing has not been scheduled, and she described the possible appeals process that could follow the administrative hearing. Representative Devlin asked whether it is correct that this controversy probably will not be resolved before the next legislative session. Ms. Fischer and Ms. Oliver indicated that statement is correct.

Ms. Oliver said part of the opposition to the change to housekeeping status for certain functions previously treated as nursing functions is related to the requirement of time studies rather than facility estimates.

Ms. Oliver said the Long Term Care Association believes NDAC Sections 75-02-07.1-20 and 75-02-07.1-22 are inconsistent with 1999 Senate Bill No. 2012. She said the 1999 legislation was intended to provide that property costs will be treated as a pass-through cost.

WORKERS COMPENSATION BUREAU

Chairman Devlin called on Mr. Reagan Pufall, Workers Compensation Bureau, for comments on bureau rules effective January 1, 2000. A copy of Mr. Pufall's prepared testimony is attached as Appendix S.

Representative Gulleason asked why the bureau believes it is important to require a treatment plan for injured workers. Mr. Pufall said there have been cases in which an injured worker does not have a treatment plan and bounces between different health care providers. He said the experience has been that improvement has not been as good as expected for such a person. He said when a treatment plan is followed, recuperation time is reduced, and the worker is able to return to productive employment faster. He said this is good for workers and the bureau.

Chairman Devlin recessed the meeting until 9:00 a.m., Wednesday, February 23, 2000.

DEPARTMENT OF PUBLIC INSTRUCTION

Chairman Devlin called on Mr. Gary Gronberg, Department of Public Instruction, for testimony relating to January and February 2000 rules of the Superintendent of Public Instruction. A copy of Mr. Gronberg's prepared testimony is attached as Appendix T.

Mr. Gronberg said 1989 legislation required school accreditation, and since that time the Department of Public Instruction has been required to have rules for that purpose. He said 1997 legislation provided for elimination of rules previously adopted by the department and required the department to adopt rules under the process that applies for administrative agencies. He said although the rules are substantial in volume, it is important to remember these rules are virtually identical to the rules that previously existed. He said approximately 90 oral and written comments were received on the rules, and each of the comments is summarized in the materials attached to his testimony.

Mr. Gronberg said many accreditation and credential standards represent a compromise between views of interested parties. He said commentators suggest either higher or lower standards. He said because the rules are often the result of compromise, not everyone is completely satisfied, and there will always be people suggesting changes to these rules to match their views of appropriate standards.

Mr. Gronberg said the rules that drew the vast majority of comments were the rules regarding credentials which were considered at the first hearing conducted on May 5, 1999. He said 77 comments were received on credentials issues.

Representative Nottestad described two 1991 suggestions on counselor credentials and asked whether these were incorporated in the rules. Mr. Gronberg said these suggestions were not incorporated and were apparently inadvertently omitted. He said the department expects these suggestions will be considered as a future amendment. Senator Andrist said schools in rural areas may have a difficult time in putting credentialed people in school positions. He asked whether there is any leeway for rural schools in this position. Mr. Gronberg said a school has two options in such a situation, which are an appeal to the Accreditation Committee or seeking a waiver from the State Waiver Committee.

In response to a question from Representative Nelson, Mr. Gronberg described how the rules provide for provisional licensing of administrators. In response to another question from Representative Nelson, Mr. Gronberg described the grandfather clause that applies to secondary principals. Representative Nelson said it appears there is no grandfather clause for elementary principals, and there was

such a provision in prior rules. Mr. Gronberg said that is correct and it was inadvertently omitted.

Representative Nelson said the school improvement process in the rules appears to incorporate a change in the timeframe from seven years to five years. Mr. Gronberg said all the accreditation rules have moved to a five-year basis from a seven-year basis for reviews. Representative Nelson said he believes that represents a substantive change from the previous rules. Mr. Gronberg said that is correct.

Representative DeKrey asked how the numbers used to divide categories based on school size were determined. Mr. Gronberg said the numbers were determined on a statistical basis based on the range of school district student populations with consideration of the amount of time deemed appropriate to be devoted to each district served when administrators serve more than one district or function. He said if a superintendent devotes less than one-half time to a school district, the quality of service received would be inadequate. He said for small districts this is important because sharing a superintendent among multiple districts would diminish the value of that person to each involved district.

Representative Nottestad asked whether the department intends to change the rules to address the issues discussed relating to inadvertent omissions from the rules. Mr. Gronberg said the department intends to make these changes. In response to a question from Representative Devlin, Mr. Gronberg said the department intends to begin the rulemaking process soon to make necessary changes before the next school year.

Chairman Devlin called on Mr. Larry Klundt, Executive Director, Council of Educational Leaders, for comments on the Superintendent of Public Instruction rules. Mr. Klundt said the Council of Educational Leaders is in general support of the rules and believes it is necessary to establish standards. He said there are some areas of concern, mostly due to concerns with language used and possible interpretation problems. Mr. Klundt said for the superintendent credential under NDAC Section 67-11-07-05, the council intended that a master's degree would be the minimum requirement. He said the rule as written appears to require a master's degree plus additional course preparation of 44 to 47 credits. He said it was intended these credits be within the master's degree program. He said the word "and" may present an interpretation problem and should be changed to "with" or "including." He said the council has some concerns about the rule on the provisional credential for superintendents, allowing two years of employment while pursuing the educational level required for the position. He said the council has some other concerns with the rules and would like the opportunity to work with the Department of Public Instruction to resolve some of these issues.

Chairman Devlin called on Mr. Thom Hendricks, North Dakota Library Association, for comments on the rules of the Superintendent of Public Instruction. Mr. Hendricks said the North Dakota Library Association adopted a resolution that urges the school library media specialist credential standards remain high or be raised even higher.

Chairman Devlin called on Ms. Janis Wallender, President, North Dakota School Counselors Association, for comments on the rules of the Superintendent of Public Instruction. Ms. Wallender said the School Counselors Association has worked extensively to review the rules relating to counselors. She said the association is comfortable with accreditation standards as they are in the rules as adopted and hopes the ratio of students to counselors will decrease in the future.

Chairman Devlin called on Mr. Max Laird, North Dakota Education Association, for comments on the rules of the Superintendent of Public Instruction. Mr. Laird said he believes there is support in the educational community for high standards of education. He said recruitment and retention of teachers is a concern, and flexibility is required to allow some schools to find and keep quality teachers. He said flexibility is provided in several areas of these rules. He said these rules are acceptable to the North Dakota Education Association.

Chairman Devlin called on Ms. Bev Nielson, North Dakota School Boards Association, for comments on the rules of the Superintendent of Public Instruction. Ms. Nielson said on some issues the School Boards Association occasionally has views that differ from those of other educational groups. She said it is important to remember that qualified people are critical in administrative positions in school districts. She said the School Boards Association supports standards to require qualified people but also believes flexibility is needed. She said the association supports credentialing of education professionals.

In response to a question from Representative Devlin, Ms. Nielson said the School Boards Association has left consideration of the details of the credentialing rules to professional groups and supports their efforts.

Chairman Devlin called on Mr. Ronald E. Stuart for comments on the rules adopted by the Superintendent of Public Instruction. Mr. Stuart said he is concerned about the quality of education. He expressed concern that North Dakota students should receive classroom instruction on the state constitution.

Chairman Devlin called on Dr. Wayne Sanstead, Superintendent of Public Instruction, for comments on the rules adopted by the Superintendent of Public Instruction. Dr. Sanstead said he regrets being unable to attend all the meeting because of attendance at a meeting of the Board of University and School Lands. He said the staff of the Department of

Public Instruction has worked diligently on development of these rules, and he believes the staff has done a good job. He said there will be questions on certain issues and details of the rules and that is to be expected as a part of the process. He said he believes school accreditation is an important function, and there is evidence students in North Dakota receive a high-quality education. He said these rules represent the initial step of the Superintendent of Public Instruction into rulemaking under the Administrative Agencies Practice Act, and he believes this will be an ongoing process.

Chairman Devlin said a letter to the editor from the Superintendent of Public Instruction indicated the Administrative Rules Committee did not grant an extension of time to the Superintendent for adoption of these rules. The chairman said the Administrative Rules Committee had no authority by law to extend the time for adoption of rules by the Superintendent. Dr. Sanstead said Chairman Devlin is correct, and it was the provisions of 1997 legislation that did not allow any opportunity for extended time to the Superintendent of Public Instruction for adoption of these rules.

Chairman Devlin called on Mr. Dennis VanBerkum, North Dakota State University, for comments on the rules adopted by the Superintendent of Public Instruction. Mr. VanBerkum said the higher education community supports standards for education and education professionals. He said standards are necessary to attract high-quality individuals to North Dakota education positions. He said he would support Mr. Klundt's suggestion that further study is needed on some aspects of the rules.

COMMITTEE DISCUSSION

The chairman asked the wishes of the committee regarding the rules of the Superintendent of Public Instruction.

It was moved by Representative Ekstrom, seconded by Representative Mickelson, and carried on a voice vote that consideration of the January and February 2000 rules of the Superintendent of Public Instruction be carried over to the next Administrative Rules Committee meeting. In discussion of the motion, Representative Koppelman said the advantage of further consideration of the rules would be to allow the opportunity to fix some inadvertent omissions by amendment under the Administrative Agencies Practice Act without beginning a full rulemaking proceeding.

The chairman said it appears the Long Term Care Association and Department of Human Services have differences on the ratemaking rules of the department. He said it is not clear whether these differences can be resolved but further discussions between the association and department might be useful.

It was moved by Representative Nottestad, seconded by Representative Mickelson, and carried on a voice vote that consideration of the January 2000 rules of the Department of Human Services be carried over to the next Administrative Rules Committee meeting.

Chairman Devlin said that with respect to the rules of the Highway Patrol, it appears the Highway Patrol was within its statutory discretionary authority in establishing the required level of insurance. He said it appears the statutory grounds upon which the committee could void a rule do not exist in this case. He asked the wishes of the committee, and no motion was made.

Senator Klein said the rules of the Board of Animal Health regarding chronic-wasting disease in cervidae might be improved by further consideration.

It was moved by Senator Klein, seconded by Representative Nelson, and carried on a voice

vote that consideration of the February 2000 rules of the Board of Animal Health be carried over to the next Administrative Rules Committee meeting.

Chairman Devlin said the Administrative Rules Committee will be required to meet before June 1. After discussion with committee members, the chairman said the next meeting would tentatively be scheduled for the second week in May.

The meeting was adjourned at 11:10 a.m.

John Walstad
Code Revisor

ATTACH:20