

**MINUTES OF THE
ADMINISTRATIVE RULES REVIEW COMMITTEE**
April 7, 1999 - 9:00 a.m. - Room 305 State Capitol

Members Present:

Sen. Howard A. Stephenson, Cochair
Rep. David Ure, Cochair
Sen. Mike Dmitrich
Sen. L. Alma "Al" Mansell
Sen. Eddie "Ed" P. Mayne
Sen. Howard C. Nielson
Rep. Judy Ann Buffmire
Rep. James R. Gowans
Rep. Martin R. Stephens
Rep. John E. Swallow

Staff Present:

Mr. Arthur L. Hunsaker,
Research Analyst
Ms. Esther D. Chelsea-McCarty,
Associate General Counsel
Ms. Barbara A. Teuscher,
Legislative Secretary

Note: A list of others present and copies of materials distributed in the meeting are on file in the Office of Legislative Research and General Counsel.

1. Call to Order and Approval of Minutes of Meeting Held December 10, 1998 - Chair Stephenson called the meeting to order at 9:00 A.M.

MOTION: Rep. Ure moved that the minutes of the Dec. 10, 1998 meeting be approved. The motion passed unanimously with Rep. Swallow absent for the vote.

Sen. Stephenson welcomed new members of the committee and reviewed its responsibility to oversee rulemaking in the state.

2. R21-3: Debt Collection Through Administrative Offset (Existing Rule) - Rep. Ure introduced the issue and invited Julia Petit, constituent, to explain her concerns. Ms. Petit briefly recounted the events surrounding the hold that was incorrectly placed on her state income tax refund.

Gwen Anderson, Director, Office of Debt Collection responded that it was her agency's rule that was being implemented in Ms. Petit's case. Various state agencies send data to the Division of Finance regarding money due to them that they have been unable to collect. The Division of Finance notifies her office when, while processing a refund, it is discovered that payments of some kind are due from a refund recipient. A hold is placed on the refund and a letter demanding payment is sent to the taxpayer by the agency which submitted the data.

Alma Allred, Director, University of Utah Parking Services, explained it was a clerical error on their part that led to the incorrect hold on Ms. Petit's refund. They sent a letter to Ms. Petit dated February 24 indicating that, unless payment was made, tax refund money would be taken to erase the debt. This is the first time in five years this has happened. Sen. Nielson suggested that if the name and address were included in the data sent to the Division of Finance, the difference in

addresses would have been noted. Mr. Allred said they have already worked through some procedural changes to avoid similar problems in the future.

Rep. Ure expressed concern with money being held before due process is granted. Sen. Stephenson said the committee needs to determine whether the hold violated due process rights.

Rep. Swallow said the letter should be sent to the address of the person filing the refund, not to the "last available address" which in this case was wrong. Sen. Stephenson suggested that perhaps *Section 63A-3-303(1)* should be changed to require that the group sending the data (in this case University of Utah Parking Services) and the Office of Debt Collection both send notice to the taxpayer.

Gwen Anderson said they will modify the procedure for agencies sending letters to the taxpayer and the wording of those letters. She also agreed to update the committee.

Rep. Swallow pointed to the definition of accounts receivable in the rule and statute and said he wants to make sure the rule does not go beyond the statutory definition. He asked legal counsel to look at the issue and any other potential statutory definitions that may apply.

Sen. Mansell observed that the agencies involved, once they were aware of the problem, appeared to move swiftly to resolve the matter, and recognized that effort.

3. Need for Rules Governing State Records Committee Action - Last year, the Administrative Rules Review Committee expressed concern with the lack of State Records Committee rules. Betsy Ross, Chair, State Records Committee, distributed a handout from which she gave her presentation. She discussed HB 272, *Government Records Committee Processes*, 1999 General Session, and how it affects future committee rulemaking. She discussed one rule that is already effective, and several that are in the drafting stage.

4. R477-8: Working Conditions (Existing and Proposed Versions of the Rule) - Conroy Whipple, Dept. Human Resource Management, explained that with the passage of SB 25, *Retirement - Use of Sick Leave Amendments*, 1999 General Session, concerns about the legality of extending certain sick leave benefits to all state employees will be resolved beginning July 1 (the effective date of the legislation). A rule change during the session removed wording that the committee determined was in conflict with statute. That filing, if allowed to go into effect (May), would be in conflict with the statute as of July 1. The agency would like to let that change lapse since SB 25, starting July 1, allows what they had attempted to do by rule.

Mr. Whipple stated there is concern with how the 200-300 state employees who plan to retire between May and June will be affected. Many can adjust and retire around the problem, but some cannot.

Rep. Swallow asked why SB 25 didn't have an immediate effective date. Mr. Whipple indicated that they have internal processes that necessitated the July 1 effective date.

Dee Larsen, Associate General Counsel, Office of Legislative Research and General Counsel, stated that the issue arose due to the illegal administrative rule.

Rep. Swallow said that, as a matter of principle, he didn't think the committee could change its position that the rule, in its originally published form, contradicted statute and needed to be changed. Mr. Whipple emphasized his purpose is to get the committee's sense as to how to proceed in the matter and appropriately address the needs of retiring employees.

Robert Cobb, constituent, supported equal treatment for retiring employees regardless of age.

Mr. Hunsaker clarified that the issue is more than a May/June concern, since the version of R477-8 which contradicted statute went into effect July 1, 1998.

The committee moved to the next item without taking action.

5. **Staff Presentation: Committee Overview** - Delayed until the next meeting.
6. **Committee Business** - the next meeting is scheduled to be held Monday, April 26. The committee tentatively planned to meet every second and fourth Tuesday, pending input from committee members not in attendance during the discussion.
7. **Adjourn** - Rep. Buffmire moved to adjourn the meeting at 11:22 AM. The motion passed unanimously with Sens. Dmitrich and Mansell and Reps. Stephens and Swallow absent for the vote.

