

**MINUTES OF THE
ADMINISTRATIVE RULES REVIEW COMMITTEE**
August 22, 2000 - 9:00 a.m. - Room 305 State Capitol

Members Present:

Sen. Howard A. Stephenson,
Senate Chair
Rep. David Ure,
House Chair
Sen. Mike Dmitrich
Sen. Eddie "Ed" P. Mayne
Sen. Howard C. Nielson
Rep. Judy A. Buffmire
Rep. James R. Gowans
Rep. John E. Swallow

Members Absent:

Sen. L. Alma "Al" Mansell
Rep. Martin R. Stephens

Staff Present:

Mr. Arthur L. Hunsaker,
Research Analyst
Ms. Esther D. Chelsea-McCarty,
Associate General Counsel
Ms. Audrey Wendel,
Legislative Secretary

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

1. Call to Order and Approval of July 5, 2000 Minutes - Chair Stephenson called the meeting to order at 9:20 a.m.

MOTION: Rep. Buffmire moved to approve the minutes of the July 5, 2000 meeting. The motion passed unanimously with Rep. Ure absent for the vote.

2. Draughton v. Department of Financial Institutions - (Rep. Ure) - Mr. Phil Dyer, Legal Counsel, Utah Public Employees Association, briefed the committee on the Draughton Decision. He distributed two handouts titled, "DAR File No. 22839" and "DAR File No. 22843" and explained why he feels R477-5 should be rewritten.

Robert Thompson, Department of Human Resource Management, argued that this rule has been substantively changed since the last draft. He pointed out that agencies need the ability to reassign employees.

Rep. Swallow asked if the Draughton case required a rewrite of the rules. Mr. Thompson said that it did. Rep. Swallow asked if the objection is to the original rule or the change in the rule. Mr. Dyer said that the objection is to the rule, and the new rule is not considered a change. Rep Swallow asked if he feels that there is any circumstance in which the employee should be able to be moved involuntarily, with the same pay range. Mr. Dyer agreed that there are circumstances in which employees may be involuntarily moved. He pointed out that employees don't need to be moved involuntarily if it is not for disciplinary action. Rep. Swallow asked what the statutory problem is. Mr. Dyer said that the rule is inconsistent with 67-19-18. Committee discussion followed.

Mr. Edward Leary, Commissioner, Financial Institutions, briefly discussed the department's views on the Draughon case.

Rep. Buffmire asked why the word "voluntary" was taken out of the rule. Mr. Dyer said that if the transfer was voluntary, it is considered a transfer. Mr. Thompson said that they don't want to lose the ability to reorganize or reassign someone.

Rep. Gowans asked if a person signs a waiver to be reassigned, does that give him any right to grieve. Mr. Thompson said that the waiver is used to waive the right to grieve.

Rep. Swallow suggested that the departments discuss these issues, and contact the committee if they cannot resolve them.

MOTION: Rep. Swallow moved to proceed to the next item on the agenda. The motion passed unanimously.

3. R277-474 School Instruction and Human Sexuality - Bulletin, August 1, 2000, p. 11 (Sen. Stephenson) - Rep. Wright and Sen. Stephenson identified the corrections they feel should be made to R277-474 School Instruction and Human Sexuality.

Mr. Gary Carlston, Deputy Superintendent, Utah State Office of Education; Mr. Jerry Peterson, Associate Superintendent, Curriculum, Utah State Office of Education; and Ms. Carol Lear, Legal Counsel, Utah State Office of Education, closely followed the handout titled, "R277-474 School Instruction and Human Sexuality" in making their presentation.

Sen. Nielson asked if students are given instruction if no parental consent form is turned in. Mr. Carlston said that the form must be signed and turned in for the student to have permission for instruction. If no form is turned in, no instruction regarding human sexuality is given.

Mr. Carlston distributed two handouts relating to the parent or guardian consent for human sexuality instruction, titled, "Utah State Office of Education Parent/Guardian Consent Form Human Sexuality Instruction" and "Disclosure." Rep. Swallow asked if R277-474-1 (G) (6) will be modified to read: "Shall be on file with parent or guardian written permission for each student present." Ms. Lear said that if the additional language clarifies the rule for the committee, they will discuss those changes with the board.

Ms. Lear said a provision was added to clarify that if teachers respond to student questions beyond the purposes and limits stated in R277-474-6 (D), they can be disciplined within established corrective guidelines. She pointed out the provision in R277-474-5 (c) (5), which says: "The district superintendent shall report educators who willfully violate the provisions of this rule to the Commission for investigation and possible discipline." Mr. Carlston pointed out that

there will be an ongoing in-service program, advising educators as to their responsibilities regarding human sexuality instruction.

Ms. Lear pointed out that teachers are prohibited from advocating or encouraging the use of contraceptives in R277-474-3 (A) (3). State curriculum guidelines direct teachers to discuss contraceptives with students as a health issue within the context of the prevention of the spread of disease. She pointed out that on the disclosure form, in the box at the top of the page, it clearly states: "demonstration on how to use condoms or any contraceptive means, methods or devices are prohibited and are not authorized."

Rep. Buffmire thanked the Utah State Office of Education for coming to the committee with these positive changes.

Rep. Wright thanked the State Office of Education for coming. He said that the public schools should not be a place for the advocacy of any product, including drugs, alcohol, and contraceptives.

Mr. Carlston thanked the committee for their understanding and support.

4. R865-19S-61 Meals Furnished Pursuant to Utah Code Annotated Section 59-12-104 - Bulletin, July 15, 2000, p 40 - Sen. Stephenson expressed his concern with why "Medical Facility" and "Nursing Facility" are now defined in the rule but all specific references to those facilities are being removed from the rule, and why references are made in the rule to Standard Industrial Classification (SIC) when there are ongoing efforts to convert to the North American Industry Classification. Mr. Bruce Johnson, Utah State Tax Commission, said that he would prefer to have a rule make sense as a whole. He said that a very conscious effort was made to remove all repetitive language in statute. Mr. Ken Hansen pointed out that "as used in" may be used to refer to the statute as a clarification.

Sen. Nielson asked if cafeterias in hospitals are taxable. Mr. Johnson said that they are taxable if they are open to the public.

Rep. Buffmire asked about the SIC codes. Mr. Johnson suggested that currently governments are in a transition period and the SIC codes will eventually become obsolete. Ms. Lynn Solarczyk, Tax Policy Specialist, Utah State Tax Commission, said that there are several areas in the sales tax code in which SIC codes are used and that this has been brought to the attention of the legislature and to the Office of Legislative Research and General Counsel. However, until the transition takes place, they don't want two different codes in statute and rule because of the confusion it would cause.

5. Committee Business

a. Legislative Intent Language Regarding Rules - Mr. Art Hunsaker referred to intent language in S.B. 1, Annual Appropriations Act, from the 2000 General Session, regarding the mileage reimbursement program. The intent language attempts to apply the reimbursement rules beyond the legislative branch, which by law they cannot do.

Mr. Ken Hansen pointed out the problems inherent in complying with the intent language.

MOTION: Rep. Buffmire moved that a letter be sent to the Executive Appropriations Committee outlining the problems with the intent language and requesting that they try to resolve the conflict between existing law and the intent language. The motion passed unanimously.

b. Meeting Schedule - The committee scheduled upcoming meetings for Sept. 12, Sept. 26, Oct. 10, and Oct. 24, 2000.

c. Items for Next Meeting

6. Adjourn

MOTION: Rep. Swallow moved to adjourn the meeting at 11:25 a.m. The motion passed unanimously with Rep. Ure absent for the vote.