

Iowa, Legislature, 1963
1963

Administrative Rules Advisory
Committee

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R E P O R T
OF THE
LEGISLATIVE ADVISORY COMMITTEE

ON THE STUDY OF

A D M I N I S T R A T I V E R U L E S

Submitted To: Members of the 60th Iowa General Assembly
January, 1963

By: The Administrative Rules Advisory Committee

Representative John L. Mowry, Chairman
Senator Melvin H. Wolf, Vice Chairman
Senator Irving D. Long Senator D. C. Nolan
Senator John A. Walker Representative John L. Duffy
Representative L. D. Carstensen

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- Appendix II - Letter dated April 10, 1962, to The Honorable Evan L. Hultman, Attorney General of Iowa.
- Appendix III - An Act relating to rules of administrative agencies. Proposed by Members of the Administrative Rules Legislative Advisory Committee.

Origin and Purpose of Study

On June 5, 1961, the Legislative Research Committee requested the Legislative Research Bureau to "study the procedures used for putting administrative rules into effect in Iowa and in other states." The request asked for information specifically on:

- "1. Review of the present method of screening and publishing departmental rules in Iowa.
2. Possible ways of implementing in the next legislative session the provisions of Senate File 503 (See Appendix I) passed by the Fifty-ninth Iowa General Assembly (Sections 17A.2 and 17A.3, Code 1962).
3. Methods used in other states to screen departmental rules before they are put into effect, especially by legislative agencies.
4. Methods used to publish departmental rules in other states."

Pursuant to Chapter 63, Acts of the Fifty-eighth General Assembly, (Section 2.55, Code 1962), this Committee was established to assist the Research Bureau in the Study.¹

Information Considered

Prior to the official formulation of the Committee, Committee members individually studied:

1. The Model State Administrative Procedure Act of the National Conference of Commissioners on Uniform State Laws, both the original Act and the 1961 revision of the Act.
2. The Alaska Administrative Procedure Act.
3. An article by David W. Howe, "Legislative Review of Administrative Rules," Current Trends in State Legislation (1955-1956), University of Michigan, Legislative Research Center.
4. A report prepared by the Legislative Research Bureau on legislative review in other states.

¹The Honorable W. C. Stuart, State Senator, was a member and served as chairman of the original Study Committee. The Committee has been composed of the present membership since Senator Stuart's resignation from the Iowa Senate.

Meetings

The Administrative Rules Legislative Advisory Committee met at the State House, Des Moines on:

August 17, 1961
December 1, 1961
March 16, 1962
May 4, 1962
July 20, 1962
September 28, 1962

Study Procedure

At the August 17 meeting, the Committee formulated policies by which the Study should be governed. The following propositions were put forth in the order they were to be studied:

1. Even though rules and regulations will be reviewed by the Legislature, such rules should still be reviewed by the Attorney General prior to promulgation. (This procedure had been stricter in the enactment of Senate File 503.)
2. The Iowa Statute should be made explicit on the point that legislative review of rules and regulations does not prohibit the judiciary from reviewing such rules and regulations upon grounds other than constitutionality.
3. Senate File 503 might be implemented by having all the departments submit rules and regulations to the Legislative Research Committee who would in turn send rules to the appropriate standing committee chairmen of the House and Senate for review.

At the August meeting, the Committee directed that all members of the Fifty-ninth Iowa General Assembly be contacted by letter asking for any opinions or suggestions as to how Senate File 503 might be implemented. A copy of this letter mailed to legislators appears as Appendix I of this Report. In response to this letter, the Committee received written suggestions from four legislators. A fifth legislator appeared before the Committee at the second Committee meeting. Letters from legislators contained the following suggestions:

1. Rules should be referred to proper general committees of the General Assembly for evaluation; i.e., Tax Commission rules should be referred to the Tax Revision Committee.

A member of the judiciary committees should be assigned to each general committee to assist in the review of rules.

2. Entering the field of reviewing administrative rules is not a proper function of the Legislature.
3. It is a legislative responsibility to review administrative rules whether rules are subject to review by the courts or not.
4. The Governor and Attorney General should be given more power in review of administrative rules.

At the December 1 meeting, the Honorable Eugene M. Hill attended and submitted a statement. Senator Hill recommended that the Legislature establish an interim committee to review administrative rules promulgated between sessions. The committee would report upon the acceptability of the rules to the General Assembly at the next session. The procedure would be similar to provisions for legislative review in Michigan and Wisconsin.

Hearings

It was brought out by Committee members and persons appearing before the Committee that the Legislature has always had the authority to change administrative rules by enacting a statute and perhaps the provisions of Senate File 503 were not necessary. However, a majority of the Committee members feel that administrative rules should in some manner be brought to the attention of the Legislature at the time of promulgation.

Committee members agreed that care should be taken so that referral of administrative rules to the Legislature does not give the rules the status of legal enactments. Rules might then be interpreted as subject to court review only on questions of constitutionality.

At the December 1, 1961 meeting, the possibility of requiring a public hearing before an agency could adopt a rule was considered. As provided in the Model Act, a notice of such hearing would be sent to all interested parties. It was suggested that notice could also be sent to legislators so that the hearings could serve as a form of legislative review.

At the March 16, 1962 meeting, Mr. John Creger, Assistant Attorney General (representing Attorney General Evan Hultman) and Mr. Wayne Faupel, Deputy Code Editor, presented testimony before the Committee on the following questions:

1. How adequate was Chapter 17A, Code 1958, before the passage of S. F. 503?
2. What were the procedures, in regard to your office, involved in promulgating rules under Chapter 17A prior to the amendment?
3. Were there problems involved in the promulgation of rules prior to the amendment of Chapter 17A?
4. Do you foresee any problems in implementing Chapter 17A as amended by S. F. 503?
5. Do you have any suggestions concerning how Chapter 17A as amended should be changed in order to improve rule promulgation procedures?
6. In your opinion, do rules reviewed by the General Assembly take on the status of law so that such rules can be reviewed by the courts only on the grounds of constitutionality?
7. In your opinion, what are the most satisfactory and effective procedures of promulgating administrative rules?

Mr. Faupel suggested that the Code Editor should have the power to change the numbering and edit the Iowa Departmental Rules in the same manner as he may edit the Code. Both Mr. Creger, and Mr. Faupel felt that uniformity in the form in which rules were adopted and published was of paramount importance. Mr. Creger told Committee members that he believed that most agencies presently were referring rules to an Assistant Attorney General for review before adopting a rule even though the referral provision had been deleted from the Code.

At a subsequent meeting, it was pointed out to the Committee by Mr. Faupel that there were a number of agencies who had statutory provisions for promulgation and publication of rules which were in conflict with the provisions of Chapter 17A.

Members of the Committee at that meeting agreed that administrative rules should be approved by the Assistant Attorney General assigned to each agency as to form and legality before promulgation. The Committee passed a resolution to that effect and transmitted a letter, a copy of which appears as Appendix II of this report, to Attorney General Hultman.

Conclusions and Findings

After considerable study and deliberation, members of the Administrative Rules Study Committee find:

1. The present method of screening administrative rules as set out in Chapter 17A, Code 1962, is inadequate.
2. The provisions of Chapter 17A of the Code should be implemented by enactment of a new Administrative Procedure Act which would:
 - a. Retain the substance of Sections 4 through 10 of Chapter 17A of the Code.
 - b. Provide for a uniform style and form in which administrative rules should be promulgated and published.
 - c. Provide that rules be submitted by the agencies to the Attorney General's office as to form and legality before filing with the Secretary of State and the Legislative Research Committee.
 - d. Provide that copies of all rules and regulations promulgated by various agencies be submitted to the Legislative Research Committee at the time they are submitted to the Secretary of State for filing. The Legislative Research Committee should at the beginning of the legislative session next following the filing of the rules, refer copies of the rules to the Speaker of the House and President of the Senate who should in turn refer them to the appropriate committees of the General Assembly.

- e. Provide by statute that review of rules by the General Assembly shall not be construed as enactment into law or affect the right of judicial review.
3. Sections of the Code relating to promulgation and publication of rules which conflict with the provisions of Chapter 17A should be specifically repealed or amended so they are in unison with Chapter 17A.

The costs of publication and printing of administrative rules was not a matter thoroughly studied by this Committee.

Recommendation

The Committee, after discussion, and deliberation has approved a bill which it is believed will make Chapter 17A more effective and workable. A copy of the bill appears as Appendix III of this Report. Committee members feel that the present Section 17A.2 of the Code is vague and may prove to be unworkable. The Committee therefore recommends this bill be given priority by the 60th General Assembly for immediate consideration and passage.

Respectfully submitted,

Representative John L. Mowry, Chairman

Senator Melvin H. Wolf, Vice Chairman

Senator Irving D. Long

Senator D. C. Nolan

Senator John A. Walker

Representative John L. Duffy

Representative L. D. Carstensen

APPENDIX I

September 11, 1961

TO: MEMBERS OF THE 59TH GENERAL ASSEMBLY

In June of this year, members of the Legislative Research Committee directed the Legislative Research Bureau to conduct a study of procedures used in promulgating administrative rules in Iowa and other states. The Research Committee was particularly interested in information concerning the following:

the present method of screening and publishing departmental rules in Iowa;

possible ways of implementing the provisions of Senate File 503, 59th General Assembly (a copy of Senate File 503 is enclosed);

methods used to screen departmental rules by legislative agencies in other states prior to adoption;

methods used to publish departmental rules in other states.

At the request of the Research Committee, a legislative committee has been appointed to assist the Research Bureau in this study. Legislators from the 1961 Senate and House Judiciary I Standing Committees have been designated to serve on the Study Committee. In addition to myself, Committee membership is comprised of Senators D. C. Nolan and Melvin H. Wolf and Representatives Lawrence D. Carstensen, John L. Duffy and John L. Mowry. Senator John A. Walker is the Legislative Research Committee's representative and the seventh member of the Study Committee.

Members of the Study Committee held their first meeting on August 17, 1961, for the purpose of officially organizing and deciding how to proceed with the Study. In discussing the present method of promulgating administrative rules and procedures in Iowa and of implementing Senate File 503, questions arose concerning the following:

What procedure should be employed by Iowa legislators in reviewing administrative rules?

Will legislative review of administrative rules be so time consuming that legislators will not be able to do an adequate job of evaluating all new rules promulgated during legislative interims?

Is there a possibility that a statute such as Senate File 503 is unconstitutional in that it exceeds the separation of powers principle?

Is there a possibility that rules and regulations reviewed by the General Assembly will assume the status of legislative enactments so that such rules and regulations can be reviewed by the courts only on the grounds of constitutionality?

Since there was some uncertainty concerning the answers to the above questions, Committee members felt as though members of the General Assembly other than those serving on the Study Committee should be contacted in order to obtain opinions concerning methods of promulgating administrative rules and regulations and suggestions as to how Senate File 503 should be implemented at the next session of the General Assembly. Any legislator having recommendations concerning the preceding, is asked to either present such comments at the next Study Committee meeting which will be December 1, 1961, or submit such information in writing to the Committee. All correspondence should be addressed to me at the following address: Iowa Legislative Research Bureau, State House, Des Moines 19, Iowa.

It is hoped that you will be able to assist us in deciding how to carry on this Study. Any opinions or suggestions concerning promulgation and review of administrative rules and regulations will be greatly appreciated by Committee members. In order to keep you informed on this Study, progress of the Study will be published periodically in the Newsletter which is to be distributed by the Legislative Research Bureau.

Sincerely,

W. C. STUART, Chairman
Administrative Rules Study Committee

enclosure

A BILL FOR

An Act relating to the rules and regulations promulgated by the various state agencies.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section seventeen A point two (17A.2), Code 1958, is hereby repealed and the following enacted in lieu thereof:

"Whenever in the statutes any administrative agency is empowered to make rules and regulations such rules and regulations or amendments thereto hereinafter promulgated shall be operative but such rules and regulations shall be reported to the general assembly within thirty days after the commencement of a regular session and shall become the permanent rules and regulations of such agency July 4th following the adjournment of such session with such changes, if any, as may have been enacted at such session. All rules and regulations must be indexed at the time of promulgation to the line, sentence, section or paragraph of the law which contains the legislative intent expressed in the rule and regulation. Nothing contained herein shall adversely affect the substantive rights of any persons arising out of any rule or regulation promulgated by any such agency."

Sec. 2. Section seventeen A point three (17A.3), Code 1958, is hereby repealed and the following enacted in lieu thereof:

"All rules and regulations adopted, as provided in section seventeen A point two (17A.2), shall be filed in the office of the secretary of state, who shall endorse thereon the date of filing and deposit and index the same in the files of his office. Such rules and regulations shall have no force and effect until so filed and indexed."

APPENDIX II

C O P Y

April 10, 1962

The Honorable Evan L. Hultman
Attorney General of Iowa
State House
Des Moines 19, Iowa

Dear Mr. Hultman:

On February 21, 1962, you or a member of your staff was asked to meet on March 16 with members of the legislative committee studying administrative rule making procedures. The purpose of the meeting was to obtain your opinions in regard to problems your office encounters in the rule making process. Committee members were especially interested in comments you might have in regard to the feasibility of Senate File 503 which was adopted by members of the 59th Iowa General Assembly. Mr. John Creger, Assistant Attorney General, met with committee members on your behalf.

One of the main items of discussion at the March 16 meeting was the subject of the attorney general being removed from Chapter 17A, "Administrative Rules and Regulations," Code of Iowa 1958, by the adoption of Senate File 503. It was the belief of the Committee members present that Iowa legislators did not intentionally mean to remove the attorney general from approving or disapproving the form and legality of administrative rules and regulations. Even though Section 2 of Chapter 17A, Code of Iowa 1958, was deleted in the process of adopting Senate File 503, it was stated by committee members who were involved in the drafting of the bill that it was their intent that the attorney general would still be involved in the rule making process even though he was not specifically designated to do so in the Code.

Mr. Creger informed us that an assistant attorney general is assigned to each state agency. It was his belief that since the adoption of Senate File 503, agencies for the most part have continued to submit, before publishing, proposed rules and regulations to the assigned assistant attorney general for informal approval of form and legality. Mr. Creger stated that although he believed most state agencies follow this procedure, he was not sure if every agency submits rules to a representative of the Attorney General's office prior to publishing.

Since it is agreed among members of the Administrative Rules Study Committee that rules and regulations should not be published without previous scrutiny of form and legality by the Attorney General's office, we wish to inform you that the Legislative Research Bureau has been instructed to draft a proposal which will require administrative "rules be submitted...to the attorney general's office for approval as to form and legality before they are filed with the secretary of state..." The proposed draft is to be considered at the next committee meeting which is tentatively being planned for the first week in May.

Thank you for your cooperation in working with the Legislative Study Committee. We will appreciate your informing us should you have further suggestions in regard to the problem with which we are concerned.

Sincerely,

/s/ John Mowry
JOHN MOWRY, Chairman
Administrative Rules
Study Committee

APPENDIX III

A BILL FOR

An Act relating to rules of administrative agencies.

Be It Enacted by the General Assembly of the State of Iowa:

Chapter seventeen A (17A), Code 1962, is hereby repealed and sections one (1) through eight (8) of this Act are enacted in lieu thereof:

Section 1. As used in this Act:

1. "Administrative Agency" or "agency" means any state board, commission, bureau, division, officer, or department which has statewide jurisdiction, except those in the legislative or judicial departments.

2. "Person" includes individuals, associations, partnerships, and corporations.

3. "Rule" means any rule, regulation, order, or standard, of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard of general application, and rules of administrative procedure issued by any agency under authority of law.

"Rule" does not include rules or regulations relating solely to the internal operation of the agency nor rules adopted relating to the management, discipline or release of any person committed to any state institution, nor rules of an agency which may be necessary during emergencies such as floods, epidemics, invasion, or other disasters.

4. "Temporary rule" means a rule which has a duration of no longer than six months.

Sec. 2. Any agency empowered by law to make rules shall submit a copy of each proposed rule, in the style and form prescribed by the code editor, to the attorney general who shall within twenty (20) days after receiving such copy give to the agency in writing his opinion on the form and legality of the proposed rule.

If the attorney general fails to render an opinion within twenty (20) days, the agency may proceed as if an opinion had been given by attaching to the copy a statement of the date on which the proposed rule was submitted to the attorney general for his opinion.

Sec. 3. Three (3) copies of all rules proposed, each with a copy of the attorney general's opinion or statement as required by section two (2) of this Act attached thereto, shall be filed with the secretary of state. Temporary rules shall in addition to filing with the secretary of state be published in a newspaper of general state circulation or a newspaper having circulation in the territory affected. No rule shall become effective until thirty (30) days after such filing unless a later date is specified in the rule. The secretary of state shall endorse upon the copies of rules so filed the date of filing and deposit and index one copy in the files of his office, transmit one (1) copy to the code editor, and transmit one (1) copy to the legislative research committee.

Sec. 4. All rules hereafter filed as provided in section three (3) of this Act shall be referred by the legislative research committee to the speaker of the house and the president of the senate of the next regular session of the general assembly who shall refer rules to the appropriate committees of the general assembly.

Nothing contained herein shall adversely affect the substantive rights of any person arising out of any rule adopted by any agency, including the right to review by the courts. Reporting of rules to the general assembly or inaction by the general assembly on rules reported shall not be construed as approval or enactment of the rules by the general assembly.

Sec. 5. Each agency shall within ten (10) days of filing with the secretary of state, mail a copy of each rule filed to the office of the clerk of the supreme court, to the office of the clerk of each district court, and to any person requesting same.

Sec. 6. Any group of twenty (20) or more persons substantially interested or affected in their person or property by a rule adopted by an agency may petition for a reconsideration of such rule or for an amendment or modification thereof by filing two (2) copies of a petition with the attorney general. Such petition shall set forth a clear, concise description of the facts and the grounds upon which such action is sought. Upon filing of such petition, the attorney general shall forthwith transmit one (1) copy of the petition to the agency which shall grant to the petitioners a public hearing within sixty (60) days.

The agency shall give the petitioners twenty (20) days notice by certified mail of the time and place of such hearing.

Sec. 7. Each agency promulgating professional and regulatory examining and licensing rules and regulations of limited application shall cause the same to be published in pamphlet form.

Sec. 8. Nothing in this chapter shall be construed as giving any additional power to any agency to make rules.

Sec. 9. Section fourteen point three (14.3), Code 1962, is hereby amended by adding the following subsection:

"Prescribe a uniform style in which administrative rules shall be prepared, and a standard form to be used in filing rules pursuant to chapter seventeen A (17A) of the Code. Such form shall contain a provision for a reference to be made by the agency for each rule proposed by it to the line, sentence, section or paragraph of the statute which the rule is intended to implement."

Sec. 10. Section fourteen point thirteen (14.13), Code 1962, is hereby amended by inserting in line two (2) after the word "Code" the words "or the Iowa departmental rules".

Sec. 11. Chapter fourteen (14), Code 1962, is hereby amended by adding the following section:

"The volume of rules and regulations published by the code editor shall be sold and distributed by the superintendent of printing in the same manner as Codes and session laws."

Sec. 12. Section eighty-nine point four (89.4), Code 1962, is hereby amended by striking from line eight (8) the words "and regulations".

Sec. 13. Section ninety-six point eleven (96.11), Code 1962, is hereby amended as follows:

1. Amend subsection one (1) by striking from lines ten (10), eleven (11) and twelve (12) the words "publication in the manner, not inconsistent with the provisions of this chapter, which the commission shall prescribe" and inserting in lieu thereof "compliance with chapter seventeen A (17A) of the Code".

2. Amend subsection two (2) as follows:

a. By striking from lines five (5), six (6), seven (7) and eight (8) the words "General rules shall become effective ten (10) days after filing with the secretary of state and publication in one or more newspapers of general circulation in this state."

b. By striking from lines thirteen (13), fourteen (14), and fifteen (15) the words "and shall become effective in the manner and at the time prescribed by the commission".

Sec. 14. Section one hundred point one (100.1), subsection five (5), Code 1962, is hereby amended by striking from lines seven (7) and eight (8) the words "and approval thereof by the attorney general".

Sec. 15. Section one hundred seven point twenty-five (107.25), Code 1962, is hereby amended by striking all after the word "concerned" in line three (3) and inserting in lieu thereof a period.

Sec. 16. Section one hundred thirty-five point eleven (135.11), subsection eight (8), Code 1962, is hereby amended by striking all after the period (.) in line five (5).

Sec. 17. Sections one hundred thirty-five point thirty (135.30) and one hundred thirty-five point thirty-one (135.31), Code 1962, are hereby repealed.

Sec. 18. Sections one hundred fifty-nine point seven (159.7) and one hundred fifty-nine point eight (159.8), Code 1962, are hereby repealed.

Sec. 19. Section one hundred sixty-three point six (163.6), Code 1962, is hereby repealed.

Sec. 20. Section one hundred seventy point thirty-eight (170.38), Code 1962, is hereby amended by striking from lines seven (7) and eight (8) the words "and approval thereof by the attorney general".

Sec. 21. Section two hundred three A point fifteen (203A.15), subsection three (3), Code 1962, is hereby amended by striking all after the period (.) in line six (6).

Sec. 22. Section three hundred twenty-two point thirteen (322.13), Code 1962, is hereby amended by striking from lines thirteen (13) and fourteen (14) the words ", and published in an Iowa newspaper having a general circulation in this state".

Sec. 23. Section three hundred twenty-eight point twelve (328.12), subsection three (3), Code 1962, is hereby amended by striking the last sentence.

Sec. 24. Section four hundred thirty-four point eleven (434.11), Code 1962, is hereby amended by striking all after the word "requirements" in line ten (10), and inserting in lieu thereof "in the manner prescribed by chapter seventeen A (17A) of the Code."

Sec. 25. Section four hundred thirty-eight point ten (438.10), Code 1962, is hereby amended by striking all after the word "requirements" in line ten (10) and inserting in lieu thereof "in the manner prescribed by chapter seventeen A (17A) of the Code."

Sec. 26. The code editor may notify any agency whose rules are not in the proper style and form as prescribed by him. Six (6) months after an agency receives such notification, the rules of that agency shall be of no further force and effect unless redrafted in the prescribed style and form and filed with the secretary of state and the code editor.

Sec. 27. This Act, being deemed of immediate importance, shall take effect and be in force from and after its publication in the _____, a newspaper published in _____, Iowa, and in the _____, a newspaper published in _____, Iowa.

EXPLANATION

The purpose of this bill is to make uniform the manner in which administrative rules are adopted, reviewed, published and distributed.

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