

**MINUTES OF THE
ADMINISTRATIVE RULES REVIEW COMMITTEE**

Tuesday, November 22, 2005 – 9:00 a.m. – Room W135 House Building

Members Present:

Sen. Howard A. Stephenson, Senate Chair
Rep. David Ure, House Chair
Sen. Ed Mayne
Sen. Michael G. Waddoups
Rep. James R. Gowans
Rep. Kory M. Holdaway
Rep. Carol Spackman Moss
Rep. Merlynn T. Newbold

Members Excused:

Sen. Mike Dmitrich
Sen. Mark B. Madsen

Staff Present:

Mr. Arthur L. Hunsaker, Policy Analyst
Ms. Susan Creager Allred, Associate General Counsel
Ms. Tracey Fredman, Legislative Secretary

Note: A list of others present, copy of related materials, and an audio recording of the meeting can be found at www.le.utah.gov.

1. Committee Business

Chair Stephenson called the meeting to order at 9:05 a.m.

MOTION: Rep. Newbold moved to approve the minutes of the November 4, 2005 meeting. The motion passed unanimously.

2. Statutory Authority Granted to State Agencies to Establish Criminal Penalties by Rule

Mr. Hunsaker introduced the issue and distributed "State of Utah, Plaintiff and Appellant, v. Debra Kay Gallion, Defendant and Respondent, Supreme Court of Utah 572 P.2d 683" and "State of Utah, Plaintiff and Appellee, v. Michael Lewis Green, aka James Alvin Douglas, Defendant and Appellant, Court of Appeals of Utah 793 P.2d 912." He also distributed "Statutorily Granted Authority to Establish a Misdemeanor by Rule."

Ms. Pam Hendrickson, Chair, and Ms. Lynn Solarczyk, Director of Legislative Affairs, Utah State Tax Commission, commented that establishing penalties by statute rather than by rule would not be a problem for their agency. Ms. Hendrickson stated that draft statutory language was provided to the Committee for one business licensing regulation.

Mr. Kyle Stephens, Deputy Commissioner, Department of Agriculture and Food, proposed a language change in Subsection 4-38-7(4), from "is guilty of a class A misdemeanor" to "is liable for a civil or criminal penalty as outlined and authorized in Section 4-2-15."

Ms. Francine Gianni, Director, Division (Division of Consumer Protection), distributed "Comments to Administrative Rules Review Committee," "Imposing Criminal Penalties for Violation of Administrative Rules," and "Administrative Rules Authorized by Utah Code Ann. § 76-10-1233." She said the Division will support any legislative modifications to the rulemaking authority.

Mr. Wayne Klein, Director, Division of Securities, stated that placing criminal penalties in rule is accommodated by more recent case law, and that it seemed more efficient to adopt rules rather than have innumerable details in the statute.

Mr. Earl Dorius, Regulatory Director, Department of Alcoholic Beverage Control, distributed and reviewed "Agency Input on Possible Legislation to Restrict Statutes that Allow Establish Crimes and Criminal Penalties

by Rule." He commented that the none of the statutes seem to invade the territory of setting penalties or setting elements of crime, and are in his view sound.

Mr. Gordon Walker, Director, Housing and Community Development, commented that Section 9-4-612 does not seem to impermissibly delegate the authority to the Department of Community and Culture or the Division of Housing and Community Development to establish the elements or penalty for criminal conduct.

Mr. Ron Morris, Utah State Fire Marshall, distributed excerpts from Sections 53-7-225.5, 53-7-226, and 53-7-302.

Mr. Brent Halladay, Chief Deputy Fire Marshall, commented on three references to administrative rules in Title 53, Chapter 7, Fire Prevention and Safety Act, and draft language to make corrections to those references in statute.

Mr. Alan Hennebold, Labor Commission, said that in order to obtain federal money the Commission needs tools that are as effective as a similar provision of the federal OSHA program, and that removing criminal penalties from rule might jeopardize federal funding.

Mr. Neal Gooch, Deputy Commissioner, Department of Insurance, spoke in favor of the current authority delegated to state agencies.

Mr. John Baza, Director, Division of Oil, Gas, and Mining, said the Division is not concerned with making changes, as the statute is adequate to ensure operators are in compliance with mining rules.

Mr. Dick Buehler, Deputy Director, Division of Forestry, Fire, and State Lands, introduced Mr. Stephen Schwendiman, Assistant Attorney General. Mr. Schwendiman said that under certain circumstances, there is need to allow the individual agencies within the Department of Natural Resources to deal with issues through rule, but if the Legislature chose to be more specific in statute the agency could accommodate the change.

Mr. Doug Springmeyer, Assistant Attorney General, commented on behalf of the Department of Health. He said the Department does not believe that the Legislature needs to repeal criminal penalties in rule.

Ms. Kathy Froerer, Executive Director, Utah Association of Local Health Departments, spoke against repealing the rule authority conveyed in statute, but she said that if penalties were placed into statute with sufficient detail, they could support the change.

Ms. Dianne Nielson, Executive Director, Department of Environmental Quality, distributed and reviewed "Criminal Penalties Bill."

Mr. Fred Nelson, Assistant Attorney General, explained that if the provisions being discussed are repealed, the Department of Environmental Quality would no longer be able to demonstrate the required equivalency with federal law to maintain primacy in a number of areas.

Ms. Ann Pedroza, Research Analyst, Money Management Council, said the Council would like to have the ability to impose a fine.

Mr. Christopher Quick, Protective Services Coordinator, Division of State Parks and Recreation, distributed "Utah Division of State Parks and Recreation Summary Analysis of How Removing Enforceable Rules Would Effect the Operation of Utah State Parks along with Utah's Boating and Off-Highway Vehicle Programs."

Ms. Heather Shilton, Assistant Attorney General, Division of State Parks and Recreation, spoke in opposition to repealing rule making authority to set criminal penalties by rule.

Mr. Miles Moretti, Deputy Director, Division of Wildlife Resources, introduced Mr. Bushman.

Mr. Martin Bushman, Assistant Attorney General, said he is in concurrence with others who have said that the *Gallion* case does not prohibit the Legislature from granting authority to administrative agencies to define acts that may constitute a crime, particularly where the penalty is defined in statute.

Ms. Linda Hull, Director, Legislative and Government Affairs, Department of Transportation, said that the enforcement of federal regulations could be established in code.

Mr. Rick Wyss, Director, Administrative Services, Department of Public Safety, said as federal regulations frequently change, the Department of Transportation needs to be able to make changes in their rules to remain in compliance.

3. Committee Business

The next meeting was scheduled for December 14, 2005 at 9:00 a.m.

6. Adjourn

MOTION: Sen. Waddoups moved to adjourn the meeting. The motion passed unanimously. The motion passed unanimously.

Chair Stephenson adjourned the meeting at 11:28 a.m.