

Approved: MARCH 4, 1993
Date

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS

The meeting was called to order by Chairman Lana Oleen at 11:05 a.m. on February 2, 1993 in Room 254-E of the Capitol.

All members were present

Committee staff present: Mary Galligan, Legislative Research Department
Jeanne Eudaley, Committee Secretary

Conferee appearing before the committee:
Alyce Hayes Brown

Others attending: See attached list

Sen. Oleen asked Sen. Jones to introduce his guests to the committee, and Sen. Oleen introduced pages from her district (including her daughter), who are assisting the committee today. She also announced the committee will continue hearing the overview from the Human Rights Commission after the confirmation hearing. Sen. Oleen introduced Alyce Hayes Brown, who has been appointed as Chairperson of the Human Rights Commission. She made a statement to the committee and referred to her confirmation questionnaire (Attachment 1). She stated she has been serving as chairperson since July, 1992, and answered questions from the committee. Sen. Ramirez questioned Ms. Brown regarding the backlog of cases and determining "probable cause" and closing some cases when it can be determined the complainant has not been aggrieved. Ms. Brown referred to the docketing report attached to her statement and cautioned against being too hasty in closing cases and using "probable cause". She stated a real positive is that businesses are better informed on policy questions and that the commission is making progress at encouraging parties to get together to work things out. Sen. Gooch, having served on the commission, explained the reasons for the name change from Civil Rights Commission to Human Right Commission and stated the reasons for the backlog is because of the variety of cases dealing with AIDS, the Disabilities Act, gay rights, etc. Ms. Brown replied that the staff cannot handle the number of cases being filed which cover all protected areas across the state. Sen. Oleen told Ms. Brown of the subcommittee studying the Human Rights Commission and of the cooperation from the Human Rights staff. She also thanked Alyce Hayes Brown for her work with the commission the past four years.

Sen. Oleen called the committees' attention to four confirmation hearings and asked the committee for action. Sen. Gooch moved the committee recommend confirmation of John Crawford as Assistant Adjutant General for Air in the National Guard; the motion was seconded by Sen. Gooch, and the motion passed. Sen. Hensley made a motion the committee recommend confirmation of Bernard Wiltz to the Lottery Commission; it was seconded by Sen. Papay, and the motion passed. Sen. Gooch made a motion the committee recommend William Malone be recommended for confirmation to the Human Rights Commission, and it was seconded by Sen. Praeger, and the motion passed. Sen. Praeger made the motion that Phillip DeLaTorre be recommended for confirmation to the Human Rights Commission; the motion was seconded by Sen. Parkinson, and the motion passed.

The Chairman thanked members of the committee for participating in the Joint Hearing with the House Committee on SCR 1608 and announced copies of the following have been distributed to committee members:

Memo to Sen. Oleen from Jim Ritchie, regarding education and training, wages, payroll and education, Mirage Resorts, Inc., (Attachment 2);
White paper on crime from Mr. Ritchie, (Attachment 3)
Letter dated January 19, 1993, from Sen. Oleen to Attorney General Robert Stephan and his response (Attachment 4).

Sen. Oleen announced she would like the committee to consider and take action on SCR 1608 tomorrow. Information has been distributed to members of the committee on the Human Rights Commission (Attachment 5). She also announced the committee will hold a hearing tomorrow on SB 82.

Meeting adjourned at 11:50.

GUEST LIST

COMMITTEE: Senate Federal & State Affairs

DATE: Feb. 2, 1993

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Brian Nankin	Lawrence	Pet Hubbell Assoc
Neal Whitaker	Topeka	Ks Beer Wholesale
Jim Ritalis	Las Vegas NV	Mirage Resorts
Robert L. Kay	900 JACKSON KHRC Lincoln Mo	KHRC
Walter D. Bynum	KHRC	—
Glyce Hayes Brown	KHRC	St Francis
Brandon L. Myers	LSOB-851-S	KHRC
Steven J. Ramirez	LSOB-851-S	KHRC
Michele Koike	Topeka	Sen Gooden (int'l)
Mary Jane Johnson	KCKs	KCKs
Jim L. Smith Yount	Topeka	K.P.H.R.A.
Carl McDowell	Topeka	Mirage Resorts, Inc
Kath Reburn	"	"
Ann P. Hoch	Manhattan	Interim
Denny Burgess	Topeka	Scentflower
John Petersen	Topeka	Antenna Busin
Margo Boyd	Topeka	Interim
Dorcas Martin	"	Conf. Management Comm.
Arthur W. Soler	Topeka	KHRC - HE Affs
Dave Schneider	Topeka	KFLAIB
Jim Yonally	Overland Park	TRAK-East

ATTACH. 1 | 2-
13

SENATE CONFIRMATION HEARING

February 2, 1993 - Room 254E

STATE & FEDERAL AFFAIRS COMMITTEE - SENATOR OLEEN, CHAIRPERSON
SENATOR VIDRICKSEN, VICE CHAIRPERSON

Name: Alyce Hayes Brown
Address: 1831 SE 43rd - Topeka, KS. 66609-1714
Phone: (913) 295-8902 (Wk) (913) 266-7757 (Hm)

I am a native Topekan, and attended Washburn University for one school year. My husband is in management with Goodyear Tire & Rubber Company, and recently completed his 25th year there. We have (2) adult children.

I was employed (17 years in management) for the Santa Fe Railway for (25) years, prior to leaving the company in 1989. My position was not affected in the force reduction, rather, I chose to leave Santa Fe to pursue a political goal, and that was to run for a seat in the House of Representatives. I was privileged to attend an all day briefing session at the White House under the direction of Lee Atwater. Former President Bush spent approximately (20) minutes with our group and took individual pictures with each of us. Due to personal reasons (family) I did not run for State Representative.

I have served on the Kansas Human Rights Commission for almost (4) years, and was appointed by former Governor Mike Hayden. I was reappointed to the Commission by Governor Joan Finney, and named Chairperson, effective July 1992, for a (4) year term.

The name change of the Commission, from the Kansas Commission on Civil Rights, to the Kansas Human Rights Commission has been a positive change. The general public is cognizant of the fact that KHRC is not for a select group of people who feel they've been aggrieved. It is for all persons who feel they have been discriminated against in the areas of religion, sex, national origin, color, race, age, ancestry, disability and retaliation. (Please refer to the attached quarterly Docketing Report). As you can see, the disability, sex, and age complaints have continued to increase.

Governor Joan Finney and her staff are strong supporters of the Commission. The Governor's recommendations to the Legislature is to staff KHRC with (3) Special Project Positions. The additional personnel will afford the KHRC to staff Investigators, which will increase the number of cases investigated each month.

Sen. Fvda.
2/2/93
att 1

Page 2

CONFIRMATION HEARING

Alyce Hayes Brown

You should receive the KHRC Annual Report for fiscal year 1992. While realizing that each of you have a great deal of reading of numerous reports, bills, etc., I trust you will have time to review this report.

Lastly, the Commissioners will extend an invitation to Legislators to attend a briefing and problem solving session on Thursday, February 18, with a morning session, and a repeat session in the afternoon.

Thank you for your time. I deem it a privilege to serve the people of Kansas.

Alyce Hayes Brown
Chairperson
Kansas Human Rights Commission

1-3

DOCKETING REPORT
DECEMBER 1992

	EMPLOYMENT				PUBLIC ACCOMMODATIONS				HOUSING				TOTAL			
	SEP	OCT	NOV	DEC	SEP	OCT	NOV	DEC	SEP	OCT	NOV	DEC	SEP	OCT	NOV	DEC
RACE	29	21	22	17	1	3		3	7	8	6	3	37	32	28	23
RELIGION	3	1		1							2		3	1	2	1
COLOR		1								1				2		
SEX	44	54	38	35	2	3		2	2	3	2	1	48	60	40	38
DISABILITY	36	34	46	28		1	1	1	1	4	4	2	37	39	51	31
ANCESTRY	9	11	7	6	1		3			2		1	10	13	10	7
NATIONAL ORIGIN	2	4	7	3	1	1				3			3	8	7	3
AGE	22	24	14	21									22	24	14	21
RETALIAT.	14	15	18	13									14	15	18	13
FAMILIAL STATUS										4	1	1		4	1	1
TOTALS	159	165	152	124	5	8	4	6	10	25	15	8	174	198	171	138

SENATE CONFIRMATION QUESTIONNAIRE
APPOINTMENTS BY GOVERNOR JOAN FINNEY

Name: ALYCE HAYES BROWN

Home Address: 1831 SE 43rd Street

City, State, Zip Code: Topeka, KS. 66609-1714

Home Phone: 913 / 266-7757

Business Address: 1700 West 7th Street

City, State, Zip Code: Topeka, KS. 66606-1690

Business Phone: 913 / 295-8902

Date of Birth: 10/25/38 Place of Birth Shawnee County

Party Affiliation UnAffiliated KBI Check(Yes/No) Yes - 1989

Appointed as: Chairperson (Commissioner) Kansas Human Rights Commission

Effective 7/1/92 for the second term

ending 7/1/96 Succeeding _____

Salary \$35.00 per mo. meeting Statutory Authority _____

Statutory Requirements _____

1. EDUCATION:

High School Topeka High School

Year Graduated 1956

Postsecondary	Degree, etc.	Dates
<u>Washburn University (1 yr.)</u>	<u>Business, Personnel</u>	<u>1977-78</u>
	<u>Administration, &</u>	
	<u>Psychology</u>	
<u>St. Francis Hosp. Education Dept</u>	<u>Interaction Management</u>	<u>1992</u>
	<u>Adventures in Attitudes</u>	<u>1992</u>
	<u>Developing Collaborative</u>	<u>1992</u>
	<u>Relationships</u>	
<u>Leadership Topeka (Greater Topeka Chamber of Commerce)</u>		<u>1989</u>

2. MEMBERSHIP IN BUSINESS, TRADE AND PROFESSIONAL ORGANIZATIONS DURING PAST 10 YEARS:

Dates	Name	Location
<u>1988 - present</u>	<u>Topeka Blood Bank - Board Member</u>	<u>Topeka</u>
<u>1987 - present</u>	<u>Career Chapter, American Business Association</u>	<u>Topeka Chapter</u>
<u>1987 - present</u>	<u>American Heart Association</u>	<u>Topeka</u>

3. HAVE YOU EVER BEEN ELECTED OR APPOINTED TO ANY PUBLIC OFFICE IN KANSAS? Yes x No
If so, please list dates and offices held.

Date	Office
_____	_____
_____	_____
_____	_____

4. HAVE YOU EVER BEEN EMPLOYED BY OR HELD A POSITION OR OFFICE WITH ANY FEDERAL, FOREIGN STATE, OR LOCAL GOVERNMENTAL ENTITY OR AGENCY? Yes _____ No
If so, please list dates and offices held:

<u>1988 - present</u>	<u>Kansas Human Rights Commission (Commissioner)</u>
_____	_____
_____	_____

5. HAVE YOU BEEN A REGISTERED LOBBYIST OR EMPLOYED A REGISTERED LOBBYIST AT ANY TIME DURING THE PAST 5 YEARS? No
If you were a registered lobbyist, did you receive any compensation?
List groups you represented or for which you employed a lobbyist:

6. EXPERIENCE OR INTERESTS WHICH QUALIFY YOU FOR THE OFFICE TO WHICH YOU HAVE BEEN APPOINTED:

I have (11) years in the arbitration and grievance process, and am personally concerned when an individuals civil or human rights have been violated.

This is beginning my fourth year as a Commissioner for the KHRC, and I feel the experience has been valuable, in serving the citizens of Kansas. There is a sense of pride when I realize that I am part of a team that strives to carry out our policy for the State of Kansas, to eliminate & prevent discrimination.

7. SUMMARY OF BUSINESS OR PROFESSIONAL EXPERIENCE: _____

Monitored over \$4 million operating budget for a department at Santa Fe.

Monitored grain (wheat, corn, milo) shipment transactions for ATSF (Eastern Line)

Supervise office staff at St. Francis Hospital. Office Manager at Santa Fe.

Active in several community service groups; Work in fund raising.

Presently handle approximately (30-40) cases per month for the KHRC

8. HAVE YOU EVER BEEN A MEMBER OF THE ARMED FORCES OF THE UNITED STATES? NO

If so, please list dates of service, branch of service and date and type of discharge:

9. HAVE YOU EVER BEEN ARRESTED, CHARGED OR HELD BY FEDERAL, STATE OR OTHER LAW ENFORCEMENT AUTHORITIES FOR VIOLATION OF ANY FEDERAL LAW, STATE LAW, COUNTY OR MUNICIPAL LAW, REGULATION OR ORDINANCE (EXCLUDING TRAFFIC VIOLATIONS FOR WHICH A FINE OF \$100 OR LESS WAS IMPOSED)? NO

10. DISPOSITION OF ANY INTERESTS THAT MIGHT HAVE PRESENTED A POTENTIAL CONFLICT OF INTEREST FOR THIS POSITION.

NO

Return to: Mary Holladay
Appointment Secretary
Office of the Governor
2nd Floor, State Capitol
Topeka, KS 66612

Glyce J. Brown
Signature

SENATE CONFIRMATION QUESTIONNAIRE
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_____	_____
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_____	_____	_____
_____	_____	_____

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NO

Return to: Mary Holladay
Appointment Secretary
Office of the Governor
2nd Floor, State Capitol
Topeka, KS 66612

Glyce J. Boem
Signature

FILED

JUL 14 1992

BILL GRAVES



6

KANSAS COMMISSION ON GOVERNMENTAL STANDARDS AND CONDUCT

STATEMENT OF SUBSTANTIAL INTERESTS FOR INDIVIDUALS WHOSEAPPOINTMENT TO STATE OFFICE IS SUBJECT TO SENATE CONFIRMATION

INSTRUCTIONS. This statement (pages 1 through 4) must be completed by each person whose appointment to a state position is subject to Senate confirmation (K.S.A. 46-247 and 46-248). Failure to complete and return this statement may result in a fine of \$10 per day for each day it remains unfiled. Also, any individual who intentionally fails to file as required by law, or intentionally files a false statement, is subject to prosecution for a class B misdemeanor.

Please read the "Guide" and "Definition" section provided with this form for additional assistance in completing sections "C" through "G". If you have questions or wish assistance, please contact the Commission office at 109 West 9th, Topeka, KS or call 913-296-4219.

A. IDENTIFICATION:

PLEASE TYPE OR PRINT

B	R	O	B	N						A	L	V	C	E							J
---	---	---	---	---	--	--	--	--	--	---	---	---	---	---	--	--	--	--	--	--	---

Last Name

First Name

MI

E	V	E	R	E	T	T	J	R													C
---	---	---	---	---	---	---	---	---	--	--	--	--	--	--	--	--	--	--	--	--	---

Spouse's Name

1	8	3	1		S	E		4	3	r	d		S	t	r	e	e	t			
---	---	---	---	--	---	---	--	---	---	---	---	--	---	---	---	---	---	---	--	--	--

Number & Street Name, Apartment Number, Rural Route, or P.O. Box Number

T	O	P	E	K	A		K	S		6	6	6	0	9	-	1	7	1	4		
---	---	---	---	---	---	--	---	---	--	---	---	---	---	---	---	---	---	---	---	--	--

City, State, Zip Code

9	1	3	**	2	6	6	**	7	7	5	7
---	---	---	----	---	---	---	----	---	---	---	---

Home Phone Number

9	1	3	**	2	9	5	**	8	9	0	2
---	---	---	----	---	---	---	----	---	---	---	---

Business Phone Number

B. APPOINTED POSITION SUBJECT TO SENATE CONFIRMATION:

K	S		H	U	M	A	N		R	I	G	H	T	S		C	O	M	M	I	S	S	I	O
---	---	--	---	---	---	---	---	--	---	---	---	---	---	---	--	---	---	---	---	---	---	---	---	---

List Name of Agency, Commission or Board

C	O	M	M	I	S	S	I	O	N	E	R										
---	---	---	---	---	---	---	---	---	---	---	---	--	--	--	--	--	--	--	--	--	--

Position

* The last four digits of your social security number will aid in identifying you from others with the same name on the computer list. This information is optional.

*

4	8	5	0
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- C. **OWNERSHIP INTERESTS:** List any corporation, partnership, proprietorship, trust, joint venture and every other business interest, including land used for income in, which either you or your spouse has owned within the preceding 12 months a legal or equitable interest exceeding \$5,000 or 5%, whichever is less. If you or your spouse own more than 5% of a business, you must disclose the percentage held. Please insert additional page if necessary to complete this section.

If you have nothing to report in Section "C", check here ☒.

BUSINESS NAME AND ADDRESS	TYPE OF BUSINESS	DESCRIPTION OF INTERESTS HELD	HELD BY WHOM	PERCENT OF OWNERSHIP INTERESTS
1.			<input type="checkbox"/> You	<input type="checkbox"/>
			<input type="checkbox"/> Spouse	<input type="checkbox"/>
			<input type="checkbox"/> Jointly	<input type="checkbox"/>
2.			<input type="checkbox"/> You	<input type="checkbox"/>
			<input type="checkbox"/> Spouse	<input type="checkbox"/>
			<input type="checkbox"/> Jointly	<input type="checkbox"/>
3.			<input type="checkbox"/> You	<input type="checkbox"/>
			<input type="checkbox"/> Spouse	<input type="checkbox"/>
			<input type="checkbox"/> Jointly	<input type="checkbox"/>
4.			<input type="checkbox"/> You	<input type="checkbox"/>
			<input type="checkbox"/> Spouse	<input type="checkbox"/>
			<input type="checkbox"/> Jointly	<input type="checkbox"/>
5.			<input type="checkbox"/> You	<input type="checkbox"/>
			<input type="checkbox"/> Spouse	<input type="checkbox"/>
			<input type="checkbox"/> Jointly	<input type="checkbox"/>
6.			<input type="checkbox"/> You	<input type="checkbox"/>
			<input type="checkbox"/> Spouse	<input type="checkbox"/>
			<input type="checkbox"/> Jointly	<input type="checkbox"/>
7.			<input type="checkbox"/> You	<input type="checkbox"/>
			<input type="checkbox"/> Spouse	<input type="checkbox"/>
			<input type="checkbox"/> Jointly	<input type="checkbox"/>

- D. **GIFTS OR HONORARIA:** List any person or business from whom you or your spouse either individually or collectively, have received gifts or honoraria having an aggregate value of \$500 or more in the preceding 12 months.

If you have nothing to report in Section "D", check here ☒.

NAME OF PERSON OR BUSINESS FROM WHOM GIFT RECEIVED	ADDRESS	RECEIVED BY:
1.		
2.		
3.		

E. RECEIPT OF COMPENSATION: List all places of employment in the last calendar year, and any other businesses from which you or your spouse received \$2,000 or more in compensation (salary, thing of value, or economic benefit conferred on in return for services rendered, or to be rendered), which was reportable as taxable income on your federal income tax returns.

1. YOUR PLACE(S) OF EMPLOYMENT OR OTHER BUSINESS IN THE PRECEDING CALENDAR YEAR. IF SAME AS SECTION "B", CHECK HERE ____.

If you have nothing to report in Section "E"1, check here X.

	NAME OF BUSINESS	ADDRESS	TYPE OF BUSINESS
1.			
2.			

2. SPOUSE'S PLACE(S) OF EMPLOYMENT OR OTHER BUSINESS IN THE PRECEDING CALENDAR YEAR. If you have nothing to report in Section "E"2, check here ____.

	NAME OF BUSINESS	ADDRESS	TYPE OF BUSINESS
1.			
2.			

F. OFFICER OR DIRECTOR OF AN ORGANIZATION OR BUSINESS: List any organization or business in which you or your spouse hold a position of officer, director, associate, partner or proprietor at the time of filing, irrespective of the amount of compensation received for holding such position. Please insert additional page if necessary to complete this section. If you have nothing to report in Section "F", check here X.

	BUSINESS NAME AND ADDRESS	POSITION HELD	HELD BY WHOM
1.			
2.			
3.			
4.			
5.			

- G. **RECEIPT OF FEES AND COMMISSIONS:** List each client or customer who pays fees or commissions to a business or combination of businesses from which fees or commissions you or your spouse received an aggregate of \$2,000 or more in the preceding calendar year. The phrase "client or customer" relates only to businesses or combination of businesses. In the case of a partnership, it is the partner's proportionate share of the business, and hence of the fee, which is significant, without regard to expenses of the partnership. An individual who receives a salary as opposed to portions of fees or commissions is generally not required to report under this provision. Please insert additional page if necessary to complete this section.
- If you have nothing to report in Section "G", check here X.

	NAME OF CLIENT / CUSTOMER	ADDRESS	RECEIVED BY
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			
11.			
12.			
13.			

H. **DECLARATION:**

I, Alice J. Brown, declare that this statement of substantial interests (including any accompanying pages and statements) has been examined by me and to the best of my knowledge and belief is a true, correct and complete statement of all of my substantial interests and other matters required by law. I understand that the intentional failure to file this statement as required by law or intentionally filing a false statement is a class B misdemeanor.

7-10-92

Date

Alice J. Brown
Signature of Person Making Statement

NUMBER OF ADDITIONAL PAGES ____.

Return your completed statement to the Secretary of State, State House, Topeka, Kansas 66612.

COMMUNITY OUTREACH PROGRAMS



P.O. Box 7777 • Las Vegas, NV • 89177



MIRAGE RESORTS

VOLUNTEERISM

As one of Nevada's largest employers, we at Mirage Resorts recognize our responsibility to encourage and support the community in which our employees live and work.



- *Mirage Resorts sponsors community food drives to help feed needy families in Las Vegas. Employees deposit hundreds of canned food items in company collection receptacles allocated for the Salvation Army and poverty stricken senior citizens.*
- *Our family of concerned employees recognize the plight of Las Vegas' needy and homeless by supporting the Adopt-A-Family program. Every month, a different Golden Nugget department donates food, clothing and furniture to a less fortunate family in the community.*
- *Employees do their part to preserve the natural beauty of our state for the next generation of Nevadans by participating in the company desk-top recycling program.*

EDUCATION

All of us at Mirage Resorts are extremely committed to the betterment of education in Nevada. We believe that learning is a never-ending process. In fact, we are the largest supporter of education in the state other than the government itself, having contributed over \$7 million since 1981.

- *Since its inception in 1981, the Golden Nugget Scholarship Foundation has provided nearly 400 scholarships to Nevada and New Jersey students.*
- *In 1990, the company donated \$1 million to establish the Stephen A. Wynn Chair for Entrepreneurial and Leadership studies at the University of Nevada, Las Vegas.*
- *Since 1985, The Mirage and Golden Nugget has contributed over \$400,000 through the Nevada Gaming for Excellence Foundation.*
- *The Mirage and Golden Nugget hotels offer a variety of courses including English-as-a-second-language (ESL) classes for the benefit of our non-English speaking employees.*



COMMUNITY AWARENESS

Community awareness programs provide a vehicle for employees to actively participate in the future of their city and state.

- *We encourage all our employees to take an active role in the issues facing Nevada by exercising their most important right as citizens - the right to vote. We have established an on-going corporate Voter Registration & Awareness program. Last year a team of employees trained to become Field Deputy Registrars, enrolled nearly 20,000 people to vote.*
- *As part of the Military Support program, we sent hundreds of care packages, greeting cards and board games to the employees and relatives of employees serving in the Gulf War. The company was also a proud sponsor of Las Vegas' Operation Desert Homecoming festivities for Southern Nevada troops.*
- *Our employees have contributed over 93,000 plastic six-pack holders to school children in the Safekey Program. The children find responsible uses for these environmentally harmful items while generating revenue for their program.*



VOICE

VOLUNTEER OPPORTUNITIES IGNITE COMMUNITY EXCITEMENT

VOICE is a corporate-wide volunteer program to enrich the quality of life in our community by bringing employees together as a team, contributing time and energy to various projects. Volunteering is Mirage Resorts' commitment to the community.

- *Employees serve as assistants and participants during the 10k/2 mile Turkey Trot benefiting Opportunity Village, an agency for handicapped and mentally retarded citizens.*
- *Volunteers assist in the YMCA Snow Box Derby which benefits the youth of Las Vegas.*
- *In support of the Southern Nevada Down's Syndrome Association, our employees volunteer by creating ornaments and decorating Christmas trees for the Festival of Trees and Lights which are then auctioned and donated to various charities.*
- *Employees are actively involved in a series of senior citizen programs featuring tours of our dolphin habitat, distribution of Christmas poinsettias and arts and crafts classes.*



MEMORANDUM

TO: Senator Lana Oleen
Chairman, Senate Federal and State Affairs Committee
FROM: Mr. Jim Ritchie, Corporate Development, Mirage Resorts, Inc.
RE: SCR 1608
DATE: February 2, 1993

I am providing this memorandum in response to several questions which have come before you as Chairman of the Senate Federal and State Affairs Committee. I appreciate your dilligent efforts to share my responses with the members of your committee and extend to you our continued availability to respond to any additional inquiries which might arise.

First, in regard to education and training for the estimated 4,000 employees at the proposed development, the Development Agreement between the City of Kansas City, Kansas and Mirage contains a requirement that to enhance the opportunities of Kansas citizens and, in particular, Wyandotte County residents, to be qualified for certain positions available upon opening of the hotel, casino and related business enterprises, Mirage agrees to establish, prior to the opening of the project, a training program for the purpose of educating and training, otherwise qualified persons for positions in the operation of the hotel, casino and related business enterprises. We have sought and received a committment from the Kansas City Community College to assist in this training and employee education program.

Second, in regard to wages and payroll at the proposed development, we appreciate that entry level salaries would mirror those at The Mirage in Las Vegas which start at \$5.50 per hour plus benefits and range upward to the executive level. At Mirage in Las Vegas, the average salary, including benefits, is \$30,000.

Third, with regard to Community partcipation, we point proudly to the leadership role we have played in Nevada. Mirage is the largest supporter of education in the state of Nevada other than the government itself, having contributed more than \$7 million since 1981. It is our corporate philosophy that learning is a never-ending process and as such, Mirage Resorts is deeply committed to the betterment of education.

Sen Fr Laffaris
2/2/93
att 2

MIRAGE RESORTS

JAMES E. RITCHIE
EXECUTIVE VICE PRESIDENT
CORPORATE DEVELOPMENT

*The attached white paper on
crime may be of interest
to you — Jim Ritchie*
JAMES E. RITCHIE

Mr. Ritchie is an attorney admitted to practice in the States of California, Oklahoma and the District of Columbia. He joined the Company after a distinguished career of government service and private practice. As former Executive Director of the Presidential Commission on the Review of the National Policy Toward Gaming (1974-1977), Mr. Ritchie was responsible for all activities and functions of the Commission, including serving as liaison with Congress regarding the taxation, prohibition and regulation of gambling activities. He also served as the liaison with appropriate federal agencies, involving extensive dealings with legal gambling interests throughout the United States and abroad. Through his involvement with the Commission, Mr. Ritchie gained recognition as an expert in both domestic and international gaming industries.

Prior to Mr. Ritchie's tenure on the Commission, he served as a trial attorney for the Organized Crime and Racketeering Section of the United States Department of Justice, and was appointed Attorney in Charge of the Detroit Strike Force and subsequently of the San Francisco Strike Force. These Strike Forces operate special prosecution units to investigate and combat organized crime, and Mr. Ritchie was involved in the prosecution of major unlawful gambling operations.

Mr. Ritchie joined the company from the firm of O'Connor & Hannan of Washington, D.C., where he was a senior partner. Prior to that association, Mr. Ritchie owned his own law firm in Washington, D.C., where he specialized in areas of taxation and policy legislative issues dealing with legalized gaming in the U.S., and abroad.

Mr. Ritchie has served in the Army Judge Advocate General's Corp in excess of 30 years. The last four years Brigadier General Ritchie was assigned to the Pentagon as Assistant Judge Advocate General for Operations, prior to his retirement in June 1992.

*Sen. F & S.A.
2-2-93
Att 3*

CASINO GAMING AND ORGANIZED CRIME:

SEPARATING FACT FROM FICTION

OCTOBER 16, 1992

Rev. 12/21/92

I. INTRODUCTION

As cities and states across the country grapple with economic challenges, casino gaming is increasingly being considered as part of new economic development plans. In what has become a recognizable trend, leaders in disparate communities react to the possibility of casino gaming based on their own perceptions, yet few, if any, of these individuals have any experience with casino operations or regulations.

High unemployment, declining tax revenues, increases in crime, inner city blight and increased demands for governmental services are forcing lawmakers and community leaders throughout the nation to develop long-range plans for creating new jobs and generating new sources of revenue. Within this context, many state and local governments are considering casino gaming.

Whenever and wherever the idea of creating new recreational and economic opportunities which include casino gaming is raised, the question is put, "Won't it bring organized crime?" The purpose of this paper is to answer that question.

Organized crime flourishes largely to the extent it is tolerated in the neighborhood, industry, business, or other endeavor where it seeks to profit. Where it is tolerated by the police and populace, it grows; where it is rejected, repudiated and vigorously prosecuted, it recedes and ultimately dies. The aptness of this simple distillation of the complex phenomenon we call organized crime becomes clear as one looks back on the history of the mafia in the United States. It is reflected in the growth of organized crime throughout several generations in American history in a wide variety of endeavors, including casinos, and it is equally reflected in the decisive actions by the Congress, law enforcement, state regulators, and private enterprise, including the casino industry, which have substantially eradicated traditional organized crime from many fields of endeavor and areas of the country over the last twenty (20) years.

The answer of Mirage Resorts, Incorporated to the question, "Won't it bring organized crime?" is that we have no tolerance for organized crime.

In conjunction with our state regulators, we pursue a vigilant program to prevent any such influence. This is also true of the other leading companies in the casino industry. The historical view that casinos and organized crime are necessarily a package deal is simply out of date, but it keeps being repeated out of habit.

In determining whether or not casino gaming is a viable alternative to help governments achieve new economic growth, it is essential to understand the strict regulatory foundation upon which a successful and crime-free casino gaming industry must be built. The regulatory systems which exist in Nevada and New Jersey have become the models utilized by new gaming jurisdictions such as Colorado, Illinois, South Dakota, Iowa, Mississippi and Louisiana. Although sometimes differing in their approach, both Nevada and New Jersey have adopted a regulatory philosophy that emphasizes three basic policies:

1. Adoption of strict licensing provisions to ensure that only suitable people are permitted to own and/or operate a casino;
2. Creation of comprehensive internal, accounting and operating controls to ensure the integrity of the gaming operation and the accountability for all revenues; and
3. Establishment of a system which allows the regulator to identify notorious persons and provide the casino operator with a legal basis to exclude those persons.

Today, gaming industry leaders are, for the most part, publicly traded companies whose ownership and financing are all a matter of public record.

A state which chooses such a company to implement its policy choice to add gaming to its mix of economic and recreational activity and then backs up that choice with a sound regulatory system need have no fear of organized crime and may concentrate on the real issues involving the choice to permit casino gaming.

This report lays out the facts and the myths surrounding the subject of the influence of organized crime in casino gaming. It presents the history of Mirage Resorts, Incorporated and gives short biographies of some of the Company's relevant key employees.

II. ORGANIZED CRIME AND CASINOS: FACT AND MYTH

In each of the states where gaming has been recently legalized, the issues of regulation and control have been raised. The debate always focuses on the possible influence of organized crime, direct or indirect, upon casino gaming.

Each jurisdiction contains within it a wide range of opinion on these controversial issues. However, it is universally accepted that the first, foremost and best line of defense against the infiltration of a casino by organized crime is the personal and financial integrity of the casino's ownership.

"There is a great deal of difference between the legalization of gambling and the legitimization of casino gambling. One process, the legalization, can be done in a matter of months or weeks, and as the voters cast their ballots it is therefore instantaneous."

"The second process, that of legitimization, of an industry gaining respect and credibility in a community, is a far more subtle, far more delicate process involving a long time. It is quite easy to derail. It is a technical and specialized business. It requires special and technical knowledge."

Organized Crime and Gambling: Record of Hearing VII, President's Commission on Organized Crime, New York, New York 537-38 (June 24 - 26, 1985) (testimony of Stephen Wynn).

As Jeremy Margolis, former Assistant U.S. Attorney for the District of Northern Illinois and Director of the Illinois State Police, stated in his May, 1992 report to the city of Chicago concerning fears that legalized casino gaming operated by Caesars World, Inc., Circus Circus Enterprises and Hilton Hotels Corporation would open the door to organized crime: "The notion that publicly held companies of this size can be taken over by organized crime may be rhetorically catchy, but is without merit." Preliminary Report to the City of Chicago Gaming Commission, at pp. 9-10.

In each new jurisdiction considering casino gaming, the accusation is often made that there is a necessary connection between casinos and organized crime. However, responsible persons separate the facts from the myth and find that "no legitimate evidence is presented, such as convictions of organized criminals involved in Atlantic City casinos, to support their views." Albanese, The Effect of Casino Gambling on Crime, 49 Federal Probation 39 (1985). Indeed, the Atlantic City experience is evidence that casinos can be run free of any organized crime influence. The New Jersey track record on this point has been so successful that in over 14 years of casino gaming, there has not been a single prosecution involving the infiltration of a casino by organized crime. In Nevada and New Jersey, the regulators have come to rely, in part, on the added protections afforded by dealing with publicly held companies to thwart any organized crime influence.

As Carl Zeitz, a former 8-year member of the New Jersey Casino Control Commission, has written: "The result is that New Jersey is credited not only with driving from the casino industry the vestiges of undesirable elements, but more significantly with establishing a system that can assure the desired result." Zeitz, Gaming Regulation in New Jersey, A Report Prepared For Sun International, at p. 9 (1992).

In October of 1992, the second invitational forum on the Casino Gambling Task Force took place in Hartford, Connecticut. As one of many speakers possessing expertise on casino gaming, Alvin Shpeen, Director of the New Jersey Division of Gaming Enforcement Department of Law and Public Safety, concurred in the belief that New Jersey has prevented organized crime from obtaining a foothold in its casino industry.

"...[W]e in New Jersey consider the act (the New Jersey Casino Control Act, N.J.S.A. 5:12-1 et seq.) and its strict regulation of the casino industry a success. We are proud that organized crime has not been able to puncture the regulatory net surrounding the industry."

Casino Gambling Task Force, October 16, 1992, at p. 6.

Mr. Shpeen testified that there has been no infiltration by organized crime in New Jersey casino ownership and, "...frankly, what happens is that they don't receive license even in the service industry...I don't know how our investigations would miss it and since it's so in depth, they just wouldn't get a license." Transcript at p. 49.

Mr. Shpeen went on to state that despite the "public perception" that casinos are involved with organized crime, a perception fueled by such films as "Bugsy", "They're answerable to a lot of people and they've got to get through a lot of internal examination, not just from us, but from other areas." Transcript at p. 50.

The same conclusion was reached by the New Jersey Governor's Advisory Commission on Gambling in 1988: "...as a result of New Jersey's strict regulatory scheme and law enforcement diligence, organized crime has not in fact infiltrated the operation, management or ownership of the casino industry in this state..." Report and Recommendations of the Governor's Advisory Committee Gambling, at 17 (1988).

The original interest of organized crime in the casino industry was grounded in the need to finance the industry. The availability of public financing has removed the very reason for the historical relationship between casinos and organized crime. Professor Jerome Skolnick, author of House of Cards and numerous other publications on gaming and casinos explained: ". . . such ties were developed because casino gambling, like other industries, needed investment capital to expand. Major institutional lenders, however, were reluctant to provide capital to a pariah industry." Skolnick, A Zoning Merit Model for Casino Gambling, Annals of the American Academy 48, 55 (July 1984).

Today, the major public corporations engaged in gaming are no longer considered "pariahs" by the banks and securities underwriters; rather, they are sought after and prized clients. Because of the success of the large gaming companies in increasing the value of their stock and in performing on their debt obligations, it is now the bankers who pursue the casinos. The result: the public markets and commercial banks provide all of the financing needed.

Stan Hunterton, former Deputy Chief Counsel to the President's Commission on Organized Crime and U.S. Department of Justice Organized Crime Strike Force prosecutor in both Detroit and Las Vegas, testified at the 1992 Hartford forum that law enforcement vigilance and major public corporations have driven organized crime from the casino industry.

"No, it's not that organized crime suddenly lost interest in casinos. Organized crime has an interest in any industry or business or area where it's tolerated, where people let it flourish, where the police are not vigilant, where the FBI is not vigilant."

"It's because they were driven out through an effective system of regulation, through a vigorous set of prosecutions which culminated in the early and mid-1980's and through the fact that in many instances...the old time private owners who might be subjected to influence by organized crime have been exchanged or replaced by New York Stock Exchange Companies..."

Transcript at pp. 122-123.

Furthermore, the casino and hotel projects are now done on a scale that is simply beyond the financial reach of organized crime. No one with organized crime expertise could seriously contend that the mafia could fund any of today's large resort and gaming projects with costs in the hundreds of millions of dollars.

The gaming industry in Nevada today is led by such New York Stock Exchange companies as Mirage Resorts, Incorporated, Hilton Hotels, Incorporated, Promus (formerly Holiday Corp.), Circus Circus Enterprises, Caesars World, Inc. and Showboat, Inc.

The standards which must be met by these companies and the oversight provided by the Securities and Exchange Commission make hidden ownership by organized crime an impossibility.

Nevada gaming licensee Richard Crane testified at the 1992 Hartford forum that he believes that today no element of organized crime exists in the gaming industry in Nevada. Crane served as Western Regional Director of the U.S. Department of Justice Organized Crime and Racketeering Strike Force. In that position he oversaw the investigation and prosecution of organized crime cases in the western United States, including Nevada, of labor corruption and political corruption cases and multi-state and multi-jurisdiction conspiracies. Now a private attorney in Los Angeles, Mr. Crane holds two unrestricted gaming licenses in Nevada and three unrestricted gaming licenses in Colorado. Mr. Crane also testified that he believes that there is no organized crime influence in the Colorado gaming industry. Transcript at pp. 82-84.

This same basic conclusion was reached in 1979 by the gubernatorially appointed New York State Casino Gambling Study Panel:

"The Panel is very aware of the widespread public perception that casino gambling and organized crime are invariably intertwined. The Panel recognized that there is a historical basis for this belief since organized crime did infiltrate and control some casinos in the early days of Las Vegas. We have investigated the development of the casinos in Nevada since the 1950's and have concluded that casinos have substantially moved toward a professional, regulated industry, largely devoid of an all-pervasive influence by organized crime. The movement into the industry of large, publicly held companies, under the supervision of the Securities and Exchange Commission, has brought about a substantial improvement in the integrity of the casino business." New York State Casino Gambling Study Panel, at 10-11 (1979).

A Presidential/Congressional Commission was created to advise the Congress and the states on the issues of gaming policy. The Commission was comprised of four United States senators, four members of the House of Representatives and seven persons appointed by the President of the United States. In its three year, \$3 million effort, all issues regarding legalized gaming were examined. Special attention was paid to the gaming industry in the state of Nevada.

Days of hearings were conducted, dozens of witnesses were examined and at the conclusion of the Commission efforts, it found: "Although organized crime once was a significant factor in some Nevada casinos, its influence has declined considerably and consistently during the past 10 years. In comparison with the situation 15 years ago, the presence of organized crime in Nevada today is negligible." Commission on the Review of the National Policy Toward Gambling, Gambling in America, p. 78. Furthermore, the efforts of the state of Nevada, in its constant vigilance to eradicate any influence of organized crime, have resulted in complete success in the sixteen years since the Commission was concluded.

The task of making the gaming industry inaccessible to organized crime in Nevada began in 1959, with the passage of the Gaming Control Act. As can be seen from the conclusions of the Commission and the New York State Casino Gambling Study Panel, by the late 1970's this effort was showing substantial success.

Today, the misplaced fear that organized crime may somehow infiltrate a large, publicly traded company is perpetuated by present and former law enforcement officials, and others who, although well-meaning, simply refuse to re-evaluate long held beliefs. These beliefs are simply and mistakenly out of date and out of touch with modern business and regulatory facts, and out of order in the legitimate capital markets that now finance gaming development. The combination of "history and Hollywood imagery," as it was referred to by Mr. Margolis in his Chicago Report, must be met with the current reality. The facts do not support the rhetoric.

III. THE COMPANY AND ITS COMMITMENT

Mirage Resorts, Incorporated, a New York Stock Exchange company with 1.5 billion in assets, operates three different properties in Nevada and operated in New Jersey from 1980 to 1987. During the past year alone, Mirage Resorts, Incorporated has raised over \$470 million in equity and debt through such companies as Salomon Brothers, First Boston Corporation, Merrill Lynch, Donaldson, Lufkin, Jenrette (a subsidiary of The Equitable Life Insurance Company), Oppenheimer and Company, Wertheim Securities and Montgomery Securities. It has completed bank lines of credit aggregating \$130 million with The Long-Term Credit Bank of Japan, Ltd., Societe Generale, and the CIT Financial Group (a subsidiary of Chemical Bank) - three of the world's largest and strongest banks.

Before such public financings are consummated, the underwriters and their legal counsel engage in an intensive due diligence examination of the company's finances, senior personnel and operations.

In addition, the Nevada regulatory authorities must approve the public issuance of the debt or security; such approval requires full disclosure of all of the terms and conditions by the licensee, a hearing and a finding of propriety by the Gaming Control Board and the Nevada Gaming Commission.

These same authorities also require, by statute, an annual independent audit by a CPA firm and are permitted to audit the licensee and demand any records or statements from licensees and their employees at any time.

Between the scrutiny regularly received by the gaming industry from state regulators, independent public accountants, various federal law enforcement agencies, underwriters and the press, and the exacting oversight of Mirage Resorts due to its frequent applications and financings, a clear and undeniable record has been established presenting Mirage Resorts as an upstanding corporate citizen.

A. A BRIEF HISTORY OF MIRAGE RESORTS, INCORPORATED

Mirage Resorts, Incorporated was incorporated in Nevada and first licensed by the Nevada Gaming Commission in 1949 under the name, "Golden Nugget, Inc." It adopted its present name in June 1991. In 1950, the Company commenced active operations when it acquired a small casino in downtown Las Vegas from a Nevada partnership. The Company's common stock became publicly registered with the Securities and Exchange Commission in 1967, and since 1980, it has been traded on the New York Stock Exchange.

In August of 1973, Mr. Stephen A. Wynn acquired control of the Company and its small casino in downtown Las Vegas known as the "Golden Nugget". A major program was undertaken to upgrade the facility and enhance operating efficiency and Mr. Wynn instituted a series of new management controls. These efforts resulted in a 358% increase in the Company's pre-tax profits for 1974, from \$1.1 million in 1973 to \$4 million in 1974.

A hotel tower was added in May of 1977. The financing for this addition was made by a consortium of Las Vegas and Utah banks led by First Security Bank of Utah. This lead bank is the principal bank and source of financing for The Church of Jesus Christ, Latter Day Saints nationally. Due to this addition in 1978, the Company's pre-tax profits increased to \$7.7 million, nearly double the 1974 level.

The Company opened the Golden Nugget-Atlantic City in December 1980, at a cost of approximately \$140 million. In its first full year of operations, the facility generated operating revenues of \$183 million and operating profit of \$54 million.

The Golden Nugget-Atlantic City rapidly surpassed its competitors in other financial measures and in 1983 led the market with operating revenues of \$288 million and operating income net of depreciation of \$98 million.

In 1984, the Company expanded the Golden Nugget in Las Vegas utilizing \$55 million of public financed mortgage debt. In 1986, the Company utilized public financed mortgage debt of \$170 million to expand this property to its present size of 1900 rooms.

In 1986, the Company acquired 85 acres of land in the center of the Las Vegas Strip to serve as the site of a major new casino-hotel and destination resort called "The Mirage." Construction of The Mirage began in November 1987, the same year that the company sold the Golden Nugget-Atlantic City for approximately \$450 million.

The Mirage opened in November 1989 at a total construction cost of approximately \$620 million. The Mirage includes 3,049 hotel rooms and suites, a 95,500 square-foot casino, 82,000 square-feet of meeting, convention and banquet space and a host of other amenities and public areas, designed around a tropical theme. In 1990, its first full year of operations, this resort generated operating revenues of \$661 million and operating income net of depreciation in excess of \$151 million. In 1991, that figure grew to in excess of \$160 million.

While construction of The Mirage was proceeding, Mirage Resorts, Incorporated expanded into the Laughlin, Nevada gaming market in October of 1988, when it purchased an operating casino in that city from the Del Webb Corporation.

Currently, the Company is developing Treasure Island at The Mirage, a major new 3,000 room pirate-themed casino-hotel. Treasure Island will be located on an approximately 17-acre portion of the existing Mirage site. Construction of Treasure Island commenced on March 2, 1992 and the facility is expected to open in late 1992. The total cost of the project is anticipated to be approximately \$430 million. On March 25, 1992, Mirage Resorts completed a \$300 million public offering of first mortgage bonds secured by the Treasure Island Project.

B. MIRAGE RESORTS, INCORPORATED KEY PERSONNEL

In addition to the outside scrutiny supplied by regulators, accountants, underwriters and the press, Mirage Resorts, Incorporated has maintained a policy of hiring among its approximately 11,700 employees individuals whose expertise includes combating organized crime. Of course, all of these people have numerous other duties, but their unique backgrounds are an important corporate asset.

Since January of 1980, our Chief of Corporate Security has been James Powers, a 25-year veteran of the FBI, who was a Deputy Assistant Director at Bureau headquarters before becoming the Special Agent in Charge of the Las Vegas field office. Mr. Powers is assisted by a staff of six, all with federal, local and/or military investigative experience. The corporate security staff is separate from the security directors at each of the respective properties, which have a total compliment of 405 investigators, guards and surveillance personnel.

While Mirage Resorts, Incorporated operated in New Jersey, the Chief of Security was Sabino Carone, a retired FBI agent who possessed extensive knowledge of organized crime. Mr. Carone was considered a leading authority on East Coast mafia activity. He was assisted by Jack Tuttle, a veteran of the Newark, New Jersey FBI office, who spent a major portion of his career investigating organized crime cases. Hotel security in New Jersey was handled by Joe Petuskey, a retired captain with the New Jersey State Police.

Al Luciani, a former Deputy Director of the New Jersey Division of Criminal Justice, also worked for the Company in New Jersey in a variety of positions, and Marilu Marshall, former Special Attorney, Organized Crime Strike Force, U.S. Department of Justice, was General Counsel.

Currently in Las Vegas, in addition to Mr. Powers, the company employs James Ritchie, former Executive Director of the Presidential Commission on the Review of the National Policy Toward Gaming. Mr. Ritchie has also served as a trial attorney for the Organized Crime and Racketeering Section, U.S. Department of Justice and as Attorney-in-Charge of the Detroit Strike Force and subsequently of the San Francisco Strike Force. While serving as a Brigadier General, Mr. Ritchie was an Assistant Judge Advocate General, U.S. Army Reserve.

The Company maintains a close working relationship with Stanley Hunterton. Mr. Hunterton prosecuted organized crime cases relating to casinos in both Detroit and Las Vegas with the U.S. Justice Department, Organized Crime Strike Forces in those cities. Before going into private practice, Mr. Hunterton was also the Deputy Chief Counsel to the President's Commission on Organized Crime, where he worked on issues involving the mafia, emerging organized crime groups and money laundering.

IV. CONCLUSION

States and communities which are considering casino gaming as a means to generate economic development must address the issue whether they can regulate and control gaming.

A cooperative effort among and between dedicated government, responsible public corporations -- with gaming experience and proven records of adherence to regulatory requirements and responsibilities in other jurisdictions, and an enlightened citizenry can settle and dispose of the legitimate social concerns about criminal influence in or over a legal gaming industry. Settlement of this issue yet requires such states and communities to examine and decide other social considerations before the beneficial economic impact of gaming is finally measured. However, these states and communities need have no fear that they will lack the ability to enforce the will of the public to exclude the influence of criminal elements from the ownership, operation, and financial or other control of casino gaming.

The effect on organized crime of such vigilant and vigorous action by law enforcement acting on behalf of the greater public good is demonstrated in the decisive victories that have been registered against organized crime during the past twenty years. Casinos are but one field of enterprise in which organized crime has felt the weight of decisive action by the Congress, by law enforcement, by state regulators, and private enterprise. These actions have substantially eradicated the presence of traditional organized crime in many industries and related fields, and have marked them as being off limits to organized crime.

Casino gaming is a notable success story in this regard. A high, impenetrable barrier of public regulatory control, reinforced by diligent private sector awareness and cooperation, makes the issue of organized crime a matter of history for the gaming industry that need not threaten the present integrity of gaming or gaming regulation.

A D D E N D U M

REGULATING CASINOS:

A SUMMARY OF THE NEVADA AND NEW JERSEY SYSTEMS

OCTOBER 16, 1992

Rev. 10/27/92

REGULATING CASINOS

In determining the viability of casino gaming as a means to spur economic development, a first consideration must be the interested jurisdiction's ability to organize and carry out a system of public gaming regulation that can and will assure the economic and social objective of the policies that underlie the decision to permit gaming.

Yet jurisdictions without the experience of legal commercial gaming necessarily lack knowledge and expertise. Just as a majority of Americans probably have never been to a casino, public officials in nongaming states frequently lack detailed knowledge of how casinos are operated and regulated. As they examine the issue they will find that gaming regulation rests on a solid, well planned, tested foundation.

The foundation of sound gaming regulatory policy:

- Measures the people who operate or would operate gaming, weighing their suitability on a scale balanced by high public expectations for personal and business integrity;

- Assures the integrity and fairness of the games and of the accurate accounting and reporting of the revenues that gaming generates; and

- Establishes a process for official public notice and action to bar notorious and unsavory members of the public from entering gaming establishments for any purpose.

Accordingly, a community may well decide that casino gaming is in its economic interest if the community believes it has the ability to put in place a system of regulation that assures only suitable persons operate a casino; the games in a casino operate honestly; that gaming revenues devoted to whatever public purpose the community assigns them are accurately counted and verified; and that regulators can scrutinize and bar undesirable members of the public from access to gaming. On the other hand, if a community doubts it can achieve these central elements of regulatory policy, no level of economic benefit should overcome those concerns or is likely to do so.

The three-pronged approach to gaming regulatory policy, prequalification for integrity, revenue accountability, and scrutiny of the public, has been developed fully in two U.S. jurisdictions, Nevada and New Jersey. In both states mature, tested regulatory systems provide:

- Strict licensing provisions to ensure that only suitable persons are permitted to invest in or operate a casino;

- Comprehensive internal and external regulatory controls that ensure integrity of the games and the proper accounting of all revenues; and

- Systems by which regulators identify and take public action to give private operators a basis on which to ban notorious persons from gaming premises.

Nevada, with 60 years of experience, and New Jersey, with 15 years of experience, provide excellent benchmarks to evaluate and judge the success of gaming control systems founded on the three-prongs of regulatory purpose described above.

In the case of both states and in others where a strong tripartite regulatory structure is in place, casinos have kept their promise to deliver substantial private and public economic benefits.

A. THE NEVADA REGULATORY SYSTEM

The anti-organized crime effort started in Nevada in 1959, with the passage of the Gaming Control Act. The Nevada Act has evolved in breadth and sophistication in order to meet the challenges of licensing and regulatory issues. The focal point of the Nevada system is strict licensing standards to ensure, to the extent possible, that only suitable people are allowed to become involved in the ownership and operation of licensed gaming establishments. This, all experts agree, is the best defense against any organized crime influence.

These licensing and regulatory responsibilities are carried out at the State level through a two-tier system consisting of the State Gaming Control Board and the Nevada Gaming Commission. The Board acts as the investigative and enforcement arm of the Commission, while the Commission takes all final action on licensing, tax and disciplinary matters. The Nevada Legislature has vested the Board and Commission with almost unfettered discretion in carrying out the purposes of the Nevada Act, including the authority to close or take over a casino. The courts of the State do not have jurisdiction to review the Commission's decisions on licensure.

Under the Nevada Act, the burden to prove qualification for licensure is on the applicant at all times. The applicant must complete a personal history record which calls for detailed information, including disclosure of arrests, detentions, convictions and instances where the applicant may have been questioned by law enforcement authorities. The form also requires disclosure of any felony convictions of members of the applicant's (or spouse's) family. The personal financial questionnaire requires detailed disclosure of assets and liabilities. The Board and its staff perform a thorough background and financial investigation at the expense of the applicant. Upon the completion of the investigation, the applicant is considered by the Board at a public meeting and a recommending vote is made to the Commission.

If the recommendation of the Board is to deny the application, only a unanimous vote of the five-member Commission at a public meeting can overturn the recommendation. The Commission can deny any application for any cause it deems reasonable. It may also grant an application with conditions or limitations. Nevada Revised Statutes 463.170, 463.220.

The Nevada Act requires the licensure of virtually all persons who have an ownership interest in privately owned gaming enterprises, subject only to certain limited exceptions. Shareholders, officers, directors, partners, limited partners, trustees and beneficiaries of trusts must be licensed. The Commission also has the authority to require any person or enterprise associated with a licensed gaming operation to be licensed or found suitable. This includes key employees, lenders, landlords and even persons who simply conduct their non-gaming businesses on the premises of a licensed gaming establishment, such as persons who lease space to operate a gift shop or dress store. In addition, all gaming employees must obtain a work permit from local authorities, subject to the Board's right to object to its issuance.

The Nevada Act treats publicly traded corporations with equal rigor by requiring the licensure of controlling shareholders and officers, directors and key employees who are actively and directly engaged in the activities of the subsidiary that holds a gaming license. Beneficial owners of more than 10% of the voting securities of the publicly traded corporation must report such acquisition to the Board and file applications for licensure within 30 days of being so notified by the Board Chairman and beneficial owners of more than 5% of the voting securities must file a report of their acquisition with the Board. This approach toward publicly traded corporations has contributed to the credibility of the Nevada gaming industry in the financial markets and to the industry's ability to attract large amounts of capital from reputable investors and financial institutions, none of whom can acquire control of a publicly traded corporation without obtaining the prior approval of the Commission.

The Nevada Act includes reporting requirements for labor organizations and gives the Commission authority to disqualify labor officials under certain circumstances. The Commission also has authority to place persons of notorious reputation on Nevada's list of excluded persons (commonly referred to as the "Black Book") and to bar their access to licensed gaming establishments. The "Black Book" has proven to be an effective tool in identifying and barring a limited number of notorious individuals from even being on the premises of a licensed gaming establishment. Criminal penalties are provided for excluded persons who enter the premises of a licensed gaming establishment and licensees who fail to exclude or eject such persons from their premises are subject to disciplinary action by the Commission. Nevada Revised Statutes 463.154 - 463.155.

Pursuant to an agreement with the United States Department of Treasury, the Commission has adopted strict regulatory requirements for the reporting of cash transactions, designed to prevent "money laundering". Nonrestricted licensees are also required to adopt a system of internal controls which must conform to strict guidelines established by the Board. The system of internal controls is designed to ensure that assets are safeguarded, financial records are accurate and reliable, transactions are performed only in accordance with management's general or specific authorization, and transactions are recorded adequately for proper reporting of gaming revenues and payment of fees and taxes. Regulation 6. The Board performs audits designed to ensure proper payment of fees and taxes and compliance with regulations and the system of internal controls.

Violations of the Nevada Act can result in disciplinary action brought by the Board. The Commission has the authority to revoke, limit or condition licenses upon completion of the disciplinary procedures and may impose substantial fines as well. Fines of up to \$100,000 for each separate violation which is the subject of an initial complaint may be imposed. Fines of up to \$250,000 for each separate violation which is the subject of a subsequent complaint may be imposed. Fines for each separate violation of cash transaction reporting requirements set forth in Regulation 6A must be between \$10,000 and \$250,000.

It is a felony to violate certain provisions of the Nevada Act, including willful failure to pay or truthfully account for license fees or taxes, failure to obtain required licenses to conduct gaming operations or share in gaming revenues and willful violation of cash transaction reporting requirements. Cheating at gambling is also a felony.

The strict licensing and reporting requirements of the Nevada Act ensure, to the maximum extent possible, that unsuitable persons will not become involved in gaming operations and that licensees conduct their businesses in strict accordance with legal requirements. The Nevada Act provides the Board and Commission with the tools to effectively combat hidden ownership and the presence of unsuitable persons in the gaming industry.

B. THE NEW JERSEY REGULATORY SYSTEM

When New Jersey legalized gaming in 1976, the state was acutely sensitive to the issue of criminal influence. The state already had on its books powerful tools to combat the underworld, including a state wiretap statute, a state grand jury system, and a State Commission of Investigation. The casino law established sweeping power and authority for the state to investigate and reject anyone who seeks to own, operate, invest in, lend or lease to, work for, or sell to a licensed New Jersey casino.

In fact, there is even a provision of the law that permits the gaming authorities to ban undesirable persons from the casinos merely as patrons, and they have used it many times to ban such persons on the mere allegation that they have criminal ties. In making these judgments, the public regulators are permitted by the New Jersey Act to rely on types of evidence that would not be permitted in the courts of law of the state. Reliance on such permissive standards of evidence is a delicate matter in a democratic society like the United States, but it has withstood scrutiny by the courts because of the singular public interest in assuring the integrity of gaming.

The New Jersey gaming regulatory system is contained within the New Jersey Casino Control Act, N.J.S.A. 5:12-1 et seq., (the Act). The law is based on a single overriding principle: The gaming industry must be protected from the intrusion or involvement in any way of organized crime or any other corrupt or illegal force or influence. The watchword of the regulatory system is integrity.

Two agencies enforce and administer the Act. The Casino Control Commission (the Commission) is an autonomous five member, full-time administrative body served by independent counsel. The Division of Gaming Enforcement (the Division) under the Attorney General is a full-fledged law enforcement agency with the power of subpoena and with authority to conduct warrantless searches and seizures of evidence in casino hotels.

The Division investigates and enforces the Act. The Commission judges the findings of the Division, issues, denies or revokes licenses as applicable, hears and decides all other matters under the Act including violation charges brought by the Division and sets the rules and regulations governing all aspects of legal gaming. The traditional civil standards of clear and convincing evidence and a preponderance of the evidence are augmented by unique evidential standards set down in the Act. They are used by the Commission to render decisions at the conclusion of hearings in which all parties are afforded full civil hearing rights under the Act and under the New Jersey Administrative Procedures Act.

All persons and business entities engaged in legal gaming must be licensed or qualified and are subject to investigation and disclosure concerning criminal histories, financial backgrounds, and associations. Any person or business doing business with a licensed casino must submit to a casino vendor licensing when required.

A casino license is issued for the business entity which will operate a casino. Parent and related business entities, and all officers and directors of the operating parent or related companies, partnerships, etc. must qualify, as must project financial sources and lessors, if any. The standard for such qualification is that of the Casino Key Employee License, the most demanding in the Act. When casinos are owned and operated by public corporations, public shareholders are also subject to scrutiny at the discretion of the regulators. Casino licenses are issued for a term of one year, subject to biennial renewal after the third consecutive annual renewal, and may be revoked by the Commission. The Commission has the power to appoint a conservator to preserve a casino hotel's assets and operations in the event it revokes an operator's license.

The Casino Key Employee License is reserved for statutorily defined employees of the licensed gaming operator and for the qualification of the officers, directors and significant securities holders.

The Casino Employee License is issued to all other gaming related employees under job categories and titles specifically identified by statute.

Regular periodic renewal terms for all categories of licenses assure a constant cycle in which qualifications are tested and retested against the demanding requirements of the Act.

Casinos maintain detailed internal and accounting controls to assure an honest count. Similarly detailed operating controls are imposed to assure the integrity of the games.

The Act mandates extensive internal, accounting and operating controls governing such aspects of the gaming business as the rules and management of games and gaming equipment, management of casino bank and cashier functions, transfers of cash and cash equivalents, and design, use and disposal of gaming equipment, to name a few.

Gaming control has been called a system of people watching people. The internal, accounting and operating controls of New Jersey casinos which are mandated by the Act establish the ground rules under which people watch people. As a result, during the past 14 years in New Jersey, the gaming industry has made an honest count of more than \$27 billion in gaming revenue on which it has made verified, audited payment of more than \$2.2 billion in taxes to the State.

The Act established the authority of the Commission to exclude individuals from casinos if the Commission finds that their presence would be inimical to the policy of the state and the integrity of gaming. Under this authority, the Commission has barred more than 150 persons based on evidence that they have cheated in casinos or that they are members or associates of organized crime or have criminal backgrounds that make them a threat to the industry and to the public interest in gaming regulation.

Such persons are afforded notice of possibility that they may be excluded and are given the right to a hearing. Casinos may be subject to the filing of charges against them if they knowingly permit an excluded person on their premises.

C. SEE ALSO, "A SUMMARY OF THE NEVADA GAMING CONTROL ACT, October 1, 1992, prepared by John A. Godfrey, Esq., Schreck, Jones, Bernard, Woloson and Godfrey, Las Vegas, Nevada.

LANA OLEEN
SENATOR, 22ND DISTRICT
RILEY AND GEARY COUNTIES



TOPEKA

SENATE CHAMBER

LEGISLATIVE HOTLINE
1-800-432-3924

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WASTE REDUCTION AND RECYCLING
DACOWITS—U.S. DEPT. OF DEFENSE

January 19, 1993

Attorney General Robert T. Stephan
Judicial Center, 2nd Floor
Topeka, Kansas 66612

Dear Attorney General Stephan:

In its opinion in State v. Finney, 251 Kan. 559 (1992), the Kansas Supreme Court posed, but did not address, three questions:

"1. Is Kansas a state which is subject to the negotiation provisions of IGRA relative to Class III casino gaming?

2. Does any Kansas public official have authority to enter into a compact permitting an activity (casino gaming) which is prohibited by the Kansas Constitution?

3. Does the federal government have the power to compel the State of Kansas to negotiate with an Indian nation for a compact under which the State would be required to regulate or otherwise condone or allow an activity situated within its borders which is in violation of the Kansas Constitution?"

QUESTION: In light of the above questions raised by the Court in State v. Finney:

First, without amendment of the Kansas Constitution, does the legislature have the authority to permit, regulate and tax privately-owned and operated casino gaming in Kansas?

Sen. F. & S. A.
2-2-93
Att 4

Second, without amendment of the Kansas Constitution, does the legislature have the authority to permit, regulate and tax any gaming in Kansas, in addition to pari-mutuel wagering on horse and dog races, the state-owned and operated lottery, and bingo?

Third, assuming the enactment of legislation authorizing the legislature to approve Indian gaming compacts, but without amendment of the Kansas Constitution, does the legislature have the authority to approve compacts with Kansas Indian tribes to permit them to conduct any gaming in Kansas, in addition to pari-mutuel wagering on horse and dog races, lottery games like those conducted by the state-owned and operated lottery, and bingo?

In light of the fact that casino gambling is to be an issue in the 1993 Legislative Session, your timely response to my inquiries is appreciated.

Sincerely yours,

Lana Oleen
Kansas Senator

LO/je

FEB 2 1993



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN
ATTORNEY GENERAL

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February 1, 1993

The Honorable Lana Oleen
State Senator, 2nd District
State Capitol, Room 136-N
Topeka, Kansas 66612

Dear Senator Oleen:

I am in receipt of your letter dated January 19, 1993, regarding the status of gaming in Kansas under our constitution.

I enclose for your review two opinions (91-119 and 87-38) by which I previously answered the questions you have posed. As you note in your letter, the Kansas Supreme Court expressly declined to address these questions so there is no indication that the court would disagree with the conclusions I have reached.

I hope this information will be of assistance to you. If I may be of further assistance in this or any other matter, please feel free to contact me.

Very truly yours,

OFFICE OF THE ATTORNEY GENERAL
ROBERT T. STEPHAN

A handwritten signature in cursive script that reads "Robert T. Stephan".

Robert T. Stephan
Attorney General

RTS: jlm



STATE OF KANSAS

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September 30, 1991

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ATTORNEY GENERAL OPINION NO. 91- 119

The Honorable Edward F. Reilly, Jr.
State Senator, Third District
430 Delaware
Leavenworth, Kansas 66048-2733

Re: Constitution of the State of Kansas--Miscellaneous--
Lotteries; Indian Gaming Regulatory Act

Synopsis: The federal Indian gaming regulatory act authorizes Indian tribes to conduct class III gaming activities (such as slot machines, parimutuel wagering on horse and dog races, jai alai and banking card games) on Indian lands located in any state which "permits such gaming for any purpose by any person, organization, or entity" pursuant to a tribal-state compact. The state of Kansas itself is constitutionally permitted to conduct any game involving the elements of consideration, chance and prize and therefore any game including these three elements may be negotiated for inclusion in a tribal-state compact. The state may refuse to include such games in the compact only if the state in good faith believes the conduct of a particular game involving these elements would be detrimental to the public welfare. A tribal-state compact may provide for licensing and regulation of gaming on Indian lands by the state lottery office, or any other state agency with expertise in the area. The governor may participate in negotiations and formulation of a tribal-state compact, but legislative action is necessary to make a compact binding and enforceable against the state. Cited herein: K.S.A. 1990 Supp. 74-8701; 74-8801; K.S.A.

79-4701; Kan. Const., art. 1, § 3, art. 15, §§
3a, 3b, 3c; 25 U.S.C. §§ 2703, 2705, 2706, 2710.

*

*

*

Dear Senator Reilly:

You request our opinion regarding the federal Indian gaming regulatory act, 25 U.S.C. §§ 2701 et seq. Specifically your questions are as follows:

"In general, what are the requirements of federal law regarding establishment of class III gaming on American Indian reservations? How do those requirements impact Kansas given the constitutionally limited types of gambling allowed in the State?

"What federal requirements are imposed regarding state/tribal agreements for class III gaming, i.e., what elements must be included in such an agreement?

"Would it be possible for the State Lottery, as the only State agency with direct experience operating a gaming activity, to be engaged in oversight and operation of class III gaming operations on a reservation?

"Does the Legislature have any role in negotiations with American Indian tribes regarding establishment of class III gaming on tribal lands, or can the Governor unilaterally enter into such an agreement? In connection with that question, can the Legislature prevent such an agreement from taking effect?"

The Indian gaming regulatory act (IGRA) provides for the regulation of gaming on Indian lands. The act classifies gaming into three categories; the provisions for regulation differ depending upon the class. Class I gaming is defined as "social games solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as part of, or in connection with, tribal ceremonies or

celebrations." 25 U.S.C. § 2703(6). Class I gaming on Indian lands is within the exclusive jurisdiction of the Indian tribe and is not subject to the IGRA. 25 U.S.C. § 2710(a)(1). Class II gaming is essentially bingo and non-banking card games, although certain other games were grandfathered in for certain tribes. 25 U.S.C. § 2703(7). Class II gaming on Indian lands is also within the jurisdiction of the Indian tribe, but subject to the IGRA and is regulated in part by the national Indian gaming commission. 25 U.S.C. §§ 2710(a)(2); 2705; 2706. Class III gaming is defined as "all forms of gaming that are not class I gaming or class II gaming." 25 U.S.C. § 2703(8). Class III gaming generally includes "slot machines, casino games including banking card games, horse and dog racing, pari-mutuel, jai alai, and so forth." S.Rep.No. 100-446, 100th Cong., 2nd Sess. 5, reprinted in 1988 U.S. Code Cong. & Ad. News 3071, 3073. [Banking card games are those games in which the players play against the house and the house acts as banker; non-banking card games are those in which players play against each other. Id. at 3079.] Class III games may be operated on Indian lands in states that permit such gaming activities and are to be regulated pursuant to a tribal-state compact. 25 U.S.C. § 2710(d)(1), (3). Class III gaming is the focus of this opinion.

The requirements for establishing Class III gaming on Indian lands are stated in 25 U.S.C. § 2710(d).

"(1) Class III gaming activities shall be lawful on Indian lands only if such activities are--

"(A) authorized by an ordinance or resolution that--

"(i) is adopted by the governing body of the Indian tribe having jurisdiction over such lands,

"(ii) meets the requirements of subsection (b), and

"(iii) is approved by the Chairman,

"(B) located in a State that permits such gaming for any purpose by any person, organization, or entity, and

"(C) conducted in conformance with a Tribal-State compact entered into by the Indian tribe and the State under paragraph (3) that is in effect.

. . . .

"(3) (A) Any Indian tribe having jurisdiction over the Indian lands upon which a class III gaming activity is being conducted, or is to be conducted, shall request the State in which such lands are located to enter into negotiations for the purpose of entering into a Tribal-State compact governing the conduct of gaming activities. Upon receiving such a request, the State shall negotiate with the Indian tribe in good faith to enter into such a compact. . . ."

The Kansas constitution now permits several forms of gaming: Article 15, section 3 authorizes the legislature to "regulate, license and tax the operation or conduct of games of 'bingo' as defined by law, by bona fide nonprofit religious, charitable, fraternal, educational and veterans organizations"; section 3b of article 15 authorizes the legislature to "permit, regulate, license and tax . . . the operation or conduct, by bona fide nonprofit organizations, of horse and dog racing and parimutuel wagering thereon. . . . No off-track betting shall be permitted . . ."; section 3c allows the legislature to "provide for a state-owned and operated lottery. . . ." Statutes regulating bingo operations are contained in K.S.A. 79-4701 et seq., those permitting and regulating parimutuel wagering are located at K.S.A. 1990 Supp. 74-8801 et seq., and K.S.A. 1990 Supp. 74-8701 et seq. establish the Kansas lottery.

Clearly bingo, on track parimutuel wagering and state owned and operated lottery games such as pulltabs, lotto, instant scratch games and draws are permitted in Kansas, although all are heavily regulated. The question is whether video lottery, slot machines, black-jack and other class III gaming activities are currently permitted. We believe that, for purposes of the IGRA, they are and may therefore be the subject of negotiation over a tribal-state compact. In Attorney General Opinion No. 87-38 we concluded that, because the term lottery has been defined broadly by the Kansas courts to include any game involving the three elements of

consideration, chance and prize, and since article 15, section 3c does not limit the types of games the state may conduct, the state is constitutionally authorized to operate any game involving the three elements "be it 'lotto' or 'casino gambling'." It has been suggested that the legislature must specifically provide for these types of games and that they be played in the state in order for such games to be deemed "permitted." The United States district court for the western district of Wisconsin rejected this position in Lac Du Flambeau Band of Lake Superior Chippewa Indians v. Wisconsin, ___ F.Supp. ___, case no. 90-C-408-C (W.D. Wisc. 1991). (This case is currently being appealed but, as of the date of this opinion, has not been reversed.) The court found that the term "permit" does not necessarily imply the need for express authorization. Additionally we note that language in the IGRA appears to support this conclusion. 25 U.S.C. § 2703, in describing the types of card games included in class II gaming, states:

"(7)(A) The term 'class II gaming' means--

. . . .

"(ii)(I) card games that --

"(I) are explicitly authorized by the laws of the State, or

"(II) are not explicitly prohibited by the laws of the State and are played at any location in the State. . . ."

Card games that do not fall within this definition are class III games. S.Rep.No. 100-446, supra at 3079. The IGRA does not specify that the negotiability of particular class III games is dependent upon those games being explicitly authorized or actually played in the state, but merely that they be "permitted." Thus, we believe any game involving the elements of consideration, chance and prize are negotiable in Kansas, but the tribe and state will have to reach an agreement regarding any class III games before those games may be conducted on Indian lands within the state. If the state in good faith believes that the operation of certain games within the state would be contrary to the public interest or endanger public safety, it may refuse to include such games in the compact. See 25 U.S.C. § 2710(d)(7)(B)(iii)(I).

You inquire next as to the elements which must be included in a tribal-state compact for class III gaming on Indian lands. The act does not require the inclusion of any specific provisions. However, 25 U.S.C. § 2710(d)(3)(C) lists several provisions which may be included in a tribal-state compact entered into pursuant to the IGRA:

"(C) Any Tribal-State compact negotiated under subparagraph (A) may include provisions relating to--

"(i) the application of the criminal and civil laws and regulations of the Indian tribe or the State that are directly related to, and necessary for, the licensing and regulation of such activity;

"(ii) the allocation of criminal and civil jurisdiction between the State and the Indian tribe necessary for the enforcement of such laws and regulations;

"(iii) the assessment by the State of such activities in such amounts as are necessary to defray the costs of regulating such activity;

"(iv) taxation by the Indian tribe of such activity in amounts comparable to amounts assessed by the State for comparable activities;

"(v) remedies for breach of contract;

"(vi) standards for the operation of such activity and maintenance of the gaming facility, including licensing; and

"(vii) any other subjects that are directly related to the operation of gaming activities."

A provision seeking to tax the tribe's class III gaming operations is specifically prohibited, 25 U.S.C. § 2710(d)(4), but the state may charge for the regulatory or other services it provides under the compact.

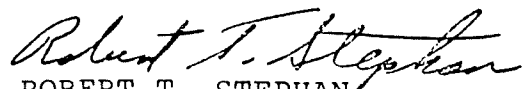
You ask whether it would be possible for the Kansas lottery office to oversee and assist in operating class III gaming on Indian lands. The IGRA does not preclude such an arrangement. In fact, the act appears to intend that type of agreement. Throughout the senate report on the IGRA are comments regarding the absence of federal or tribal entities to regulate class III gaming and the states' expertise in this area, thus sparking the provision for tribal-state compacts. See S.Rep.No. 100-446, supra at 3075 ("the expertise to regulate gaming activities and to enforce laws related to gaming could be found in state agencies . . .", "the mechanism for facilitating the unusual relationship in which a tribe might affirmatively seek the extension of State jurisdiction and the application of state laws to activities conducted on Indian land is a tribal-state compact"), 3083 ("there is no adequate Federal regulatory system in place for class III gaming, nor do tribes have such systems. . . . Thus the logical choice is to make use of existing State regulatory systems . . ."). Thus, not only may the lottery office be used, but law enforcement agencies such as the KBI and other regulatory agencies such as the Kansas racing commission may be of assistance.

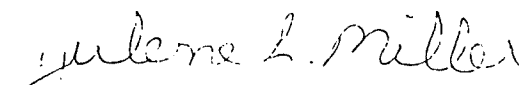
Finally, you question whether the legislature has any role in establishment of class III gaming operations on Indian lands. The IGRA does not speak to the issue of what procedures are involved in negotiating and executing a compact to bind the state. Apparently that is to be determined pursuant to state law. "All governmental sovereign power is vested in the legislature, except such as is granted to the other departments of the government, or expressly withheld from the legislature by constitutional restrictions." Leek v. Theis, 217 Kan. 784, syl. ¶ 7 (1975). "It has been said that the executive power is more limited than legislative powers, extending merely to the details of carrying into effect laws enacted by the legislature as they may be interpreted by the courts, the legislature having the power, except where limited by the constitution itself, to stipulate what actions executive officers shall or shall not perform." 16 Am.Jur.2d Constitutional Law § 303 (1979). Essentially, the governor, as chief executive officer of the state, is to see that the law is executed and administered. Kan. Const., art. 1, § 3; State, ex rel., v. Fadely, 180 Kan. 652, 670 (1957). It is for the legislature to determine public policy and enact the laws accordingly. Id.; 16 Am.Jur.2d Constitutional Law § 318 (1979).

The Kansas constitution makes no express grant to the governor of power to bind the state to compacts such as the tribal-state compact provided for in the IGRA. Neither has the legislature granted this power through legislation. Binding the state to such a compact requires a determination of public policy and enactment of law, and is therefore a function for the legislature to perform. The legislature must either ratify the compact or authorize the governor to formulate and execute it. Thus, while the governor may participate in the negotiation process, submit a proposed compact agreement to the legislature, and/or execute the compact, legislative action is required to make the compact legally binding and enforceable against the state.

In conclusion, the federal Indian gaming regulatory act authorizes Indian tribes to conduct class III gaming activities (such as slot machines, parimutuel wagering on horse and dog races, jai alai and banking card games) on Indian lands located in any state which "permits such gaming for any purpose by any person, organization, or entity" pursuant to a tribal-state compact. The state of Kansas itself is constitutionally permitted to conduct any game involving the elements of consideration, chance and prize and therefore any game including these three elements may be negotiated for inclusion in a tribal-state compact. The state may refuse to include such games in the compact only if the state in good faith believes the conduct of a particular game involving these elements would be detrimental to the public welfare. A tribal-state compact may provide for licensing and regulation of gaming on Indian lands by the state lottery office, or any other state agency with expertise in the area. The governor may participate in negotiations and formulation of a tribal-state compact, but legislative action is necessary to make a compact binding and enforceable against the state.

Very truly yours,


ROBERT T. STEPHAN
Attorney General of Kansas


Julene L. Miller
Deputy Attorney General

RTS:JLM:jm



STATE OF KANSAS

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ROBERT T. STEPHAN
ATTORNEY GENERAL

February 25, 1987

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ATTORNEY GENERAL OPINION NO. 87- 38

The Honorable Vincent K. Snowbarger
Representative, 26th District
Capitol Building, 446-N
Topeka, Kansas 66612

Re: Constitution of the State of Kansas --
Miscellaneous -- State Owned and Operated
Lotteries

Synopsis: The constitutional provision permitting a
state owned and operated lottery would allow the
state to advance and market any game or
combination of games as long as there is
consideration, chance and a prize involved in
each game. Cited Herein: Kan. Const., Art. 5,
§3C; L. 1986, ch. 414.

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Dear Representative Snowbarger:

As Representative for the Twenty-Sixth district, you ask
our opinion as to the definition of the word "lottery."
Specifically, you question whether the game "lotto" is
allowed by the Kansas constitutional provision, Art. 15,
§3C.

The constitutional provision as voted on and passed by the
Kansas electorate did not define or restrict the term
"lottery," nor did it define or restrict itself to any
specific games. The definitional responsibility of
defining "lottery" is therefore passed to the courts of

this state. State v. Nelson, 210 Kan. 439, 445 (1972). In Nelson, the Court stated that "[t]he definition should achieve a consistency so that it shall not be taken to mean one thing at one time and another thing at another time." Id. at 445.

In Higgins v. Cardinal Manufacturing Co., 188 Kan. 11 (1961), the Court stated that a constitution is not to be narrowly or technically construed but its language "should be held to mean what the words imply to the common understanding of men." This position was adopted in the later case of State, ex rel., v. Highwood Services, Inc., 205 Kan. 821 (1970), when the court used resources available around the time the Kansas Constitution was adopted in 1859 to define "lottery." The Court wrote in Highwood at 825 and 826 that "in ascertaining the meaning of constitutional provisions courts should consider what appears to have been the intendment and understanding of the people at their adoption. (See, also, State v. Sessions, 84 Kan. 856, 115 Pac. 641)." Thus, in defining the term "lottery" the Court has adopted common usage definitions.

In Highwood, the Court's research included the following:

"In Abbott's Law Dictionary, published in 1879, we have found this definition of a lottery:

"'A scheme for the distribution of prizes by chance, among buyers of the chances.

"'Such schemes were formerly very common, were authorized by law, and were even set on foot, in many instances, by the authorities, for raising revenue for public or benevolent purposes. In view of the ill effects of the element of gambling involved, they are now very generally made unlawful.'

"Foremost among the citations appended to the text, the author has placed the following:

"'A lottery is a distribution of prizes by chance or lot, where a valuable consideration is given for the chance of drawing a prize. United States v. Olney, 1 Abb. U.S. 275.,' (1868).

"Webster's Third New International Dictionary, unabridged, (1964) conveys much the same idea as it defines lottery:

"'a scheme for the distribution of prizes by lot or chance; esp.: a scheme by which prizes are distributed to the winners among those persons who have paid for a chance to win them, usu. as determined by the numbers on tickets as drawn at random (as from a lottery wheel).'

"To similar effect, see Oxford Illustrated Dictionary (1962) and The Random House Dictionary of the English Language, the Unabridged Edition (1967)."

The court has refined the various definitions into three required elements in order to be recognized as a lottery in Kansas. "The court has held that the essential elements of a lottery are three: (1) consideration, (2) prize, and (3) chance. (State, ex rel. v. Bissing, 178 Kan. 111, 283 P.2d 418)." Highwood, 205 Kan. at 823. Using this three element definition the court has adhered to the constitutional provision banning lotteries and struck down such efforts prior to Kan. Const. Art. 15, sec 3c. "The State, ex rel v. Mercantile Association, 45 Kan. 351, 25 Pac. 984, [distribution of prizes by chance]; In re Smith, Petitioner, 54 Kan. 702, 39 Pac. 70, [sale of lottery tickets]; The State, ex rel v. Fair Association, 89 Kan. 238, 131 Pac. 626, [bets on horse races]; State, ex rel., v. Fox Kansas Theatre Co., 144 Kan. 687, 62 P.2d 929, [theater bank night]; City of Wichita v. Stevens, 167 Kan. 408, 207 P.2d 386, [punch boards]; State v. Brown, 173 Kan. 166, 244 P.2d 1190, [punch boards]; State, ex rel. v. Bissing, 178 Kan. 111, [parimutuel betting on dog races]." Nelson, 210 Kan. at 444.

In considering the lottery provision, numerous individuals and state agencies advanced definitions for the term lottery. Included in the minutes were reports that "new forms of lottery games are constantly being invented," Minutes of the House Federal and State Affairs Committee, January 16, 1986, testimony of Ross Mills, Legislative Research Department, Attachment A., and "there are currently several types of lottery products being played . . . weekly game or draw lottery . . . instant lottery ticket . . . online system . . . numbers game . . . pick four." Minutes of the House Federal and State Affairs

Committee, January 16, 1986, testimony of Secretary of Revenue Harley Duncan, Attachment B.

It was further presented that some states have restricted their lottery to specific games. Minutes of the House Federal and State Affairs Committee, January 21, 1986, testimony of Patrick J. Hurley, Attachment C. The Kansas Legislature did not preclude any specific game or games with the language used in 1986 Senate Concurrent Resolution 1609, L. 1986, ch. 414.

In Attorney General Opinion No. 87-16, this office indicated that:

"[t]he intent and understanding of both the legislature and the people seems to have been to have a government controlled lottery as a revenue raising measure. Minutes of the House Federal and State Affairs Committee, January 21, 1986, testimony of Secretary of Revenue Harley Duncan, Attachment A.

"It appears that the intent of the voters in approving the lottery was to allow closely regulated gambling and to raise money for the state. A multi-state lottery would not be repugnant to the intent of the constitutional provisions."

In our judgment, the game "lotto" would fall within the scope of the Kansas constitutional "lottery" amendment since it is an unrestricted provision. The lottery could include both an active game and a passive game. An active game has been recognized as a lottery game in which the player takes action to determine the outcome by choosing a number or set of numbers to bet on, attempting to match the numbers later drawn. A passive game is a lottery game in which the player takes no active part in determining the outcome; the ticket sold is either a winner or a loser, and no choices of numbers are made. Minutes of the House Federal and State Affairs Committee, January 16, 1986, testimony of Secretary of Revenue Harley Duncan. Attachment B. Again, to be recognized as a lottery the three (3) essential elements must be present in either an active or passive game.

The Kansas Supreme Court in Highwood, supra, came to the conclusion that:

"In short, we entertain the opinion that not only in 1859, when the constitution was adopted, and in 1895, when K.S.A. 21-1506 was enacted, but in recent years as well, the common understanding of a lottery entertained by men in general has been that a consideration of value must flow from those who participate. We gravely doubt that had the ordinary man in the streets in 1859 been able to envision the advent of television he would have characterized as a lottery the give-away program known as Dialing for Dollars." 205 Kan. at 826.

In keeping with the court pronouncement that the definition must remain constant and should withstand the test of time, any game, no matter the extent of player participation or the title assigned to the game, be it "lotto" or "casino gambling," as long as it is state owned and operated and involves the essential elements discussed above, it would be classified as a lottery.

It is therefore our opinion that a state-owned and operated lottery could include any game or combination of games as long as there is consideration, chance and prize involved in each game. Such a game would not be repugnant to the intent of the constitutional provision.

Very truly yours,



Robert T. Stephen
Attorney General



Brenda L. Braden
Deputy Attorney General

RTS:BLB:may

KS HUMAN RIGHTS COMMISSION HISTORY

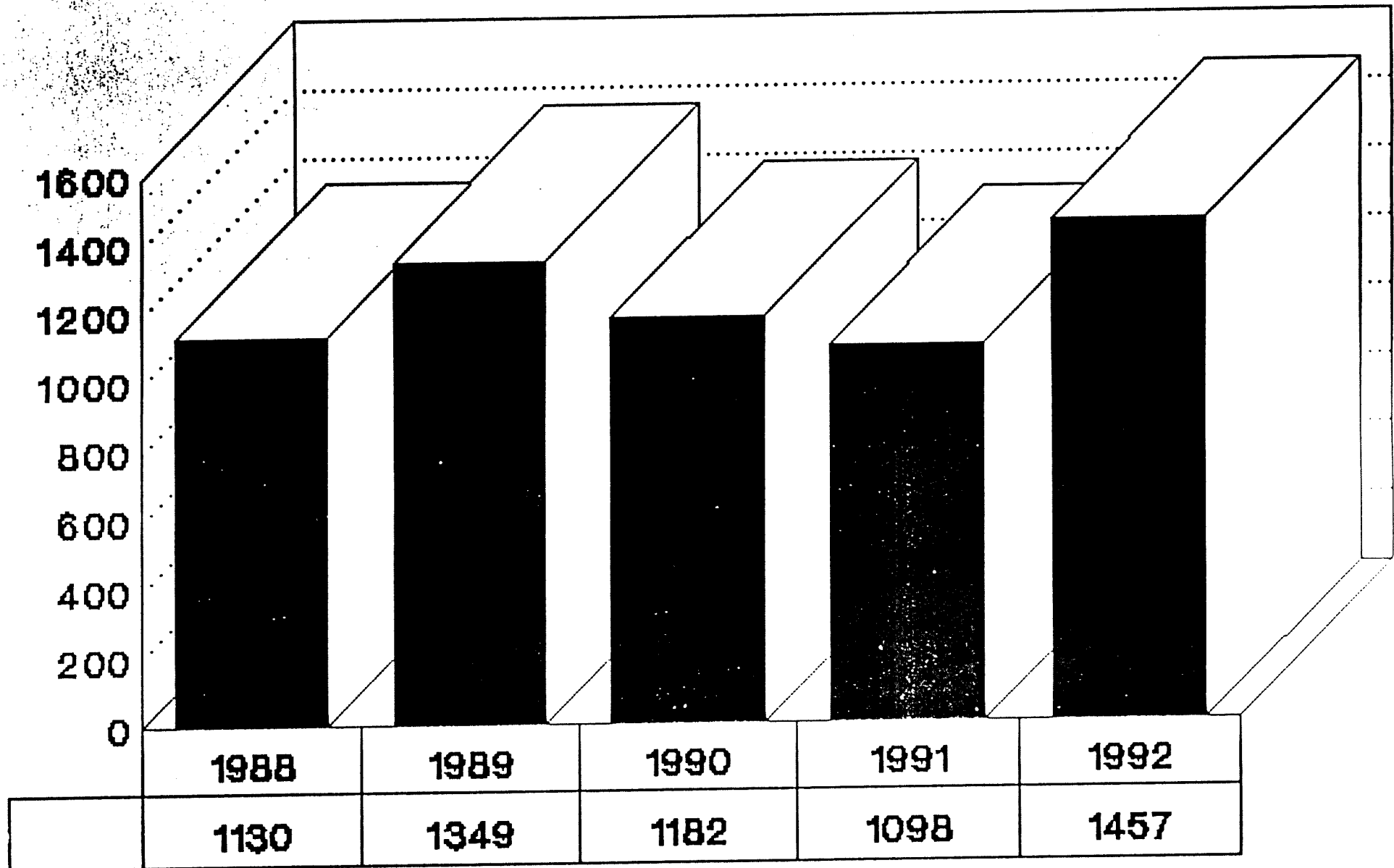
*Sen. F. L. A.
2-2 Oct 5*

- 1953--KANSAS ACT AGAINST DISCRIMINATION ENACTED
KHRC GIVEN ENFORCEMENT POWERS IN 1961
- 1963--PUBLIC ACCOMMODATIONS AMENDED TO KAAD
- 1970--HOUSING DISCRIMINATION AMENDED TO KAAD
- 1972--SEX DISCRIMINATION AMENDED TO KAAD
- 1974--PHYSICAL HANDICAP AMENDED TO KAAD
- 1983--AGE AMENDED TO KAAD (AGE COVERAGE
EXPANDED TO 18 YEARS AND UP IN 1988)
- 1991--DISABILITY/FAMILIAL STATUS AMEND. TO HOUSING
- 1991--DISAB (MENTAL/PHYSICAL) AMEND. TO EMPL & PA

COMPLAINTS FILED

FY 1988-1992

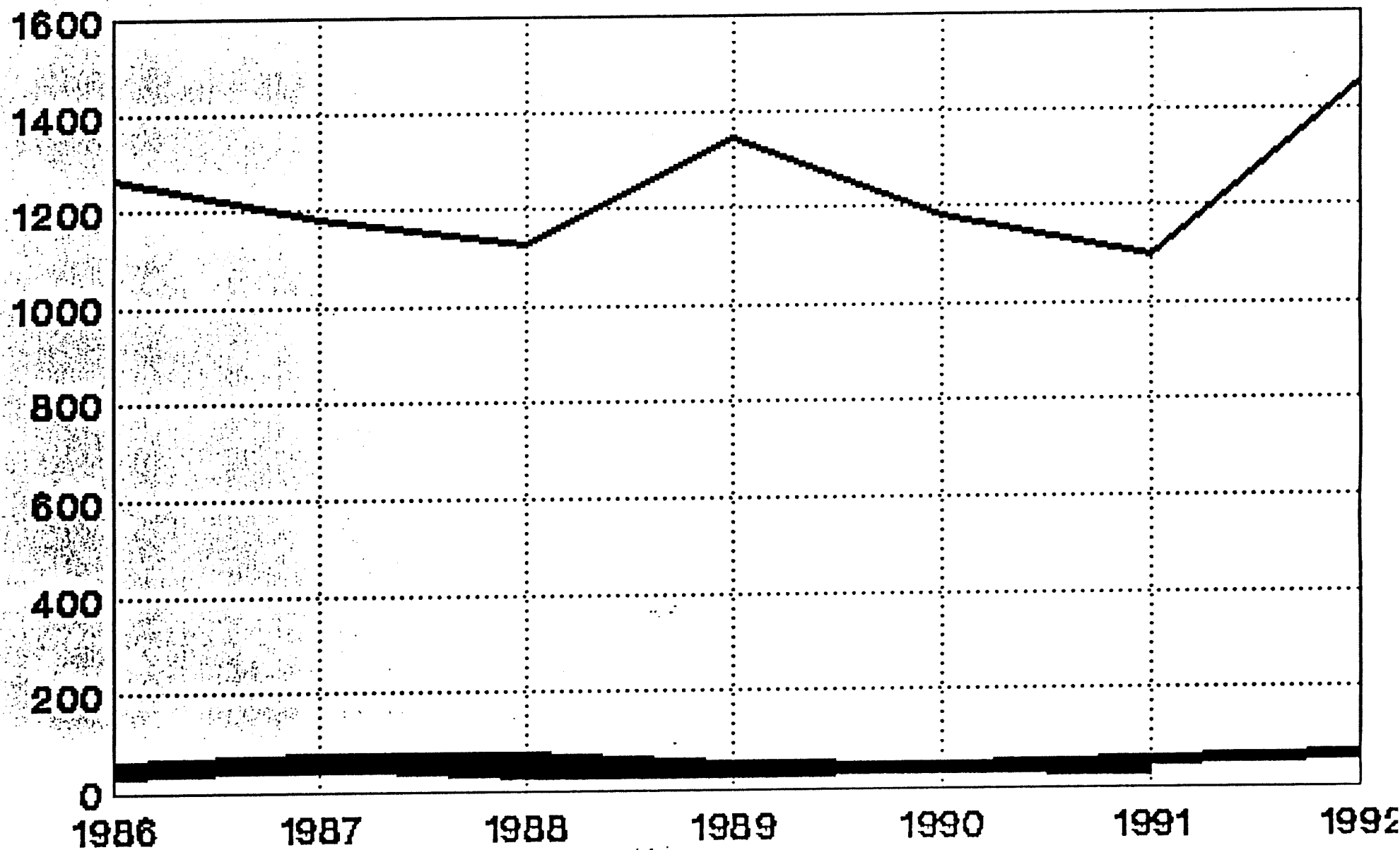
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COMPLAINTS FILED

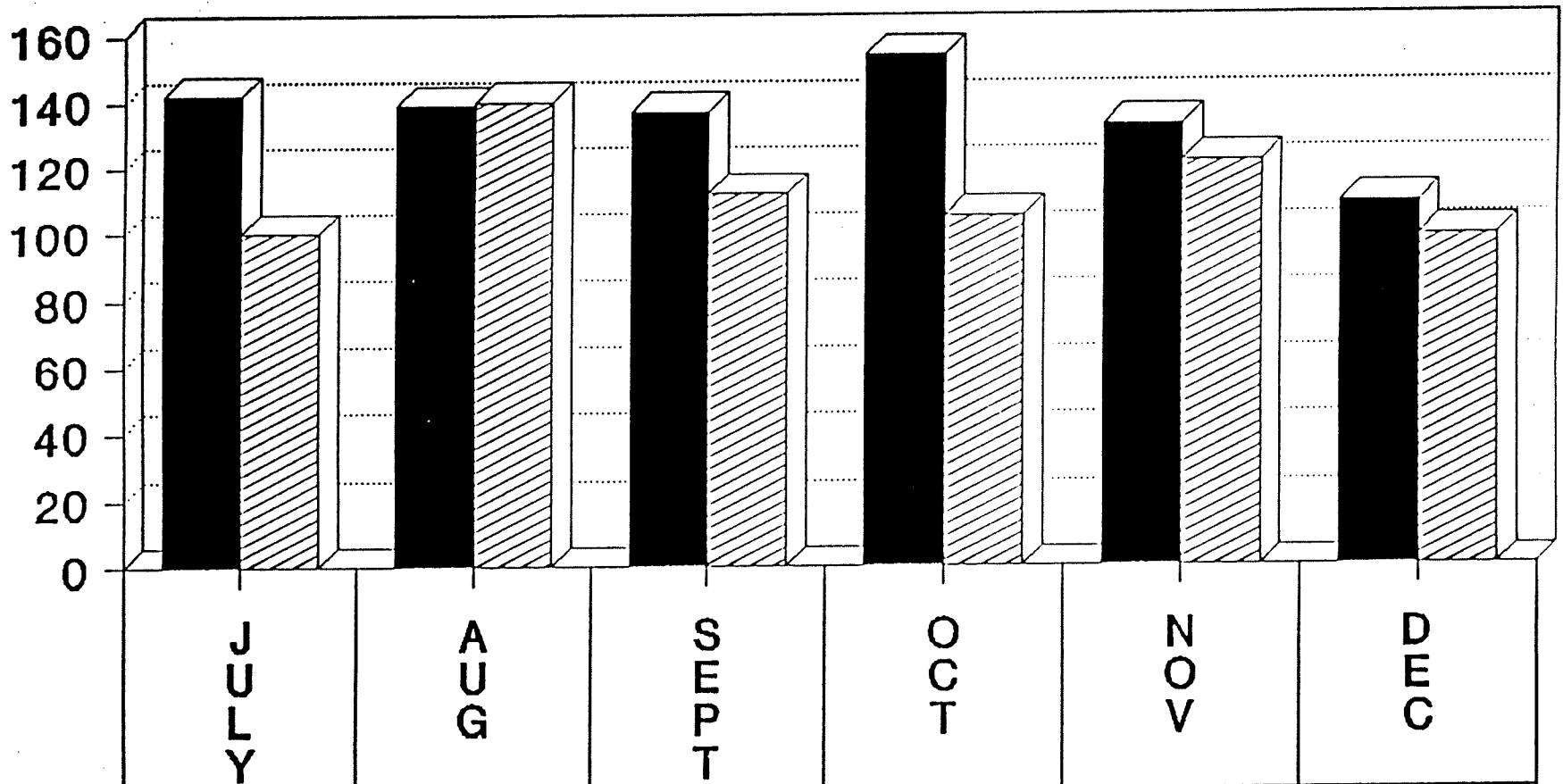
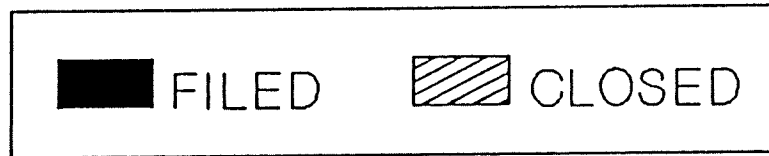
FY 1986-1992

5-3



CASE FILINGS/CLOSURES

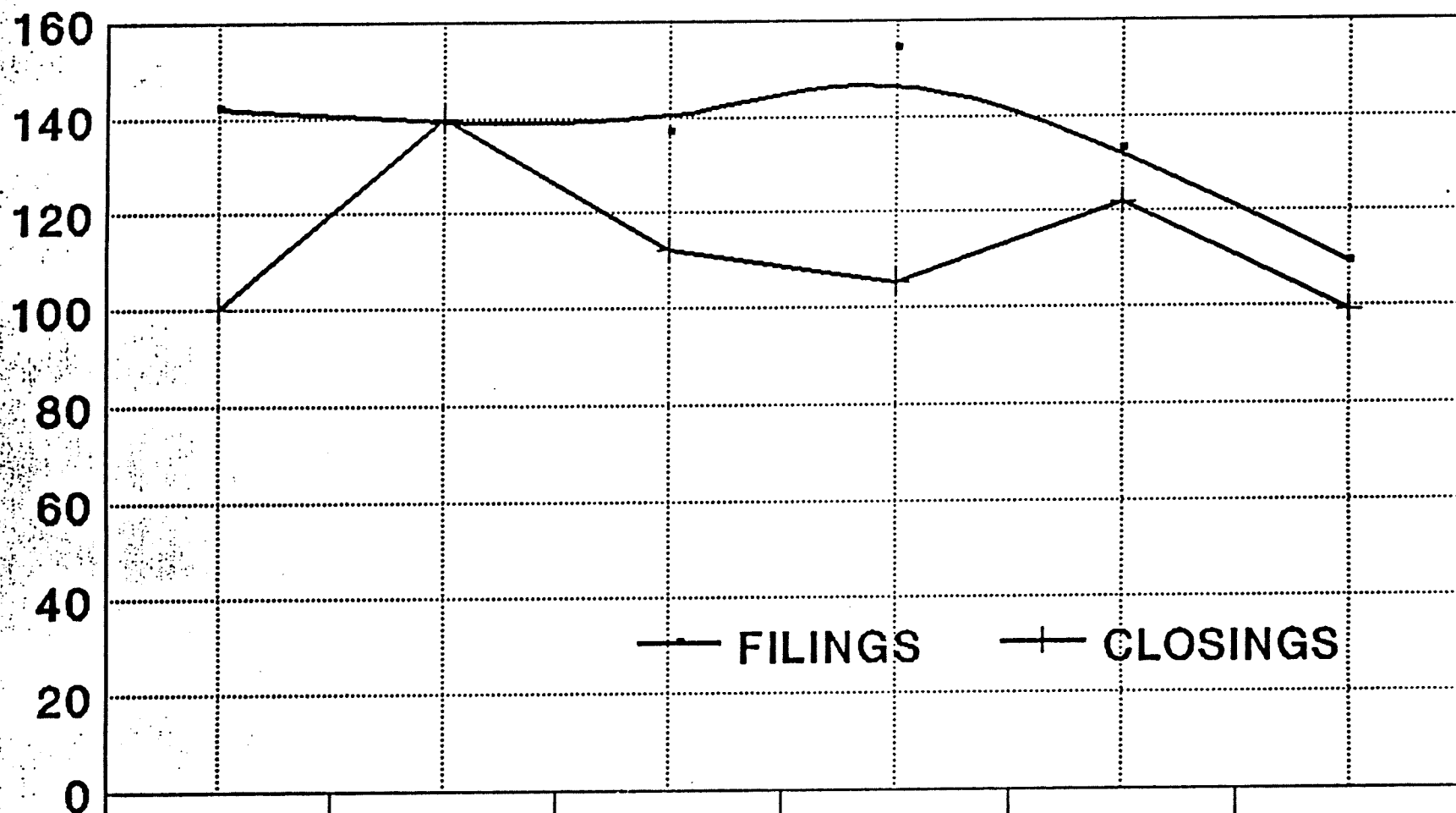
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FILED	142	139	137	154	133	109
CLOSED	100	140	112	105	122	99

CASE FILINGS/CLOSURE

FY 1993--JULY-DECEMBER

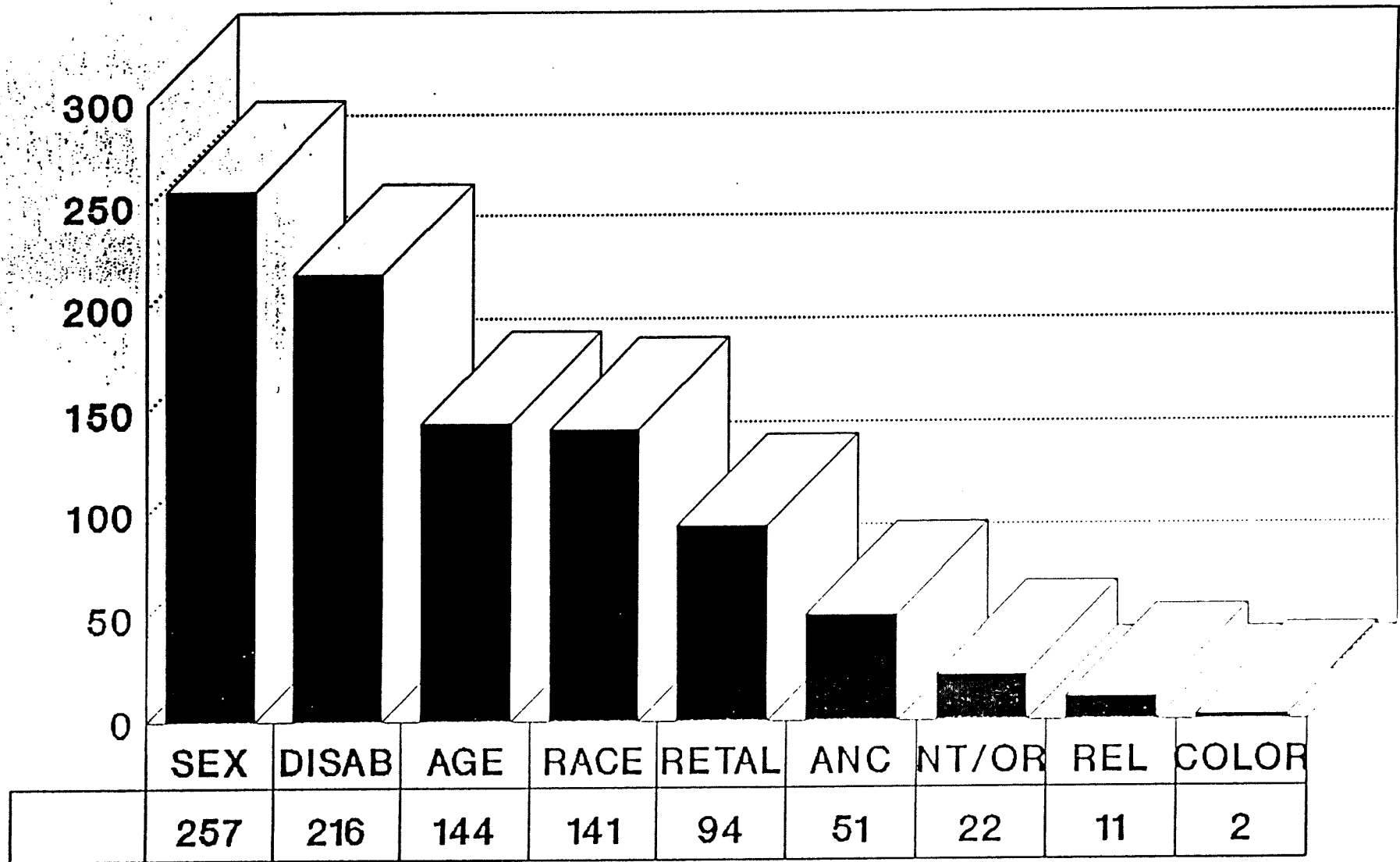


	JULY	AUG	SEPT	OCT	NOV	DEC
FILINGS	142	139	137	154	133	109
CLOSINGS	100	140	112	105	122	99

BASIS OF COMPLAINTS

EMPLOYMENT

5-6

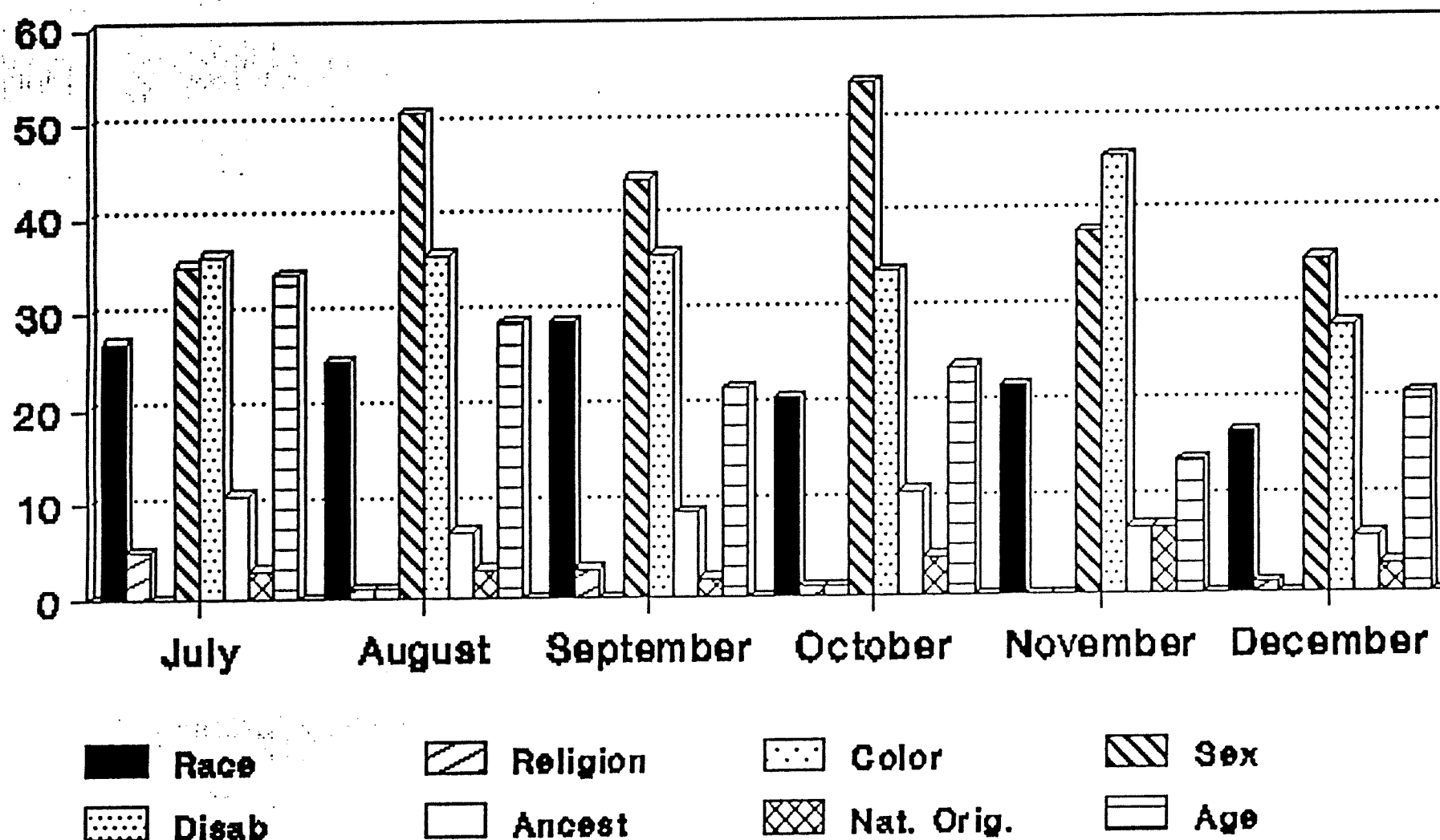


FY 1993--JULY-DECEMBER

EMPLOYMENT DISCRIMINATION

BASIS OF FILING

5-7

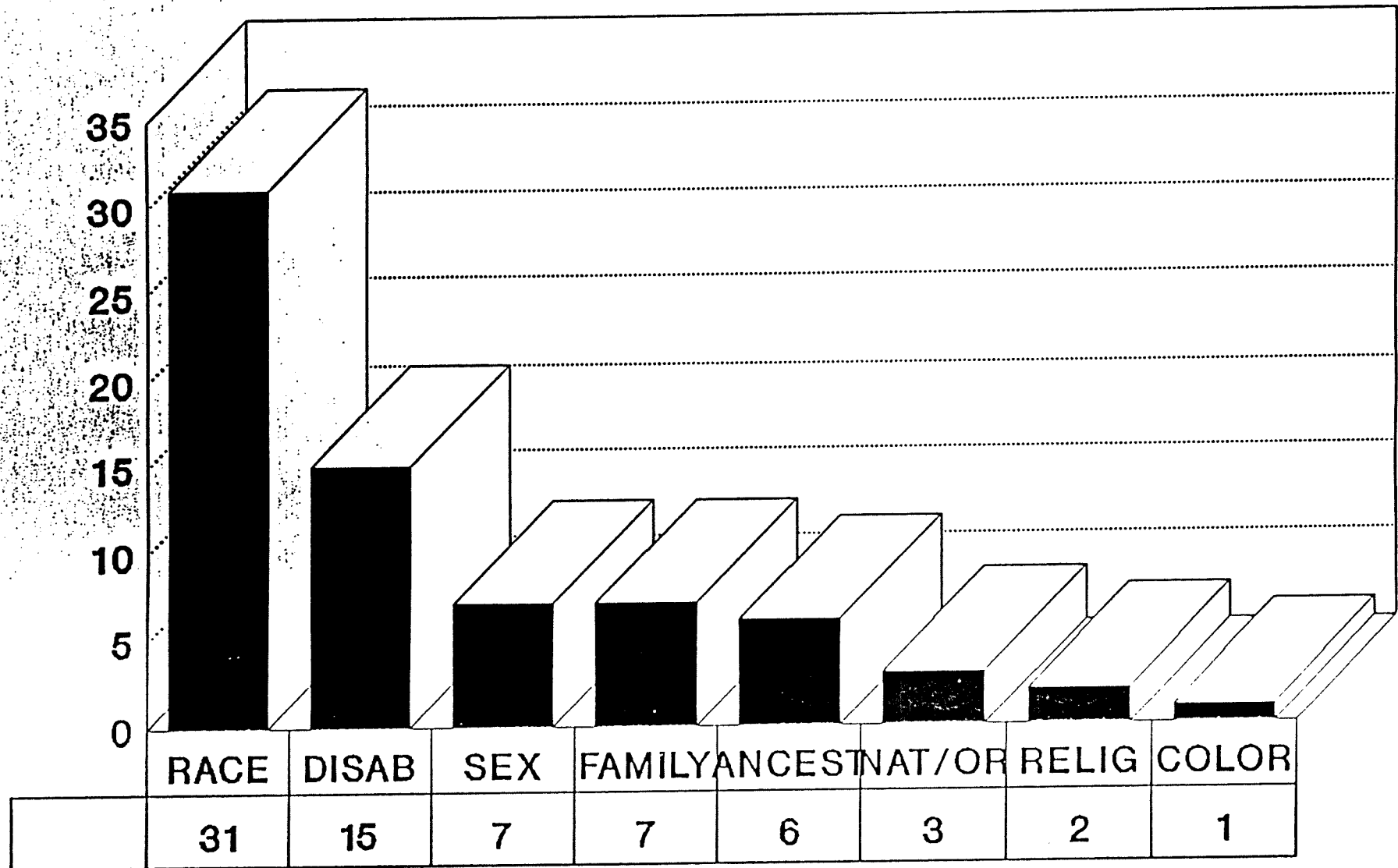


FY 1993, JULY-DECEMBER

BASIS OF COMPLAINTS

HOUSING

8-5

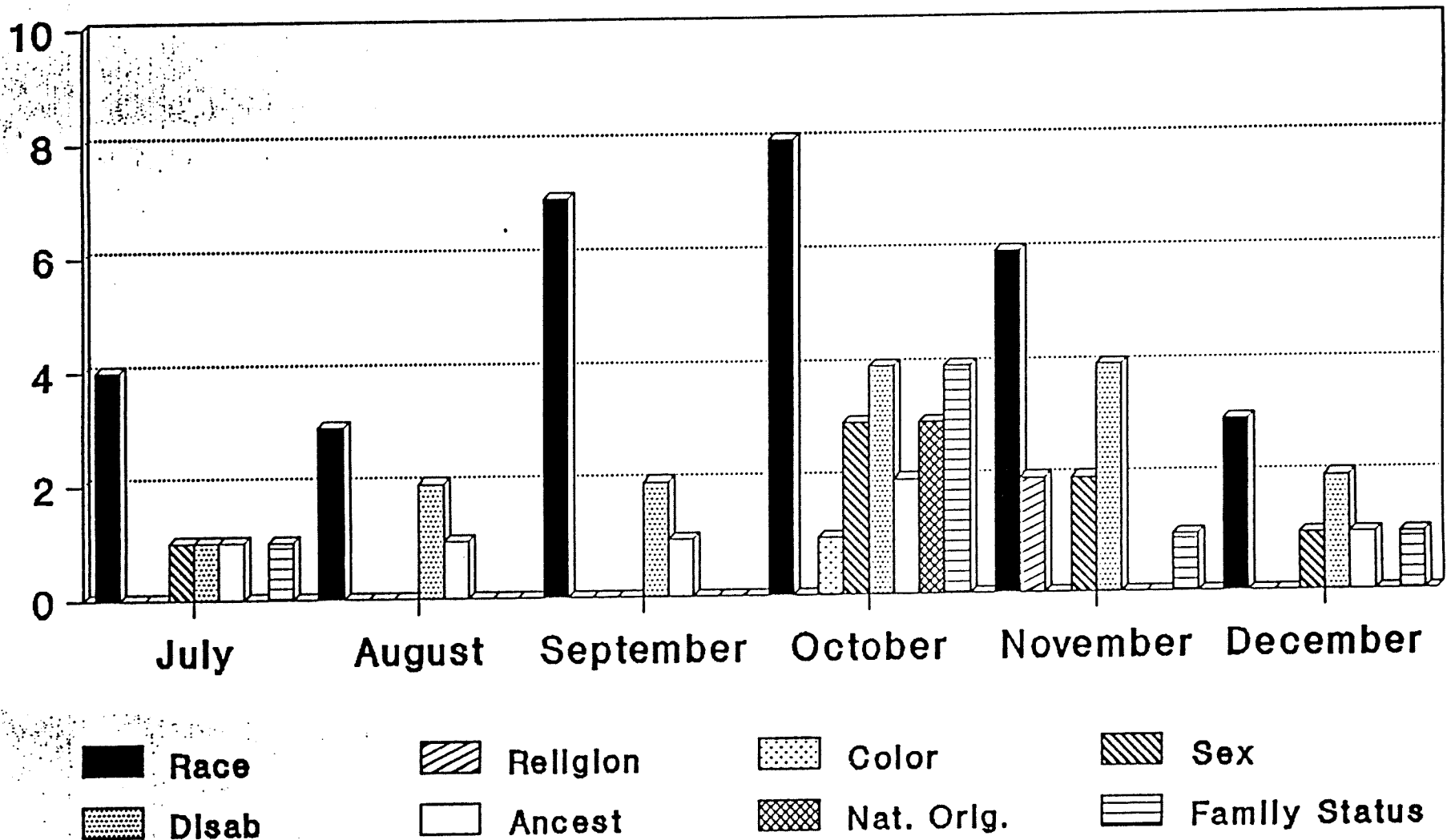


FY 1993--JULY-DECEMBER

HOUSING DISCRIMINATION

BASIS OF FILING

5-5

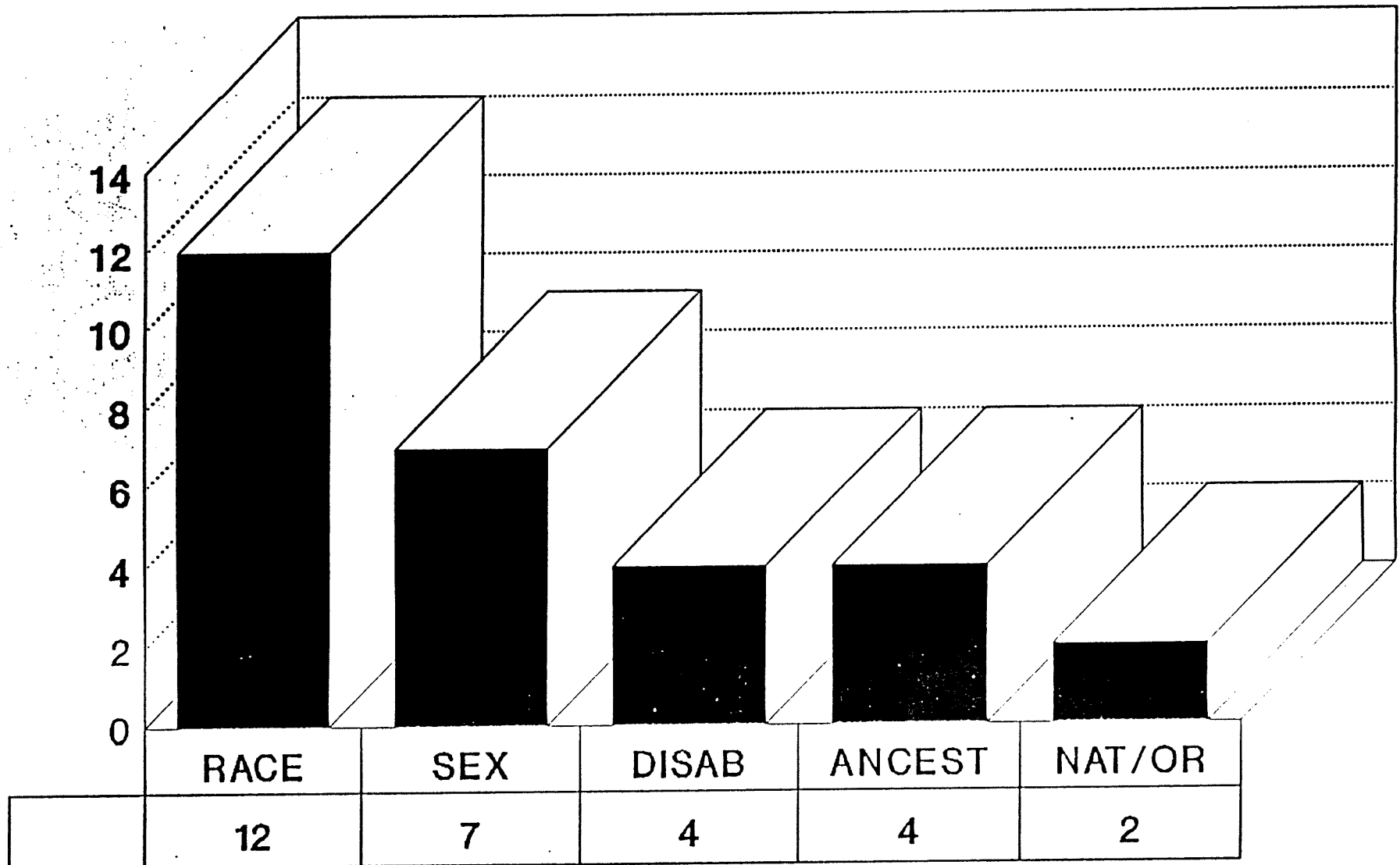


FY 1993, JULY-DECEMBER

BASIS OF COMPLAINTS

PUBLIC ACCOMMODATIONS

5-10

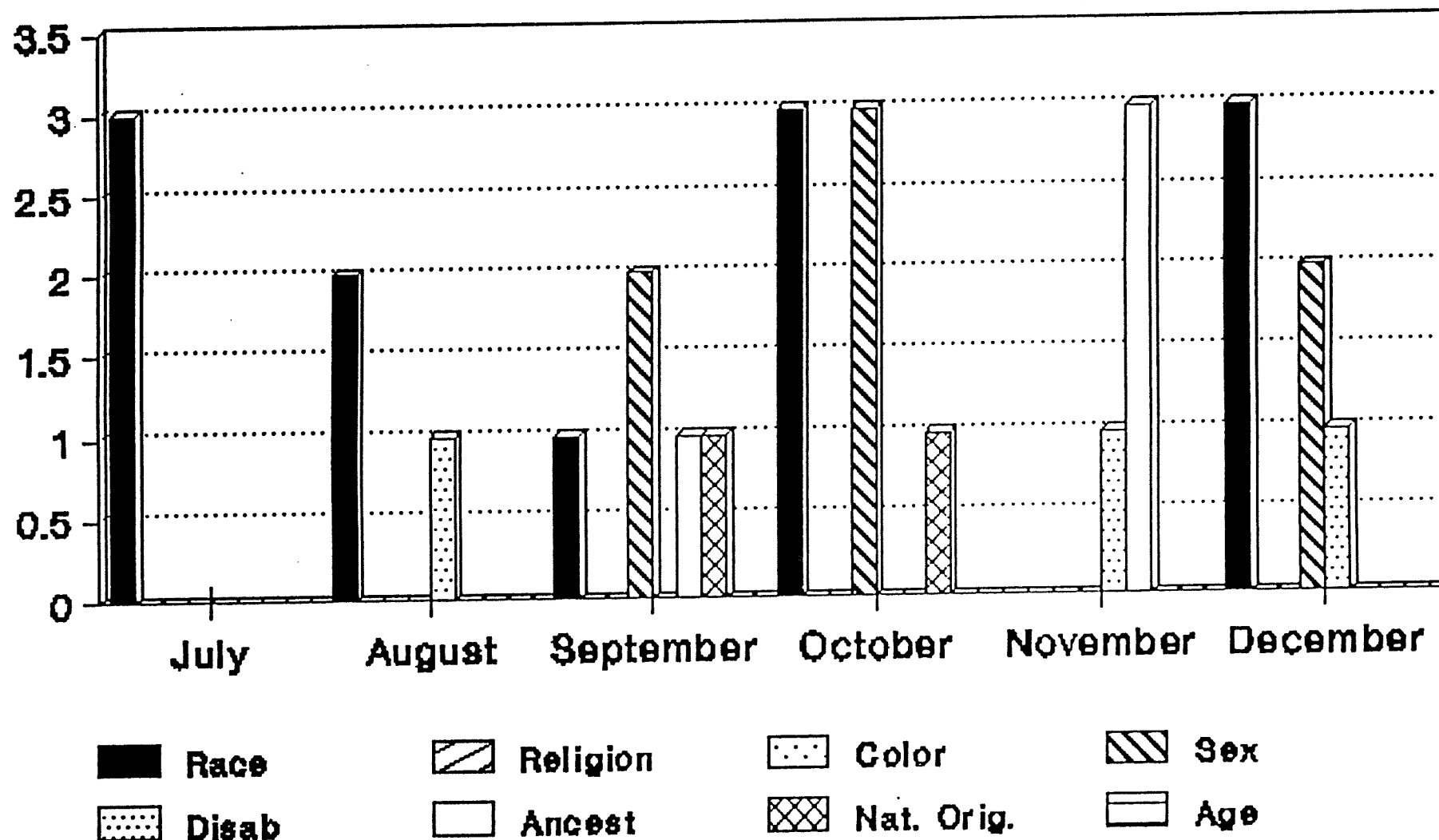


FY 1993--JULY-DECEMBER

PUBLIC ACCOMMODATIONS

BASIS OF FILING

11-5



FY 1993, JULY-DECEMBER

KANSAS HUMAN RIGHTS COMMISSION

<u>FISCAL YEAR</u>	<u>COMPLAINTS FILED</u>	<u>AVERAGE PER MONTH</u>	<u>FROM PREVIOUS YEAR</u> <u>%INCREASE</u> <u>%DECREASE</u>
1982	1112	93	21%
1983	939	78	16%
1984	1233	103	31%
1985	1260	105	2%
1986	1266	106	.4%
1987	1182	99	7%
1988	1130	94	12%
1989	1349	112	19%
1990	1182	99	12%
1991	1098	92	7%
1992	1457	122	33%
*1993	1632	136	12%

*Estimate based upon first six months of FY 1993. If our estimate is correct, this would show a total increase of 48.6% in the past two fiscal years. With the three (3) new special project positions recommended by the Governor beginning in FY 1994, this would indicate a 15.3% increase in staff during the same time period.

**KANSAS HUMAN RIGHTS COMMISSION
1982 THROUGH 1992**

<u>FY</u>	<u>TOTAL FUNDS</u>	<u>GENERAL FUNDS</u>	<u>STAFF SIZE</u>	<u>CASES FILED</u>	<u>CASES CLOSED</u>	<u>BACK/ LOG</u>
92	\$1,471,609	\$1,052,652	39	1457	1176	1243*
91	\$1,482,560	\$1,061,129	40	1098	1115	609
90	\$1,436,105	\$1,039,803	40	1182	1206	677
89	\$1,380,777	\$ 944,241	40	1349	1107	690
88	\$1,287,604 (only 39.5 positions funded)	\$ 868,035	41	1130	1083	366
87	\$1,285,230	\$ 619,315	41	1182	1367	406
86	\$1,224,159	\$ 934,560	42.7	1266	1177	462
85	\$1,238,868	\$ 999,257	41.7	1260	1119	520
84	\$1,171,751	\$ 949,953	42.7	1233	1035	303
83	\$1,115,134	\$ 963,560	45.7	939	1278	190
82	\$1,124,825	\$ 966,851	46.2	1112	1351	518

* The BACKLOG (formerly called Regular Backlog and Federal Suspense File) is now referred to in terms of OPEN CASES. The numbers for the backlog are as of June 30 of each fiscal year.

** Note that in 1983 the Kansas Act Against Discrimination (KAAD) was amended to include the Age Discrimination in Employment Act (ADEA) protecting persons between the ages of 40-70. The ADEA was expanded in 1988 to protect persons 18 years and up. The 1991 Legislature amended the KAAD to protect Persons With Disabilities (both mental and physical) from discrimination in the Employment and Public Accommodations portions of the KAAD effective July 1, 1991. Effective January 1, 1992 the housing section of the KAAD protected Persons With Disabilities and Families With Children from discrimination in the area of Housing.

KANSAS HUMAN RIGHTS COMMISSION
MARCH 1, 1992 THROUGH JANUARY 1, 1993

<u>DATE</u>	<u>OPEN CASES*</u>	<u>NEW CASES</u>	<u>CASES CLOSED</u>
3-1-92	1318	148	86
4-1-92	1355	135	92
5-1-92	1411	137	72
6-1-92	1456	111	76
7-1-92	1453	121	139
8-1-92	1485	142	100
9-1-92	1521	139	140
10-1-92	1523	137	112
11-1-92	1592	154	105
12-1-92	1626	133	122
1-1-93	1644	109	99

This indicates a 25% increase in the **Open Cases** in an 11 month period which equates to an average of 30 cases per month in the past 11 months going into "Backlog".

KHRC BACKLOG

Assuming we continue to average 136 cases per month or 1632 complaints filed per year, with SIX (6) new investigators to compliment our Eighteen (18) investigators that are averaging 113 closed case per month (1356 per year) they would be able to close an average of 143 cases per month (1716) per year.

<u>DATE</u>	<u>TOTAL OPEN CASES</u>	<u># NEW CASES</u>	<u>CASES CLOSED</u>	<u>BACKLOG/ CARRYOVER</u>
6-30-93	1729			1729
6-30-94	3361	1632	1716	1645
6-30-95	3271	1632	1716	1561
6-30-96	3193	1632	1716	1477
6-30-97	3109	1632	1716	1393
6-30-98	3025	1632	1716	1309
6-30-99	2941	1632	1716	1225
6-30-00	2857	1632	1716	1141
6-30-01	2773	1632	1716	1057
6-30-02	2689	1632	1716	973
6-30-03	2605	1632	1716	889
6-30-04	2521	1632	1716	805
6-30-05	2437	1632	1716	721
6-30-06	2353	1632	1716	637
06-30-07	2269	1632	1716	553
06-30-08	2185	1632	1716	469
06-30-09	2101	1632	1716	385
06-30-10	2017	1632	1716	301
06-30-11	1933	1632	1716	217
06-30-12	1849	1632	1716	133
06-30-13	1765	1632	1716	49

With SIX (6) additional invesitgators we could eliminate the BACKLOG in 20.58 years.

KHRC BACKLOG

We are currently RECEIVING 136 cases per month.
18 Investigators are CLOSING 113 cases per month.
If we are appropriated 6 ADDITIONAL INVESTIGATORS we would be
able to eliminate 7 cases per month from the BACKLOG. We
could eliminate the the backlog in 20.58 years.

<u>DATE</u>	<u>BACKLOG</u>
6-30-93	1729
6-30-94	1624
6-30-95	1561
6-30-96	1477
6-30-97	1393
6-30-98	1309
6-30-99	1225
6-30-00	1141
6-30-01	1057
6-30-02	973
6-30-03	889
6-30-04	805
6-30-05	721
6-30-06	637
6-30-07	553
6-30-08	469
6-30-09	385
6-30-10	301
6-30-11	217
6-30-12	133
6-30-13	49