

Approved: 5-1-93
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 March 22, 1993 in Room 254-E of the Capitol.

All members were present

Committee staff present: Emalene Correll, Legislative Research Department
Mary Ann Torrence, Revisor of Statutes
Jeanne Eudaley, Committee Secretary

Conferees appearing before the committee:
Janet Chubb, Racing Commission

Others attending: See attached list

Sen. Oleen recognized Sen. Papay, Chairman of the Human Rights Commission Subcommittee, who explained the report (Attachment 1) to the committee. Sen. Papay referred to the last page of the report which outlines staff size and funds expended for FY 82 through 92. She outlined three important points from the report: (1.) The agency will be short \$14,049 for salaries and wages in FY93, and the Subcommittee recommends the agency have authority to expend federal funds to meet shortfall; (2) Recommends 3.0 Special Investigator I positions be added, above the 3.0 requested by the Governor, to work on backlog cases for one year; (3) Recommends Performance audit of functions and duties of the Commission to report to the 1994 Legislature.

Considerable discussion centered around the backlog of cases and the reasons for the backlog. Sen. Vidricksen asked if the subcommittee determined how many of those cases are frivolous, and Sen. Papay answered that a case has to be investigated to determine if it is frivolous and that according to the law, everyone is entitled to a hearing. Sen. Oleen stated that recently the Commission has moved Senior Investigators to the front line to initially interview when a complaint is filed. The Commission feels this has been successful in taking care of some cases that have no merit. Sen. Vidricksen asked if we have a "no probable cause" law to discourage and penalize filing frivolous complaints, and Sen. Parkinson stated there is such a law. Sen. Papay stated the Commission needs investigators to determine the status of claims; however, they have fewer Investigators than ten years ago, with more cases being filed. Sen. Ramirez reminded the committee that the Federal law does not give the Commission much latitude, but that there are a large number of cases that are filed for "no probable cause". Sen. Gooch stated he has served on the Human Rights Commission for a number of years, and the only way to cut down on the number of cases is to cut out the reasons why people file complaints; that a one-year wait is too long for a case to be heard. Sen. Jones reminded the committee the name of the Commission was changed from Civil Rights Commission to Human Rights Commission - he carried the bill on the House floor. He stated that Civil Rights was organized by the infra-structure of the United States to deal with the problems of blacks trying to get jobs, and it has expanded from there to include at least 16 components of Rights. He recalled there were over 100 sexual harassment cases filed with the Commission after the Clarence Thomas Hearing. Sen. Papay stated the Federal government will pay the Commission for hearing certain types of complaints, such as housing complaints, within a certain time period; but if the case cannot be heard in that time, the Federal government will not pay for those cases.

The committee also discussed Sen. Gooch's attempt to amend the provision of three additional investigators into another bill on the Senate floor, but it failed to pass. Sen. Oleen stated she has received calls from employers (and others named as defendants) with complaints that their case cannot be heard in a timely manner. Sen. Oleen advised that the committee may vote to introduce an appropriation bill containing the provision for the three additional Investigators, which would probably be referred to the Ways and Means Committee. Sen. Papay made a motion the committee introduce an Appropriations bill which would add three additional Investigator I positions (over the Governor's recommendation of 3 additional) to work on the backlog of cases for one year. Sen. Ramirez seconded the motion, and the motion passed. Sen. Oleen thanked the Subcommittee for its contribution to the committee.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS, Room 254-E
Statehouse, at 11:05 a.m. on March 22, 1993.

Sen. Oleen called the Committees' attention to the Committee Meeting Minutes for February 4 and 10.

Sen. Ramirez made a motion the Minutes be approved, and it was seconded by Sen. Tillotson; the motion passed and the Minutes are approved.

Sen. Oleen introduced pages from Sen. Feleciano's district who are assisting the committee today.

Sen. Oleen asked the committee to look at revised amendments to HB 2152 (Attachment 2), and Mary Torrence explained the amendments relate to Department of Corrections employees only for court ordered testing for HIV and Hepatitis B, after a crime has been committed. It provides the results of the test may be directed to a healthcare provider and counseling may also be included after testing. Sen. Praeger referred to the information the Corrections employee will receive after testing and the provision that the information will not be disclosed. She emphasized the importance of confidentiality and asked what the penalty is for disclosing that information and how it is to be enforced. Emalene Correll stated a subsection could be added to provide disclosure would be a Class B misdemeanor. Sen. Praeger stated she feels it is important to have assurance that there is a penalty for disclosure. Sen. Praeger made a motion to amend HB 2152 to include the appropriate penalty for disclosure, and it was seconded by Sen. Tillotson. Ms. Correll explained the difference, under the law, in how infectious diseases are treated and how they are reported to the local Board of Health and what can be disclosed, which varies because of the difference in diseases. She stated the Department of Health and Environment has Rules and Regulations which mandate how certain diseases will be treated. Sen. Walker asked if the pending motion was in conflict with those Rules and Regulations, and Ms. Correll said a disease could be excluded in order to handle the penalty provision. Sen. Walker stated he supports including protection for state hospital employees since there are many assaults reported from the hospitals. Sen. Walker made a substitute motion to include state hospital employees in the bill, and it was seconded by Sen. Parkinson. Sen. Tillotson stated that prisons are unique, that inmates have been convicted of a crime and have lost their rights and reminded this bill forces the inmate to test for the disease. Sen. Ramirez stated he supports keeping this provision narrow in scope and including only the prison population. Sen. Oleen clarified the penalty should be a Class C Misdemeanor, rather than a Class B. Sen. Praeger responded that the only way she can support the bill is to include Corrections employees only and cautioned against getting into more complex areas and establishing new policy. Upon voting for the Substitute motion, a division was called; the vote was tied, and the Chairman voted against the amendment, and it failed. The original motion to amend HB 2152, including the appropriate Class B or C misdemeanor penalty passed. Sen. Tillotson made a motion the bill be reported favorably as amended, and it was seconded by Sen. Ramirez; the motion passed.

Sen., Oleen directed the committees' attention to SB 412, amending the parimutuel racing act, and requested that Janet Chubb present the section which the Racing Commission feels needs to be passed this session. Ms. Chubb presented testimony (Attachment 3), and stated the section which the commission feels is urgent is on Page 9, Lines 1-28. Sen. Oleen asked Ms. Chubb if she had figures on the fiscal impact if this section were enacted, but Ms. Chubb stated she did not have that information with her today but will make it available to the committee.

Meeting adjourned at 12:15.

GUEST LIST

COMMITTEE: Senate Federal & State Affairs

DATE: MARCH 22, 1993

[illegible]

Attach. 1

STATE OF KANSAS • SENATE CHAMBER

LILLIAN PAPAY
State Senator

Thirty-Third District
Barber, S. Barton, Comanche, Harper, Kingman, Pratt, Stafford Counties
1416 Coolidge, Great Bend, KS 67530
(316) 793-3836

memorandum

PLEASE NOTE*

This report was prepared in
direct conjunction with the House
Subcommittee on the Human Rights
Commission.

LP

Sen. F. & S. A.
3-22-93
att 1



TOPEKA

SENATE CHAMBER

LILLIAN PAPAY

SENATOR, 33RD DISTRICT

BARBER, S. BARTON, COMANCHE, HARPER,

KINGMAN, PRATT, STAFFORD COUNTIES

1416 COOLIDGE

GREAT BEND, KS 67530

(316) 793-3836

STATEHOUSE—143-N

TOPEKA, KS 66612-1504

(913) 296-7394

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(DURING SESSION)

COMMITTEE ASSIGNMENTS

VICE CHAIRMAN: TRANSPORTATION & UTILITIES

MEMBER: FEDERAL & STATE AFFAIRS

GOVERNMENTAL ORGANIZATION

PUBLIC HEALTH & WELFARE

March 22, 1993

HUMAN RIGHTS COMMISSION
SUBCOMMITTEE REPORT

Members: Papay, Gooch & Ramirez

Also: Jones & Oleen

Senate Subcommittee Recommendation

Senate Bill #62

The Senate Subcommittee concurs with the recommendations of the Governor, with the following adjustments.

1. Increase the expenditure limitation on the Conversion of Materials and Equipment Fund from \$0 to \$629. This will provide funding for the agency to pay higher than anticipated utility bills in the Wichita office.
2. Increase the expenditure limitation on the agency's federal funds by \$20,933 from \$501,167 to \$522, 100. The Governor recommended reductions of \$6,884 from the State General Fund appropriation. These reductions were in travel and subsistence (\$5,610), and fees--professional services (\$1,274). The agency requested that the \$6,884 reduction in State General Fund financing be replaced by available federal funds. According to the agency, the travel funding is essential for on-site investigations. The reduction recommended by the Governor for fees-professional services represents the approximate cost of transcripts for two public hearings. In addition, the agency indicates that, to date, it has not experienced the turnover it anticipated for FY 1993. With no additional turnover in FY 1993, the agency projects that it will be short \$14,049 for salaries and wages. The Subcommittee recommends that the agency have the authority to expend federal funds to meet this potential shortfall.

Senate Subcommittee Recommendation

Senate Bill #41

The Senate Subcommittee concurs with the recommendations of the Governor, with the following observations:

1. The Subcommittee shares the serious concerns of the agency in addressing the backlog of cases currently pending before the Commission. In its testimony to the Subcommittee, the Commission noted that if an individual filed a complaint this month, it would be approximately 15 months before the Commission could begin a full investigation. The agency requested that the Subcommittee recommend 3.0 Special Projects Investigator I positions in addition to the three recommended by the Governor. The agency indicated that even with 6.0 new Investigators, the Commission would expect to completely eliminate the case backlog by the year 2014.

The Subcommittee recognizes the severity of the problems outlined by the agency and believes that there are essentially two alternatives available to address the concerns of the Commission. The first would be a large addition of staff with a corresponding large addition of State General Fund moneys. The other alternative would be an attempt to modify or redefine the duties of the Commission or its investigation methods.

The Subcommittee recommends, however, that neither of these alternatives be undertaken without a great deal of further information. For that reason, the Subcommittee recommends that the Legislative Division of Post Audit be requested to conduct a performance audit of the functions and duties of the Commission and report to the 1994 Legislature. With that report, the 1994 Legislature could explore a better solution to the problems faced by the agency and determine the resources necessary for the Commission to accomplish its objectives.

2. The Subcommittee notes, that according to information provided by the agency, that the nature of complaints being received by the agency has changed dramatically. In FY 1991, for example, 337, or 31.2 percent, of all cases filed were based on race discrimination, and 336, or 31.1 percent, of cases filed were sex discrimination cases. Physical handicap/disability cases constituted only 6.6 percent of all case filings. In FY 1992, by contrast, 526, or 36.1 percent, were sex discrimination cases, and 276, or 18.9 percent, were disability cases. Race discrimination cases constituted 29.4 percent of the FY 1992 filings. The increases in disability and sex discrimination case filings may well be the result of increased awareness stemming from passage of the Americans with Disabilities Act (ADA) and the media coverage surrounding the Clarence Thomas hearings, and the Subcommittee believes that those complaints may, at some point, reach a plateau and begin to level off. If that is in fact the case, the backlog facing the agency might not continue to grow at such a rapid pace.

**KANSAS HUMAN RIGHTS COMMISSION
1982 THROUGH 1992**

f2

<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.

HOUSE BILL No. 2152

By Representatives Wilk, Ruff, Dawson, Gatlin, Goodwin, Graeber,
Kejr, Mayans, Minor, Nichols, Pauls, Powers, M. Smith and
Standifer

1-28

AN ACT concerning certain ~~infectious~~ diseases; authorizing a court
to order tests for such diseases under certain circumstances; au-
thorizing disclosure of certain information; amending K.S.A. ~~65-~~
~~6001 and~~ 65-6004 and repealing the existing ~~sections~~

section

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 65-6001 is hereby amended to read as follows:
65-6001. As used in K.S.A. 65-6001 to 65-6007, inclusive through
65-6007 and section 3, and amendments thereto, unless the context
clearly requires otherwise:

(a) "AIDS" means the disease acquired immune deficiency
syndrome. "Offender" means a person in the legal custody of the
secretary of corrections.

(b) "HIV" means the human immunodeficiency virus.

(c) "Positive reaction to an AIDS HIV test" means a positive
screening test, approved by the secretary, indicating infection by
HIV, with a positive specific test as specified by the secretary com-
prising confirmed analytical results which are evidence of HIV
infection.

(d) "Positive reaction to a hepatitis B test" means the confirmed
presence of hepatitis B surface antigen.

(e) "Secretary" means the secretary of health and
environment.

(f) "Physician" means any person licensed to practice medi-
cine and surgery.

(g) "Laboratory director" means the person responsible for
the professional, administrative, organizational and educational duties
of a laboratory.

(h) "HIV infection" means the presence of HIV in the body.

(i) "Racial/ethnic group" shall be designated as either white,
black, Hispanic, Asian/Pacific islander or American Indian/Alaskan

Don
7-5-94
3-22-94
Oster

1 Native.

2 ~~(#)~~ "Law enforcement officer" means police officer or law
3 enforcement officer as such terms are defined under K.S.A. 74-
4 5602 and amendments thereto.

5 ~~(#)~~ (j) "Corrections employee" means an employee of the depart-
6 ment of corrections.

7 ~~(#)~~ (k) "Emergency services employee" means an attendant or first
8 ~~respondent~~ responder, as defined in K.S.A. 65-6112 and amend-
9 ments thereto, or any firefighter.

10 ~~(#)~~ (l) "Law enforcement employee" means:

11 (1) Any police officer or law enforcement officer, as defined in
12 K.S.A. 74-5602 and amendments thereto;

13 (2) any person in the service of a city police department or county
14 sheriff's office who performs law enforcement duties without pay
15 and is considered a reserve officer; or

16 (3) Any person employed by a city or county who is in charge
17 of a jail or section of jail including jail guards and those who conduct
18 searches of persons taken into custody.

19 ~~(#)~~ (m) "Infectious disease" means AIDS HIV infection or hep-
20 atitis B.

21 ~~(#)~~ (n) "Infectious disease tests" means tests approved by the
22 secretary for detection of infectious disease.

23 ~~(#)~~ (o) "Body fluid" means blood, amniotic fluid, pericardial
24 fluid, pleural fluid, synovial fluid, cerebrospinal fluid, semen or
25 vaginal secretions, or any body fluid visibly contaminated with blood.

26 ~~Sec. 2.~~ K.S.A. 65-6004 is hereby amended to read as follows:

27 65-6004. (a) Notwithstanding any other law to the contrary, a phy-
28 sician performing medical or surgical procedures on a patient who
29 the physician knows has AIDS ~~an infectious disease~~ or has had a
30 positive reaction to an AIDS ~~infectious disease~~ test may disclose
31 such information to other health care providers, emergency per-
32 sonnel, correctional officers employed by the department of
33 corrections or law enforcement officers ~~services employees, cor-~~
34 ~~rections employees or law enforcement employees~~ who have been or
35 will be placed in contact with bodily fluids ~~body fluid~~ of such
36 patient. The information shall be confidential and shall not be dis-
37 closed by such health care providers, emergency personnel, cor-
38 rectional officers employed by the department of corrections
39 or law enforcement officers ~~services employees, corrections em-~~
40 ~~ployees or law enforcement employees~~ except as may be necessary
41 in providing treatment for such patient.

42 (b) Notwithstanding any other law to the contrary, a physician
43 who has reason to believe that the spouse or partner of a person

Section 1.

AIDS

personnel or law enforcement officers

bodily fluids

personnel or law enforcement officers

1 who has had a positive reaction to an AIDS ~~infectious disease~~ test AIDS
 2 or who has AIDS ~~an infectious disease~~ may have been exposed to
 3 HIV ~~the infectious disease~~ and is unaware of such exposure may HIV
 4 inform the spouse or partner of the risk of exposure. The information
 5 shall be confidential and shall not be disclosed by such spouse or
 6 partner to other persons except to the spouse or partner who has
 7 had a positive reaction to an AIDS ~~infectious disease~~ test or who AIDS
 8 has AIDS ~~an infectious disease~~.

9 (c) Nothing in this section shall be construed to create a duty to
 10 warn any person of possible exposure to HIV ~~an infectious disease~~. HIV

11 (d) Any physician who discloses information in accordance with
 12 the provisions of this section in good faith and without malice shall
 13 have immunity from any liability, civil or criminal, that might oth-
 14 erwise be incurred or imposed in an action resulting from such
 15 disclosure. Any such physician shall have the same immunity with
 16 respect to participation in any judicial proceeding resulting from such
 17 disclosure.

18 New Sec. 3. (a) If a corrections employee has been placed in
 19 contact with body fluid from one or more other persons offenders
 20 while performing duties within the scope of such employee's duties
 21 as an employee, the secretary of corrections may make application
 22 to a court of competent jurisdiction the district court of the county
 23 where the offender or offenders are in custody for an order requiring
 24 such other person or persons offender or offenders to submit to
 25 infectious disease tests. Such application shall include an allegation
 26 that the person or persons offender or offenders sought to be
 27 tested have been requested to voluntarily submit to infectious disease
 28 tests and have refused the tests. When any such application is re-
 29 ceived, the court shall hold a hearing forthwith and shall issue its
 30 order thereon immediately if the court finds that: (1) There is prob-
 31 able cause to believe that the employee involved has been placed
 32 in contact with body fluid of the person or persons offender or
 33 offenders sought to be tested; and (2) the person or persons of-
 34 fender or offenders sought to be tested have been requested to
 35 submit to the tests and have refused, unless the court makes a further
 36 finding that exigent circumstances exist that would, in the court's
 37 judgment, excuse the applicant from making such a request. Ex-
 38 penses of the testing shall be assessed as a cost of the proceeding. a

39 (b) If an infectious disease test ordered pursuant to this section
 40 results in a negative reaction, the court, upon proper application,
 41 shall order the person offender tested to submit to another infectious
 42 disease test six months after the date the first test was administered.

43 (c) The results of any infectious disease test ordered pursuant to

New Sec. 2. See attachment

New Sec. 3. See attachment

a corrections

tests for HIV infection and hepatitis B

tests for HIV infection and hepatitis B and have refused the
 tests and that the corrections employee has agreed to voluntary
 testing for HIV infection and hepatitis B, including appropriate
 follow-up testing

If a test is ordered pursuant to this section, the corrections
 employee shall designate a health care provider or counselor to
 receive the test results on behalf of the corrections employee.

1 ~~this section~~ shall be disclosed to the court that ordered the test, the
2 ~~employee and the person tested.~~ The results shall also be disclosed
3 to the secretary of corrections for inclusion in the offender's medical
4 records ~~and for internal management purposes on a need-to-know~~
5 ~~basis as determined by the secretary.~~

the test

and the health care provider or counselor designated by the
corrections employee

6 (d) When a court orders a person an offender to submit to
7 ~~infectious disease~~ tests under this section, the withdrawal of the
8 blood may be performed only by: (1) A ~~person licensed to practice~~
9 ~~medicine and surgery~~ or a person acting under the supervision of
10 ~~such licensed person~~; (2) a licensed professional nurse or a licensed
11 practical nurse; or (3) a qualified medical technician. No person
12 authorized by this subsection to withdraw blood, no person assisting
13 in the performance of the ~~infectious disease~~ tests nor any medical
14 care facility where blood is withdrawn or tested that has been ordered
15 by the court to withdraw or test blood shall be liable in any civil
16 or criminal action when the act is performed in a reasonable manner
17 according to generally accepted medical practices.

Test results of the corrections employee shall not be disclosed
except as specifically authorized in writing by the employee.

physician

18 (e) The results of tests or reports, or information therein, ob-
19 tained under this section shall be confidential and shall not be di-
20 vulged to any person not authorized by this act to receive such
21 results, reports or information. Any violation of this subsection is a
22 class C misdemeanor.

23 Sec. 4. K.S.A. 65-6001 and 65-6004 are hereby repealed.

24 Sec. 5. This act shall take effect and be in force from and after
25 its publication in the statute book.

New Sec. 2. As used in sections 2 through 4:

(a) "Body fluid" means blood, amniotic fluid, pericardial fluid, pleural fluid, synovial fluid, cerebrospinal fluid, semen or vaginal secretions, or any body fluid visibly contaminated with blood.

(b) "Corrections employee" means an employee of the department of corrections.

(c) "HIV" means the human immunodeficiency virus.

(d) "HIV infection" means the presence of HIV in the body.

(e) "Offender" means a person in the legal custody of the secretary of corrections.

(f) "Physician" means any person licensed to practice medicine and surgery.

(g) "Positive reaction to a hepatitis B test" means the confirmed presence of hepatitis B surface antigen.

(h) "Positive reaction to an HIV test" means a positive screening test, approved by the secretary, indicating infection by HIV, with a positive specific test as specified by the secretary comprising confirmed analytical results which are evidence of HIV infection.

(i) "Tests for HIV infection and hepatitis B" means tests approved by the secretary of health and environment for detection of HIV infection and hepatitis B.

New Sec. 3. (a) Notwithstanding any other law to the contrary, a physician performing medical or surgical procedures on a patient who the physician knows has HIV or hepatitis B or has had a positive reaction to an HIV or hepatitis B test may disclose such information to corrections employees who have been or will be placed in contact with body fluid of such patient. The information shall be confidential and shall not be disclosed by corrections employees except as may be necessary in providing treatment for such patient.

(b) Nothing in this section shall be construed to create a duty to warn any person of possible exposure to infection or hepatitis B.

(c) Any physician who discloses information in accordance with the provisions of this section in good faith and without

malice shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed in an action resulting from such disclosure. Any such physician shall have the same immunity with respect to participation in any judicial proceeding resulting from such disclosure.

SENATE FEDERAL AND STATE AFFAIRS -- March 22, 1993

Testimony of Janet A. Chubb

Chairman and members of the committee, thank you for allowing me to appear on behalf of the Kansas Racing Commission today.

The commission seeks an amendment to the racing act that would permit it to appoint a temporary substitute racing judge or steward when necessary. The current language limits the commission's appointments to three stewards and three racing judges at each race meeting. The commission wants to limit the service to three stewards or three judges at any one time, but the commission does not want to limit the appointments to three. It believes a plain reading of the current language does not permit it to appoint a substitute.

As a result of legislative amendment in 1991, stewards and judges became state employees in the unclassified service. They serve at the pleasure of the commission. Stewards and judges act as a board. Their primary responsibilities are the monitoring of racing and wagering and the conduct of administrative hearings.

Traditionally, three stewards and three racing judges, sitting as a panel, observe racing from the stewards' and judges' tower or stand. Administrative hearings concerning alleged violations of the racing act or regulations are not assigned by the commission to an individual judge or steward but to the three-person board. Findings of fact and conclusions of law are a result of the board's deliberations. The language of the racing act and commission regulations is consistent with this procedure.

With the amendment, if a steward or judge were ill or on vacation, the temporary appointment would serve in his or her stead to perform essential duties, specifically those related to conduct of racing and wagering and scheduled administrative hearings.

Sen. F. + S. Q.
3-22-93
Act 3

ARTICLE 5 - RACETRACK OFFICIALS

112-5-1. Racetrack officials. (a) Unless otherwise ordered by the commission, racetrack officials at a race meet for horses shall be as follows: the starter, the paddock judge, the patrol judges, the placing judges, the clerk of scales, the racing secretary, the mutuel manager, the "horsemen's bookkeeper" and the identifier. Each individual, and each member of the individual's family as defined by K.S.A. 1988 Supp. 74-8810(c) who owns a horse or has a financial interest in a horse entered at a race meet shall not serve as a racetrack official at the meet. A lessee or lessor of a horse shall be deemed to have a financial interest in the horse.

(b) Each racetrack official shall be strictly responsible to the commission for the performance of the official's respective duties and shall promptly report to the commission or the stewards any violation of the regulations of which the official has knowledge. Each racetrack official who fails to perform the official's responsibilities shall be discharged by the stewards.

(c) Each racing secretary and each mutuel manager shall be an employee of the organization licensee and accountable to the board of directors of the organization licensee. Each organization licensee and facility manager licensee shall not by contract or agreement diminish the organization licensee's ultimate responsibility to conduct the races and the parimutuel system of wagering. However, any organization licensee and facility manager licensee may execute a contract or agreement that permits the delegation of day-to-day management over the conduct of races and the parimutuel system of wagering.

(d) Each racetrack official shall be approved by the commission before the official assumes any race meet duty. Each organization licensee shall identify each racetrack official 30 days before the first day of the race meet for which the official is to serve. (Authorized by K.S.A. 1988 Supp. 74-8804; implementing K.S.A. 1988 Supp. 74-8804, 74-8813 and 74-8818; effective T-112-1-19-

89, Jan. 19, 1989; effective April 10, 1989; amended March 19, 1990.)

112-5-2. Commission officials, stewards. (a) Each licensee and each individual attending horses during a race meet shall conduct the licensee's and individual's activities according to the general authority and supervision of the stewards. Any of these racing regulations may be interpreted by the stewards, and any appropriate action not expressly authorized by these racing regulations may be ordered by the stewards to ensure a fair race and to protect the best interests of racing.

(b) Each matter regarding entry, eligibility and racing shall be determined by the stewards. Each entry, declaration and scratch shall be supervised by the stewards.

(c) If a vacancy occurs among the racetrack officials, a substitute shall be appointed by the organization licensee subject to the approval of the stewards. The appointment shall be effective until the vacancy is filled in accordance with these racing regulations.

(d) If a vacancy occurs among the stewards, a substitute shall be appointed by the chief steward immediately. If the chief steward is absent, the senior associate steward shall make the appointment. Each substitution shall be reported immediately to the commission office.

(e) The stewards' jurisdiction over any matter shall commence 72 hours before any entry is taken for the first day of racing at the meet and shall extend until 30 days after the last day of the meet. If a dispute arises during a race meet that is not settled within the stewards' 30-day jurisdiction, the authority of the stewards may be extended by the commission until the matter is resolved or until it is referred or appealed to the commission.

(f) Any occupation licensee may be penalized by the stewards or the commission in accordance with the Kansas parimutuel racing act and the Kansas administrative procedure act. At the direction of the com-

mission, the stewards, or any of them as designated by the commission, may conduct summary adjudicative hearings in accordance with the Kansas administrative procedure act.

(g) Each penalty shall be reported immediately to the commission by the stewards.

(h) Any horse may be suspended from participating in races for a period of time determined by the stewards if the horse does not meet the requirements of or has been involved in any violations of these racing regulations or any provisions of the Kansas parimutuel racing act, including but not limited to the following:

(1) A horse is a confirmed bleeder or unsound for racing as determined by the animal health officer, and the animal health officer recommends to the stewards that the horse be suspended from participation; or

(2) a horse is involved with:

(A) Any violation of medication laws and regulations; or

(B) any suspension or revocation of an occupation license by the stewards in accordance with K.S.A. 74-8816 (h) or the commission or any racing jurisdiction recognized by the commission.

(i) Any matter within the jurisdiction of the stewards may be referred to the commission with or without recommendation.

(j) A detailed written account of each question, dispute, protest, complaint and objection shall be maintained by the stewards. A daily report that details each race day's activities, which shall include but not be limited to each foul and disqualification, each disciplinary hearing, each suspension, the conduct of each race, each interruption and delay and the condition of the racetrack facility shall be prepared by the stewards and submitted to the executive director within 72 hours of the race date that is the subject of the report.

(k) Each horse that has entered a race or that has run in a race shall be tested or examined by a qualified person when ordered by the stewards. Any ownership

papers, certificates, documents of eligibility, contracts or leases pertaining to any horse at the racetrack facility may be examined by the stewards.

(l) If the stewards determine a race or races cannot be conducted in accordance with the regulations, they shall cancel each race. If a mechanical failure or any interference during the running of any race affects the horses in the race, the race may be declared a no contest by the stewards. If no horse covers the course of the race, the race shall be declared no contest.

(m) Any horse's trainer may select a substitute jockey if a jockey who is named to ride the horse in a race is unable to fulfill the jockey's engagement and is excused by the stewards. Each trainer shall be responsible for securing a jockey for the trainer's entered horse. If no substitute jockey is available, the horse may be scratched from the race by the stewards. If the stewards scratch a horse, no individual shall be entitled to any refund of nomination, sustaining, penalty payments or entry fees. Any horse may be placed in the temporary care of any trainer the stewards select if the trainer of a horse is absent. However, the owner and the substitute trainer shall approve its entry or competition in a race before it is allowed to enter or race. Each substitute trainer shall sign the entry card.

(n) A stewards' list that identifies those horses that are ineligible to be entered in any race because of poor or inconsistent performance, which includes but is not limited to failing to maintain a straight course or causing a hazard to the safety of any participant, shall be maintained by the stewards. Each horse on the stewards' list shall be refused entry until it has demonstrated to the stewards or their representatives that it can race safely. (Authorized by K.S.A. 1988 Supp. 74-8804; implementing K.S.A. 1988 Supp. 74-8804 and 74-8816 (g); effective, T-112-1-19-89, Jan. 19, 1989; effective April 10, 1989; amended March 19, 1990.)