

Approved: 1/19/94  
Date

## MINUTES OF THE HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS.

The meeting was called to order by Chairperson Clyde Graeber at 1:30 p.m. on January 12, 1994 in Room 526-S of the Capitol.

All members were present except:

Committee staff present: Mary Galligan, Legislative Research Department  
Lynne Holt, Legislative Research Department  
Mary Ann Torrence, Revisor of Statutes  
June Evans, Committee Secretary

Conferees appearing before the committee: Janet Chubb, Executive Director, Kansas Racing Comm.  
Bruce Rimbo, Executive Vice President, Woodlands  
Don Bruner, Director of the Division of Labor Management Relations and Employment Standards, Department of Human Resources

The Chairperson opened the hearing on HB 2577, an Act amending the Kansas racing act.

Janet Chubb, Executive Director of the Kansas Racing Commission, presented the commission's proposed amendments to the racing act. The amendments were considered during public meetings during the past summer and fall. (See Attachment #1)

The committee requested the Kansas Racing Commission provide the following information at the January 13 meeting: (1) Financial Report; (2) Commissioners Expenses, travel and salary; (3) mutuel tellers employment history and (4) shortage/overages in tellers boxes.

Bruce Rimbo, Executive Vice President, Woodlands, testified supporting HB 2577. The one item that is still in question is regarding the stewards and judges and understand the Racing Commission will supply more information on that topic. The race tracks wind up reimbursing the Racing Commission for the employees working at the tracks, yet the Woodlands does not have any input as to the amount they get paid or the hours worked.

The track feels they should have some input into the amount of time spent and wages paid. Kansas ranks very high in the salary paid to judges and stewards. The Commission is looking into these issues but it is felt the race tracks need to have this information. This is not a part of this bill, but it is important to us. (No written testimony)

Don Bruner, Director of the Division of Labor Management Relations and Employment Standards, Department of Human Resources, testified opposing Section 8 (f) lines 33-37 of HB 2577. This language is in direct conflict with the Kansas Wage Payment Act, specifically KSA 44-319 and Rules and Regulation KAR 49-20-1.

Mr. Bruner stated there is strict enforcement of this law as it is very important to the working people. This transfers the risk of doing business to the employees. There is no way to prove if an employee is stealing. There are other factors involved; machine malfunctions or the employee skimming the drawer could be in error. (See Attachment #2)

Richard Teichgraeber, President, Eureka Downs Horsemen's Association, Inc., handed out testimony opposing HB 2577. (See Attachment #3)

The Chairperson stated this hearing on HB 2577 would be continued on January 13, 1994.

The meeting adjourned at 3:00 PM.

The next meeting will be January 13, 1994.

Date: 1-12-94

FEDERAL and STATE AFFAIRS COMMITTEE

NAME	ORGANIZATION	ADDRESS
Jim & Sonia Yount	K.Q.H.R.P.	RT1 Box 158 Valley Falls, KS 66088
Don Bruner	Ks Dept. Human Resources	Topeka
James Inell	KRC	Topeka 504 Lake Forest Burrer Spr. KS 66602
John M. Coy	K.T.A.	22753 Dempsey Rd Leavenworth KS 66048
Richard Turpin	KTA	
Dirk Boushleg	Woodlands	Kc
Jim Yonally	TRAK-East	KC, KS
ART NEUHEDL	KRC	TOPEKA
L. Johnson	KRC	Topeka
Pat Schubert	WGP	Topeka
Don Bud	KFLAIB	Topeka
Bob Shekman	Meadow Topeshaw	Topeka
Dave Schneider	KANSANS FOR LIFE AT ITS BEST	Topeka
Barbato	KPA	Topeka
Margaret Jones	K.C.Ks	K.C.Ks

Date:

FEDERAL and STATE AFFAIRS COMMITTEE

[illegible]

STATEMENT  
OF THE  
KANSAS RACING COMMISSION

Before the House Committee on  
Federal and State Affairs  
The Honorable Clyde Graeber, Chair  
January 12, 1994

Chairman Graeber and members of the committee:

I am Janet Chubb, executive director of the Kansas Racing Commission. Thank you for allowing me to present the commission's proposed amendments to the racing act. The commission considered all of them during public meetings this summer and fall. They are:

K.S.A. 74-8801. The commission seeks to terminate its jurisdiction over non-parimutuel horse racing. The commission's experience with fair meetings has taught it that regulation, even simplified regulation, is too demanding for these small meetings. The expense, including the use of commission resources, cannot be justified, particularly since non-parimutuel meetings generate no revenue for the state. The commission has never regulated non-parimutuel greyhound racing.

K.S.A. 74-8802. Proposed amendments to the definition section broaden the definition of "fair association" and "horsemen's association" and "horsemen's nonprofit organization" to allow for more uniform treatment of them and the development of a fair circuit, more specifically addressed in the substantive provisions of the act. Also added is a definition for "racing or wager equipment or services licensee," reflecting a substantive change in K.S.A. 74-8837.

K.S.A. 74-8804. This proposed amendment clarifies that the commission may receive background reports from its security personnel in executive session, who are law enforcement officers, just as it does from the KBI. It also clarifies that the provision applies to commission employees and applicants for employment, just as it does to commission licensees and applicants for licensure. The commission believes that the same standard that applies here to licensees must also apply to its own employees.

K.S.A. 74-8810 and 74-8813. These changes merely conform existing language to the substantive amendments proposed elsewhere.

K.S.A. 74-8814. The amendments to this section conform to a broader definition of fair association, not restricting them to

FSA  
1-12-94  
Atch #1

those organized under K.S.A. 2-125. They would also make uniform the provision allowing horsemen's nonprofit organizations to conduct fair meetings, currently permitted only at Eureka Downs.

K.S.A. 74-8818(a). The commission seeks authority for the hiring of substitute stewards and racing judges who may relieve the regularly appointed stewards and racing judges in the event of overtime, illness, vacation or emergency. The present authority will sunset at the end of this fiscal year.

K.S.A. 74-8818(c). This amendment would waive the commission's examination for stewards and racing judges if the applicant has passed a similar test in another state and could show proof of the fact or if the applicant has been accredited by one of the steward or judge accreditation programs.

K.S.A. 74-8819. Paragraph (f) of K.S.A. 74-8819 presently states:

"No organization licensee shall loan money or any other thing of value to any person for the purpose of permitting that person to wager on any race."

The parimutuel teller at Kansas racetracks is an employee of the organization licensee, the nonprofit corporation that the Kansas constitution states may operate racing and wagering. This person is the cashier who picks up a cashbox from the money transactions at the mutuel windows and other wagering areas and then returns the cashbox to the money room.

The racing commission believes the language prohibiting loans restricts tellers from "running tabs" for track patrons and from wagering themselves out of their boxes. A commission regulation specifically prohibits parimutuel tellers from wagering while on duty.

The commission has conducted hearings on several occasions concerning the issue of parimutuel tellers wagering and loaning money. The testimony has been that a majority of other racing jurisdictions allow tellers to wager out of their cashboxes and to repay any shortages from their wages. The Kansas commission is firm that it does not want tellers using the nonprofit monies in this manner. Because the practice is common in other racing states, enforcement here is difficult.

The statute and regulation are also difficult to enforce because the money transactions performed by the tellers are fast and complicated. Testimony before the commission is persuasive that even video monitors are limited as enforcement tools, because they do not reveal whether the teller is acting for himself or another. Commission staff has drafted guidelines for audits of

the teller cashboxes to assure the commission and the wagering public that the nonprofit's monies are handled as they should be under the law. However, the audits will disrupt wagering activity, and there is some concern that, even though the commission has broad search powers, the audit may draw a challenge as an unreasonable search.

The commission believes that sending a clear message to the tellers that the boxes must balance is one of the most effective regulatory tools available. However, the Kansas wage payment law will not permit the licensees to deduct shortages from teller wages.

The tracks have drafted employment policies to address the issue. They asked for the commission's assistance with the proposed amendment, because the policies leave them little discretion. Though the policies are somewhat different, both provide that parimutuel tellers may be terminated when cashboxes reflect shortages in a stated amount. The tracks must apply the same standard to all of these employees under state and federal laws. They and the commission believe the application of this narrow amendment to the racing act will allow tellers to "make good" any shortages in their cashboxes.

K.S.A. 74-8837. The commission seeks authority to license photo finish, video replay, video reception and transmission services and similar services, as defined by the commission, similar to the licensing required of concessionaire and totalisator providers.

K.S.A. 74-8838. The proposed amendments to the section on the county fair horse racing benefit fund would rename the fund, allow more uniform application for fair meetings and facilitate the development of a Kansas fair circuit. They would allow application of the fund to a fair association or horsemen's nonprofit found qualified by the commission, including one that conducts greyhound racing. They also would allow application of the fund to commission administrative costs.

K.S.A. 74-8836. In the near future the commission will propose a single bill to suggest two amendments to the simulcasting provisions of the act.

Thank you for your attention to the commission's request. I am happy to address questions.

94JAC1-dpb



the  
WOODLANDS



RACING

A Facility of Sunflower Racing, Inc.

January 12, 1994

Ms. Janet Chubb  
Executive Director  
Kansas Racing Commission  
3400 Van Buren  
Topeka, KS 66611-2228

Dear Janet,

As requested, please find below the information needed regarding our mutuel tellers.

1. The number of mutuel tellers employed by The Woodlands since September 1989 is 764. There are 189 active year to date.
2. The turnover rate is:

1989 -	59.8%
1990 -	132.3%
1991 -	54.0%
1992 -	32.3%
1993 -	25.9%
3. Average length of employment is approximately 2 years.
4. Rate of pay is \$7.35 to \$7.60 per hour with line supervisors making \$9.50 per hour.

If you need further information, please do not hesitate to contact me.

Kindest Regards,

*H. Rick Henson*

H. Rick Henson  
General Manager

HRH/lmf



Kansas Racing Commission  
Salary & Travel Expense  
January 13, 1994

Reimbursable Expense Fund

	<u>FY 93</u>	<u>FY 92</u>	<u>FY 91</u>
<u>Salaries</u>			
Judges	303,987	267,301	361,185
Stewards	46,768	36,492	68,816
Veternarians	153,231	151,146	190,433
Total base salaries	<u>503,986</u>	<u>454,939</u>	<u>620,434</u>
<u>Backpay</u>			
Judges	44,913	0	0
Stewards	18,746	0	0
Veternarians	0	0	0
Total backpay	<u>63,659</u>	<u>0</u>	<u>0</u>
Total salaries & backpay	<u>567,645</u>	<u>454,939</u>	<u>620,434</u>
<u>Benefits</u>			
Benefits	78,960	62,852	21,753
Benefits- backpay	7,581	0	0
Total benefits	<u>86,541</u>	<u>62,852</u>	<u>21,753</u>
Total Reimbursable Salaries & Benefits	<u>654,186</u>	<u>517,791</u>	<u>642,187</u>

Commissioner's salary expense- FY 93 120,484

Commissioner's travel expense- FY 93 25,593

TESTIMONY BEFORE THE HOUSE FEDERAL AND STATE  
AFFAIRS COMMITTEE WEDNESDAY, JANUARY 12, 1994  
RELATED TO HB 2577

GOOD AFTERNOON CHAIRMAN GRAEBER AND COMMITTEE MEMBERS. MY NAME IS DON BRUNER, DIRECTOR OF THE DIVISION OF LABOR MANAGEMENT RELATIONS AND EMPLOYMENT STANDARDS, DEPARTMENT OF HUMAN RESOURCES.

I APPEAR TODAY IN OPPOSITION TO PROPOSED AMENDMENTS TO SECTION 8(F), LINES 33 - 37.

**"...In accordance with written procedures that comply with requirements established by rules and regulations of the commission, an organization licensee may deduct from the wages of a parimutuel teller the actual monetary shortages detected in the organization licensee cash box that is assigned to the teller."**

THE ABOVE PROPOSED LANGUAGE IS IN DIRECT CONFLICT WITH THE KANSAS WAGE PAYMENT ACT SPECIFICALLY K.S.A. 44-31~~9~~ AND RULES AND REGULATION K.A.R. 49-20-1. THIS ISSUE HAS BEEN LITIGATED IN WAGE CLAIMS FILED AGAINST SUNFLOWER RACING, INC. /VS/ KANSAS DEPARTMENT OF HUMAN RESOURCES, ET AL, IN WYANDOTTE COUNTY DISTRICT COURT, CASE #92C-02130. JUDGE JOHN WILLIAM MAHONEY FOUND, BEGINNING ON PAGE EIGHT (8), THAT:

**"The policy at issue makes no distinction between shortages which may be the 'fault' of employees and those shortages arising from equipment malfunction, customer refusal to pay, or simple negligence. There is no justification in holding employees responsible for shortages which are a normal risk of the employer. While the employer is free to discipline an employee for cash shortages or overages occurring on their terminal, the repayment of cash shortages from earned wages is prohibited under the Wage Payment Act. Continuation of employment is not one of the benefits identified in K.A.R. 49-20-1.**

**"The employer is knowledgeable about the Kansas Wage Payment Act and designed a plan to attempt to circumvent the application of the Act. Accordingly, the plan was willful, entitling claimants to applicable penalties and interest."**

**A COPY OF THE REFERENCED COURT DECISION IS ATTACHED FOR THE COMMITTEE'S REVIEW. THE PROPOSED LANGUAGE HERE IS YET ANOTHER ATTEMPT TO MAKE RIGHT THAT WHICH HAS BEEN FOUND WRONG. THE KANSAS RACING COMMISSION ACKNOWLEDGES THAT PARIMUTUEL TELLER MACHINE ERRORS DO IN FACT OCCUR. THE PROBLEM WAS GREAT ENOUGH TO CAUSE ADOPTION OF RULE AND REGULATION K.A.R. 112-9-2 AND K.A.R. 112-9-30. TESTIMONY INDICATED THAT THIS WAS SOLVING THE ERROR PROBLEM. HOWEVER, WITH THE PROPOSED AMENDMENT A PROBLEM WILL DEVELOP AS SUCH COULD BE DEDUCTED FROM TELLERS WAGES.**

**ADDITIONALLY, TESTIMONY AND EVIDENCE CONTAINED WITHIN THE WOODLANDS WAGE CLAIM CASE FILES INDICATES THAT THE WOODLANDS HANDLE \$320,000,000 IN CASH TRANSACTIONS PER YEAR. UNDER THIS AMENDMENT THE FULL EMPLOYER RISK OF DOING BUSINESS AT THE PARIMUTUEL TELLER MACHINE COULD BE TRANSFERRED TO THE EMPLOYEES.**

**I URGE THE COMMITTEE TO STRIKE THE PROPOSED AMENDMENT FOUND IN SECTION 8(f) IN KEEPING WITH THE INTENT OF THE KANSAS WAGE PAYMENT ACT THAT EMPLOYEES MUST BE PAID EARNED WAGES. TO NOT DO SO WILL UNDERMINE THE WAGE PAYMENT ACT AS ADDITIONAL EMPLOYERS COULD CLAIM A SPECIAL NEED TO DEDUCT WITH THE FINAL RESULT BEING THAT EMPLOYEES OF KANSAS WOULD LOSE AN EFFECTIVE METHOD TO COLLECT UNPAID WAGES. NOTE IS MADE THAT THE CURRENT STAFF OF FOUR LABOR CONSULTANTS COLLECT AND RETURN IN EXCESS OF \$500,000 PER YEAR TO KANSAS WAGE EARNERS.**

DISTRICT COURT OF KANSAS

CHAMBERS OF  
JOHN WILLIAM MAHONEY  
JUDGE



COURTHOUSE  
KANSAS CITY, KS. 66101  
913-573-2920

WYANDOTTE COUNTY

January 26, 1993

Merrill J. Hicklin Befort  
Staff Attorney  
Kansas Dept of Human Resources  
401 Topeka Blvd  
Topeka, KS 66603

Blaise R. Plummer  
6/140 Corporate Woods  
8900 Indian Creek Pkwy  
Overland Park, KS 66210

R. Scott Beeler  
Gage & Tucker  
Attorneys at Law  
P.O. Box 418200  
Kansas City, MO 64141

( Re: Sunflower Racing, Inc. vs.  
( Kansas Dept of Human Resources, et a  
( Wyandotte County District Court  
( Case No. 92C-02130

MEMORANDUM DECISION

On the 14th day of January, 1993, this matter came on for Judicial Review.

Appearing for the Petition was Rebecca L. McGinnis and R. Scott Beeler; appearing for the Respondent, Kansas Department of Human Resources was Merrill J. Hicklin Befort. Blaise R. Plummer, counsel for employee did not personally appear, however, he did file a brief with the Court.

This matter initially came before the Kansas Department of Human Resources pursuant to wage claims being filed against Sunflower Racing, Inc. The wage claimants were employees of Sunflower

Racing, Inc., who worked as mutuel clerks operating terminals for the issuance of wages and the payment of winning tickets at Woodlands Race Track. The employees alleged that Sunflower Racing Inc., violated the Wage Payment Law by requiring employees to repay any cash shortages out of wages paid them or be terminated from employment at Woodlands. Pursuant to the Wage Payment Law, K.S.A. 44-313 et. seq., the Kansas Department of Human Resources investigated the employees allegations and held a hearing as to the employees wage claims. The Kansas Department of Human Resources administrative hearing officer found that Sunflower Racing, Inc., knowingly violated the Wage Payment Law by unlawfully diverting employees wages for cash shortages. The administrative hearing officer's decision was appealed to the Secretary for review. The Secretary affirmed the administrative hearing officer's decision.

#### ISSUES

The issues presented on appeal to the Court are:

1. Whether there is substantial evidence for the Secretary to find that Sunflower Racing, Inc. violated the Wage Payment Law by requiring employees to repay cash shortages.
2. Whether the Secretary correctly applied the applicable law to the facts of this case.
3. Whether there is substantial evidence for the Secretary to find that the violation of the Wage Payment Law by Sunflower Racing, Inc., supports the finding that the violation was willful pursuant to K.S.A. 44-315(b).

Page Three.  
Memorandum Decision  
Case No. 92C-02130

The above issues are before this Court pursuant to the Kansas Judicial Review and Enforcement Act, K.S.A. 77-601 et. seq. The scope of judicial review is established in K.S.A. 77-621. Pursuant to the Kansas Judicial Review Act and applicable case law, this Court cannot reweigh the evidence or substitute its judgment for that of the administrative agency. Boswell Inc. v. Harkins, 230 Kan. 610 (1982). Judicial review must be made in the light most favorable to the findings and holdings of the administrative tribunal and conflicting evidence should be disregarded. Chadwick v. Employment Security Board of Review, 192 Kan. 769 (1964); Crawn v. French, 7 K.A. 2d 672 (1982); Levi Strauss & Co. v. Sheaffer, 8 K.A. 2d 117 (1982). The function of this Court is to determine whether the facts found by the administrative agency are supported by evidence of record Craig v. Kansas State Labor Commission, 154 Kan. 691 (1942). The District Court must make specific finding that there is no evidence to support the findings of fact by the administrative agency before the facts can be set aside. Chadwick, supra. p. 772.

#### CONCLUSION

The interpretation of a statute is a question of law and the purpose and intent of the legislature governs when that intent can be ascertained from the statute. State ex rel. Stephan v. Kansas Racing Commission, 246 Kan. 708, 719 (1990). In construing

Page Four.  
Memorandum Decision  
Case No. 92C-02130.

statutes, the legislative intent must be determined from a general consideration of the entire act. If possible, effect must be given to all provisions of the act, and different provisions must be reconciled in a way that makes them consistent, harmonious, and sensible. In determining legislative intent, the purpose of the statute and the effect the statute may have under the constructions suggested by the parties are relevant. Id.

The purpose of the Kansas Wage Payment Act was implicitly adopted in Dangerfield v. Montgomery Ward, 236 Kan. 594, 600 (1985):

The available legislative history of the 1973 session for House Bill 1429 which contains the applicable statutes is not contrary to our application of the law. The primary purpose of the legislation was to protect employees from the docking or shorting of pay to cover alleged shortages. There was a recognition that the absence of statutory constraints served as an invitation to employers to withhold from an employee wages earned, and benefits such as vacation pay, contributions to pension and welfare funds, and to otherwise manipulate and prey upon employees through misleading statements relative to the terms and conditions of employment.

Id. (quoting trial court's findings). The pay scheme at issue in Dangerfield was the payment of guaranteed minimum wage or 6% sales commission, whichever was greater, over a four-week period. The wage plan was determined not to be contrary to the statutory purpose but is readily distinguishable from the facts of this case.

Ordinarily the interpretation placed on a statute by the

2-6



administrative agency charged with its enforcement is entitled to a great deal of judicial deference and may be of controlling significance. Excel Corporation v. KDHR, 12 Kan. App.2d 417, 419 (1987).

K.S.A. 44-319 provides in part:

(a) No employer may withhold, deduct or divert any portion of an employee's wages unless: (1) The employer is required or empowered to do so by state or federal law; (2) the deductions are for medical, surgical, or hospital care or service, without financial benefit to the employer, and are openly, clearly and in due course recorded in the employer's books; or (3) the employer has a signed authorization by the employee for deductions for a lawful purpose accruing to the benefit of the employee. (emphasis supplied).

K.A.R. 49-20-1(a)(2) specifically identifies certain deductions which do not accrue "to the benefit of the employee":

The following deductions shall not be considered authorized deductions "accruing to the benefit of the employee" within the meaning of K.S.A. 44-319 (a)(3): (A) Deductions made for cash and inventory shortages; breakage; returned checks or bad credit card sales; losses to employers resulting from burglaries, robberies, or alleged negligent acts. (B) deductions made for uniforms, special tools or special equipment which are not necessary to the performance of the assigned duties and are customarily supplied by the employer; (C) any other deduction not set out by K.S.A. 44-313 et seq. or permitted by these rules and regulations.

2-7

Page Six.  
Memorandum Decision  
Case No. 92C-02130.

It is admitted by the employer that the liability of employees for cash shortages at their terminals cannot be enforced by deduction or ~~w~~ withholding said shortages from employees' wages as a contravention of the Kansas wage payment act.

The question remains whether or not the pressure exerted by the employer for employees to "voluntarily" repay the employer for cash shortages on their terminals is prohibited by the language of K.S.A. 44-319 which states no employer may "withhold, deduct or divert" any portion of an employee's wages. To divert means "to turn (a person or thing) aside (from a course, direction, etc.; deflect." Webster's New World Dictionary (Second College edition 1980) 411. Since the statute in question includes in its prohibition direct deduction and direct withholding of wages to cover shortages, diversion must mean something other than refusal to pay over wages from the source, otherwise the term "divert" would have no independent meaning under the statute. Considering the statutory purpose of the legislature to protect employees from the docking or shorting of wages to cover alleged shortages, the term "divert" must have been intended to cover circumstances in which the employer simply required a repayment of shortages as a condition of the employment agreement without direct deduction or withholding. Otherwise, the purpose of the statute would be circumvented by the simple expedient of requiring employees to repay shortages as a condition of continued employment.

2-8

Page Seven.  
Memorandum Decision  
Case No. 92C-02130.

In Yuille v. Pester Marketing Co., 9 Kan. App. 2d 464 (1984), the Kansas Court of Appeals considered a plan by which service station managers were to be paid a monthly "bonus" less deductions for their employees' shortages. The trial court found that the plan was an attempt to deduct losses from an employee's salary and to avoid the provisions of Kansas wage payment act. Id. at 466-467. Thus, although deductions were not made from minimum wage employees, their supervisors were made liable for employee shortages through a bonus reduction plan.

The court further found that reduction for shortages was a condition subsequent to the payment of wages and therefore in violation of K.S.A. 44-313(c). Id. at 469. The court further states in dicta that even if the arrangement had been crafted to make the payments a condition precedent, it should be declared unreasonable and unenforceable as violative of the spirit and letter of the wage payment act. Id.

In this case, the plan to make employees liable for shortages on their terminals and to require payment of shortages before logging on is unreasonable and a contravention of the wage payment act. The plan results in a diversion of employee's wages to cover shortages which are the normal risk of the employer. If the position of the employer in this case was sustained, employers would be permitted to do indirectly what the statute directly prohibits.

Page Eight.  
Memorandum Decision.  
Case No. 92C-02130.

Once an employee receives wages from the employer, the employer may not subsequently require the employee to repay money for shortages which occurred during the preceding pay period. K.S.A. 44-313(c) and K.A.R. 49-20-1(d). Conditions subsequent to payment of wages resulting in a forfeiture of loss of earned wages are ineffective and unenforceable. Under the plan in this case, once employees have received wages, any coerced reimbursement of cash shortages constitutes a condition subsequent to the payment of wages and is prohibited. The repayment is presumed to have worked a reduction or forfeiture in earned wages.

Employee's deductions for state and federal income tax and other lawful purposes are calculated based upon wages paid. The repayment of shortages as a condition of employment necessarily results in a reduction of wages which is not reflected in the employer's records. This plan results in an incorrect statement of employee's income to the taxing authorities in contravention of reporting requirements.

The policy at issue makes no distinction between shortages which may be the "fault" of employees and those shortages arising from equipment malfunction, customer refusal to pay, or simple negligence. There is no justification in holding employees responsible for shortages which are a normal risk of the employer. While the employer is free to discipline an employee for cash shortages or overages occurring on their terminal, the repayment of

210

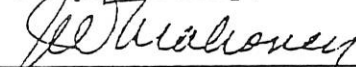
Page Nine.  
Memorandum Decision  
Case No. 92C-02130.

cash shortages from earned wages is prohibited under the wage payment act. Continuation of employment is not one of the benefits identified in K.A.R. 49-20-1.

The employer is knowledgeable about the Kansas wage payment act and designed a plan to attempt to circumvent the application of the act. Accordingly, the plan was wilfull entitling claimants to applicable penalties and interest.

Counsel for the Department is requested to prepare for approval of counsel and signature of the court, a Journal Entry.

Respectfully,



---

J. WILLIAM MAHONEY,  
District Judge, Div. 4

JWM:bb

NOTES FOR TESTIMONY BEFORE THE COMMITTEE ON FEDERAL AND STATE  
AFFAIRS CONCERNING THE PROPOSED HOUSE BILL AMENDING THE KANSAS  
RACING ACT

Eureka Downs Horsemen's Association, Inc., a non-profit corporation, formed specifically for the purpose of conducting parimutuel racing at Eureka Downs believes the following concerns with the proposed bill should be addressed by the Committee:

1- The amendments proposed to K.S.A. 74-8802 appear to permit the Commission to grant to non-profit horsemen's associations or fair associations, as determined qualified by the Kansas Racing Commission, to avail themselves of the benefits of the Racing Act that were accorded specifically to Eureka Downs and Anthony Downs. (Expand by explaining to the Committee how the bill was promoted and the purpose for the promotion).

2- The proposed changes appearing under Section 6, K.S.A. 74-8814(a)(1) and (2), have the same problems addressed in 1 above.

3- The proposed changes appearing in Section 11, K.S.A. 74-8838, permit the use of funds by the Racing Commission for reimbursement to the Commission for administrative costs related to race meets conducted by fair associations or horsemen's organizations and also permit payment of racing judges. These funds are derived from simulcasting of horse races and were to be used to promote horse racing in the State of Kansas. Since the

*Eureka Downs Horsemen's Assn Inc*

*1-12-94*

*RH Guchyrocke*

*FVSA  
1-12-94*

*Atch #3*

Racing Commission deals both with horse racing and dog racing, permitting the Commission to reimburse itself for administrative costs and permitting the use of funds for racing judges would result in horse racing funds going to promote dog races.

The Kansas Racing Commission in its proposed bill has failed to address two issues which we feel should be addressed:

1- Under the current law, K.S.A. 74-8836, the live meets and simulcast races cannot exceed nine consecutive weeks. As a practical matter, this restriction prohibits the simulcasting of some of the major racing events. We feel the better alternative is to permit the Kansas Racing Commission to permit the live race days and simulcast days without the nine week restriction.

2- K.S.A. 74-8836 also provides that if a county fair association is less than 100 miles from an organization licensee that is not a county fair association, it must secure written consent from that organization licensee to conduct simulcast races in excess of two simulcast days for each live day of racing, with special events added on. The result of this provision means that the Wichita Greyhound Park, as opposed to the Kansas Racing Commission, can decide how many days of simulcast racing should be conducted at Eureka Downs or Anthony <sup>Downs</sup> Days. We feel this decision should remain with the Kansas Racing Commission.