

Approved: February 20, 1996  
Date

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS.

The meeting was called to order by Chairperson Garry Boston at 1:30 p.m. on February 7, 1996 in Room 519-S of the Capitol.

All members were present except: Representative David Adkins, Excused

Committee staff present: Mary Galligan, Legislative Research Department  
June Evans, Committee Secretary

Conferees appearing before the committee: Cindy Lash, Legislative Post Audit

Others attending: See attached list

Cindy Lash, Legislative Post Audit, stated this is one of six audits related to racing in Kansas and these were directed by the Post Audit Committee after legislation was passed last year requiring audits of one or more entities regulated by the Racing Commission. Legislative Post Audit staff met with legislators and legislative staff and the Racing Commission staff to try to identify what the specific concerns were in each of the areas. In regard to the Racing Commission the concerns fit under the broad question of whether the Commission was effectively enforcing the Parimutuel Racing Act. Other concerns that we were asked to address that didn't fit directly under that question are placed in profiles and boxes.

There is background information on the Racing Commission, i.e., how the Commission's staffing is laid out, the Commission is governed by a 5 member board of commissioners who are appointed by the Governor and they are under the immediate direction of the Executive Director who is also appointed by the Governor. The Commission has a staff of approximately 50 people and a little more than half of them are in Topeka and the rest are stationed at the various tracks. The primary purpose of a regulatory agency is to help protect the public from the industry that is being regulated. This audit looked at some of the major things that the Commission does to help ensure the integrity of racing. Within each area, we focused most of our concerns on specific things that we were asked to look at by legislators and other people.

One of the first things the Commission does in working with organizations and individuals is require background investigations. The investigation is a tool to help the Commission know who they are working with - to help keep organized crime and undesirable characters out of racing in Kansas. Every person and organization that is licensed by the Commission as well as every Commission staff person must have a background investigation of some type. That investigation must be completed before the person is actually involved with racing in Kansas. We were specifically asked to look at two background investigations; Hollywood Park and United Tote. Sunflower Racing which is a non-profit organization for the Woodlands became a wholly owned subsidiary of Hollywood Park in March of 1994. That sale was approved by the Commission subject to a favorable background investigation of Hollywood Park. However, the background wasn't completed until September, 1995, 16 months after it was requested. We spoke with KBI officials about why it was taking so long and they told us that at the same time they were looking at Hollywood Park Camptown was coming on-line and they had repeated demands to do investigations on Camptown staff and the Commission gave priority to those investigations. The KBI investigators had to go to 9 different states to collect information and they didn't get a timely response from any of the people they had to get information from. However, the background was completed and the sale was approved in September, 1995.

United Tote is the company that supplies computerized totalisator equipment to calculate payments to winning bettors at the Kansas tracks. That equipment calculates the odds and the wagering.

In 1992 the Legislature passed legislation requiring companies providing totalisator, photo finish, and certain other services to be licensed by the Commission, which would require a background investigation. United Tote Company, which supplies computerized totalisator equipment to calculate payments to winning bettors, has been operating at Kansas tracks since 1989. Bureau officials indicated the Commission did not direct them to begin a background investigation of United Tote until June 1994, even though one should have begun when the law took effect in mid-1992. A Bureau official said that, once begun, the investigation was delayed because of a change in ownership of United Tote. It was indicated that the investigation is currently on hold

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because another change in ownership is pending.

Over the years the Commission hasn't always been prompt in completing background investigations on its own staff. More than a quarter of the professional staff did not have a completed background investigation when they began working at the Commission. Those were from one month to two years late. However, there have been some major improvements in that area. Of the people hired in the last two years only one of 9 people hired did not have a background completed before they started and that one was two months late. It was recommended that the Commission ensure that all of its staff have completed background investigations before they begin working.

Another thing the Commission does to protect the integrity of racing is to make sure that racing animals are tested for illegal use of drugs and to take action against trainers whose animals test positive for drugs. Kansas regulations require that every winning horse and greyhound be tested for the use of drugs. Our review of three days at the track showed the winning horse was always tested, but the winning greyhound was tested only about half of the time. The Commission's Animal Health Officer told us that tracks were expected to test between 15 and 20 dogs per performance. He indicated they tried to test the winners but if they couldn't get a specimen from the winners they would simply go on and test another dog. When an animal does test positive for controlled substances, a hearing is conducted to assess penalties.

Hearings were reviewed for 5 horses and 5 greyhounds and found the penalty assessed may be too lenient to deter the use of illegal drugs, particularly horses. 4 of the horses in the sample had Class IV violation and according to statute the penalty would be one or more of the following:

1. To be disqualified and the purse be redistributed.
2. Return the trophy.
3. Fine up to \$1,000.
4. Suspension up to 60 days.

All 4 of the horses in the sample were winners, 1 was disqualified and had to return the purse and that trainer was fined \$25. Of the other 3, 2 were fined \$50. and one \$150. It was recommended that all winning horses and greyhounds be tested and assess stricter penalties to ensure winners will be less likely to use illegal drugs.

The Commission requires tracks to file copies of all contracts and oral agreements that they enter into. It allows the tracks to know who the Commission is doing business with and if there are any ties to organized crime. Audits of the 3 tracks have all identified written or oral contracts that are not on file with the Commission. At least one track said that it inadvertently did file some contracts with the Commission and the Commission has admitted that it has misplaced some contracts through personnel changes. The Woodlands and Wichita Greyhound Park said they now have tracking systems that show what contracts they have submitted. The Commission has a mail log which will show every contract and other mail received so in the future there should be a running trail to tell if a contract has in fact been submitted. The Woodlands had 40% fewer contracts on file than Wichita Greyhound Park. During the audit the officials at the Woodlands simply told us they did not have many contracts with the vendors. It was recommended that the Commission more strongly enforce its requirement for filing of oral agreements and tracks to submit annual lists of vendors and payment amounts, the Commission can identify those arrangements that need to be filed.

Also found several areas where the Commission did not have written policy procedures for clear understanding of the expectations and help ensure that the people will be doing work that is appropriate and productive. The Commission did not have policy procedures for its security staff, animal health staff or following up on its annual review orders. Our recommendation in that area was to develop written procedures in all of those areas.

Within every regulatory agency there are differences of opinion on how strictly to regulate the industry as it is a balancing act between protecting the public and not regulating so tightly that the industry becomes economically not viable. In recent years the Racing Commission has varied in how strictly it has regulated the industry. Half of the respondents in the survey of Commission employees said that over the years they had not maintained a consistent approach to regulations and promotion of the racing industry. One Executive Director cited fundamental difference of regulatory philosophy with the Commission Chairman. The Executive Director was in favor of more strict regulation of the industry that the Commission at that time. The Director of Parimutuels was then Acting Executive Director and selected on a 3-2 vote by the members who were in favor of less strict regulation. However, the Commission changed and placed the Chairmanship in the hands of a Chairman in favor of stricter regulation, conflict followed, and the Executive Director resigned. The position was vacant for 8 months and filled in December, 1995. Vacancies have negatively affected the agency's ability in carrying out its functions. There were 5 Executive Directors in the first 7 years followed by an 8 month vacancy until December. In addition to that, the Commission has had extended vacancies in a

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number of significant positions. The Director of Racing position which was created to make sure that the Commission would have someone on staff with a strong background in racing has never been filled. The Director of Parimutuels position has been vacant since September, 1994. The Director of Security position was vacant for nearly 2 years in the early 1990s before the current Director began in July, 1993. All of these positions are designed to help ensure the integrity of racing in Kansas. A survey was done of Commission staff, past and present Commissioners and track officials and there are 3 separate surveys and 75% of the respondents said that vacancies in top positions over the years had effected agency functioning.

Also reviewed two areas in which the Racing Commissioners had taken action that appear contradictory the intent of the Legislature when they passed the Parimutuels Racing Act. Those areas are charity payments made by the racetracks and shortening of the horse racing season at the Woodlands. Kansas Statutes require that non-profit licensee at the racetracks to distribute all of its net earnings from conducting races to charitable organizations. The net earnings applies that the non-profit takes all of its income which is all of the money wagered and it pays its bills, the bills include all things like paying off all the winners, paying staff, purses, and paying the facility manager, then the rest of the money goes to charity. Over the years the Racing Commission has approved arrangements at all three tracks that don't comply with strict reading of the Statute. Wichita Greyhound Charities receives a flat 1% of the handle which is all the money handled, all the money wagered plus \$100,000. TRAK Southeast (Camptown) receives .5% of the handle and TRAK East (Woodlands) until June, 1995 received a flat payment which for that year was \$500,000 and because of financial conditions at the track, payments were stopped until June, 1996 at which time they are to presume. It was recommended that the Commission should either require the tracks to comply with the Statute as it is written or if the Commission thinks that the current arrangements provide more money and are more advantageous for charities then they need to have the Statute changed.

Kansas Statutes also require the Woodlands to conduct horse races on at least 20% of the track's annual racing days. In 1995 they had 300 racing days which meant there should be a horse racing season of 60 days. In late June, 1995 the Woodlands asked permission to shorten the horse racing season to 45 days, citing losses on horse racing and indicated with the shortened season they could provide better purses and hopefully attract better horses. The Commission approved the shortened season. Because of a recent State Supreme Court Decision that said both simulcast races and live races had to be counted in considering the number of race days conducted by the track. The Commission said they would be requesting legislation to amend the requirement of the Woodlands providing 20% of live horse racing. Our recommendation was that they actively pursue that regulation.

Representative Graeber requested that Legislative Post Audit furnish a breakdown of distribution of the \$100,000 received by Wichita Greyhound Charities which is 1% of the total amount wagered at Wichita Greyhound Park.

Myron Scafe, Executive Director, stated he was hired December 4 and has learned a lot about greyhound racing. Mr. Scafe stated he felt the Legislative Post Audit was a good audit and a lesson for the Racing Commission. The role of the Commission is one of regulating -- not policy. The Commission carries out the Legislatures desires. There have been personnel changes in the Commissioners and the Commission today is relatively a new Commission. It is understood that the Legislature wants the Commission tightly regulated and that will be carried out.

A saliva test has been developed in place of drawing blood from greyhounds and will be used for testing. Drawing blood hampers the greyhounds from racing for a few days. The easy way to test the greyhounds is through urine but can be difficult to collect.

The meeting adjourned at 2:30 p.m.

The next meeting is scheduled for February 8, 1996.

# FEDERAL & STATE AFFAIRS COMMITTEE GUEST LIST

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NAME	REPRESENTING
David Berry	COALITION AGAINST CASINO GAMBLING
David Schneider	Kansas For Life At Its Best
Donna S. Bartelli	SEK Coalition Against Casino Gambling
Bruce Bartelli	" " "
Bill Wilson	Pittsburg SEK Coalition against C. Gambling
Norma Wilson	" "
John J. Miller	Pittsburg, SEK, Coalition Against C. Gambling
Wayne Stringer	FT Scott " "
Linda Baker	Peterson Public Affairs group
Amy McNeill	Pat McNeill
Steve Johnson	K.R.C.
Francis Inell	K.R.C.
Jerry Hamilton	Racing Commission
Myron E. Seefe	Racing Commission
Mike Munson	Leadership Ark City
Mike Walker	" " "
Sharon Kelly	" " "
Karel Magnus	" " "
Sallyanne Korman	Leadership Ark City

Larry J. Droe " " "

ARNOLD ARROWOOD " " "

Carl McDowell Kansas Gaming Partners

Douglas Stone KC MO

Brad Pace KC MO