

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL & STATE AFFAIRS

The meeting was called to order by CHAIRMAN MILLER at _____
Chairperson

1:30 a.m./p.m. on February 3, 1987 in room 526S of the Capitol.

All members were present except:

Representative Grotewiel

Committee staff present:

Lynda Hutfles, Secretary
Mary Galligan, Research
Raney Gilliland, Research

Conferees appearing before the committee:

Steve Montgomery, Kansas Racing Charities, Inc.
Pete McGill, McGill & Associates
Gary Guccioni, National Greyhound Association

The meeting was called to order by Chairman Miller.

Representative Barr made a motion, seconded by Representative Ramirez, to approve the minutes of the February 2 meeting. The motion carried.

HB2071 - Reporting of gifts received by state officers, employees or candidates

Representative Sprague asked the Chairman to delay action on the bill because of a technical problem in lines 43-45 which may create situations whereby estate planning may not be possible for these persons.

HB2044 - Pari-Mutuel

Steve Montgomery, Kansas Racing Charities, Inc., gave testimony in support of HB2044. KRCI was formed for the purpose of becoming licensed to operate a racetrack facility in the State within the parameters of the recently adopted constitutional amendment and the enabling legislation. KRCI is a non-profit corporation which was formed by former Congressman Larry Winn, Jr. The following issues were addressed by Mr. Montgomery: advance payment of fees and taxes, unqualified commitment for financing, taxes and purses, racing commission and its employees, exclusive state regulation and licenses and racing days. See attachment A.

The primary position of the KRCI on the tax issue is to go with the bill as is.

When asked where the \$75,000 for the three man commission they were recommending was going to come from, Mr. Montgomery said it would hopefully come from the \$½ million that developers would be depositing as an advance.

When asked how long it would take to build and operate a track from the time a developer received the license, Mr. Montgomery said that this was contingent on weather, finances, etc. The Bluffs Run facility was ready to go nine months from the time the license was issued. When asked what his corporation would think about requiring \$10,000 per day for delays in building, Mr. Montgomery said he would ask his client.

Mr. Montgomery said his client is a corporation that has been started by former Congressman Winn. Paul Bryant would act as track manager. He said he was going to meet with his client later in the afternoon. When asked who he was meeting with, Mr. Montgomery said they would be surveying Bluffs Run and would be meeting with Paul Bryant. Congressman Winn, Jr. is the incorporator and is the only Director at this time. The rest of the Directors have not been selected. There was discussion of how a non-profit organization makes decisions. Montgomery said that decisions are determined in much the same way as for-profit corporations. Members would make decisions. When asked

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Federal & State Affairs,
 room 526S, Statehouse, at 1:30 a.m./p.m. on February 3, 19 87

who the members of the corporation are, Mr. Montgomery said Congressman Winn was the sole director and member at this time. He hoped at the meeting at Bluffs Run, the other members would be selected and by-laws would be adopted after talking with Mr. Bryant's attorney, Tom Jones.

There was discussion of the percentage of purse and take out at tracks in Alabama and Iowa. The Kansas City market is an excellent market; preferential to Bluffs market.

When asked about dual tracks, Mr. Montgomery said they were not proposing to build a dual track. He said they had not seen the successful operation of a dual track in the U.S. It may be that Kansas can do this. He said they know a dog track works and it is profitable both to the state and the developer at a 5% tax.

Pete McGill of Pete McGill & Associates representing the Kansas Veterinary Medicine Association, the Hutchinson Chamber of Commerce and the Kansas Greyhound Racing Association, Inc. gave testimony in support of the bill as written. Mr. McGill said that Mr. Strong of the Kansas Greyhound Racing Association approached him with his proposal of the Queen Dome to be built in three phases. Mr. Strong does not support a dual track. He supports the tax rate as feasible and is a fair rate.

Mr. McGill was asked to find out whether the Kansas Greyhound Racing, Inc. was a profit or non-profit organization.

Gary Guccioni, Abilene, is Secretary-Treasurer of the National Greyhound Association. He explained to the committee the role of the NGA and offered some concerns with the bill. The KGEOD and the NGA are independent and autonomous. The NGA's input to the legislation has been limited and confined to recommendations and suggestions. KGEOD was very active in the drafting of the bill. There are differences, but in so far as this legislation, they agree on 95% of the bill. The major difference is just a paragraph or two.

With regard to the Bryant proposals, it is predictable that one of the first things to be talked about is the reduction of the purse. There is no breeding industry in Alabama. There are six tracks in the U.S. that currently pay 3% purses; three operated by Paul Bryant. The 3% purse was the percentage of the 70's; 4% purse is the percentage of the 80's. Breeders are entitled to 4%. Breeders gain a percentage of the purse; percentage leans to kennel operators. Few enough kennels are booked so that they do well, the breeder gets a very small peice of the pie. Mr. Gucionne agreed that the purse needs to be at 4% and the 5/18 level should be retained.

Mr. Gucionne said that dual purpose facilities have not done well in this country. The question that should be asked is, What system of racing is going to provide Kansas with the greatest benefit to Kansans. Kansas City has the best potential for greyhound racing. Hope of this will be jeopardized with a dual track. Why should greyhound racing subsidize horse racing.

The greyhound industry can pay the equivalent of a 5/18 tax. There are developers that are eager to develop tracks at this rate.

Mr. Gucionne told the committee that last April of 86, Mr. Strong came to them with his elaborate program, the Queen Dome, and wanted to establish this track in the Kansas City area. Because of the uniqueness of this plan, the executive committee of the NGA unanomously endorsed his organization.

There was discussion of strikes and what happens when there is a strike among racers. The committee was told that strikes have minimal effectiveness. Strikes were all in states that did not have percentages set out in their statutes. He felt these percentages should be in the statute.

Hearings on pari-mutuel will be continued on February 9, 10, & 11.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Federal & State Affairs,
room 526S, Statehouse, at 1:30 a.m./p.m. on February 3, 1987

A subcommittee was appointed to investigate the medication issue in the bill. Representative Barr, Chairman with Representatives Eckert, Jenkins, Sughrue and Sebelius as members.

The meeting was adjourned.

GUEST LIST

FEDERAL & STATE AFFAIRS COMMITTEE

DATE 2/3

(PLEASE PRINT)

NAME	ADDRESS	WHO YOU REPRESENT
Steve Montgomery	Topeka	Ks. Racing Charities, Inc.
Norman Rose	K.C.K.	Ks Racing Mgt. Inc.
Tom Beyer	Topeka	Sunflower Racing Inc.
DICK TAYLOR	TOPEKA	LIFE AT BEST
Bob Anderson	TOPEKA	KANSAS RACING CHARITIES, INC.
Pete McGillivray	Topeka	KUMA - Hutchinson Co. - Spring
Frank Lucione	Abilene	Natl Greyhound Assn.
Fred Johnson	HAYS	Harris News Service
Norma White		Ks. Independent Greyhound Owners
Helen Stout	Rt 2 Burlingame, Ks	1 Greyhound Farmer
Ben Stout	Rt 2 Burlingame Ks.	Greyhound Farmer
Andrea Collette	Abilene Ks	KIGO
Richard A. Nelson	" "	" "
NORMAN HANSON	TOPEKA Ks	KIGO
R. R. DOMERDM	Topeka, Kansas	Kansas Veterinary Medical Assc.

2/3 A

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MEMORANDUM

TO: House Committee on Federal and State Affairs
FROM: Kansas Racing Charities, Inc.
DATE: February 2, 1987
RE: Testimony on House Bill No. 2044

INTRODUCTORY REMARKS

I am Steve Montgomery, and I am appearing today as a proponent of House Bill No. 2044 on behalf of Kansas Racing Charities, Inc. (KRCI). KRCI is a nonprofit corporation which was formed by former Congressman Larry Winn, Jr., for the purpose of becoming licensed to operate a racetrack facility in the State of Kansas, within the parameters of the recently-adopted constitutional amendment and the enabling legislation.

KRCI has been assisted in its review of HB 2044 by Paul W. Bryant, Jr. His experience and expertise in the racing industry has been of great benefit to us in the development of our recommendations to the Committee. Corporations in which Mr. Bryant is the principal stockholder have financed the construction and served under contract to manage two racetrack facilities in Alabama and one in Iowa. KRCI is currently discussing with Mr. Bryant the terms of an agreement whereby a Kansas corporation would be formed by him to finance the construction and serve as the manager of any racetrack facility for which KRCI becomes licensed.

Even to a casual observer, it is apparent that HB 2044 is the product of a significant amount of time and effort by the State Task Force on Parimutuel and the Special Committee on Federal and State Affairs. Because KRCI was formed only recently, we did not participate in the deliberations of these bodies. However, a review of their minutes and reports also discloses that the other proponents of this bill who did participate in those proceedings are to be commended for their efforts, as well.

Attachment A

HB 2044 is a good bill, and KRCI's desire to operate a racetrack facility in Kansas would not be diminished if the bill were enacted in its present form. However, we believe it can be made even better--better in terms of accomplishing the intent of the voters who approved the constitutional amendment last fall; better in terms of promoting the public's interest in having legislation which will make it as tough as possible for organized crime to infiltrate the racing industry in Kansas; and better in terms of encouraging the development and operation of racetrack facilities that will make Kansas a showcase of horse and greyhound racing.

We believe that our proposals to amend HB 2044 are consistent with the legislative process. Even though this Committee will want to avoid unnecessarily duplicating the efforts of the Task Force and the interim committee, that should not preclude the reconsideration of particular issues, so as to insure that the bill enacted by this legislature is as good as it can be.

Moreover, a significant change in circumstance has occurred subsequent to the deliberations and recommendations of the Task Force and the interim committee. Shortly before the convening of this legislature, it was projected there would be a significant shortfall of general fund revenues this fiscal year. The 1987 Legislature already has responded to this financial crisis by enacting legislation to restore the ending balances to appropriate levels, and legislation is now being considered which will protect the integrity of those balances in subsequent fiscal years.

Thus, it is imperative that the legislation enabling and regulating parimutuel racing be premised on fiscally sound policies. Regulation of the racing industry must be self-sustaining, and the initial cash flow burden should be absorbed by the racing industry, to the greatest extent possible, and not by the state treasury. KRCI believes it is appropriate for the enabling legislation to permit racetrack developers to make reasonable and legitimate profits from racetrack operations, so as to encourage well-qualified persons and businesses to become licensed in Kansas. Anything less than that will encourage the potential participation in the Kansas racing industry by persons who might be willing to "cut corners" to make a profit. However, in light of the State's current financial difficulties, it is equally important that the legislature does not sanction windfall profits to any segment of the racing industry.

These are the concerns that have guided our review of HB 2044, and it is from this perspective that we would offer our proposals for the Committee's consideration. The balance of this Memorandum contains KRCI's principal recommendations, each of which begins on a separate page to facilitate its location, and they are preceded by a page index. There are additional drafting and less substantive amendments which we would offer to share with the Committee's staff, if that is deemed appropriate.

KRCI appreciates the opportunity to participate in these proceedings. We will make available to the Committee any of our resources or information deemed necessary to your deliberations.

INDEX OF ISSUES

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ADVANCE PAYMENT OF TAXES AND FEES

We believe the bill could be significantly strengthened by requiring that any applicant for a license to construct a racetrack facility (other than the associations identified in section 14 of the bill) deposit with the Racing Commission, at the time of making application, an advance against the taxes and fees that would be paid by the applicant, if the license were granted and the applicant constructed and operated a racetrack facility. The amount of deposit should vary with the number of racing days applied for by the applicant. If the number of racing days applied for is less than 150 days, we suggest that the amount of deposit should be \$250,000, and if the number of racing days applied for is 150 days or more, the amount of deposit should be \$500,000.

If the application is denied, the deposit would be refunded. But, if the application is granted by the Commission, the amount of deposit would then be credited to the appropriate funds in the state treasury, as an advance payment of the racing day license fees and the taxes on parimutuel wagering for which the licensee will be obligated after the commencement of racing at the licensee's racetrack facility.

The purpose of this recommendation is two-fold. First, it provides the Racing Commission with an indication of the applicant's financial strength and stability, and as a consequence, it will provide additional assurance to the Commission that, once the license is granted, the licensee will

proceed with due dispatch to construct the racetrack facility and have it in operation as quickly as possible.

Much has been said about the unique opportunity available to the State of Kansas if it acts expeditiously to provide for the construction and operation of racetrack facilities with parimutuel wagering. It serves no one's purpose if, subsequent to the granting of a license, a licensee does not proceed in a timely manner to construct a racetrack facility and place it in operation.

Equally as important, though, is the fact that the sums deposited by applicants who are granted a license will significantly ease the state's burden in funding the operations of the Racing Commission prior to the time when revenues are generated by the racetrack facility. The projected costs of funding these operations in the interim are not insignificant, and the Committee has heard testimony that prior projections as to the required funding may be too low. And, in light of the diminishing general fund balance, the cost of the Racing Commission's start-up funding becomes even more significant.

Even though the state may eventually be reimbursed for the start-up costs by the revenues accruing from the operation of racetrack facilities, why should the state treasury bear the initial cash flow burdens? We believe it is only appropriate that the segment of the racing industry that will profit the most from the advent of parimutuel wagering on horse and greyhound racing in Kansas should sustain these cash flow burdens.

UNQUALIFIED COMMITMENT FOR FINANCING

Consistent with the foregoing recommendation, KRCI also proposes that an applicant who seeks a license to construct a racetrack facility provide to the Racing Commission a firm commitment for the financing of such construction. We recommend that HB 2044 be amended to provide that, at the time such applicant submits to the Commission the detailed plans for the construction of the racetrack facility, the applicant also will submit a commitment for financing the construction by a financial institution or other source which, in the opinion of the Commission, is able to provide such financing. Such financing commitment must be unqualified, except as to the grant of the license in accordance with the terms of the application.

Again, this proposal has a dual purpose. It not only provides to the Commission significant assurance that the racetrack facility will be constructed in an expeditious and timely manner, but it also closes a loophole in the bill which provides the potential for organized crime to infiltrate the Kansas racing industry.

Whether the Kansas economy profits from the advent of parimutuel wagering on horse and greyhound racing depends in large measure on the timely construction and operation of racetrack facilities. It will do no good for the legislature to expedite its consideration and passage of enabling legislation, or for the Racing Commission established thereby to give

prompt consideration to the applications for licenses, if the construction of racetrack facilities are delayed due to the licensee's inability to obtain adequate financing. Absent a requirement in HB 2044 that an applicant provide the Commission with an unqualified commitment for such financing prior to the issuance of the license, there is a significant likelihood that inordinate delays in the construction of racetrack facilities will occur. The experience in other states which do not require firm financing commitments testifies to that fact.

Iowa is such a state. The law authorizing parimutuel wagering in Iowa was enacted in 1983. In the spring of 1984, the Iowa Racing Commission issued a license for a horse racetrack facility in Des Moines, based on the belief that the facility could be constructed with proceeds of industrial revenue bonds. To date, these bonds have not been sold, and the facility has not been constructed.

Early in 1984, the Iowa Racing Commission also granted a license for a facility in Waterloo. A firm financing commitment to the applicant was not required, and the licensee was nearly two years in obtaining the requisite financing. Also, the original license for the greyhound racetrack facility in Council Bluffs was issued without an unqualified commitment for financing. The licensee was unable to obtain the necessary financing, and it was necessary to seek alternative financing from Mr. Bryant.

The State of Alabama also has had similar experiences. A racetrack facility for horses in Birmingham was licensed in 1983, without an unqualified commitment for financing the applicant's construction of the facility. It is anticipated that this facility will finally open in 1987.

Thus, to avoid similar experiences in Kansas, the legislature should require that an applicant for a license to construct a racetrack facility must provide the Racing Commission with an unqualified commitment for financing such construction. Such a requirement also will close one of the avenues available to organized crime to become an integral part of the racing industry in Kansas.

In our judgment, it is imperative that the Kansas Racing Commission has unequivocal knowledge of the source of the moneys used to finance the construction and operation of racetrack facilities. The Commission's background investigations of the applicant and the promoter may reveal that they are "beyond reproach." However, if the Commission does not have the opportunity to similarly investigate the source of funds used to finance the track, there can be no assurance that the funds will not ultimately be provided by organized crime. Even though the promoter honestly believes at the time the application is filed that the financing sources identified to the Commission will provide the necessary funding, the above-referenced experiences in other states which do not require unqualified financing commitments demonstrate that the promoter's expectations are often unrealized. Typically, what happens in this event, is that the promoter

then must "shop the deal" to obtain the financing. This is the opportunity for which organized crime has been waiting.

We wholeheartedly concur in the testimony you heard previously from Kansans for Parimutuel, urging the enactment of legislation which will promote an honest and healthy racing industry in Kansas. Accordingly, we urge that HB 2044 include a requirement that applicants for a license to construct a racetrack facility provide to the Commission an unqualified commitment for the financing thereof.

TAXES AND PURSES

It is appropriate at this point to advise the Committee that KRCI has an interest in becoming licensed only to operate a facility for racing greyhounds. It has no interest in becoming licensed to build and operate a facility for horse racing or a dual facility for racing both horses and greyhounds. Accordingly, we will not be so presumptuous as to suggest to the Committee what the rate of tax on parimutuel wagering at horse races should be. Our comments will be confined to the appropriate rate of tax on parimutuel wagering at greyhound races.

KRCI has no difficulty in supporting the bill's present provisions. The equivalent of a 5% tax on greyhound races is not inappropriate. In fact, we would urge the Committee to increase the tax on parimutuel wagering at greyhound races to 6% (or the equivalent thereof), the maximum tax permitted under our constitutional amendment. It is apparent that various members of this Committee are concerned about the revenues to be realized by the state by the bill's current rate of tax. KRCI shares that concern, and we would hope that increasing the tax to its constitutional limit would resolve these concerns. It is necessary and appropriate to address this issue in HB 2044, in light of the fiscal crunch confronting the 1987 Legislature.

However, our endorsement of such increase is conditioned upon a corresponding decrease in the amount of the minimum purse paid to greyhound

owners. As HB 2044 is now written, the licensee of a greyhound racetrack facility is entitled to retain approximately 50% of the takeout on all parimutuel wagering at greyhound races. We believe this is an equitable percentage and should be maintained. Accordingly, if the Committee finds merit in our proposal to increase the tax to 6%, we would respectfully urge that a corresponding decrease be made in the amount of the minimum purse payable to greyhound owners. Similarly, if the Committee determines to retain the amount of the tax now provided in the bill, or to reduce it even further, we would not suggest a reduction in the amount of the minimum purse.

For the Committee's information, however, when the bill's provision establishing the minimum purse is considered in conjunction with the bill's disposition of the breakage and the unclaimed winning ticket proceeds at greyhound races, the purses provided greyhound owners under the bill, particularly the owners of Kansas-whelped greyhounds, will be greater than the purses paid in any other state. Currently, one relatively small track in New Hampshire pays a 4.1% purse, and the dog tracks in Massachusetts all pay purses of 4%. However, neither of these states statutorily provides for supplementing purses by moneys obtained from the breakage or the proceeds from unclaimed winning tickets, as does HB 2044.

There is one other aspect of the tax structure established in HB 2044 that should be addressed. The Committee has previously heard testimony regarding the reasons why the taxes provided by the bill are expressed as

fractions of the takeout, rather than a percentage of the handle (total amount wagered). As long as the takeout remains at 18%, a 5% tax on the handle will produce essentially the same amount of revenue as a tax having a rate of 5/18ths of the takeout, as is now provided in Section 23.

However, the bill also authorizes the takeout of 22% in certain instances, and in those races where the takeout is 22%, if the tax were expressed as a straight percentage of the handle, the revenue derived from the tax would be no greater than the amount that would be derived if the takeout were 18%; yet, where the takeout is 22%, the track operator retains a greater amount of money than if the takeout had been 18%. Consequently, the bill is designed to prevent such windfall profits by providing for an increase in the tax corresponding to the increase in the percentage of the takeout.

We recognize that this is a difficult concept to understand. Accordingly, we would propose to eliminate this confusion by recommending that the takeouts be established at 18% in all instances. This will permit the tax to be expressed in terms of a percentage of the handle, which is simpler to compute and easier to understand.

However, our recommendation is not made primarily for the sake of simplicity. Based on the experience at tracks in other states, we believe that limiting the takeout to 18% will generate greater tax revenues than by allowing the takeout to increase to as much as 22%. The experience of other states indicates that the money wagered on an average racing day "turns over" about five times. Thus, the greater the amount of money

returned to the bettors on each race, the greater the total amount of money wagered on that day will be, thereby correspondingly increasing the tax revenues derived from that racing day.

There is another important aspect of this proposal. Bettors who are knowledgeable about parimutuel wagering pay close attention to the amount of takeout at the tracks they patronize, because they know that the lower the takeout the more money there is to be returned to the bettors who hold winning tickets. Even bettors who are less knowledgeable learn over a period of time that they seem to fare better at tracks having lower takeouts, even though they do not realize the reasons for their success. If the Kansas economy is to flourish, as anticipated, by the advent of parimutuel wagering on horse and greyhound racing, we must do all that we can to attract patrons to the tracks in our state. Maximizing the amount of money returned to the bettors at our tracks is one way to assist in that effort.

THE RACING COMMISSION AND ITS EMPLOYEES

With the enactment of HB 2044, the State would assume the exclusive power to regulate parimutuel racing in Kansas. Whether such exclusive power is exercised to the benefit of the general public interest, and is applied fairly to all of the special interests that are subject to regulation, depends on the effectiveness of the regulatory body which administers the law and promulgates the necessary rules and regulations. For this reason, careful attention should be given to the creation of that administrative agency.

KRCI believes it is imperative that the enabling legislation provides a mechanism for establishing a Commission which will be composed of persons who are of the highest moral fiber and who have the background, experience and competency to administer a complex body of statutes and regulations. To do so, the Commission must be as free of internal politics as possible.

To achieve these objectives, KRCI believes that the Racing Commission should be composed of three members who devote their full time to their statutory duties. Each member should be paid an annual salary of \$75,000.00. The powers and duties assigned to the Commission by HB 2044 are too significant to be assigned to an administrative body composed essentially of volunteers--members who serve on a part-time basis and whose attentions are, of necessity, primarily directed to the principal source of their livelihood. This is not to suggest that persons who serve the state

on a part-time basis are not of good character, high integrity and good qualifications. It suggests only that the policy decisions required of the Commission should not be relegated only a portion of a commissioner's professional time and attention.

By establishing a part-time commission, with a full-time executive director, HB 2044 creates the possibility that the power and authority intended to be exercised by the Commission will, in fact, be exercised by the executive director. There is a potential for this occurring in any state board or commission, irrespective of whether the members thereof serve full-time or part-time, but we believe the potential is greatly enhanced where the members do not devote their full time and attention to their statutory duties. Prior experiences in our own state indicate that this is not merely a hypothetical possibility.

As to the qualifications of the commissioners, we concur in the bill's requirements as to citizenship, residency and the absence of any felony conviction, and no more than two of the commissioners should be members of the same political party. However, as to the requirement that one member must be experienced in the horse racing and breeding industry and one member be experienced in the greyhound racing and breeding industry, we must respectfully disagree. Members of the Commission should be appointed because of their competency, rather than their affiliation with any particular segment of the racing industry. Notwithstanding the size of the Commission, the governor should be unfettered in his appointments to the

Commission by such requirements. The governor should appoint persons to the Commission on the basis of their competence, integrity and a background indicating an ability to accept responsibility, make reasoned decisions and provide supervision to others.

We recognize the argument that, because parimutuel racing is a very technical, complex industry, there should be appointed to the Commission persons who have experience in the racing industry. We find this argument without merit, for several reasons. Carrying that argument to its logical conclusion, would it also be a valid argument that the legislature should amend the statutes establishing the State Corporation Commission, to provide that members of that Commission should have experience in or affiliation with the utility industry? We doubt that a bill to accomplish that objective would find much support in the legislature.

As a matter of fact, the State Corporation Commission provides a good example of the type of agency we would recommend as a pattern for the Racing Commission. The matters presented to that agency for its consideration and determination are perhaps more technical and complex than the issues presented to any other state agency. The issues to be decided by the KCC involve the disciplines of accounting, economics, engineering, geology, personnel management, law and others. Yet, persons appointed to that agency are not required to possess expertise in any of these areas or to have any prior experience or affiliation with the industries which it regulates. Notwithstanding, we submit that throughout its long history,

the State Corporation Commission has functioned extremely well by the appointment of persons who have the confidence and respect of the governor who appointed them. We strongly recommend, therefore, that the current governor and all governors who succeed him be provided with this same latitude in appointing members of the Racing Commission.

We note also that, as a practical matter, HB 2044 would not provide for the representation of all segments of the racing industry. Under the bill's present provisions, even though appearing on their face to permit persons having any prior connection with the racing industry to serve on the Commission, the only segments of the industry which will be represented are the greyhound breeders and horse breeders. By requiring that each member of the Commission shall have been a resident of Kansas for a continuous period of not less than five years immediately preceding appointment, representatives of the other segments of the industry are effectively precluded from serving on the Commission. We are unaware of any promoter or track operator who has experience in the racing industry and who has been a resident of Kansas for the last five years.

The solution is not to provide for representation of all of the various segments of the industry, but rather it is to eliminate the requirement that the racing industry must be represented on the Commission. To expand the Commission so as to provide adequate representation of all segments of the horse and greyhound racing industries would create an unwieldy commission, and it would foster internal politics, backscratching and other

undesirable arrangements in order to make the important policy decisions necessary to carry out its duties.

In short, it is not appropriate that only the breeders are represented on the Commission, and it is unnecessary that any segment of the industry be so represented.

With respect to the Commission's employees, it is to be noted that HB 2044 vests a substantial amount of discretion in the Racing Commission regarding the regulation of the racing industry. We believe that it should have the same discretion in determining the number and types of employees it needs, the requisite qualifications for employment and the duties that its employees will perform. With all due respect to the drafters of HB 2044, we believe that the advice and counsel the new Commission can receive from other racing commissions throughout the country will provide a more informed basis upon which to determine the Commission's staffing needs.

In addition to the individual state racing commissions, the National Association of State Racing Commissioners provides great assistance to its members on these matters. That association functions much like the National Association of Regulatory Utility Commissioners does for the State Corporation Commission. It provides for a free exchange of information regarding the operations of racing commissions, and it regularly holds meetings and seminars at which topics of mutual concern to its members are discussed. In addition, Arizona State University not only offers a degree

in racetrack management, but it offers short courses in this area, as well; and it serves as a repository of a wealth of information regarding the racing industry, which can be utilized by members of the Kansas Racing Commission.

By providing the Commission with the authority to determine its staffing needs, the Commission also will have the ability to determine which of its duties might be better performed by the commissioners themselves. It is not uncommon, for example, for commissioners in other states to serve as track stewards. Such is the situation in certain counties in Alabama. (Parimutuel racing in Alabama is subject to county option, and the various counties which have parimutuel racing have their own racing commissions.) We believe there are other supervisory functions which might be performed by members of the Kansas Racing Commission, rather than employ a staff person for such purpose. KRCI submits that it makes more sense to have these important managerial functions performed by full-time commissioners who were appointed for their managerial competence, rather than delegate such functions to employees.

We believe the foregoing recommendations regarding the Commission and its staff are essential to the efficient administration of the Commission's affairs and the regulation of the racing industry, and we would urge the Committee to consider these recommendations favorably.

AUTHORITY TO LICENSE, TAX AND REGULATE

VESTED EXCLUSIVELY WITH THE STATE

It is our perception of the intent of the legislature and the racing industry that the state should have the exclusive authority to license, tax and regulate that industry. The benefits of exclusive state control are uniform and effective enforcement and taxation. Section 25(a) of HB 2044 contains language suggesting such control. However, paragraphs (b) and (c) substantially confuse the issue. We believe the legislature should vest the Racing Commission with the exclusive authority to issue licenses and approve track licensees.

Already some local units of government are endorsing particular developers. These activities are occurring prior to the passage of any enabling legislation, and KRCI strongly suggests that the Committee act to clarify this issue, consistent with the language in paragraph (a) of Section 25.

The direct participation of local units of government in the construction and operation of racetrack facilities will seriously detract from the exclusive state regulation contemplated by HB 2044. One of the most important responsibilities vested in the Racing Commission is the selection of licensees to construct and operate racetrack facilities. The involvement of local units of government in the construction and operation of racetrack facilities places competing governmental interests at issue in

the Commission's selection of licensees. It creates the potential that the state's regulatory prerogatives may be compromised by local political pressures.

KRCI proposes that HB 2044 be amended in the following areas to accomplish such a goal:

1. The "facility owner licensee" in Section 1(f) should be eliminated or amended to prevent units of government from constructing or owning racetracks. The ability of a unit of government to compete with private developers for a construction license creates a conflict of interest and could obstruct the construction of the track through indirect means (zoning, building permits, etc.). In addition, it is questionable that local taxpayers should be required to participate in the construction of racetracks via the issuance of I.R.B.'s. As indicated previously in the case of Des Moines, Iowa, the sale of I.R.B.'s is not always a realistic form of financing. Furthermore, the participation of units of government in owning and operating racetracks detracts from the charitable, nonprofit foundation of HB 2044.

2. An exemption from local property taxes should be provided to the nonprofit corporations which are licensed to construct and operate racetrack facilities. We would not propose to eliminate

tax benefits to localities; rather, KRCI proposes to simplify the method of taxation. KRCI proposes that cities and counties in which a racetrack is located each receive .5% of the gross sum wagered, which amount would be paid out of the tax collected by the state to the units of local government in which the track is located.

The benefits of this proposal are derived from simplicity for the racetrack manager and the local unit of government, and the state's retention of control of the tax burden sustained by racetracks.

3. The existing language in Section 25(b) of HB 2044 should be clarified to state that nonprofit corporations licensed to construct and operate racetrack facilities shall be exempt from all privilege taxes.

RACING COMMISSION SHOULD HAVE AUTHORITY TO GRANT EXCLUSIVE LICENSES

Our review of HB 2044 does not reveal any expression of intent with respect to the Racing Commission's authority to grant licenses with exclusivity clauses, which clauses would restrict competition among tracks located within geographic areas. KRCI proposes that language be inserted in HB 2044 clarifying that the Racing Commission has such authority. KRCI also proposes that the National Greyhound Association and fair associations be exempt from any exclusivity requirement. Such a statement would be similar to the provision in Section 15(c) with respect to the maximum number of years for which a track license may be issued by the Commission.

Exclusivity provisions are commonly employed in the racing industry for the purpose of protecting the financial integrity of racetracks. Exclusivity clauses also assist track developers in obtaining financing. The presence of such provisions can be vital to the ability of tracks to obtain licenses and to continue their operations.

THE NUMBER OF RACING DAYS TO BE ALLOWED SHOULD BE MAXIMIZED

The number of racing days to be allowed at race tracks is important to the viability of the tracks. The ability of greyhounds, for example, to race for 300 days each year improves the developer's ability to obtain financing. Long racing seasons also increase state revenues, increase the total amount of purses available to local breeders and makes possible the permanent, rather than seasonal, employment of racetrack personnel.

KRCI proposes that a statement of legislative intent be inserted in the bill to direct the Racing Commission to allow a maximum of 300 racing days each year. It is our belief that such a statement will greatly assist the Racing Commission in designating the number of racing days to be permitted to licensees.