

Approved \_\_\_\_\_

May 4, 1990 Date

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS

The meeting was called to order by Representative Ginger Barr at  
Chairperson

1:36 ~~xxx~~/p.m. on March 20, 1990 in room 526-S of the Capitol.

All members were present except:

Representatives Peterson  
Sprague

Committee staff present:

Mary Galligan, Kansas Department of Legislative Research  
Lynne Holt, Kansas Department of Legislative Research  
Juel Bennewitz, Secretary to the Committee

Conferees appearing before the committee:

Representative Phil Kline  
Representative Elizabeth Baker  
Rust Wilson, Manhattan, Kansas  
Representative Jim Lowther  
Jim Conant, Revenue Manager, Alcoholic Beverage Control (ABC)  
Karleen O'Brien, City of Emporia  
Dave Corliss, League of Kansas Municipalities

HCR 5047

Representative Kline explained that on September 25, 1789, James Madison drafted an amendment to the Constitution dealing with congressional pay raises, as part of the Bill of Rights. The amendment is contained in lines 23-25 of HCR 5047. Within two years, Delaware, Missouri, North Carolina, South Carolina, Virginia and Vermont had ratified it. It lay dormant for 82 years then Ohio ratified it in 1875 and 105 years later Wyoming ratified it in 1978. Since that time 24 more states have ratified it bringing the total to 32, 38 being the number required for ratification. Representative Kline suggested that through some of its intemperate actions concerning its pay raises, Congress has "cast a pall on all state legislatures". Attachment No. 1 is a balloon with technical amendments.

Committee discussion:

1. An increase can be voted but it must be done by appropriation and would not take effect until after the next election.
2. re: lines 29-36 and Congress being the final arbiter on the deadline of the bill, Representative Kline's opinion was that if 38 states ratify the amendment, Congress is not likely to declare the deadline too long.

There were no opponents to the bill.

HB 2784

Representative Baker explained the bill is in reference to 18-21 year olds and the consumption of alcoholic beverages and any city ordinances or county resolutions must have the same minimum penalty as state statutes. She then introduced her son, Rusty Wilson.

Mr. Wilson was a proponent of the bill stating a \$50 fine is an insufficient deterrent, Attachment No. 2.

Committee discussion:

The city ordinance or county resolution may currently be invoked as penalty over state law.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Federal and State Affairs

room 526-S, Statehouse, at 1:36 ~~am~~/p.m. on March 20, 1990

Representative Lowther testified in support of the bill suggesting a second violation carry a higher penalty, requested review of other aspects of the enforcement statutes and adoption of any necessary amendments to provide equity and ease of enforcement, Attachment No. 3.

Committee discussion:

The self-incrimination aspect of the club owner for reporting an underage drinker was discussed.

Jim Conant spoke on behalf of the bill as it makes penalties consistent, Attachment No. 4. He suggested until penalties are mandatory, they are subject to judicial discretion. When ABC enters a club, the owner is the only one it can punish if there are underage drinkers present. The self-incrimination defense by a club owner has not been used since its origination though ABC would be bound to release the person charged. Once the club owner, doorman or bartender has admitted someone with a false I.D., he has no authority to seize the I.D. The ABC has no firm policy on charging an owner who notifies authorities of the presence of underage drinkers.

Committee discussion:

1. ABC agents write reports of the facts which are submitted to the ABC office, reviewed by a supervisor and forwarded to the legal section. The assistant attorney general assigned to ABC makes the determination whether a citation should be issued.
2. There are no age restrictions to be on the premises as long as the underage person is not in possession of alcohol.
3. ABC citations are higher in areas where local law officers make enforcement of liquor laws a priority.
4. ABC arrest statistics reflect only its own arrests - local law enforcement agencies are completely separate.
5. In cases of underage patrons where the ABC is involved, its agent would write the notice to appear or make the arrest and turn the notice over to local law enforcement. ABC is then notified of disposition.
6. Mr. Conant stated ABC had not identified any action between present practice and mandatory sentences to recommend as insurance of uniform punishment. The ABC considers the bill "a step in the right direction" and Mr. Conant stated he felt a \$100 fine to be an adequate deterrent.

Karleen O'Brien was a proponent of the bill stating it emphasizes the seriousness of underage drinking, Attachment No. 5.

Committee discussion:

1. Emporia's fine for minors in possession of liquor is \$250. Approximately 50% of those guilty, work the fine off through community service projects.
2. Ms. O'Brien clarified the support of the bill is primarily the provision which would not permit community service in lieu of the fine.
3. Emporia schools have newly instituted programs regarding alcohol use and abuse.

Dave Corliss presented the opinion of the League that the bill is unnecessary according to Supplement 41-427, Attachment No. 6.

Committee discussion:

1. Mr. Corliss had not investigated the possibility that cities had used their Home Rule powers to "charter out" enactments. He stated the statute is not uniformly applicable and under the constitution cities may pass a charter ordinance to exempt themselves.
2. Mr. Conant affirmed the understanding of the ABC to be that the statute sets a statewide floor for fines.
3. ABC would have the basis to challenge any city or county ordinance imposing a lower fine than the state statute. The issue of Home Rule has never been "pushed" by the ABC.
4. Mr. Corliss stated his understanding to be that all cities and counties were in compliance with the statute. Representative Baker explained that Representative Hochhauser had contacted Riley County officials and was told its fine is \$50.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Federal and State Affairs,  
room 526-S, Statehouse, at 1:36 ~~xxm~~/p.m. on March 20, 1990.

There were no opponents to the bill.

HB 2929

Representative Baker explained the bill requires an annual compliance audit of the Kansas Racing Commission (KRC), Attachment No. 7. Attachment No. 7A is a copy of the interim report with attached minority report.

There were no opponents to the bill.

Representative Sebelius moved to recommend the bill favorably, seconded by Representative Blumenthal. The cost of a compliance audit was discussed. Comparisons were made to information presented as a result of the compliance audit of the lottery, therefore, such an audit was viewed as a fiscally responsible. The provisions permitting the KRC to hire outside experts is separate from the auditing of the KRC. Currently the only review of the KRC spending is specifics which are brought to this committee or in the Budget Committee. It was felt the legislature should provide oversight. The motion carried.

HCR 5047

Representative Long moved to accept the balloon amendments presented by Representative Kline, seconded by Representative Jenkins. The motion was adopted. Representative Long made a motion to recommend the resolution favorably, as amended, seconded by Representative Jenkins. The motion carried.

HB 2784

Representative Sprague asked a conceptual motion to amend the bill to permit a campground in McPherson County having a newly built restaurant and club, be permitted to issue a temporary club membership such as motels are allowed to issue. The draft was prepared by staff and the language approved by ABC. It was decided to postpone the discussion until the printed amendment could be presented.

HB 2732

There had been concern regarding a proposed amendment. The revisor was not present to advise, therefore further discussion was postponed.

Representative Blumenthal presented a request that the committee introduce a bill regarding ethics legislation. Issues considered most important by Common Cause in priority order were:

- a. subpoena powers
- b. creation of a new Public Disclosure Commission of 9 members
- c. extension of the statute of limitations
- d. creations of a position - Executive Director of the Public Disclosure Commission

He suggested there be two bills as an insurance policy in the event the senate failed to act on the issue. The first bill would concern ethics, the second to include items b-d. There was brief discussion by the committee. Representative Ramirez moved to adjourn.

The meeting was adjourned at 2:51 p.m.

The next meeting of the committee is scheduled for March 21, 1990, 1:30 p.m. in Room 526-S.



3-20-90

House Concurrent Resolution No. 5047

By Representatives Kline, Bunten, J.C. Long, O'Neal and Amos, Barr, Cates, Empson, Gatlin, Gjerstad, Heinemann, Lynch, R.D. Miller, Spaniol, Vancrum, Wells and Williams

2-6

11 A CONCURRENT RESOLUTION ratifying the proposed original
12 second amendment to the Constitution of the United States rel-
13 ative to the compensation of Members of the United States Con-
14 gress and when any variances therein shall take effect.

15
16 Be it resolved by the House of Representatives of the State of
17 Kansas, the Senate concurring therein: That the legislature of the
18 state of Kansas, pursuant to Article V of the United States Consti-
19 tution, hereby ratifies an amendment to the Constitution of the
20 United States proposed by resolution of the First Congress of the
21 United States in New York, New York, on September 25, 1789,
22 which reads as follows, to wit:

23 "Article the second...No law, varying the compensation for the
24 services of the Senators and Representatives, shall take effect,
25 until an election of Representatives shall have intervened."

; and

26 Be it further resolved: That the legislature of the state of Kansas
27 acknowledges that the above-quoted article of amendment to the
28 United States Constitution has already been ratified by the legis-
29 latures of the following states on the dates indicated, to wit: Maryland
30 on December 19, 1789; North Carolina on December 22, 1789; South
31 Carolina on January 19, 1790; Delaware on January 28, 1790; Ver-
32 mont on November 3, 1791; Virginia on December 15, 1791; Ohio
33 on May 6, 1873 [70 Ohio Laws 409-10]; Wyoming on March 3, 1978
34 [124 Cong. Rec. 7910; 133 Cong. Rec. S12949]; Maine on April 27,
35 1983 [130 Cong. Rec. H9097, S11017]; Colorado on April 18, 1984
36 [131 Cong. Rec. S17687; 132 Cong. Rec. H6446]; South Dakota on
37 February 21, 1985 [131 Cong. Rec. H971, S3306]; New Hampshire
38 on March 7, 1985 [131 Cong. Rec. H1378, S3597]; Arizona on April
39 3, 1985 [131 Cong. Rec. H2060, S4750]; Tennessee on May 23, 1985
40 [131 Cong. Rec. H6672, S10797, S13504]; Oklahoma on July 10,
41 1985 [131 Cong. Rec. H7263, S13504]; New Mexico on February
42 13, 1986 [132 Cong. Rec. H827, S2207-8, S2300]; Indiana on Feb-
43 ruary 19, 1986 [132 Cong. Rec. H1634, S4663]; Utah on February

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In lines 29 through 43, by commencing a new paragraph at the name of each state

HOUSE FEDERAL & STATE AFFAIRS
Attachment No. 1
March 20, 1990

1 25, 1986 [132 Cong. Rec. S6750, S7578; 133 Cong. Rec. H9866];  
 2 Arkansas on March 5, 1987 [134 Cong. Rec. H3721, S7518]; Montana  
 3 on March 11, 1987 [133 Cong. Rec. H1715, S6155]; Connecticut on  
 4 May 13, 1987 [133 Cong. Rec. H7406, S11891]; Wisconsin on June  
 5 30, 1987 [133 Cong. Rec. H7406, S12948, S13359]; Georgia on Feb-  
 6 ruary 2, 1988 [134 Cong. Rec. H2638, S5239]; West Virginia on  
 7 March 10, 1988 [134 Cong. Rec. H2492, S4784]; Louisiana on July  
 8 6, 1988 [134 Cong. Rec. H5783, S9939]; Iowa on February 7, 1989  
 9 [135 Cong. Rec. H836, S3509-10]; Idaho on March 23, 1989 [135  
 10 Cong. Rec. H1893, S7911]; Nevada on April 26, 1989 [135 Cong.  
 11 Rec. H2054, S10826]; Alaska on May 5, 1989 [135 Cong. Rec. H5485,  
 12 S8054]; Oregon on May 19, 1989 [135 Cong. Rec. H5692, H5972,  
 13 S11123, S12150]; Minnesota on May 22, 1989 [135 Cong. Rec.  
 14 H3258, H3678, S7655, S7912]; and Texas on May 25, 1989 [135  
 15 Cong. Rec. H2594, S6726-27]; and

16 *Be it further resolved:* That the Legislature of the state of Kansas  
 17 acknowledges that resolutions to ratify the above-quoted article of  
 18 amendment to the United States Constitution have been adopted  
 19 by the Senate of the State of California on June 30, 1989; the House  
 20 of Representatives of the State of Illinois on June 22, 1988, and  
 21 again on May 24, 1989; the Senate of the State of Michigan on  
 22 March 15, 1989; and the House of Representatives of the State of  
 23 North Dakota on January 26, 1987, and again on February 3, 1989;  
 24 and

25 *Be it further resolved:* That the legislature of the state of Kansas  
 26 acknowledges that the above-quoted article of amendment to the  
 27 United States Constitution may still be ratified by states' legislatures  
 28 as a result of the ruling by the United States Supreme Court in the  
 29 landmark case of Coleman v. Miller, [307 U.S. 433 (1939)] in which  
 30 it was opined that if Congress does not specify a deadline on a  
 31 particular amendment's consideration by the state legislatures, then  
 32 Congress itself is the final arbiter of whether too great a time has  
 33 elapsed between Congress' submission of the particular amendment  
 34 and the most recent state legislature's ratification of same assuming  
 35 that, as a consequence of that most recent ratification, 38 states have  
 36 at one time or another ratified it; and

37 *Be it further resolved:* That the Secretary of State of the state of  
 38 Kansas shall notify the Archivist of the United States (pursuant to  
 39 1 U.S.C. 106b and 112, as amended by PL 98-497 [98 Stat. 2291])  
 40 of the action of the 1990 Regular Session of the Kansas Legislature  
 41 by sending to the Archivist a copy of this resolution; and

42 *Be it further resolved:* That the Secretary of State of the state of  
 43 Kansas shall also send copies of this resolution to both United States

In lines 1 through 14, by commencing a new paragraph at the name of each state

FSH  
1-2  
3-20-90

Cong. Rec.

[

legislature

Coleman

duly authenticated

1 Senators from Kansas, to all United States Representatives from  
2 Kansas, to the Vice-President of the United States and to the Speaker  
3 of the United States House of Representatives with the request that  
4 it be printed in full in the *Congressional Record*.

FSA  
1-3  
8-20-02

TO: Federal and State  
Affairs Committee



March 20, 1990

MADAM CHAIRPERSON AND MEMBERS OF THE COMMITTEE:

THANK YOU FOR THE OPPORTUNITY TO APPEAR BEFORE THIS COMMITTEE TO DISCUSS MY CONCERNS WITH UNDERAGE DRINKING VIOLATIONS. MY NAME IS RUSTY WILSON AND I AM THE OWNER/MANAGER OF LAST CHANCE, RESTAURANT AND DRINKING ESTABLISHMENT, LOCATED IN AGGIEVILLE, SOUTH OF THE K-STATE CAMPUS. I AM VICE-PRESIDENT OF THE AGGIEVILLE BOARD OF DIRECTORS, SERVE ON THE AGGIEVILLE PLANNING COMMISSION AND I AM A MEMBER OF THE MANHATTAN CHAMBER OF COMMERCE.

THE PROBLEM WE ARE CONFRONTED WITH IN MANHATTAN IS THE CONSISTENT ATTEMPT BY STUDENTS UNDER 21 TO OBTAIN AND CONSUME ALCOHOLIC BEVERAGES. THE FINES THAT ARE PRESENTLY BEING IMPOSED ARE SIMPLY INADEQUATE AS A DETERRENT.

I UNDERSTAND THAT AS A RESTAURANT/DRINKING ESTABLISHMENT OWNER I HAVE A RESPONSIBILITY TO PREVENT UNDERAGE LIQUOR CONSUMPTION, BUT I ALSO BELIEVE THAT STUDENTS MUST ACCEPT RESPONSIBILITY FOR THEIR OWN ACTIONS. AT PRESENT I CAN BE FINED FROM \$100 TO \$1,000 AND THE STUDENT MAY BE FINED \$50. THAT IS SIMPLY NOT A SUFFICIENT PENALTY. MOST STUDENTS ARE QUITE WILLING TO TAKE THE CHANCE THAT ONE NIGHT OF "PARTYING" MIGHT COST THEM \$50.

HB 2784 STATES THAT ALL CITY ORDINANCES OR COUNTY RESOLUTIONS SHALL PROVIDE THE SAME MINIMUM PENALTY AS PRESCRIBED BY THE STATE.

I DO NOT PRETEND THAT THIS WILL SOLVE THE PROBLEM ENTIRELY, BUT I DO BELIEVE IT WILL HELP CONSIDERABLY. I URGE YOU TO SUPPORT THIS BILL.  
THANK YOU.



JAMES E. LOWTHER  
REPRESENTATIVE, SIXTEENTH DISTRICT  
LYON COUNTY  
1549 BERKELEY ROAD  
EMPORIA, KANSAS 66801



TOPEKA

HOUSE OF  
REPRESENTATIVES

COMMITTEE ASSIGNMENTS  
APPROPRIATIONS COMMITTEE  
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EDUCATION COMMITTEE  
TAXATION COMMITTEE  
LEGISLATIVE EDUCATIONAL PLANNING  
COMMITTEE

House Federal and State Affairs  
Testimony on HB 2784

by Jim Lowther

3/20/90

I appreciate the opportunity to say a few words in support of HB 2784. I think the bill will help remedy a problem that has developed over minors violating the law against drinking alcoholic beverages in public and private restaurants, taverns and clubs. It is my feeling there should be uniformity statewide and the penalties substantial. In fact, I would suggest that there should be consideration of a penalty for a second violation that is higher than for the first.

In addition, I want to discuss in general what I see as a real problem in the current set of laws relative to this subject - and also possibly to the rules and regulations that ABC has developed from the statutes.

Last year HB 2237 was signed into law giving those who sell alcoholic liquor a defense to prosecution when a sale is made to a minor when the minor resorts to fraud in order to make the purchase. (Ref. Session laws of 1989, Chapter 91)

It is my understanding that club owners hands are tied when they discover they have served a minor because they incriminate themselves when they report the minor to the police. I would just ask that in your discussion of this measure you look into other aspects of the statutes on enforcement of the drinking laws and adopt any amendments to further provide both equity and ease of enforcement.

MEMORANDUM

TO: The Honorable Ginger Barr, Chairperson  
Senate Committee on Federal and State Affairs

FROM: Jim Conant, Revenue Mgr.  
Alcoholic Beverage Control Division

DATE: March 20, 1990

SUBJECT: House Bill 2784, As Introduced

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I appreciate the opportunity to appear before you today in support of House Bill 2784. Requiring city ordinances and county resolutions which prohibit possession or consumption of alcoholic beverages by a person under 21 years of age to include penalty provisions not less than the state's minimum penalty would provide consistency across the state. Having consistent penalty provisions would prevent the possibility of the gathering of minors in certain city or county areas where penalties are considerably less than those imposed by K.S.A. 41-727.

The following table represents the number of arrests made by ABC for liquor and cereal malt beverage possession by juveniles and minors in recent fiscal years.

ARRESTS OF JUVENILES (under age 18)

	<u>FY 87</u>	<u>FY 88</u>
Liquor Possession	165	185
CMB Possession	<u>51</u>	<u>44</u>
	216	229

ARRESTS OF MINORS (age 18-20)

	<u>FY 87</u>	<u>FY 88</u>
Liquor Possession	347	552
CMB Possession	<u>132</u>	<u>100</u>
	479	652

March 20, 1990 Testimony on HB2784 before The House Federal and State Affairs Committee

Chairperson Barr and members of the committee I appreciate the opportunity to appear before you in support of HB2784. I am Karleen O'Brien and am here on behalf of the City of Emporia. The Emporia City Commission and Emporia's citizens are concerned about the widespread illegal use of alcohol by today's young people. In Kansas in 1987, 25.5% of drinking drivers involved in fatal accidents were 15-20 years old. This age group accounted for 22.4% of all Kansas drivers killed in traffic accidents. Requiring all cities and counties to set a minimum fine for juveniles found to be in possession of alcoholic liquor or cereal malt beverages emphasizes the seriousness of the underage drinking problem. Removing public service as an option for payment of such fines and making it available to the court to use for added impact is a positive step.

With the alcoholic beverage industry spending \$1.3<sup>b</sup> million per year promoting alcohol as a necessary ingredient to a "good time," it is imperative that elected representatives counter that and similar messages with legislation that deals firmly with minors in possession. Although HB2784 is but a small step in that direction, it is deserving of your support.



**League  
of Kansas  
Municipalities**

**Municipal  
Legislative  
Testimony**

An Instrumentality of Its Member Cities. 112 West Seventh Street, Topeka, Kansas 66603 913-354-9565 Fax 354-4186

To: House Committee on Federal and State Affairs  
From: Jim Kaup, League General Counsel  
Re: HB 2784; Minimum Penalties for Alcohol Violations Under Local Laws  
Date: March 20, 1990

While the League does not have a formal position on HB 2784, we do want to bring to the Committee's attention our belief that one of the proposed amendments to Supp. 41-727 is not necessary, for the reasons set out below.

Supp. 41-727 prohibits persons under age 21 from possessing or consuming alcoholic liquor or CMB. Violation of the statute carries with it a penalty of a fine of \$100 minimum. HB 2784 would (1) eliminate public service or alcohol education programs from being ordered by a court in lieu of the statutory fines; and (2) would mandate that any city or county law prohibiting the same acts prohibited by Supp. 41-727 must have a minimum penalty not less than that set out in Supp. 41-727.

The League believes HB 2784's mandate beginning at line 42 is not necessary because Kansas Supreme Court decisions on the issue of conflict between state law and local law already prohibit cities and counties from enacting laws with minimum penalties lower than those of Supp. 41-727. The Court's decisions in Leavenworth Club Owner's Association v. Atchison, 208 Kan. 318, (1971) and City of Junction City v. Lee, 216 Kan. 495 (1975) apply a rule of state-local conflict that, in a nutshell, says that city law may be as restrictive or more restrictive than state law on the same subject, but when it is less restrictive than the state law it is in conflict with that law and therefore is invalid.

We believe therefore that recognized Home Rule caselaw requires cities and counties to establish minimum penalties for possession or consumption of alcoholic beverages no lower than those set out in state law at Supp. 41-727.

Our purpose in bringing this to the Committee's attention is to keep unnecessary laws out of the statute books, and also to avoid the potential for inferences to be drawn, should HB 2784 become law, that other statutory minimum penalties, for which there are no similar express mandates upon local laws, may not be controlling upon local lawmakers.



STATE OF KANSAS

**ELIZABETH BAKER**  
REPRESENTATIVE, EIGHTY-SECOND DISTRICT  
SEDGWICK COUNTY  
601 HONEYBROOK LANE  
DERBY, KANSAS 67037



TOPEKA

HOUSE OF  
REPRESENTATIVES

COMMITTEE ASSIGNMENTS  
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ECONOMIC DEVELOPMENT  
VICE CHAIRMAN: SEDGWICK COUNTY  
LEGISLATIVE DELEGATION  
REGIONAL OMBUDSMAN: KANSAS  
COMMITTEE FOR EMPLOYEE  
SUPPORT OF THE GUARD AND  
RESERVE

**TO: Federal and State Affairs Committee**

**FROM: Representative Elizabeth Baker**

**DATE: March 20, 1990**

**RE: HB 2929**

From the 1989 Interim Joint Committee of Federal and State Affairs minority report:  
"Another matter speaks to the Legislature's ability to monitor the Racing Commission on an ongoing basis. The extraordinary amount of discretion given the Racing Commission and recent events seem to point directly to the need for a high level of legislative oversight. We recommend that the Racing Act be amended to require an annual compliance audit of the Racing Commission with the scope of such audit either included in statute or determined annually by the Legislative Post Audit Committee. Compliance audits are a key means of determining whether actions of any agency conform with all relevant statutes. The Kansas Lottery is subject to an annual financial compliance audit. Information provided to this Committee makes it apparent that ongoing public scrutiny of the activities of the Racing Commission is equally important."

HB 2929 accomplishes those objectives. It would require an audit replicating the audit requirements of the lottery. It is only appropriate that the same standard of review be applied to both agencies.

RE: PROPOSAL NO. 28 -- PARIMUTUEL WAGERING\*

The Special Committee on Federal and State Affairs/Governmental Organization was directed to review policies that govern parimutuel wagering including simulcasting of races, function and operation of the Kansas Racing Commission, disclosure of Kansas Bureau of Investigation reports about license applicants, and statutory limitations on wagering. The Committee's charge encompassed four distinct areas each of which is discussed separately.

## Background

### Simulcasting Races

In 1988 the Attorney General issued an opinion (Attorney General Opinion No. 88-116) that stated the Kansas Parimutuel Racing Act does not permit simulcasting between licensed racetrack facilities. In that opinion, the Attorney General stated that simulcasting to licensed racetrack facilities is not off-track betting so would be permissible under the Kansas Constitution.

1989 S.B. 347 would allow simulcasting of races, defined as telecasting of live audio and visual signals of horse or greyhound races for the purpose of parimutuel wagering. The bill would allow licensees to apply to the Racing Commission for simulcast facility licenses. The sending track would not be required to have a license to originate the broadcast, and would not have to be located in Kansas. The bill was in the Senate Committee on Federal and State Affairs at the end of the 1989 Legislative Session.

S.B. 347 begins with three preliminary statements.

1. The racing, breeding, and parimutuel wagering industry is an important sector of the agricultural economy of Kansas and will soon provide substantial revenue for government and employment for many residents.
2. Simulcasting of horse and greyhound races has potential to strengthen the economic contributions and promote

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\* S.B. 428, S.B. 429, and S.B. 430 accompany this report.

growth of the industry resulting in additional revenue for the racing industry and is in the best interests of the state.

3. The Legislature intends to authorize simulcasting at licensed racetracks as permitted by law.

The bill would provide that any organization licensee or facility owner licensee authorized to conduct at least one live race during each calendar year could apply to the Kansas Racing Commission for a simulcast facility license. If the track is not owned by the organization licensee, the facility owner and the organization licensees would be required to apply for a simulcast license jointly.

The Kansas Racing Commission would be authorized to establish limitations governing the receiving track's ability to display simulcast races and accept parimutuel wagers on the simulcast races. The sending track would not be required to have a license to originate the broadcast, and would not have to be located in Kansas.

Any simulcast agreement between sending and receiving tracks would have to be approved by the Kansas Racing Commission. No application for a simulcast license could be approved by the Commission without such a written agreement. The written agreement would have to take into consideration the best interests of the racing, breeding, and parimutuel industries in Kansas.

Every simulcast licensee would be considered to be conducting a licensed live race and, except to the extent inconsistent with the intent of the bill, would be subject to all appropriate provisions of the Kansas Parimutuel Racing Act relating to the conduct of race meetings. A parimutuel tax would be levied on the gross amount wagered or the total daily takeout from simulcast pools, and an admissions tax collected on admissions. Those taxes would be computed, remitted, and distributed in the manner required by the Parimutuel Racing Act. The receiving track would be required to send an amount dictated by the written agreement to the sending track.

Arrangements between sending and receiving tracks would be exempt from two provisions of the Parimutuel Racing Act, K.S.A. 1988 Supp. 74-8813(o) and (p). K.S.A. 1988 Supp. 74-8813(o) prohibits organization licensees from turning over to anyone else the parimutuel wagering system or the conduct of races. Subsection (p) of the statute allows the organization licensee to enter into contracts for services based on a percentage of the amount wagered only for facility rental and for

management provided by a licensed facility manager. Any such contracts would have to be approved by the Racing Commission.

If both the sending and receiving tracks are located in Kansas, all wagers placed at the receiving track would be combined with all wagers placed at the sending track to produce a common parimutuel betting pool for calculation of odds and determination of payouts. The payout would have to be the same for all winning tickets regardless of where the wager is placed. Likewise, when both tracks are in Kansas purses would be computed as required under current law and would include the combined parimutuel handle for all wagers placed at both tracks. If the simulcast agreement includes a track that is not located in Kansas, the Kansas licensee would be required to compute and conduct a separate parimutuel pool for that track, subject to approval of the Kansas Racing Commission.

### **Function and Operation of the Kansas Racing Commission**

The Commission operates within the framework provided by the Kansas Parimutuel Racing Act and the rules and regulations adopted by the Commission under authority of that Act. The Commission has latitude to conduct its activities in a manner it deems appropriate within that framework.

One of the controversial issues regarding operation of the Commission is a provision in the Kansas Parimutuel Racing Act that exempts the original grant or denial of organization, facility owner, and facility manager licenses from the Kansas Administrative Procedure Act (KAPA). The exemption was provided as an amendment to the Act in 1988. The same bill provided for limited and expedited judicial review of decisions to issue or deny such licenses.

The House Committee on Federal and State Affairs introduced 1988 H.B. 2776. As introduced, the bill would have amended KAPA by exempting the parimutuel licensure procedure from KAPA. Committee minutes do not indicate who requested introduction of the bill. Testimony of Jim Grenz, Executive Director of the Commission, stated that the bill was not requested by the Commission.

The bill was referred to the House Committee on Federal and State Affairs and received a hearing at which Mr. Grenz and Denny Burgess, who represented Sunflower Racing, Inc., were the only conferees. The Commission's position on the bill was ambivalent and Sunflower Racing, Inc. supported the bill. After the hearing, the bill was referred to a subcommittee of Representatives Ramirez and Sprague chaired by

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Representative Roy. The Subcommittee recommended a substitute bill to amend the Racing Act rather than KAPA and which included limitations on judicial review.

In the Senate Committee on Federal and State Affairs, Jim Grenz submitted written testimony in support of the bill. No other testimony was offered at the Senate Committee hearing on the bill. The substitute bill passed the House and Senate without amendment.

### **Disclosure of Kansas Bureau of Investigation Reports**

The Kansas Parimutuel Racing Act was amended by the 1988 Legislature to allow the Racing Commission to receive criminal history record information from the Kansas Bureau of Investigation (KBI), or other criminal justice agencies. The amendment also authorized the Commission to meet in executive session to receive information from the KBI or to negotiate with a license applicant regarding such information. Disclosure or use of any such information received by the Commission, or of any record containing such information, for purposes other than those enumerated in the statute is a class A misdemeanor and constitutes grounds for removal from office; termination of employment; or denial, revocation, or suspension of any license issued under the Parimutuel Racing Act. However, the amendment permits disclosure of the information by the Commission in a hearing held in accordance with the Act.

The amendment was requested by the Kansas Racing Commission and supported by the KBI. In testimony presented to the Senate Committee on Federal and State Affairs, the Executive Director of the Commission justified the request as follows:

This amendment is necessary in that the members of the commission are not law enforcement officers and the Kansas Bureau of Investigation or other criminal justice agencies would be prohibited by law from sharing certain criminal history information including nonconviction data and criminal intelligence information with the commissioners. Additionally the commission would be allowed to receive and discuss this information in closed or executive session for the very same reason. If this were information to be discussed in a [sic] open meeting, the Kansas Bureau of Investigation would be unable to discuss much of the information which is desired.

The testimony went on to explain that the procedure outlined in the requested amendment was very similar to that used in Iowa.

The Racing Commission operated under the authority of that amendment while considering license applications in 1988. None of the background information gathered as part of the precicensing activity was released to the public. After the initial licenses were granted, an appeal was filed with the Kansas Supreme Court by applicants who were denied licensure. The appeal, among other things, claimed that the Racing Commission's ". . . refusal to disclose Kansas Bureau of Investigation (KBI) investigative reports to appellants and the Commission's failure to provide appellants an opportunity to present evidence regarding those reports violated statutory law and appellants' due process rights under the Kansas and United States Constitutions." (Kansas Racing Management, Inc. v. Kansas Racing Commission 244 Kan. 343 (1989))

On that point the Court held that:

subject to specified restrictions, disclosure of Kansas Bureau of Investigation investigative reports to racing license applicants is permitted both under K.S.A. 1988 Supp. 74-8804(n) and (o) and under the Kansas Open Records act, K.S.A. 45-215 et seq. The Kansas Racing Commission may disclose any information contained in the law enforcement agency's report that it determines is in the public interest, if disclosure of that information does not violate the provisions of K.S.A. 1988 Supp. 45-221(a)(10)(A)-(E) by (1) interfering with prospective law enforcement action; (2) exposing the identity of a confidential source or undercover agent; (3) revealing a confidential investigative technique or procedure not known by the applicant; or (4) endangering the life or safety of a person. (Kansas Racing Management, Inc. v. Kansas Racing Commission)

### Limitations on Wagering

Under the Kansas Parimutuel Racing Act, it is illegal for the following people to place wagers on races conducted in Kansas:

- any member, employee, or appointee of the Commission, including stewards and racing judges;
- any officer, director, or member of an organization licensee, other than a county fair association; or
- any facility owner licensee or facility manager licensee or any officer, director, or employee thereof.

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In addition, rules and regulations of the Racing Commission prohibit wagering by jockeys under certain circumstances.

Current law does not prohibit wagering by the following people:

- employees of an organization licensee;
- concessionaire licensees and their officers, directors, and employees; or
- occupation licensees, which group includes horse and greyhound owners, trainers, jockeys, agents, apprentices, grooms, exercise persons, veterinarians, valets, blacksmiths, starters, timers, supervisors of mutuels, pari-mutuel tellers and clerks, and guards. Regulations of the Racing Commission include additional occupations that are required to be licensed.

1989 H.B. 2562 would make it a class A misdemeanor for employees of organization licensees who work in the racing department to place wagers on races operated by the organization licensee; at a track owned or operated by the organization licensee; or at a track owned or managed by the facility owner, or facility manager who owns or manages the racetrack operated by the organization licensee. The bill would allow officers and directors of organization licensees, or of facility owner or facility manager licensees to place wagers at tracks that are not operated, owned, or managed by the licensee and at tracks in which the officers or directors have no financial interest. The existing prohibition against wagering for facility owner licensee directors and employees also would be eliminated. The bill was in the House Committee on Federal and State Affairs at the end of the 1989 Legislative Session.

### Committee Activity

The Committee held hearings on this proposal on August 3, 16, and 17, and on October 23. Representatives of organizations and individuals appeared on August 3 on the matters of release of KBI background investigations and function and operation of the Racing Commission. Many of the conferees were persons who had experience with the operation of the Racing Commission by virtue of having applied for a license from the Commission. The Racing Commission, the KBI,

and representatives of the Attorney General's Office testified on August 16 and 17 on those same matters. The hearings in August were lengthy and the testimony detailed, so the Committee had verbatim transcripts made of the proceedings. The hearing on October 23 was in regard to simulcasting and limitations on wagering.

### Simulcasting Races

On October 23 the Committee conducted a hearing on simulcasting and limitations on wagering. Conferees who appeared at that hearing included: Jim Grenz, Executive Director of the Kansas Racing Commission; Richard Boushka, Sunflower Racing, Inc.; Jonathan Small, Rooks and Greenwood County Fair Associations; Helen Stout; and Pete McGill, Wichita Greyhound Park. All of the conferees except Mr. McGill supported institution of simulcasting in Kansas relatively soon. When he appeared before the Committee on August 3, Mr. John Gaffney, Anthony Fair Association, encouraged the Committee to study the benefits of simulcasting and stated that the Anthony Fair Association supports simulcasting at licensed tracks in Kansas. Mr. Peter Loriaux, former member of the Racing Commission Advisory Committee, spoke in favor of implementation of simulcasting when he appeared before the Committee on August 17.

Mr. Grenz informed the Committee that the Racing Commission would support permissive legislation with regard to simulcasting if the technical aspects of implementation were developed by the Commission through rules and regulations. Further, the Commission would be interested in reviewing or participating in drafting proposed simulcasting legislation. He pointed out that the cost of conducting live race meetings is very high and that simulcasting could be a way for the county fair tracks to offset their live racing costs. Mr. Grenz identified a number of potential problems with simulcasting which the Commission has not yet had an opportunity to discuss. Among those potential problems are distribution of the take out, contractual arrangements between the sending and receiving facilities, and treatment of interstate and intrastate parimutuel pools.

Mr. Boushka proposed amendments to 1989 S.B. 347 that would make the National Greyhound Association of Abilene, Kansas, a party to agreements between the receiving and sending tracks submitted to the Racing Commission. Other amendments proposed by Mr. Boushka would require that purses for intrastate simulcast races be computed using the combined parimutuel handle from wagers placed at both tracks. In addition, interstate simulcast wagering would have to be conducted in compliance with the Interstate Horse Racing Act of 1978 (U.S.C. title 15, Sec. 3001, et seq.) and agreements regarding division of purses for

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greyhounds at either the sending or receiving track or both would have to be clearly defined in a written agreement among the sending and receiving tracks and the National Greyhound Association.

Ms. Stout pointed out the need for protections for greyhound owners similar to those currently in federal law for horse owners. The Committee was informed that on October 6 Congressman Jim Slattery introduced H.R. 3429, the Interstate Greyhound Racing Act of 1989 and that an identical bill, S. 1734, was introduced in the Senate by Senator John Breaux of Louisiana. In a letter from the Congressman provided to the Committee the bill was summarized as follows:

H.R. 3429 would extend to greyhound owners the same legal protections provided horse owners by the Interstate Horseracing Act of 1978. H.R. 3429 would prohibit interstate off-track wagering unless all the parties involved in racing -- the track, the greyhound owners, the off-track betting interests, and the racing commission of the involved states -- agree, either directly or indirectly regarding the terms and conditions of such wagering.

Mr. McGill encouraged the Committee to be cautious about authorizing simulcasting at this time. He identified a need to analyze the current status of the racing industry in Kansas and to resolve any problems prior to introducing a new element. Identification of the person responsible for paying for simulcasting is one of the issues that must be explored. He said the state should not be in a hurry to get into simulcasting because it can always be done later.

### **Function and Operation of the Kansas Racing Commission and Disclosure of KBI Reports**

The bulk of testimony on these portions of the Committee's charge was provided on August 3, 16, and 17. Conferees who appeared on August 3 included: John Daveline, member, Board of Directors, Fairground Parimutuel Racing; Bob Gottschalk, Kansas State Fair; Joel Rhodes, Pittsburg; John Spurling, Girard; John Gaffney, Anthony Fair Association; Joseph Steineger, Mayor of Kansas City; Brent Scott, TRAK-SE; David McLane, TRAK-SE; Davis Merritt, Executive Editor, Wichita Eagle-Beacon; David Schoenstadt, M.D.; Gene DeGruson, President, The Little Balkans Foundation, Inc.; William Ouseley, Security Consultant, The Little Balkans and Camptown Racing; Cale Hudson, Consultant, Camptown Development, Inc.; Dr. Dwight Blackwood, President, Camptown Development, Inc.; Teri Tharp, Secretary-Treasurer, Camptown

Development and Camptown Racing, Inc.; Charles D. McAtee, Majority Stockholder, Counsel, and former President of Camptown Racing, Inc.; and David Ryan, Professor of Law, Washburn University.

Among the issues addressed in testimony on August 3 were the following:

1. County Fairs

- Requirements imposed on county fair races are inappropriately stringent and require expenditures that make it economically unfeasible to conduct race meetings.

2. Racing Commission Operation and Procedures

- The appearance that the Commission's decision regarding licensees was predetermined, because there was a lack of public discussion of applications and because entities that may not have the best financial potential were licensed.
- The number of Racing Commission proceedings conducted in executive session.
- Exemption of original grant or denial of organization, facility owner, and facility manager licenses from KAPA.
- Lack of information provided to applicants regarding the reason for denial of a license.
- Possible conflict created by having an Assistant Attorney General assigned to be counsel for the Racing Commission.
- Lack of expertise among the Commissioners and Commission staff to adequately evaluate license applications and apparent reluctance on the part of the Commission to secure necessary expertise by hiring outside consultants.
- The appearance of a lack of an arm's length relationship between the organization licensee and the owner/manager licensee created by the evidence that some organization licensees were

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created by potential facility owners/managers solely for the purpose of obtaining a license, and by the practice of the owner/manager licensee making loans to the organization licensee.

- The possibility that policies and procedures of the Racing Commission may not be designed and executed in such a way to provide maximum protection against organized crime.
- Procedures of the Commission may not provide for sufficient input from the public. There may be insufficient public explanation of Commission decisions.
- Delay of the start of construction on the track licensed in Pittsburg drew criticism of the Commission's handling of that license procedure and questions regarding the Commission's authority to grant repetitive extensions of time for a conditional licensee to submit its plan for financing under K.S.A. 74-8815(j).
- The possibility that tax abatements will be sought by developers.

### 3. Other Matters

- The possibility that the involvement of legislators and local officials in the licensure process unduly influenced the Commission in its decisions regarding licensure.
- The potential conflict between the interpretation of K.S.A. 74-8813(o) and K.S.A. 74-8813(c)(2) regarding the roles and responsibilities of the organization licensee. K.S.A. 74-8813(o) prohibits the organization licensee from turning over to any other person the parimutuel system of wagering or the operation and conduct of any horse or greyhound race subject to such wagering. The statute does not, however, prohibit the organization licensee from contracting with and compensating others for providing services in connection with the financing, acquisition, construction, equipping, maintenance, and management of the race track

facility, the hiring and training of personnel, and the promotion of the facility.

K.S.A. 74-8813(c) requires that in order to qualify for an organization license to conduct horse or greyhound races, the applicant must be a bona fide nonprofit organization that has, either by itself or through contractual relationships with other persons or businesses approved by the Commission, the financial capability, manpower, and technical expertise as determined by the Commission to properly conduct horse races or greyhound races or both and to operate a parimutuel wagering system.

During the August 3 hearing conferees also proposed solutions to the problems identified. A number of the suggested solutions are summarized below.

1. County Fairs

- Mandate that the Racing Commission address the needs of county fair race meets by reducing regulations and application requirements.
- Provide sufficient staff for the Racing Commission to exercise authority it currently has under the Act to develop different policies and procedures for county fair associations.

2. Background Investigations

- Make applications and supporting material for any license public documents, except those containing non-conviction and criminal intelligence information.
- Declare that KBI background investigation records of applicants are not criminal investigation records, but are public documents.
- Require that all discussion of racing license applications by the Commission be in open meetings.

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- At a minimum, make contents of background investigations available to the applicants.
- Require that the KBI background reports consist of summary memoranda that ensure sources are protected and which contain no raw data. Each memorandum could set forth at least the nature of the allegations worded in a manner that protects sources who have been asked and who have indicated that they do not wish to have their identities revealed.

### 3. Racing Commission Operations and Procedures

- Appoint an emergency oversight committee with subpoena power, with independent counsel, with a budget to hire expert consultants, and give it a short length of time, perhaps 90 days, to report back on its review of the Kansas Racing Commission's operations compared to other states' racing commissions, financial feasibility of the present licensees, and ownership/management of the present licensees.
- Require expert analysis, from outside consultants or other state agencies, as appropriate, while evaluating applications. Also utilize Racing Commission staff expertise to verify claims of applicants regarding details of development.
- Establish statutory qualifications for the Executive Director of the Racing Commission.
- Reinstate applicability of KAPA for initial grant or denial of organization, facility owner, and facility manager licenses.
- Require use of a procedure similar to that used in a trial court to adduce facts and to enable the Commission to avail itself of each applicant's expertise.

#### 4. Other Matters

- Require the Racing Commission to approve for licensure only bona fide nonprofit organizations that operate at arm's length from the track owner and manager.
- Remove the Attorney General as lawyer for the Racing Commission and call for outside counsel experienced in the parimutuel industry.
- Specifically require that a combination license, once awarded, cannot be downgraded to a greyhound only license without legislative approval.
- Prohibit convicted felons from being employed in the racing industry.
- Enable members of organization licensee boards of directors to receive per diem payments for activities other than board meetings.

On August 16 and 17 the Committee held hearings at which the Kansas Racing Commission, the Commission's advisory committee, representatives of the Attorney General, and representatives of the KBI appeared to respond to the testimony provided on August 3. Mr. Richard Boushka, one of the principals in Sunflower Racing, Inc., also appeared on August 17.

The Chairman of the Commission, Alfred Schroeder, made the following points and suggestions in his testimony to the Committee.

- Application of KAPA to the original grant or denial of licenses to organizations, facility owners, and facility managers would have delayed the beginning of track construction for approximately three years.
- If the Racing Commission releases background information provided by the KBI about license applicants, the KBI will no longer include intelligence information in the reports it makes to the Commission. Unless the Legislature allows the Commission to keep the background information confidential, the racing program in Kansas will be in serious trouble.

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- If the Commission would be permitted by statute to release information gathered by the KBI that is in the public domain, e.g., conviction information and withhold intelligence information that is strictly confidential and gathered with an assurance that it will stay that way, it might alleviate some public concern.
- The definition of bona fide nonprofit organization in the Kansas Parimutuel Racing Act refers only to how the corporation is organized and the requirement that benefits do not inure to a member of the organization.
- Appeals of Racing Commission decisions to the Supreme Court should be accompanied by a \$500,000 deposit to be retained in the Racing Fund until the appeal is completed. The Supreme Court would be required to determine whether the appeal was frivolous. If the Supreme Court rules that the appeal is frivolous, the deposit would be forfeited.
- In general, the losing party in a lawsuit should be required to pay the attorney fees of the winning party.
- The Commission needs a public relations officer.
- Most executive sessions which the Commission has held have been in regard to hiring personnel and receiving confidential information regarding racing license applicants.
- Prohibit short duration parimutuel racing by county fairs because licensing and regulating those activities is expensive for the Racing Commission.
- Repeal all legislation regarding racing by county fair associations. (Commissioner Martin disagreed with this suggestion stating that the Commission may need to study successful approaches used by other states.)
- Examine the structure and purpose of the nonprofit organizations, including the county fair associations, in order to determine whether it is realistic to expect that those duties and functions required by statute can be performed by those organizations.
- What should the Commission do under the Parimutuel Racing Act if there is a sale of a racing facility and

an attempt to assign licenses to new owners? Could the Commission utilize existing statutory authority to amend licenses to allow for sale of a facility?

- Profits from parimutuel wagering in states that do not require a nonprofit organization to operate tracks, go to those who have the licenses that permit them to make a profit. The profit in nonprofit states goes to the contract manager. In Kansas, the contractual relationship between the nonprofit (the organizational licensee) and the facility-owner and the facility manager determines how much of the take-out is distributed to the manager and owner. The contract is submitted to the Commission with the application for licensure and must be approved before a license is granted.
- The Commission did not have background investigations conducted on members of its Advisory Committee because there appeared to be broad support of the proposed members. The Commission also did not think a background check was necessary because the Committee would not be making "critical decisions."
- The Legislature is going to have to be very, very careful when considering any amendment to the legislation that would provide for management and operation of a bankrupt track. Financial documents that have been approved by the Commission include a provision that a change in legislation may be considered by the financing entity to be an event of default, in which case it would foreclose the loan, go after the security, and shut down the operation.
- The first denial of a license should not have to go through an administrative proceeding. If the Legislature requires such a proceeding, a court might hold that the entity whose license was denied had some form of property right to the license. The result could be that licensing of all tracks would shift into the courts.

Commissioner Martin raised the following issues and made the following suggestions:

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- Addition of a research assistant to the Racing Commission staff. (Commissioner Arvin also suggested that an assistant for the Executive Director be hired.)
- As the industry and the Commission mature, it will be the responsibility of the Commission and the Legislature to review and ensure that organization licensees are able to function as envisioned when the Act was passed. The Legislature should be aware of how much can be expected of these public service volunteers and how much time they can devote.
- The Legislature needs to make a policy decision regarding expectations of the Racing Commission. Does the Legislature want a strong Commission? What is the Legislature willing to do in the future to fill vacancies on the Commission? Does the Legislature expect people to serve and spend the hours and hours and hours of time that are necessary to do an appropriate job, or will the agency become dominated and controlled by staff and not have independent oversight? The responsibilities of the Racing Commission are as great or greater than some of the other major regulatory agencies such as the Kansas Corporation Commission or State Board of Tax Appeals.

Also at the August 16 meeting the Committee received testimony from the Attorney General. Among the comments of the Attorney General were the following:

- The Racing Commission has proceeded in accordance with the Kansas Parimutuel Racing Act, and if there is fault to be found with regard to the release of KBI background information or due process rights of unsuccessful license applicants, it should be found with the Act. On both issues the Commission had every reason to think its actions were consistent with the Act.
- Prior to the Supreme Court's decision in Kansas Racing Management the Kansas Bureau of Investigation felt reasonably confident that disclosure of information it received and provided to the Commission from other law enforcement agencies and interviews under the cloak of confidentiality present in a criminal investigation was unlikely. The KBI is no longer certain

information will be kept confidential and has begun advising its sources that information gathered during racing background investigations may be revealed.

- A possible compromise between the two positions regarding the release of background information would be to create a public record and hold a public hearing involving information that can be released, reserving intelligence information for an executive session, and confidential record. The danger of such a process is that the public record may be misleading. An applicant with a poor public record could be awarded a license because of the damaging information contained in a competitor's confidential report. This may not serve the goal of restoring public confidence.
- Providing license applicants with more statutory due process rights would in all likelihood limit the information made available upon which the Commission can base its decisions.
- Once the original organization, facility owner, and facility manager licenses have been granted, the Commission will be operating under entirely different procedures. Concessionaire and occupation license applicants can only be denied for reasons specified in the Parimutuel Racing Act. These are all criteria which are likely to be decided only as a matter of record. Information such as criminal intelligence is of little use in making the Commission's decision. Denial, suspension, revocation, and renewal of all licenses is subject to KAPA and to judicial review. The processes in which the Commission will be engaged in the future appear to involve matters that generally can be discussed in public and which afford applicants and licensees with more typical due process rights.
- The fact that the Attorney General appoints attorneys who serve the Commission would have no effect on a decision to investigate and prosecute violations of the law. No complaint of open meetings violations has been made to the Attorney General's Office regarding the Commission.

KBI Director Johnson also appeared on August 16. Some of the major points he made to the Committee are listed below.

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- A conflict arises regarding background investigation information when there is a need for confidential information disclosure of which jeopardizes the ability to obtain that information. There are two types of confidential information. The first is confidential under state or federal laws, e.g., income tax returns, nonconviction criminal records, and Social Security numbers. The second is information that connects an individual to criminal activity or questionable behavior, but which is not contained in a public record, e.g., interviews with employers, neighbors, friends, and intelligence files of law enforcement agencies. In investigations of the type conducted for the Racing Commission, the most useful information often includes private, hidden facts.
- The Supreme Court's interpretation of the Racing Act in regard to disclosure of background information places the KBI in a difficult situation. The result of the decision is that the KBI can no longer control the dissemination of information it obtains. The Bureau cannot provide other law enforcement agencies and sources with assurance of nondisclosure. In practical terms this will drastically reduce the availability of the kind of information most needed in background investigations.
- The most acceptable policy regarding background information would allow the KBI to provide intelligence information to the Racing Commission which would be strictly prohibited from releasing that information. In the absence of such a policy it will be impossible for the KBI to conduct as thorough investigations as it has in the past. The scope of background investigations needs to be defined by the Legislature.

Mr. Norm Hanson, Mr. Peter Loriaux, and Mr. Keith Dillon, who served on the Advisory Committee to the Racing Commission, appeared on August 16 and 17. Mr. Hanson recommended that the Advisory Committee be continued. He suggested that the law be amended so that people with experience in racing could remain on the committee. He argued that experienced people who are familiar with the industry are needed on the committee and said that it seems backward to require that someone resign from the committee in order to race animals in Kansas. Mr. Loriaux did not disagree, but thought there

might not be a continuing purpose for the Advisory Committee since most of the technical regulations have been issued.

Janet Chubb, Assistant Attorney General assigned to the Racing Commission, responded to the Committee's request for information on three issues at the October 23 meeting. The first was the relationship between the organization licensee and the owner and manager licensees. She cited the Commission's Administrative Order No. 1, which states that the director of racing and the director of parimutuels at each track are to be employees of the organization licensee, and provisions of contracts between the licensees, as documents that control those relationships. She identified K.S.A. 74-8813(c)(2) and 74-8813(o) as the most troublesome sections of the statute in regard to those relationships.

The second issue Ms. Chubb addressed was release of KBI background information. She indicated that the Commission has been working since May, 1989 with the KBI on this issue. That effort has led to the Commission modifying its disclosure form. The modification will result in some information being available to the public and some remaining confidential. She explained that the Commission cannot control the record once it goes to the KBI at which point it becomes part of the investigation. Currently, the KBI delivers reports to the Commission orally. She stated that the Commission wants to receive intelligence information on applicants and does not want to receive that information in an open meeting.

In regard to county fair associations, Ms. Chubb reported that the Commission would probably work on a new application form for county fair associations. She stated that the Commission does not want regulatory authority over nonparimutuel horse racing. In any amendment to the Act regarding fair association races, the Commission would like to retain authority to develop technical aspects rather than have them enumerated in the statute.

The Committee considered five possibilities for amendment of the act regarding KBI investigation reports:

- **More Restricted Access.** The Parimutuel Racing Act and Open Records Act could be amended to provide that the Commission may not disclose any investigative information received from the KBI or other criminal justice agencies.
- **Less Restricted Access.**
  1. Remove current provisions of the Parimutuel Racing Act that allow the Commission to receive

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criminal history record information (including arrest and nonconviction data), criminal intelligence information and information relating to criminal background investigations, and to receive that information in executive session. The Open Records Act could then be applied to the information and the Commission could adopt policies or rules and regulations closing or restricting access to those criminal investigation records permitted to be closed under the Open Records Act.

2. Prohibit disclosure of those portions of investigative records that are not required to be open under the Open Records Act and require disclosure of the remainder, as provided by the Open Records Act. Under this approach some information would be open, but the Commission would not have discretion to disclose any information that falls within the definition of "criminal investigation records" unless ordered by a court.
3. Redefine "criminal investigation records" and "undercover agent" under the Open Records Act to include all parimutuel background reports and sources used to compile those reports. This would make the information in the reports subject to disclosure on court order if the requirements of the Open Records Act are met. This approach would allow the Commission to disclose records that it believes meet those requirements and would require a court order to disclose if the Commission decided against disclosure.
4. Combine alternatives 2 and 3 so the Commission could not disclose any part of a background report except on court order in accordance with criteria of the Open Records Act.

### **Limitations on Wagering**

On October 23 the Committee accepted testimony regarding statutory limitations on wagering. Persons who appeared at that hearing

included: Jim Grenz, Executive Director of the Kansas Racing Commission; Richard Boushka, Sunflower Racing, Inc.; and Pete McGill, Wichita Greyhound Park.

Mr. Grenz raised a question about the appropriateness of the policy that prohibits wagering by certain persons statewide. The Commission would favor prohibiting wagering only by those persons who can have a direct impact on the outcome of a race. The Commission has no position on 1989 H.B. 2563, but Mr. Grenz expressed his willingness to work with the Committee to develop acceptable statutory language.

Mr. Boushka characterized the existing prohibition as unenforceable and supported the Racing Commission's position. He suggested that tracks should be responsible for instituting rules required for proper employee supervision.

Mr. McGill indicated support for legislation that would allow track employees who cannot directly influence a race to place wagers.

During Committee discussion of the issues involved in parimutuel wagering in Kansas, the matter of direct involvement of legislators in the racing industry was raised. The Committee requested and was provided with information regarding legislative codes of ethics from several other states. After preliminary discussion of legislative ethics in the context of this proposal, the Committee chose to report on that issue in connection with Proposal No. 24 -- Legislature -- Structural Improvements.

## Conclusions and Recommendations

### Simulcasting of Races

The Committee acknowledges the Commission's position as clarified in a letter to the Committee Chairperson November 8, 1989. That position is as follows:

The commission has an interest in the subject of simulcasting and the commission is studying it presently. The commission would be interested in having the opportunity to view any proposed legislation or participate in the drafting of any possible legislation in this regard.

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In the letter clarifying the Commission's position, the Executive Director of the Commission noted that he misinterpreted the Commission's position and for that reason his testimony to the Committee may have been misleading.

In light of the Commission's position on this issue, the Committee does not make any recommendation regarding simulcasting at this time. Further, the Committee recommends that the Legislature refrain from considering legislation that would implement simulcasting until the Racing Commission completes its examination of the issue.

### Function and Operation of the Kansas Racing Commission

The Committee requested that the Judicial Council review the KAPA issue. Specific questions that the Committee asked to have addressed prior to the start of the 1990 Legislative Session include:

- If KAPA and full judicial review procedures were available, how much time would be added to the original licensure process including all avenues of appeal?
- If the appropriate sections of the Act were amended to restore coverage by KAPA at this time what impact would that action have on licenses already granted?
- If a current owner or manager licensee relinquishes the license and another owner or manager license is granted by the Commission to operate the same track for the same organization licensee, would the second license be an "original" license?
- Is there any conflict in giving the Commission broad discretion in granting licenses and application of KAPA to the process?
- Would application of KAPA to the original grant or denial of a license require, prior to granting the license, a formal hearing before the Racing Commission during which there would be opportunity for examination and cross examination?
- Would application of KAPA to the grant or denial of an original license have any impact on release to the

public of background intelligence information gathered about license applicants?

The Committee makes no recommendation regarding KAPA as it applies to the Parimutuel Racing Act pending receipt of information from the Judicial Council.

The Committee recommends enactment of legislation that would require the Racing Commission to adopt rules and regulations providing for simplified and less costly procedures and requirements for county fair associations applying for or holding a license to conduct race meetings for 14 or fewer days per year.

The Committee recommends that the Ways and Means and Appropriation Committees authorize the Racing Commission to hire a research assistant.

After discussing advantages and disadvantages of having counsel for the Racing Commission appointed by the Attorney General, the Committee recommends continuation of the current requirement that the Attorney General appoint counsel for the Racing Commission.

#### **Disclosure of Kansas Bureau of Investigation Reports**

The Committee recommends enactment of legislation that would make confidential all background information provided by the KBI except conviction information.

Based on testimony provided by the KBI and the Attorney General, the Committee concludes that more detailed background investigation may be needed for occupation and concessionaire license applicants. The Committee further recommends that the KBI, the Attorney General, and the Racing Commission develop and submit to the 1990 Legislature, a proposed amendment to the Parimutuel Racing Act that would close what appears to be a loophole regarding background investigations of applicants for occupation and concessionaire licenses.

#### **Statutory Limitations on Wagering**

The Committee recommends enactment of legislation that would ease current restrictions on wagering with the understanding that those persons who could influence the outcome of a race could not wager. The bill would authorize the Racing Commission to designate in rules

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and regulations specific positions which could influence the outcome of a race. Licensees, officers, directors, members, or employees of licensees holding such positions would be prohibited from wagering at races conducted at a track where the licensee is authorized to engage in licensed activities.

Respectfully submitted,

December 1, 1989

Sen. Edward Reilly, Chairperson  
Special Committee on Federal and  
State Affairs/Governmental  
Organization

Rep. Tom Walker,  
Vice-Chairperson  
Rep. Elizabeth Baker  
Rep. Betty Jo Charlton\*  
Rep. Ginger Barr  
Rep. Nancy Brown  
Rep. John McClure  
Rep. Robert D. Miller  
Rep. Alfred Ramirez  
Rep. Bill Reardon  
Rep. L. V. Roper

Sen. Eugene Anderson  
Sen. Fred Kerr  
Sen. Don Montgomery  
Sen. Jack Steineger  
Sen. John Strick  
Sen. Ben Vidricksen

\* Ranking minority member.

## Minority Report

After reviewing all of the testimony presented to the Special Committee on Federal and State Affairs/Governmental Organization in over three days of hearings, the undersigned members of the Committee submit the following minority report. While we agree with the conclusions and recommendations of the full Committee, we feel that those recommendations do not go far enough.

### I. Organization Licensees

#### A. Qualifications for Licensure

One of the issues we raise is in regard to placing in statute limitations on the types of organizations that can be considered for licensure, e.g., organizations that have been in existence for a certain length of time, or organizations that can demonstrate ability to operate a track. While we recognize that organization licenses have been granted for 25 years, there remains the possibility that new licensees may be chosen at some time in the future. We are concerned that the existing organization licensees are all new entities established for the sole purpose of operating a racetrack. That reality does not seem to us to conform with the expectations of the voters of Kansas or with the expectations of the legislators who crafted the Parimutuel Racing Act. Having heard the description of what we consider to be loopholes in the statute, as explained by the former chairperson of the Racing Commission, it seems apparent that the only solution is an amendment to the statute.

We therefore recommend that the Parimutuel Racing Act be amended to require that in addition to existing requirements for organization licensees, any nonprofit organization licensed must have been in existence and operating continually for no less than five years prior to licensure. We further recommend that those organizations be established for the purpose of and be continually engaged in charitable or community service activities.

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**B. Relationship Between Organization Licensees and Owner and Manager Licensees**

1. A number of issues were brought out in testimony presented to the Committee regarding the relationships between the nonprofit (organization licensees) and the profit making entities (facility owner and manager licensees) involved in promoting and developing racing in Kansas. We are particularly concerned about the appearance that some of the persons involved with organization licensees appear to be in a position to personally benefit financially in ways that may not be in the best interest of communities and consistent with the charitable intent of racing in Kansas.

The Kansas Parimutuel Racing Act is very specific regarding activities that are prohibited for officers, directors, or members of the nonprofit organization (see K.S.A. 74-8813(d)(3)), but is silent on the issue of involvement of employees, consultants, and professionals under contract. We are concerned that persons involved with or employed by the organization licensees may be in a position to benefit in ways that have been specifically prohibited for officers, directors, or members. Therefore, we recommend that prohibited activities be defined for these additional classes of persons. We feel that this recommendation is consistent with the position that profits from parimutuel racing are to be used for charitable purposes and not for the benefit of any individual.

2. We note that two sections of the Act may contribute to confusion over the relationship between organization licensees and facility owner and manager licensees. Those two sections are K.S.A. 74-8813(o) and K.S.A. 74-8813(c)(2), both of which were included in the original Parimutuel Task Force draft of the Act. The former prohibits the

organization licensee from turning over operation of the parimutuel system of wagering to anyone. However, the same section allows the organization licensee to contract the hiring and training of personnel, presumably including personnel involved in operation of the parimutuel system of wagering. The latter section, which speaks to qualifications for an organization license, requires that the applicant have, either by itself or through contractual relationships with other persons, the manpower and technical expertise to properly conduct races and operate a parimutuel wagering system. The section might be read to imply that these important functions can be contracted to another entity.

These sections are sufficiently ambiguous to warrant clarification regarding responsibilities that can and cannot be delegated by contract to other entities by the organization licensee. At a minimum applicants for organization licenses should be able to demonstrate that they have the personnel and technical expertise necessary to properly conduct races and operate a parimutuel wagering system. Conducting races and operating the parimutuel wagering system are the primary responsibilities of the organization licensee under the Act, and it seems contradictory to have language in the statute that could be read to mean those responsibilities could be delegated by contract to another entity. We therefore recommend that the Act be amended to clarify the responsibility of the organization licensee to conduct the races and to operate the wagering system.

## II. Ownership of Tracks

Events of the summer of 1989 regarding proposed changes in ownership, control, and financing of tracks in Kansas raise many questions regarding the adequacy of statutory provisions regarding

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such transactions. We point out that the act contains a strict standard regarding how a change in ownership of an organization licensee is to be handled. The provision is contained in K.S.A. 74-8813(m) which states:

Once an organization license has been issued, no person thereafter and during the term of such license shall in any manner become the owner or holder, directly or indirectly, of any shares of stock or certificates or other evidence of ownership or become a director or officer of such organization licensee without first having obtained the written approval of the commission.

There is no equally clear provision in regard to owner or manager licensees. However, there is a provision included among the qualifications for licensure as an owner or manager that states:

An applicant for a facility owner license or facility manager license, or both, shall not be granted a license if there is substantial evidence that the applicant for the license, or any officer or director, stockholder, member or owner of or other person having a financial interest in the applicant: . . . (6) is or becomes subject to a contract or option to purchase under which 10% or more of the ownership or other financial interest or membership interest are subject to purchase or transfer, unless the contract or option has been disclosed to the commission and the commission has approved the sale or transfer during the license period. (K.S.A. 74-8815(f))

Under this statute an unscrupulous partner could, by selling sufficient small pieces of interest to select individuals, allow persons who could not be approved by the Racing Commission to gain control of the licensee. It seems ludicrous not to apply the same standard for sale or transfer of ownership to all three types of licenses. Imposition of the higher standard, i.e., the language of K.S.A. 74-8813(m), is consistent with the objective of giving the Racing Commission broad power over the industry. We therefore recommend that the same requirements be imposed for facility owner and manager licenses as for organization licenses. We further recommend that the statute clearly require the Racing Commission to conduct the same type of investigation of

potential purchasers as is conducted for original owners prior to licensure.

Finally, the statute should dictate how the Commission will deal with changes of track ownership necessitated by the death, bankruptcy, or insolvency of the owner/manager licensee. The statute should allow "temporary" ownership or management by an unlicensed entity, selected by the Commission, for a specified period of time while the organization licensee locates a new owner or manager who can be licensed. This temporary arrangement should be structured in such a way that there is a clear line of responsibility to the Racing Commission until such time that a new license can be issued through the existing process.

### III. Procedures of the Racing Commission

- A. The Legislature should include in statute more specific procedures for the Racing Commission to follow during consideration of organization, owner, manager, and concessionaire license applicants. Testimony presented to the Committee leads to the conclusion that an improved procedure would at a minimum reduce the mystery and therefore the criticism surrounding the decisions made by the Commission. We recommend that the Commission be required to:
1. Obtain expert analysis of license applications either by appropriately experienced Commission staff or by consultants with necessary expertise. We suggest as a model for this analysis procedures used by the Kansas Corporation Commission.
  2. Hold a public hearing on each organization, owner, manager, and concessionaire license application. At the hearing each applicant would present his or her proposal and there would be an opportunity for examination and cross examination by those experts who had analyzed the application as well as by the Commission. This procedure would place the Commission in a position of passing judgement regarding licensure on facts presented in public at the hearing.

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3. Place limitations on the number of extensions that can be granted to a conditional license for the purpose of securing financing under K.S.A. 74-8815(j). Clearly, the events of this summer have illustrated the weakness of allowing the Commission unrestricted discretion in this area. Manipulation of the process and of the Commission has resulted in what may end up being fatal delay in the start of development of a track in southeast Kansas.

B. Audit requirements for organization, owner, manager licensees in the statute should be strengthened to provide both the Legislature and the Commission with a better means of monitoring activities of licensees. While many of the suggestions in section A above are made in retrospect, this recommendation goes to the heart of ongoing regulation of the industry. Audits of licensees required to be submitted to the Commission should be upgraded from "financial audits" to "financial compliance audits" to ensure that the Commission receives all the information it needs to ascertain whether licensees are in compliance with relevant statutes and rules and regulations.

To further clarify the statute, it should specify that audits be performed in compliance with generally accepted audit standards and other guidelines specified by the Commission. This language would establish a minimum standard, the requirements of which are understood by CPAs, but would allow the Commission flexibility to direct auditors' attention to specific issues as necessary.

Finally, a similar audit requirement should be imposed on concessionaire licensees. Large amounts of money will change hands through concessionaire licensees, and experienced racetrack security personnel from many states have warned that it is every bit as important to watch these licensees as it is to watch the organization, owner, and manager licensees.

C. We commend the Racing Commission for efforts it has made to make some background information about

license applicants available to the public in the future. We hope that the procedures described to the Committee are fully implemented to ensure that nonconfidential information is available to the public. We support the majority recommendation for a statutory change only in light of the more open procedures recently adopted by the Racing Commission.

#### IV. Legislative Oversight

Another matter speaks to the Legislature's ability to monitor the Racing Commission on an ongoing basis. The extraordinary amount of discretion given the Racing Commission and recent events seem to point directly to the need for a high level of legislative oversight. We recommend that the Racing Act be amended to require an annual compliance audit of the Racing Commission with the scope of such audit either included in statute or determined annually by the Legislative Post Audit Committee. Compliance audits are a key means of determining whether actions of an agency conform with all relevant statutes. The Kansas Lottery is subject to an annual financial compliance audit. Information provided to this Committee makes it apparent that ongoing public scrutiny of the activities of the Racing Commission is equally important.

#### V. Use Of Public Funds To Finance A Track

Finally, we feel that voters were convinced to support parimutuel racing in Kansas as an economic development activity. As such, we feel that public funds should not be funnelled into support of racing and recommend statutory prohibitions of direct or indirect support of parimutuel racing or parimutuel racetrack facilities with public funds. This recommendation constitutes reversal of a policy incorporated into the Act. Specifically, K.S.A. 74-8815 permits the State of Kansas or any political subdivision thereof to apply for a facility owner license to construct, own, or both, a racetrack. We would allow one exception, that would be for the State of Kansas to be an owner licensee for the purpose of a parimutuel racetrack at the state fairgrounds. The exception is consistent with the broad policy recommended to the extent that tax dollars, per se, would not be used to support racing at the state fairgrounds.

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**VI. Simulcasting**

In light of testimony the Committee received regarding the reluctance of the Racing Commission to make hard decisions necessary to regulate this industry, we feel that the Legislature should engage in its own examination of simulcasting. Such a study would enable the Legislature to be adequately prepared to address any proposal developed by the Commission. The Legislature's study should include a review of experiences of other states including aspects of law enforcement, the amount of revenue generated for the state and for all elements of the industry, and the impact simulcasting has on live racing and attendance at live races.

Respectfully submitted,

Rep. Ginger Barr

Rep. Betty Jo Charlton

Rep. Tom Walker

Rep. Nancy Brown

Rep. Elizabeth Baker

Rep. John McClure  
all parts except IA