

Approved _____ Date 2-6-90

MINUTES OF THE Senate COMMITTEE ON Federal and State Affairs

The meeting was called to order by Senator Edward F. Reilly, Jr. at
Chairperson

11:05 a.m./~~p.m.~~ on January 31, 1990 in room 254-E of the Capitol.

All members were present except:

Committee staff present:

Mary Ann Torrence, Revisor of Statutes Office
Mary Galligan, Legislative Research
Deanna Willard, Committee Secretary

Conferees appearing before the committee:

Janet A. Chubb, Kansas Racing Commission
Pete McGill, Wichita Greyhound Park
Jim Yonally, TRAK-East
Jonathan Small, Greenwood County Fair Assoc., Rooks County Free Fair
Rep. Debbie Schauf
Denny Burgess, Sunflower Racing Inc.
Kyle Smith, KBI

The minutes of the January 30, 1990, meeting were approved as amended.

Hearing on: SB 429 - Concerning parimutuel racing; prohibiting
wagering by certain persons

Janet A. Chubb, Assistant Attorney General, Kansas Racing Commission, briefly commented that it was decided among the racing commissioners and the committee members working on this proposal that this was the most agreeable language.

The Chairman recognized Mr. Dan Hamer, Executive Director, Kansas Racing Commission.

Pete McGill, Wichita Greyhound Park, Inc., presented testimony in support of the bill, stating that many people refused to accept positions with the track when they learned they would be unable to wager. (Attachment 1)

Jim Yonally, TRAK-East, appeared in support of the bill, emphasizing that preventing employees from wagering is impossible to enforce. (Attachment 2)

Jonathan Small, Greenwood County Fair Association and Rooks County Free Fair, offered testimony in support of SB 429, saying he believes the amendment would be wisely implemented and would not compromise the security in which races are conducted. (Attachments 3 & 4)

Rep. Debbie Schauf presented testimony in support of SB 429, saying that the law as it stands places unnecessary restrictions on who is permitted to wager. (Attachment 5)

Denny Burgess, Sunflower Racing Inc., spoke in support of the bill. (Attachment 6) He said that other states have more liberal policies in regard to employee wagering. Legislative Research was directed to provide information on this.

Hearing on: SB 430 - Concerning the Kansas parimutuel racing act;
relating to disclosure of certain information

Janet A. Chubb, Kansas Racing Commission, presented a memorandum (Attachment 7) and spoke in favor of SB 430, needed to clarify when

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 Senate COMMITTEE ON Federal and State Affairs,
room 254-E, Statehouse, at 11:05 a.m./~~p.m.~~ on January 31, 1990

the commission may disclose KBI reports to applicants, licensees, and the public.

Kyle Smith, Assistant Attorney General, KBI, offered testimony in support of SB 430, in hopes that it will clarify that information provided the racing commission will not be disclosed, thus enabling the KBI to provide it once again. (Attachment 8)

Written testimony was distributed from Harriet J. Lange, Executive Director, Kansas Association of Broadcasters, urging favorable consideration of SB 430. (Attachment 9)

The meeting was adjourned at 12:00 noon.

TESTIMONY
PRESENTED TO THE
SENATE FEDERAL AND STATE AFFAIRS COMMITTEE
ON JANUARY 31, 1990
BY
PETE MCGILL
OF PETE MCGILL & ASSOCIATES, INC.
ON BEHALF OF
WICHITA GREYHOUND PARK, INC.

Good Morning Mr. Chairman and Members of the Committee:

I am Pete McGill of Pete McGill & Associates, appearing here before you today on behalf of Wichita Greyhound Park, Inc. I appreciate the opportunity to appear and offer testimony in support of Senate Bill 429, the Employee Wagering bill.

Our client, Wichita Greyhound Park, opened their doors on September 7, 1989 to become the first parimutual greyhound facility in operation in the state of Kansas. Since their opening, W.G.P. has generated hundreds of thousands of dollars for the organizational licensee, Wichita Greyhound Charities, significantly boosted the Wichita area economy and provided an atmosphere of first class greyhound racing and entertainment for the state of Kansas

W.G.P. presently employs some 450-500 people, a majority of which are unable to wager due to present restrictions in the statute. Many of these people work on a part-time basis, such as weekends, when the crowds may be twice the size of the weekday attendance. Even though they may only work one or two days per week, they are precluded by statute from wagering at any time. Many of W.G.P.'s employees also seek positions at a race track because they like the "action and excitement" accompanying such a job - they enjoy the racing atmosphere -

however, they would like to place a wager themselves, too.

The Kansas Racing Commission has been together as a unit for over two years now. They have traveled to half a dozen or more states to learn the industry and are active members in the Association of Racing Commissioners International, Inc., a world-wide association of their contemporaries. SB 429 would not automatically allow everyone employed by the tracks to wager - that would be based upon a "position by position" determination of the Commission. W.G.P. is confident that the Commission will use their resources and past experiences to properly decide who should be allowed to wager at Kansas tracks and still insure the integrity of the industry in Kansas.

For example, our track operates their own concessions. As employees of the facility owner/manager, they are presently prohibited from wagering. I believe one would be hard pressed to show how a waitress or kitchen helper could "influence the outcome of a race." Many people refused to accept such positions with the track when they learned that they would be unable to wager.

In conclusion, let me say that I have closely monitored the parimutuel issue since before the Constitutional admendment was adopted and on through its implementation. One overriding theme during discussions of employee wagering and so forth was that "if we were to err, it should be on the side of conservatism". The tracks are up and running in Wichita, Kansas City, Eureka, and other locations.

It would appear that we can now afford to fine tune the programs and allow certain track employees who would like to wager to do so without having to make a choice between a job and placing a bet.

I thank you for your time and would ask for your favorable consideration of SB 429.

TESTIMONY BEFORE THE SENATE COMMITTEE
ON FEDERAL AND STATE AFFAIRS

January 31, 1990

Mister Chairman and members of the committee, my name is Jim Yonally, representing the board of directors of TRAK-East, the non-profit corporation holding the organization license for the Woodlands race track in Kansas City. We are pleased to appear today in support on SB 429.

As you know, the current paramutuel racing act speaks in a rather broad fashion regarding who can, and who cannot, wager on races in Kansas. For example, employees of an owner or manager licensee at any other track in Kansas cannot legally wager at our facility. This, quite obviously, is impossible for us to enforce as we have no way of knowing who those people are if they step up to one of our windows to place a wager.

Senate Bill 429, as recommended by the interim study committee, allows the racing commission to determine, by rules and regulations those persons who could influence the outcome of a race. Those persons would then be prohibited from wagering. We believe this to be a workable solution, and one which we endorse.

We urge your favorable consideration for SB 429, and I would be happy to try to respond to any questions.

Senate F & S A
1-31-90
Att. #2

JONATHAN P. SMALL, CHARTERED

Attorney and Counselor at Law
Suite 304, Capitol Tower
400 West Eighth Street
Topeka, Kansas 66603
913/234-3686

January 31, 1990

TESTIMONY BEFORE THE
SPECIAL COMMITTEE ON FEDERAL AND
STATE AFFAIRS/GOVERNMENTAL ORGANIZATION

RE: 1990 SENATE BILL 429

I am Jonathan Small appearing here before the Committee today in behalf of Greenwood County Fair Association which manages the famous Eureka Downs in Eureka, Kansas.

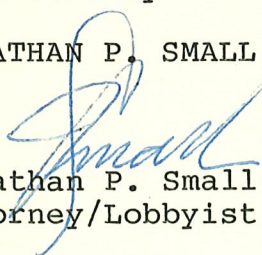
This is to advise the Senate Federal Committee that the Greenwood County Fair Association operator of Eureka Downs horse racing facility at Eureka, Kansas, supports 1990 Senate Bill 429.

S.B. 429 proposes amendments to the general and very broad proscription regarding wagering by officers, directors, members and employees of an organization licensee (the non-profit entity) and those of the facility owner and manager licensees. The proposal could allow directors, officers, members and certain employees of the non-profit organizational licensee and the for-profit facility owner and manager licensees to wager on horse or dog races, provided the Racing Commission does not designate such persons as being in a position to influence the outcome of a given race.

The substantive effect of the proposed amendments will be to place in the hands of the Commission the discretion to identify which of its licensees will be authorized to place parimutuel wagers on races. It is our opinion that his amendment will not degrade or compromise the security of or the strict lawful manner in which the races are or will be conducted. It should further enhance enforcement of the Act in this regard. The net effect of this will be to enlarge the potential parimutuel handle for all parimutuel races in Kansas. It should not serve to restrict the affected individuals from enjoying the sport of parimutuel wagering on horse and dog racing.

Respectfully submitted,

JONATHAN P. SMALL, CHARTERED


Jonathan P. Small
Attorney/Lobbyist

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Senate Federal & S A
1-31-90
AEE. # 3

JONATHAN P. SMALL, CHARTERED

Attorney and Counselor at Law
Suite 304, Capitol Tower
400 West Eighth Street
Topeka, Kansas 66603
913/234-3686

January 31, 1990

TESTIMONY BEFORE THE
SPECIAL COMMITTEE ON FEDERAL AND
STATE AFFAIRS/GOVERNMENTAL ORGANIZATION

RE: 1990 SENATE BILL 429

I am Jonathan Small appearing here before the Committee today in behalf of the Stockton Chamber of Commerce in behalf of Rooks County Free Fair, Stockton, Kansas.

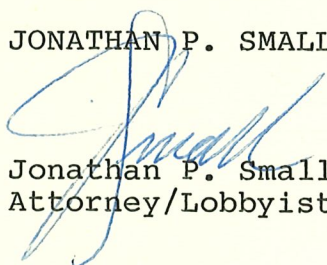
This is to advise the Senate Federal Committee that the Stockton Chamber of Commerce in behalf of Rooks County Free Fair horse racing facility at Stockton, Kansas, supports 1990 Senate Bill 429.

S.B. 429 proposes amendments to the general and very broad proscription regarding wagering by officers, directors, members and employees of an organization licensee (the non-profit entity) and those of the facility owner and manager licensees. The proposal could allow directors, officers, members and certain employees of the non-profit organizational licensee and the for-profit facility owner and manager licensees to wager on horse or dog races, provided the Racing Commission does not designate such persons as being in a position to influence the outcome of a given race.

The substantive effect of the proposed amendments will be to place in the hands of the Commission the discretion to identify which of its licensees will be authorized to place parimutuel wagers on races. It is our opinion that his amendment will not degrade or compromise the security of or the strict lawful manner in which the races are or will be conducted. It should further enhance enforcement of the Act in this regard. The net effect of this will be to enlarge the potential parimutuel handle for all parimutuel races in Kansas. It should not serve to restrict the affected individuals from enjoying the sport of parimutuel wagering on horse and dog racing.

Respectfully submitted,

JONATHAN P. SMALL, CHARTERED


Jonathan P. Small
Attorney/Lobbyist

QS0131T1

Senate Federal & S A
1-31-90
ATT. #4

DEBARA K. SCHAUF
 REPRESENTATIVE, EIGHTY-FIRST DISTRICT
 SEDGWICK AND SUMNER COUNTIES
 P.O. BOX 68
 MULVANE, KANSAS 67110
 (316) 777-4608



TOPEKA

HOUSE OF
 REPRESENTATIVES

COMMITTEE ASSIGNMENTS
 MEMBER: LABOR AND INDUSTRY
 FEDERAL AND STATE AFFAIRS
 COMMERCIAL AND FINANCIAL
 INSTITUTIONS
 JOINT COMMITTEE ON ADMINISTRATIVE
 RULES AND REGULATIONS

TESTIMONY ON SB429

by

REPRESENTATIVE DEBBIE SCHAUF

Mr. Chairman & Members of the Committee:

I appreciate the opportunity to appear before you today. During the past year I have spent countless hours studying the implementation of our Parimutual Act in Kansas.

The proposed amendment to the language of 44-8810 is in my opinion very necessary. It has become apparent as we have track operations underway that the law as originally written, placed unnecessary and somewhat unenforcible restrictions on who is permitted to wager. The janitorial or concession staff, for example, from Eureka Downs has no influence in any way on the outcome of a specific race or the track operation at Eureka. If they travel 50 miles west to Wichita for a day at Wichita Greyhound Park, it is nearly impossible to supervise their wagering activity. Also, it is obviously difficult for these people to understand why they are not permitted to wager where they are employed.

Additionally, why should a County Fair Association such as Eureka, who runs 60+ days, be allowed to have officers and directors who are allowed to wager, but not a track who runs additional performances

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but has no more official involvement of duties than a County Fair Association?

My one concern with this proposed change is section (f) is that the Commission will adequately research and determine those persons whose duties would allow them a position of influence in the outcome of a race.

I would also like to share my thoughts and concerns about several sections of 74-8810 which would lend themselves to amendment in this bill. In Section (b) line (4) I would like to see clarifying language to define what constitutes "suitable facilities and services" to facilitate the member, employee, or appointees' official duties. I am very concerned that because the Governor appointed people with no ties or experience both to the commission and executive director and the majority of the staff, has the same high level of experience we have created a situation where the "experts" are the track operators in Kansas, and their influence is weighing very heavy in the decisions that are currently being made. I believe it is imperative that the Racing Commission regulate the racing industry in Kansas, and not allow the tracks to regulate the industry. If we cannot suitably provide a definition of what constitutes suitable facilities and services, then we should insert a period behind licensee in line 43 and strike the remainder of that item.

In Section C, I would like to express my concern about the extent of the family we have prohibited from holding licenses due to their relationship with members, employees, or appointees of the Commission.

or example, a situation developed this summer where an employee of the Commission began a dating relationship and considered getting married. The father of the lady in question holds an owner's license for a quaterhorse and has for many years. If the couple had married, it would have meant a change in employment for one member or the relinquishment of a license.

Thank you for your consideration of my concerns, and I will be happy to stand for questions or provide further information as you desire.

SUNFLOWER RACING INC.

LEGISLATIVE TESTIMON.

TO: SENATE FEDERAL AND STATE AFFAIRS
RE: SB 429
FROM: DENNY BURGESS, VICE PRESIDENT/PUBLIC AFFAIRS
AND COMMUNICATION
DATE: JANUARY 31, 1990

I am Denny Burgess representing Sunflower Racing Inc. in support of SB 429. This bill is the result of a study by the Special Committee on Federal and State Affairs/ Governmental Organization. The committee in my opinion has produced a very good bill and we urge the committee to report it favorably.

I would be happy to answer any questions that members of the committee may have. Thank You.

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STATE OF KANSAS



KANSAS RACING COMMISSION

3400 Van Buren
Topeka, Kansas 66611-2228
(913) 296-5800

TO: Special Committee on Federal and State
Affairs/Governmental Organization

FROM: Janet A. Chubb

DATE: January 30, 1990

RE: Chronology of KRC Activity Relating to KBI Background
Investigations and Reports

Early in the commission's application and licensing process it became clear that the KRC needed to receive the criminal history information necessary to determine the qualifications of licensees of and applicants for licensure by the commission. The commission was concerned about the public disclosure of this sensitive information and for good reason. It is the same type of information the Kansas Supreme Court had before it when the court considered a district court's refusal to disclose an investigative criminal file in 1987. The high court observed:

"Criminal investigation files are sensitive. Raw investigative files nearly always include the names of many innocent people. Where the files are open to public scrutiny, the potential for injury is great. In addition, if criminal investigation files are open, many people with information which might lead to a resolution of the investigation will refuse to disclose such information. Investigations will be badly hampered. Thus, only under very restrictive circumstances may the district court require disclosure." Harris Enterprises, Inc. v. Moore, supra at p. 67.

The commission considered whether the criminal record, intelligence and background information it received from the KBI or other law enforcement must be received in open meeting or whether it could be received in executive session. January 4, 1988, the commission asked the attorney general whether the information was subject to public disclosure.

January 8, 1988, in Opinion 88-3, the attorney general explained that records act exception KSA 45-221(a)(10), wherein criminal

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investigation records are not required to be disclosed, does not apply to the KRC. That exception only applies if records are those of "an investigatory agency or criminal justice agency...compiled in the process of preventing, detecting or investigating violations of criminal law..." KSA 45-217(b). Any reports made to the commission for the purpose of its administrative licensing procedures would be subject to public disclosure under the public meetings and records acts.

During this time the commission was finalizing its license application form and the companion personal background disclosure form. The personal background disclosure form elicited information upon which the KBI would commence its investigation of applicants. Many applicants expressed concern to commissioners that, if the completed disclosure forms were filed with the commission, the forms would be subject to a records request and used by others for personal and competitive advantage. January 15, 1988, the commission passed Administrative Order No. 2, which states background disclosure forms and fingerprint cards shall be filed directly with the KBI. The KRC has never accepted for filing the completed background disclosure forms.

The KRC and KBI petitioned the legislature for relief during the 1988 session. The legislature responded by amending K.S.A. 74-8804 with new subsections (n) and (o) as follows:

"(n) The commission may receive from the Kansas bureau of investigation or other criminal justice agencies such criminal history record information (including arrest and nonconviction data), criminal intelligence information and information relating to criminal and background investigations as necessary for the purpose of determining qualifications of licensees of and applicants for licensure by the commission. Disclosure or use of any such information received by the commission, or of any record containing such information, for any purpose other than that provided by this subsection is a class A misdemeanor and shall constitute grounds for removal from office, termination of employment or denial, revocation or suspension of any license shall be construed to make unlawful the disclosure of any such information by the commission in a hearing held pursuant to this act.

(o) The commission, in accordance with K.S.A. 75-4319 and amendments thereto, may recess for a closed or executive meeting to receive and discuss information received by the commission pursuant to subsection (n) and to negotiate with licensees of or applicants for licensure by the commission regarding any such information." H.B. 2774, effective April 7, 1988.

During the summer of 1988 commissioners met in executive session with KBI representatives to receive oral investigative reports. (As a security measure only one copy of the written investigative reports was delivered to commission counsel. She secured them in a locked file drawer in her office so that commissioners could review them if necessary.) The commission also met with project principals in executive session to discuss with them any investigative information that needed clarification. The commission was not conducting a KAPA hearing pursuant to the racing act, so it did not consider discussing any of the information in public meeting.

Following is a brief outline of the commission's activity June-September 1988, as reflected in commission minutes:

Regular meeting:

- June 17 Commission in executive session for two and one-half hours to hear background investigative reports from KBI.
- June 24 Commission in executive session one-half hour "to enter into negotiations with Eureka Downs officials concerning the results of the KBI background investigations."
- Commission in executive session for 30 minutes to discuss KBI background information with Eureka Downs officials.
- July 1 Commission in executive session two hours to hear KBI background investigative reports.
- Commission in executive session for approximately 20 minutes to discuss background investigations on Eureka Downs.
- July 8 Commission in executive session for two hours and twenty-five minutes to hear KBI background investigative reports.
- Commission into executive session one hour and forty minutes to confer with applicants concerning KBI background information on Kansas Greyhound Racing, Inc. and Sunflower Racing, Inc.
- Commission into executive session for two hours to confer with Kansas Racing Management, Inc. and Alabama/Kansas, Inc. concerning KBI background investigations.

July 15 Ronald Manka, lawyer for KRM, submits a confidential letter to the commission requesting that project's KBI background investigative reports.

Commission in executive session for one hour and five minutes with TRAK East regarding KBI background investigative reports.

July 22 Commission in executive session for 10 minutes regarding legal consultation on KRM letter filed week earlier.

Commission in executive session one hour and twenty-five minutes to hear KBI background reports on Rooks County Free Fair and Alabama/Kansas.

July 29 Commission in executive session for one hour and fifteen minutes to hear KBI investigative reports on TRAK Southeast and Sunflower Racing, Inc. and to discuss personnel matters.

Commission denies request by KRM for disclosure of background reports.

August 5 Commission in executive session for two hours to hear and discuss KBI background reports on Little Balkans and Camptown Racing.

Commission in executive session for 20 minutes to discuss background reports with Little Balkans and Camptown Racing.

August 12 Commission in executive session for one hour and one-half to discuss KBI background reports with Sunflower Racing, TRAK South and TRAK Southeast.

Commission in executive session for 30 minutes to discuss background reports with Fairground Parimutuel Racing Association and the Kansas State Fair.

August 19 Commission in executive session for two hours and forty-five minutes to receive background reports and to review them with applicants.

August 26 Commission in executive session for forty-five minutes to discuss legal matters.

- August 26 Curtis Loy, lawyer for OGB Charities, requests their meeting with the commission to review KBI background investigation reports be delayed until September 9, 1988, when Mr. Bicknell would be available.
- August 27 Commission in executive session for thirty minutes to discuss KBI background reports with OGB Charities.
- September 9 Commissioner Martin requests executive session with legal counsel and KBI agents who investigated Sunflower financing for September 16 meeting.
- September 16 Commission into executive session for one hour and one-half to discuss KBI background reports with agents and to discuss legal matters with counsel.
- Commission into executive session for half an hour to discuss financial background information with Richard Boushka and Dee Hubbard.

The commission issued the last of its licensing orders September 23, 1988. Two appeals followed. In both, appellants agreed they were entitled to review their KBI investigative reports. The Kansas Supreme Court ruled in Kansas Racing Management February 27, 1989, that the commission may release information from the reports subject to several restrictions.

The court stated a plain reading of the statutory language (quoted above) indicates a legislative intent to make both receipt and disclosure of background investigations discretionary with the commission. Background information could be discussed with applicants at closed or executive meetings or hearings held pursuant to the act. The penalties apply only if the background reports are disclosed for any other purpose. Stating the appellants and the KRC had both misinterpreted the provisions relating to disclosure of the investigative reports, the courts discussed how the reports may be disclosed to applicants and the public in an exercise of the commission's discretion.

In my opinion, the general rule is:

If the commission's only purpose is to determine qualifications of a licensee of or applicant for licensure by the commission

and

if disclosure of the information is made in a hearing or executive session held pursuant to the racing act

then

the commission may, but is not required to, disclose KBI investigative reports to applicants or licensees under 74-8804(n) and (o) and the open records act

and

the commission may, but is not required to, disclose KBI investigative reports to the public if

It is in the public interest

and

it does not violate provisions (B) - (E) of 45-221(a) (10):

Interference with law enforcement action
expose identity of agent
reveal investigative techniques
endanger life/safety

Based on the Kansas Racing Management decision, the Wichita Eagle-Beacon requested that the commission disclose the original background investigation reports March 10, 1989. The commission denied the request questioning whether there was any public interest in the documents and stating that the commission was not at that time determining any applicant's qualification for licensure in a hearing held pursuant to the racing act.

The Wichita paper filed a mandamus action against the commission in the Kansas Supreme Court April 13, 1989. When the court dismissed the action, the Eagle-Beacon, Stauffer Communications, Hutchinson Publishing and the Kansas Press Association refiled the action seeking disclosure of the reports in the District Court of Shawnee County May 9, 1989. The commission's motion to dismiss the action is pending.

In May 1988 Commissioner Martin requested that counsel meet with KBI representatives to consider whether some of the background disclosure and investigative information received by the commission at the present time may be disclosed as a policy matter. After meeting for two months, these individuals agreed

the commission may want to maintain completed background disclosure forms in its office as a matter of public record. However, the intelligence information previously reported to the commission could no longer be reported, because the commission may release it. The attorney general was consulted about these conclusions, and he agreed with them. He also agreed Director Johnson should take the matter up with the 1989 legislature.

MEMO3.jac-cd



JAMES G. MALSON
DIRECTOR

KANSAS BUREAU OF INVESTIGATION

DIVISION OF THE OFFICE OF ATTORNEY GENERAL

STATE OF KANSAS

1620 TYLER

TOPEKA, KANSAS 66612-1837

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ROBERT T. STEPHAN
ATTORNEY GENERAL

TESTIMONY

KYLE G. SMITH, ASSISTANT ATTORNEY GENERAL
KANSAS BUREAU OF INVESTIGATION
FOR THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE
JANUARY 31, 1990
SENATE BILL 430

Mr. Chairman and Members of the Committee:

I am appearing today on behalf of the Kansas Bureau of Investigation (KBI) and it's Director Jim Malson in support of Senate Bill 430. Director Malson regrets that he is unable to attend personally, but I hope I can answer your questions.

Senate Bill 430 is the most recent and hopefully the final modification or resolution to a difficult problem. Attached to my testimony today is a copy of former Director David Johnson's testimony before the Special Committee on Federal and State Affair and Governmental Organizations hearing this summer. That testimony expounds upon the dilemma involved with intelligence information and background investigations, and I will not repeat that explanation. However, I feel a brief history of this problem would be useful.

In the early stages of the application and licensing period, the Kansas Racing Commission determined it needed access to criminal intelligence and background information to make knowledgeable decisions on who would be granted the original licenses. However, the Kansas Racing Commission was concerned that any information obtained would be subject to the Open Records Act and in January, 1988, requested an Attorney General Opinion as to whether they could maintain the confidentiality of such

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reports. As the committee is aware, if you cannot maintain the confidentiality of your sources, you will soon not have sources. Attorney General Opinion 88-3 issued on January 9, 1988, stated that the Kansas Open Records Act would apply to any such reports that were obtained and therefore would be subject to public disclosure. The legislature then during the 1988 session amended K.S.A. 74-8804, the same statute we are dealing with here today, with the intent to make it clear that such reports were not to be disclosed. In fact, making it a class A misdemeanor to release confidential information obtained in a background investigation. Based upon that language, the Kansas Racing Commission felt that it was statutorily prohibited from releasing background information and proceeded with the licensing process.

This position was challenged in the Kansas Racing Management v. Kansas Racing Commission case, which opinion was filed February, 1989. In that case the Kansas Supreme Court interpreted the statutory language to make disclosure of confidential information discretionary with the Kansas Racing Commission. In other words, if certain criteria were met, the Racing Commission had the discretion to release confidential information.

At that point, the KBI was placed in a difficult position wherein we could no longer assure individual sources and other agencies that the intelligence information they provided us would not be disclosed. Without assurances of confidentiality, the decision was made not to provide the Racing Commission with additional intelligence information on background

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investigations. Fortunately, at that point, most of the major licenses had already been granted and hopefully this has not worked to the detriment of the racing industry in Kansas.

Last summer and fall hearings were held by the special interim Committee on Federal and State Affairs and Governmental Organizations, to some degree directly on this point Senate Bill 430 was the result. As I read Senate Bill 430, this should make it clear to courts, racing commissions and law enforcement, that the intelligence information and background information provided will not be disclosed, thus enabling us to provide it once again to the Racing Commission.

Given the social ills that racing and gambling are subject to, I believe this legislation is necessary to assure to the greatest extent possible the integrity of racing in Kansas.

Thank you.

#010

B-3



JAMES G. MALSON
DIRECTOR

KANSAS BUREAU OF INVESTIGATION

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ROBERT T. STEPHAN
ATTORNEY GENERAL

STATEMENT

DAVID E. JOHNSON, DIRECTOR

KANSAS BUREAU OF INVESTIGATION

BEFORE THE JOINT INTERIM COMMITTEE FEDERAL AND

STATE AFFAIRS AND GOVERNMENTAL ORGANIZATIONS

Mr. Chairman and Members of the Committee:

I appreciate the opportunity to address this committee and, to the best of my ability, some of the concerns expressed by both the committee and the previous conferees. I appreciate those concerns expressed by the committee, applicants and members of the public regarding recent background investigations conducted by the Kansas Bureau of Investigation (KBI). However, I do believe there are no easy answers to the competing and conflicting public policies that have created such concerns. It is not our intent to be secretive or combative to the positions of unsuccessful applicants, the news media or this committee. But, it must be recognized that disclosure of thorough background investigations, including what we refer to as intelligence information, results in the ability to conduct such investigations being seriously compromised.

You undoubtedly know better than I the legislative intent involved in the passage of the Kansas Racing Act. Everyone

recognizes the "social ills" that racing and gambling are subject to. The exchange of large amounts of cash and the potential for affecting the outcome of a race have traditionally led to strict control under the state's police power of gambling operations. This very concern has led to the two conflicting public policies that have created so much of this turmoil. First is the need for public scrutiny of all activities involved with racing. The second is the need for thorough and complete investigations of the major individuals involved in the racing operation: thus assuring, to the greatest extent possible, the integrity of racing and legalized gambling in Kansas.

Conflict arises when there is a need for non-public information and disclosure of such information jeopardizes the ability to obtain such information. This non-public information has at least two forms. The first being legally restricted information such as income tax returns, non-conviction criminal records and social security numbers. Because various statutes, both federal and state, limit or prohibit such disclosures, this type of information must remain confidential. The second kind of non-public information is what we generally refer to as intelligence information. This is information that connects an individual to criminal activity or questionable behavior, but is not contained in any public

record. Examples would be interviews with employers, neighbors, friends, and the intelligence files of various law enforcement agencies which also contain investigative leads, interviews and informant data.

Until now the KBI has been able to access for the Racing Commission, not only our own intelligence files, but those of other law enforcement agencies, and gain the cooperation of individuals close to the applicants, largely because the KBI was able to provide assurances that the information would not be made public and get back to the individual under investigation. For example, we may have had a friend or business associate admit that he ran or placed bets for the applicant with illegal bookies. We then follow-up on that information with local law enforcement agencies, organizations, friends or spouse, whatever avenues are available, and confirm, if possible, the gambling. Understandably, that business associates' information is less likely to be given to us if we have to tell him that his giving us information may be disclosed to his business partner and friend. Even if the source is never disclosed by name the applicant may conclude that he was betrayed and future cooperation will be nil.

Similarly, our investigations, both criminal and background, are enhanced by our working relations with federal agencies such as the FBI, DEA, other state law enforcement

agencies, racing commissions and local law enforcement agencies. They allow us access to their intelligence information and we reciprocate because there is an agreement that such information will not be disclosed. If the information is disclosed, even what seems like innocuous and trivial information, it can jeopardize or destroy the cooperation of an informant, an agency, or even endanger the life of an undercover agent. If the source of the information can only be one person then the subject of the investigation can determine where that information came from.

The KBI is proud that it has built a reputation for protecting it's sources of information and we must maintain that reputation if we are to be an effective law enforcement agency.

A comparison can be drawn to reporters and the media who have on occasion gone to jail rather than reveal their sources. They know that to allow disclosure would not only destroy that source of information, but discredit their reliability in the future. Frankly, if an agent from another law enforcement agency, be it the FBI or another state's racing commission, contacted and requested our cooperation and access to our intelligence files but couldn't assure us that the information would remain confidential, the KBI would not open it's intelligence files to that agency.

The Kansas Racing Commission was given specific authority by the legislature to receive and consider intelligence information, K.S.A. 1988 supp. 74-8804(n). Further, in the granting of the highest level of licenses, organization licenses under K.S.A. 74-8813 and facility owner and facility manager licenses under K.S.A. 74-8815, the granting or denial of such licenses was specifically removed from the Kansas Administrative Procedures Act and rests solely with the commission to use their discretion in determining what is in the best interest of horse and Greyhound racing in the state.

The second level of licenses, occupational licenses, under K.S.A. 74-8816, and concessionaire licenses under K.S.A. 74-8817, dealing with the jockey, stewards, grooms, etc., were placed under the Kansas Administrative Procedures Act and specific criteria were set out for what can be considered in granting or denying a license. The second level licensees still has a potential for corruption, but it is obviously on a lesser scale, and so the legislature apparently struck a balance: the granting of the most important licenses rests solely with the commission and allows that they consider all the information available, but the second level licenses require the finding of unfitness by the commission and denial is regulated by the Kansas Administrative Procedures Act.

At this time I would like to review the relationship between the Kansas Bureau of Investigation and the Racing Commission. It was agreed early on that the KBI would conduct any background investigation requested by the commission and the depth of the investigation would relate to the applicant's position. In other words, for facility owner licenses, facility manager licenses and organization licenses, all would have an indepth background. The other backgrounds will be of a lesser degree as provided in the Kansas Racing Act.

The Kansas Racing Commmission interpreted the Act to preclude release of the information contained in our investigations. In it's Kansas Racing Management decision the Kansas Supreme Court interpreted the Racing Act as well as the Kansas Open Records Act to permit investigations to be released by the Kansas Racing Commission in executive session to the applicants or in an open hearing if certain statutory criteria are met (see Exhibit A).

This interpretation, along with the pending mandamus action, places the KBI in a difficult situation in regard to our racing backgrounds. The KBI can no longer control the dissemination of information given to us. We cannot provide other law enforcement agencies and sources with assurances of non-disclosure. In practical terms this will drastically

decrease the kind of information that is most needed in background investigations.

Public information is almost routine in backgrounds of this kind. If the person is a known criminal with convictions for racketeering, then he or she wouldn't be considered for licensure or appointment. What is most useful are the private, hidden facts. Be it cocaine addiction or racketeering friends, it is always a closely guarded secret.

Because of the risks of disclosure the KBI's only responsible position is to advise individuals and law enforcement agencies of that risk. If we didn't so advise, the first time disclosure occurred our credibility would be severely damaged and future cooperation, whether with informants or law enforcement agencies, would be destroyed. This would seriously affect not just our background investigations, but our primary duty of criminal investigations. I cannot let that happen. Unfortunately, this warning will result in less information being available to the commission.

In wrestling with these conflicting needs, I have had my agents contact fourteen states which have parimutuel racing which we have had previous dealings with. A brief summation of their resolutions to this dilemma are contained in Exhibit B. I should point out the KBI will do whatever is authorized by

the legislature; these are policy decisions that are for you to decide.

One resolution of the conflict would be for the state agency to conduct perfunctory investigations based only on public records, which could then be made public. This is done in Alabama and Wyoming.

Another option utilized by some states, for example Illinois, Minnesota and Louisiana, is for investigations to be complete, but the reports to the commission contain only public information. This option concerns me as it places the KBI in the position of editing out intelligence information and denying the commissioners the information that can be most useful and was legislatively authorized for them to have. However, if we do conduct a full investigation but only provide non-intelligence information to the commission, we would at least still have the intelligence information in our files and available for criminal investigations when and if an offense should occur.

Another resolution utilized by states such as Iowa and Arizona is to avoid application of open records or sunshine laws by providing no written reports to the commissioners.

A final possibility would be legislative action to clarify the protection given to background investigations under the Racing Act and Kansas Open Records Act.

Most of the first level investigations, the most thorough, have already been completed and the Supreme Court affirmed the Racing Commission's decision that disclosure was not required. Current level investigations would contain considerably less intelligence information and are of somewhat less concern. However, the problem still remains that due to the interpretation of the Supreme Court and pending lawsuits, the KBI can no longer assure agencies and individuals that information provided will remain confidential. Without such assurances it will be impossible for the KBI to conduct as thorough investigations in the future. The KBI will continue to serve the State of Kansas to the best of our ability, but the scope of background investigations needs to be defined by the legislature.

In response to statements made during the hearing on August 3, 1989, before this committee, a statement was made that it would cost \$3,000 for each individual background for the fair board at Anthony, Kansas. Reference was made concerning the cost of conducting background investigations for the Rooks County Track. Twenty-six individuals were investigated for the Rooks County Track for a total cost of \$10,374.99 or an average of \$399.03 each.

There has been a number of comments that the KBI Director is an appointee of the Attorney General and that a conflict

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could exist relative to background investigations. I would like to set the record straight that the Attorney General has never seen or reviewed any background investigation the KBI has conducted for the Lottery Commission or the Racing Commission and he has never asked to review them, although he was interviewed during the course of one of the investigations as were a number of other people. Thank you.

#856

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Kansas Association Of Broadcasters

818 Merchants National Bank, Topeka, Kansas 66612 (913) 235-1307

January 31, 1990

TO: Senate Committee on Federal and State Affairs

FROM: Harriet J. Lange
Executive Director *HJL*

RE: SB 430

The Kansas Association of Broadcasters supports passage of SB 430, which would allow public disclosure of conviction data relating to licensees and applicants for licensure under consideration by the Kansas Racing Commission.

A prohibition on such disclosure tends to undermine the credibility of a public body whose mission it is to ensure that parimutuel wagering in Kansas is conducted free from any criminal element.

We urge your favorable consideration of SB 430.

The KAB represents a membership of 120 radio stations and 20 television stations in Kansas.

Senate F & S A
1-31-90
Att. #9