Approved 3-26-92

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS.

The meeting was called to order by Sen. Edward F. Reilly, Jr. at 11:00 a.m. on March 2, 1992 in Room 254-E of the Capitol.

All members were present except:
Sens. McClure and Vidricksen were excused

Committee staff present:
Mary Galligan, Legislative Research Department
Mary Torrence, Office of Revisor of Statutes
Jeanne Eudaley, Committee Secretary

Conferees appearing before the committee:
Bill Henry, Philip Morris
Dana Nelson, Executive Director, Kansas Racing Commission
Janet Chubb, Kansas Racing Commission
Whitney Damron, McGill & Associates

Others attending: See attached list

Sen. Reilly called the meeting to order and introduced Bill Henry, representing Philip Morris, who presented a proposal (Attachment 1) to the committee. Sen. Bond moved the proposal be introduced as a committee bill, and the motion was seconded by Sen. Ehrlich. The motion passed.

The chairman introduced Dana Nelson, Executive Director of the Racing Commission, who explained SB 703 (Attachment 2). Committee members questioned Mr. Nelson about sections of the bill, mainly dealing with the totalisator license, the stockholder/shareholder provision, juvenile records and concessionaire licenses. Ms. Chubb provided information to the committee regarding juvenile records and the juvenile code and how the Racing Commission handled those problems in the past. In answer to a question from Sen. Ward, Ms. Chubb explained that because of the cost and staff travel time, the Racing Commission requested all court cases be heard in Shawnee County. Sen. Daniels also asked for further information regarding adjudication of juvenile records.

Sen. Reilly introduced Whitney Damron of Pete McGill & Associates, representing Wichita Greyhound Park, who gave testimony (Attachment 3) on SB 703.

The Chairman announced that the committee will consider the bill further later in the week.

The meeting adjourned at 12:00.

GUEST LIST

COMMITTEE: Senate Federal & State Affairs DATE: March 2, 1992

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
John McElroy	Topeka	KTSW
Donna Lynn Yoxall	Valley Falls	K.H.R.A
Dick Conley	Topeka	McGill & Associates
Matt Bra	Topeka	Intern/Vidricksen
DANA NELSON	TOPEKA	KRC
BILL HENRY	TOPEKA	Philip Morris
Whitney Damron	Topeka	McGill & Assoc./WHP
Janet Chubb	Topeka	KRC
Grace May	Topeka	Kansas Assn. Garden

Attach. 1

(Bill Henry)

AN ACT CONCERNING EMPLOYEE PRIVACY--PROHIBITING EMPLOYMENT PRACTICES THAT DISADVANTAGE EMPLOYEES OR APPLICANTS FOR EMPLOYMENT WHERE A PERSON USES LAWFUL PRODUCTS OFF THE PREMISES OF THE EMPLOYER DURING NON-WORKING HOURS; PROVIDING A CIVIL ACTION AS REMEDY FOR DAMAGES RESULTING FROM VIOLATIONS.

Section 1. It shall be unlawful for an employer to:

(1) Refuse to hire or to discharge any individual, or otherwise disadvantage any individual, with respect to compensation, terms, conditions or privileges of employment because the individual uses lawful products off the premises of the employer during non-working hours; or

(2) Require as a condition of employment that any employee or applicant for employment abstain from using lawful products off the premises of the employer during non-working hours.

(3) The provisions of this section shall not apply to unified school districts or to non-profit organizations whose primary purpose or objective is the promotion of health or health awareness.

Section 2. The sole remedy for any individual claiming to be aggrieved by a violation of Section 1 of this act shall be a civil action for damages which include all wages and benefits deprived the individual by reason of the violation.

Att. 1

1

Attac 2

Testimony of Dana Nelson

Executive Director

Kansas Racing Commission

before the

Senate Federal and State Affairs Committee

March 2, 1992

Good morning Mr. Chairman and members of the Senate Federal and State Affairs Committee. My name is Dana Nelson I am the Executive Director of the Kansas Racing Commission. The bill before you this morning, Senate Bill 703, was introduced at the request of, and on behalf of the Kansas Racing Commission. This bill represents the commission's only initiated piece of legislation this session, and was approved unanimously by the Kansas Racing Commission for submission to the Legislature.

I would like to tell you that everything in this bill represents cleanup, but I must acknowledge there are some substantive issues which deserve discussion before this committee, and some other issues for which the commission is seeking guidance from the legislature.

Some of the items recommended for change by the Kansas Racing Commission require a number of internal reference changes throughout the statute, so if you will bear with me I will try to touch on each of those items, and identify for you the

changes necessary in the statute to accomplish the commission's goal.

The first change we are recommending is a revision the definition of "race meeting". On the bottom of page 2, lines 39 through 43, and the top of page 3, lines 1 and 2 you will see that the italicized language will modify the definition of race meeting to include such additional time as designated by the commission for the conduct of official business before and after races. This language when combined with the language on page 3, lines 18 through 22, which strikes some language designating the period of time that the commission would regulate a race meeting would allow the Kansas Racing Commission to conduct the kind of regulation necessary. These changes would also allow the commission regulatory oversight at a facility during simulcasting, should SB 383 ultimately become law. The reason for the changes is to clarify that the Kansas Racing Commission has authority and regulatory oversight during the period of racing, but at other times the facility owner should be able to use its facility for purposes it deems appropriate. This particular dilemma is one of the reasons which caused the Racing Commission to revoke the license of Eureka Downs. Under current statute, the Racing Commission found that it had a continuing authority and obligation to regulate the facility even when races were not being conducted. In other words, once a facility owner received a twenty-five year racing license, they effectively lost the use of their facility without the

Att. 2
2

permission, and oversight of the Kansas Racing Commission. We do not believe that was what was intended by the legislature, nor do we think that is efficient in terms of regulating a seasonal racing track such as at Eureka Downs. In order to fully implement the revision of the race meeting definition, a number of changes also needed to be made to K.S.A. 74-8824, the section which deals with the admissions taxes. You will note on pages 29 and 30 of your bill those particular changes. They simply make changes so that admission taxes are collected on race meeting, and not simply for attendance at the race facility for other things such as carnivals and so forth.

A second change recommended to the bill is a licensing provision for totalisator services. The totalisator service is the computer service which accepts and records wagers, calculates the odds, and ultimately calculates the payouts. It is a contractural arrangement with a private business, and is an intricate part of the entire parimutuel wagering system. Currently, the provisions for licensing concessionaires does not cover totalisator services, yet we believe this is a very important area for licensing. This is also a major point of emphasis on the national level. Standards and regulations for totalisator companies will be established, and once again, should simulcasting pass, increased oversight in regulation of totalisator companies, to ensure that computer interaction and communication is carried out properly will be critical. The additional definition on page 3, line 14 through 16, and the

Att. 2
3

language on page 27 beginning with line 38, and continuing on pages 28 and 29 through line 25, establishes a procedure for licensing totalisator companies. That procedure is consistent with the procedure for licensing concessionaire licensees. One difference worthy of pointing out is that totalisator licenses would be issued for a period of not more than ten years, while a facility owner and organization license can be issued for twenty-five years. The language proposed for adoption here is consistent with language in existing statutes for other licensing decisions. Denial must be handled pursuant to the Kansas Administrative Procedures Act, there are standards for denial, and the opportunities for the commission to conduct background investigations on owners or personnel of the totalisator company are included.

Legislative staff has also recommended a pair of changes to K.S.A. 74-8810, which is the prohibited acts section of the statute. In that section, they recommend including totalisator license to the criminal penalties for members and employees of the commission, and for officers, directors, or members of the organization licensee. I have some concern in this area, as the totalisator companies are publicly traded stocks, and it would be possible that a member or employee of the commission, or an officer, director, or member of an organization licensee, could hold stock in those companies. Since the tracks contract for totalisator services, they could at the end of a contract period select a different totalisator company, and rather innocently

Att. 2
4

and coincidentally bring a member or employee of the commission, or an officer, director, or member of the organizational licensee into conflict with the state statute. This concerns me to some degree, and I would recommend that the changes on page 7, on lines 6 and 7, and line 38 be deleted.

The third change recommended to the statute requires considerable massaging of the parimutuel racing act. Currently, the Kansas Racing Commission can utilize criminal records to approve or deny racing licenses. As a law enforcement agency, the Racing Commission has been able to secure juvenile records as well. We have found in some instances, that individuals have applied for licenses, who have a rather extensive record. Frequently, those acts committed as juveniles would have been felonies had they been committed by adults. We have been operating in a gray area, uncertain whether or not we could or should use those juvenile records to deny licensing. We are seeking guidance from the legislature in this particular area. We are recommending, that the Kansas Racing Commission be allowed to use juvenile records for determination of whether or not individuals should be licensed. I would tell this committee that the use of juvenile records would be handled in the most confidential way possible and yet, we feel it is imperative that people who have recently been adjudicated of juvenile acts, should not be at racetrack facilities in this state. We are not suggesting that we would dig back into somebody's life some twenty or thirty years to make such a determination, but many of

Att. 2
5

the acts that I am referring to have been committed in the past two to three years. In many cases, the individuals involved are still juveniles, but in other cases they have subsequently turned 18 or are now 19 and 20. A common rule of thumb when examining criminal records by our security staff is to look at the immediate past five years. For us to look at problems an individual had more than five years ago, it would have to be a very serious crime. In order to implement the language clarifying that the commission has the authority to utilize juvenile records, changes are required on page 4 lines 15 through 19, page 6 lines 14 through 19, page 12 lines 37 through 39, page 21 lines 8 through 21, page 24 lines 39 through 42, page 25 lines 1 through 4, page 27 lines 1 through 17, and page 31 lines 14 through 16.

Janet Chubb, an Assistant Attorney General assigned to the Kansas Racing Commission is here today to answer questions or respond to your concerns about the use of juvenile records. Janet has spent considerable time discussing the issue with individuals involved in the juvenile criminal justice system.

The commission is also asking for the authority for the commission to recover and assess costs for proceedings adverse to a licensee or applicant. These costs would be assessed only in the instance of the commission being the successful party. The commission is proposing language on page 5 lines 11 through 30 to implement this particular item. This language is based on

language previously adopted by the Kansas legislature for the Board of Healing Arts. Consequently, there is some precedent by the legislature to approve and adopt language for the recovery of costs. As you are all aware, the racing industry is one of the most highly regulated industries in the country. As a result, there are frequently violations or alleged violations of the racing act or its rules. Sometimes the investigation into the allegations and charges require extensive commission activity, research and investigation. On occasions, it has required the employment of outside resources to examine areas which the racing commission has inadequate resources to examine. Such was the case some one and one-half years ago when the Kansas Racing Commission embarked on an extensive investigation into the ownership and management structure of Wichita Greyhound Park. After conducting extensive examinations, the commission found that its most significant authority was to revoke or suspend the racing license of the licensee. This appeared to serve no real useful service as everybody would lose. The greyhound park agreed to reimburse the Kansas Racing Commission up to $200,000 for outside legal and investigative expenses. This was done on a voluntary basis, and resulted in covering most of the costs of the investigation. However, the commission had no authority to order such a payment. In fact, at that time, the commission did not even have the authority to assess fines for violations by the facility owner and manager. That was corrected a year ago in the statute. Once again, Janet Chubb is here to answer some

of the questions or concerns which may be expressed by this recommended provision.

Continuing on page 5, lines 31 and 32 you will see that the commission is recommending that judicial review of orders from the commission shall be filed in the District Court of Shawnee County. Currently, as the legislature is aware, actions for judicial review can be filed in any county in which they have authority. For the Kansas Racing Commission, that would allow the filing in any county in the State of Kansas. The hardship of sending staff to other counties, and transporting records from our main offices in Topeka to outlying counties is financially burdensome to the agency. Because frequently people making appeals live in other areas of the state other than where the racing is being conducted, currently only Sedgwick and Wyandotte Counties, an action in those counties is no more or less convenient for them than action in Shawnee County. In addition, some of the more recent appeals of commission decisions have been made by non residents of the State of Kansas. In that instance, the hardship and burden of travel, transporting records, and making court appearances in counties other than Shawnee County where our staff is based has created budgetary problems with regard to travel. It is also not the best use of legal staff's time to have them on the road as frequently as they have been the past year.

Att. 2
8

The next change recommended to the existing statute is at the bottom of page 7 where the commission proposes to include stockholder and shareholder to the restrictions of ownership of racing animals. Under the current statute an officer, director, or employee of a facility owner or manager license could not own a racing animal, but a shareholder of the corporation could. In other words, the primary owner of the facility, simply by refraining from being an officer or director would have the ability to own a racing animal, while one of his hired employees could not. We believe that was an oversight in the drafting of the original statute, and in fact the legislature intended for the owner of the facility to have such restrictions placed on them as well as their employees.

On page 8, we are asking for an additional modification to the language on who was eligible to place wagers at a racetrack. On page 8, we are recommending language on lines 9 and 10 to include those people who could influence the outcome of the parimutuel wagering. Currently the restriction is limited to those who could influence the outcome of a race. However, during a recent investigation of some activities at the Woodlands, we found that there are some key positions which could influence the outcome of the parimutuel wagering, by placing, and then canceling large wagers on long shots, or by utilizing inside information to place bets on betting interests which are likely to be in the payoffs. During this investigation, we found that we had very few teeth in the

statute or our administrative rules to deal with such an insider information situation.

On page 10 of your bill, draft, lines 34 through 39, the commission is recommending, that horses or greyhounds owned by stables, or kennels, be registered with the Kansas Racing Commission, and a registration fee assessed. The reason for wanting stables and kennels to register, is that such names as ABC Stables, or XYZ Kennels, reveal little to the racing commission or the betting public as to who the proper ownership is. By requiring registration, and the payment of the fee, the racing commission can extract such information, make sure that all owners of the stable or kennel are properly licensed, and eligible for licensing, and cover the costs of such registration and licensing. The language of allowing a maximum fee of $200 a year is consistent with existing statutes for occupational licensing. I would represent to this committee, that the highest occupational license fee in Kansas is currently $40.00 per year.

The next change is simply a cleanup recommendation, on page 20 lines 31 through 34. Language which is repeated for a second time is overstricken.

As I said at the outset of my remarks, the Kansas Racing Commission examined these issues, and approved them by a vote of five to zero for submission to the legislature. We believe the

Att. 2
10

items incorporated in this bill will strengthen the commissions hand in dealing with the complex regulatory issues of the racing industry. I also indicated to you that there are some issues of substances in here which deserve, in fact require, discussion and some direction from the legislative body. I would be pleased to try to respond to your questions or comments at this time.

92DN3-nw

Att. 2
11

Attach. 3

TESTIMONY

OF

WHITNEY B. DAMRON
OF
PETE MCGILL & ASSOCIATES

ON BEHALF OF

WICHITA GREYHOUND PARK

PRESENTED BEFORE

THE

SENATE FEDERAL AND STATE AFFAIRS COMMITTEE

March 2, 1992

RE: SB 703

Good morning Chairman Reilly and members of the Senate Federal & State Affairs committee. I am Whitney Damron of Pete McGill & Associates appearing today on behalf of our client, Wichita Greyhound Park, to address a few comments to you on SB 703, the so-called "Kansas Racing Commission Clean-Up Bill."

SB 703 proposes to make a number of substantive as well as relatively minor amendments to present parimutuel statutes. WGP is in general agreement or is indifferent to most all of the proposed amendments with the following specific exceptions:

Page Five, Section (k), (l), (m), (n), & (o) {lines 11 - 32}

First of all, we are opposed to the Kansas Racing Commission being unilateral empowered to assess the costs of administrative investigations against those they investigate and subsequently deem to have violated a parimutuel statute or regulation. Under the proposed section, the Commission would be allowed to incur costs virtually unchecked and require payment from those adversely affected by their decision. Costs specifically allowed for in the proposed amendment include transcripts, witness fees, expenses, mileage, travel allowances, and retained independent contractors.

WGP would not object to this proposal if licensees were afforded the same guarantees. If a licensee were ultimately deemed "innocent" of an alleged violation

of statute or regulation, would the Commission and ultimately the State be willing to pay for the costs of defense incurred by the licensee?

WGP would suggest that although the current system may not be perfect, both sides are presently economically encouraged to seek an expedicious conclusion to any such legal matters which is ultimately in the best interests of both the State and those they license.

Another concern in this section for WGP would be the designation of Shawnee County as the situs for any district court review of Commission action.

WGP would point out that this is not a case similar to the Kansas Corporation Commission which regulates utility and energy interests located throughout the state and country but a situation whereby the Commission presently has but two tracks to regulate: One located in Wyandotte County and the other in Sedgwick County.

District Court actions arising out of Commission rulings most likely will originate from the decisions of hearing officers rendered in the localities of the tracks. Such hearings are generally presided over by track stewards and judges or hearing officers retained by the Commission who reside in cities near the tracks. Appeals from these decisions will involve licensees from tracks who live in those areas. Attorneys representing those people will also likely reside in those towns as

well. In fact, virtually all participants in such district court actions will reside in the cities near the tracks with the exception of the attorney for the Commission. A mandatory Shawnee County venue would place a severe burden upon an appellate litigant and should not be designated by statute.

The racetrack facility owners, charitable operators, kennel & stable owners and employees all have significant ties to the communities where the tracks are located. Witnesses, evidence and the situs of an alleged violation will also likely be at or near a racetrack facility. There is nothing to indicate that the district courts of Wyandotte and Shawnee counties cannot handle such matters and are likely more qualified than most due to the tracks being located within their jurisdictions. Furthermore, if such an occasion should arise where it would be in the best interests of all parties concerned to seek judicial review in Shawnee County, a change of venue motion is merely a procedural act which either party can file.

As an additional point of information, included with this testimony is a copy of a letter sent to the Commission by WGP's legal counsel which expressed formal opposition to this section of the bill.

For these reasons, we would respectfully request the Committee amend SB 703 by deleting lines eleven through thirty-two (11-32) on Page Five (5) of this bill.

I would be pleased to stand for any questions.

KAHRS, NELSON, FANNING, HITE & KELLOGG
ATTORNEYS AT LAW

SUITE 630 • 200 WEST DOUGLAS AVENUE
WICHITA, KANSAS 67202-3089

TELEPHONE (316) 265-7761

FAX (316) 267-7803

H. W. FANNING
RICHARD C. HITE
DARRELL D. KELLOGG
RICHARD L. HONEYMAN
LARRY A. WITHERS
GARY A. WINFREY
ROBERT HALL
CLARK R. NELSON
STEVEN D. GOUGH
SCOTT J. GUNDERSON
RANDY J. TROUTT
CHARLES E. HILL
ARTHUR S. CHALMERS
MARC A. POWELL
KIM R. MARTENS
LINDA S. PARKS
F. JAMES ROBINSON, JR.
DON D. GRIBBLE, II
JOHN G. PIKE
VINCE P. WHEELER
ALAN R. PFAFF
DENNIS V. LACEY

DAVID E. ROGERS
MARK E. FERN
STACY L. STIPP
DANA D. PREHEIM
DONALD N. PETERSON
CURTIS L. PERRY
SIDNEY R. THOMAS

W. A. KAHRS
(1904-1989)
ROBERT H. NELSON
(1904-1977)

OF COUNSEL
DANIEL D. TONTZ
CHRISTY W. PASSMAN

January 17, 1992

Mr. Dana Nelson
Executive Director
Kansas Racing Commission
3400 Van Buren
Topeka, Kansas 66611

Re: Legislative Matters

Dear Dana:

On behalf of WGP, we have reviewed the proposed legislative changes discussed by the Commission on January 10, 1992. There are two proposed changes of a legal nature, with which we have some disagreement. The purpose of this letter is simply to let you know of our position and the reasons therefor.

First, we disagree with the proposed change to K.S.A. 74-8804, which would impose costs incurred by the Commission against an unsuccessful litigant. WGP has no desire to participate in litigation, administrative or otherwise. Nevertheless, we believe the assessment of costs would have a chilling effect on one's ability to effectively defend against any action. As you know, the cost of litigation (whether one prosecutes or defends), can be extremely high. The requirement that a litigant also risk bearing the Commission's costs, no matter how close the question, seems unfair. Further, the statute, as proposed, would require the Commission to bear its own costs if unsuccessful, but the statute does not attempt to assess the successful litigant's costs against the Commission. We do not propose such a change. Rather, we believe that both parties should be required to bear their own costs.

We also disagree with the Commission's proposal that venue for appeal of any administrative order be in Shawnee County only. If there is an action involving WGP, we believe proper jurisdiction and venue would lie in Sedgwick County. In such a situation, the witnesses, the situs of the property and any evidence, would most likely be in Wichita. Accordingly, we believe that the burden could be tremendous upon a Wichita appellant forced to litigate in Topeka. In fact, the

Att. 3
5

Commission has recognized this forum non conveniens argument in the past in that they have attempted to have "Wichita matters" heard in Wichita (i.e. annual reviews or the Delbert Reed matter), and Kansas City matters heard in Kansas City. Although I have not researched it, I am not even certain whether such a provision would be constitutional, but I mention that more as an aside than as some major contention. In any event, we understand the Commission's desire to limit venue to Shawnee County, but we feel compelled to disagree with the provision that would require this limitation.

The above comprise the legal concerns which we have raised. We hope by this letter to inform you of our thoughts and comments. We certainly support the Commission in its other legislative changes as proposed. If you have any questions, please do not hesitate to contact me.

Yours very truly,

Linda S. Parks
KAHRS, NELSON, FANNING,
HITE & KELLOGG

LSP/bw
cc: Janet Chubb
Roy Berger
Whitney Dameron
Herbert A. Meisler

Att. 3
6