

Approved: 3-31-95
Date

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS.

The meeting was called to order by Senator Lana Oleen at 11:05 a.m. on March 13, 1995 in Room 254-E of the Capitol.

All members were present except: Sen. Praeger (excused)

Committee staff present: Mary Galligan, Legislative Research Department
Mary Ann Torrence, Revisor of Statutes
Kim Perkins, Committee Secretary

Conferees appearing before the committee: Judy Krueger, Appointment Secretary to the Governor

Others attending: See attached list

Sen. Oleen asked the committee to turn its attention to **SB 124**, an act concerning the racing commission. Sen. Oleen stated that there were two policy questions which she wished to discuss. The first issue concerning the position of director of racing. Sen. Oleen told the committee that the newly-appointed chair of the racing commission had not been aware that the position would be removed from the organizational chart.

Sen. Oleen next addressed the appointment of the executive director of the racing commission. Sen. Oleen stated that Mary Galligan, Legislative Research, had compiled information which explains the chronology of appointments, the history of the racing act, and information regarding the 1989 interim (Attachment 1). Sen. Oleen introduced Judy Krueger, Governor's Appointment Secretary, who stated that the office of the Governor would request that the committee change the language in the bill to allow the Governor to appoint the Executive Director of the Racing Commission.

Sen. Hensley asked staff to clarify when the appointment of the Executive director of the racing commission was transferred to the racing commission and Mary Galligan answered that the change occurred during the 1990 session. Sen. Hensley stated that, according to the memo which Mary Galligan compiled, there was also an alternative which would allow the commission to nominate several candidates from which the Governor could appoint one person to the position of the executive director of the racing commission.

Sen. Gooch questioned who the control figure would be if the position of the executive director were appointed by the Governor and Sen. Oleen clarified that the executive director would be appointed by the Governor and would serve under the direction and supervision of the commission.

Sen. Papay made a motion to amend **SB 124** to read that the position of the executive director of the racing commission would be appointed by the Governor and would serve under the direction and supervision of the Racing Commission. The motion was seconded by Sen. Ramirez; the motion passed.

Sen. Ramirez made a motion to recommend **SB 124**, as amended, for favorable action and the motion was seconded by Sen. Tillotson. The motion passed.

Sen. Oleen asked the committee to turn its attention to **SB 256**, an act concerning microbreweries, and called upon Mary Galligan to review the bill for the committee. Sen. Vidricksen made a motion to raise the cap on barrels produced from 5,000 to 15,000, which is 20,000 barrels less than the bill's amended language, and to strike all other changes in the proposed bill. The motion was seconded by Sen. Parkinson; the motion passed.

Sen. Oleen called for further discussion on the bill and Sen. Parkinson spoke in support of the amendment. Sen. Papay made a motion to recommend **SB 256**, as amended, favorably and the motion was seconded by Sen. Gooch. The motion passed.

Sen. Oleen announced that the committee would continue discussion of **HB 2282**, an act concerning

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS, Room 254-E
Statehouse, at 11:00 a.m. on March 13, 1995.

alcoholic beverages; relating to consumption in certain places. Sen. Oleen stated that she is aware that there is a request to amend the bill to include credit card sales of liquor and that she does not want to see the original bill threatened because of the amendment. Sen. Oleen therefore stated that the question would be divided by request on the Senate floor should the bill, with amendment, be reported favorably to the Senate floor.

Sen. Hensley made a motion to report **HB 2282** favorably and the motion was seconded by Sen. Gooch. Sen. Oleen called for further discussion. Sen. Parkinson made a substitute motion to amend **HB 2282** to allow for the purchasing of liquor by credit card. The motion was seconded by Sen. Vidricksen. The substitute motion failed.

Sen. Oleen called for further discussion on **HB 2282**, and seeing none, called for a vote on the original motion to recommend the bill favorably. The motion passed.

The meeting was adjourned at 11:55 a.m.

The next meeting is scheduled for March 14, 1995.

KANSAS LEGISLATIVE RESEARCH DEPARTMENT

**300 S.W. 10th Avenue
Room 545-N -- Statehouse**

Phone 296-3181

February 27, 1995

TO: Senator Lana Oleen

Office No. 136-N

RE: Selection and Appointment of Executive Director of the Racing Commission

In response to your questions about the chronology of appointments of persons to be Executive Director of the Racing Commission, the following information was obtained from the Racing Commission.

November 3, 1989 Jim Grenz appointed by Governor Hayden
January 18, 1990 Dan Hamer appointed by Governor Hayden
February 25, 1991 Dana Nelson appointed by Commission
February 4, 1993 Janet Chubb appointed by Commission
September 18, 1994 Art Neuhedel appointed by Commission (permanent)

Mr. Neuhedel is the only person who has served as acting Executive Director of the Commission.

In regard to the history of the appointment authority in the Racing Act, I have been able to reconstruct the following.

The Parimutuel Task Force which was appointed by Governor Carlin to develop a draft act during the summer and fall of 1986 included in that draft language that would have had the Executive Director appointed by the Commission. According to the Task Force staff attorney's notes, the genesis of that provision was the proposal submitted to the Task Force by Kansans for Parimutuel. Also according to the staff attorney's notes that organization was a lobbying group composed of horse and dog owners and breeders, track developers, and existing track operators. The draft bill they presented was prepared by attorney Jonathan P. Small.

The Task Force presented its report to the Governor after the November 1986 election at which the voters approved the constitutional amendment authorizing parimutuel wagering. That draft also was presented to the Joint Committee on Federal and State Affairs prior to the start of the 1997 Legislative Session. The Joint Committee reviewed the draft and introduced a slightly modified version, however, the provision regarding appointment of the Executive Director remained as recommended by the Task Force.

*Sen Fed & State
3-13-95
Attachment 1*

During the 1987 Session, the Legislature worked on the bill (1987 H.B. 2044) and made significant changes to some portions. The House Committee on Federal and State Affairs amended the bill to require that the Governor appoint the Executive Director of the Commission and that the appointment be subject to Senate Confirmation (February 17 and 18, 1987). The minutes of committee meetings at which those amendments were offered do not reflect any discussion of the matter that might have transpired. Testimony presented to the House Committee prior to its amendment of the bill by representatives of Kansas Racing Charities, Inc. (according to written material, "a nonprofit corporation which was formed by former Congressman Larry Winn, Jr., for the purpose of becoming licensed to operate a racetrack facility in the State of Kansas . . .") advocated a full-time Commission paid \$75,000 annually each with no Executive Director. I have not been able to locate any other testimony in my files that addressed the subject of appointment of an Executive Director and I have not had sufficient time to review all the testimony presented during legislative consideration of the Racing Act. I would note, however, that the House Committee amendment to the introduced version of the bill was not subsequently changed as the bill went through the legislative process.

During the 1989 interim, the Special Committee on Federal and State Affairs held extensive hearings on the Parimutuel Racing Act and its implementation. However, neither the Committee report nor the minority report addressed the issue of appointment of the Executive Director.

In early February of the 1990 Session Representative Deb Schauf introduced H.B. 2892 which would have required, among other things, that the Racing Commission nominate one or more persons from whom the Governor would make his or her choice for Executive Director of the Commission. The bill also would have required the Executive Director to "have experience in the horse and dog racing industries sufficient to fulfill the duties of the office . . ." That bill also would have made some other changes in staffing of the Commission.

Representative Schauf was a member of the House Committee on Federal and State Affairs during the 1990 Session and had experience in the racing industry. She was licensed by the Racing Commission as administrative support for the Greenwood Fair Association in 1989. She also was licensed as a horse owner/partner at the Greenwood Fair track and the Woodlands in 1990. Her involvement in the industry continued after she left the Legislature.

The 1990 Legislature had before it for consideration and action over 20 bills that would have amended the Racing Act. The House Committee assigned most of its bills to a subcommittee for consideration and amendment. That subcommittee recommended that the provision in H.B. 2892 regarding appointment of the Executive Director be amended to authorize the Commission to appoint that position and that the provision be amended into S.B. 428 which the Committee had before it. The Conference Committee on the bill did not make any changes to the appointment provision.

During the same legislative session, amendments to the Racing Act placed with the Executive Director authority to appoint the key enforcement personnel who had originally been appointed by the Commission. Each of the positions is unclassified and the 1990 amendments gave the Executive Director authority to establish the salary for the position. Those positions are:

- Inspector of Parimutuels -- responsible for inspecting and auditing the conduct of parimutuel wagering by organization licensees, including the equipment and facilities used and procedures followed; and

- Director of Security -- responsible for conducting investigations relating to compliance with the provision of the Act and rules and regulations of the Commission; recommend proper security measures to organization licensees.

The 1990 bill created a new regulatory/enforcement position, Director of Racing Operations, which was to be responsible for supervising racing operations including stewards and racing judges, training stewards and racing judges, and advising the Commission regarding desirable changes in rules and regulations relating to conduct of races. Like the two positions discussed above, the Director of Racing Operations was an unclassified position the salary of which was to be set by the Executive Director. That position would be eliminated by enactment of 1995 S.B. 124 as amended by your committee last week. According to testimony presented to the Committee by the current Executive Director of the Racing Commission, that amendment was suggested by the past chairperson of the Commission (Mr. Peltzer). Also according to that testimony, the position has never been filled.

So, at the same time the appointment of the Executive Director was shifted to the Commission, the authority of the Executive Director over implementation of the Act was broadened.

Finally, you asked whether there are examples in Kansas government of the Governor appointing both a board or commission and the chief administrative officer of that body. There are some.

- **Bank Commissioner and Banking Board.** Both the Commissioner and the Board have statutory powers and responsibilities for regulation of the banking industry.
- **Credit Union Administrator and Credit Union Council.** Generally, the Administrator of the chief regulator of state chartered credit unions. The Council shares certain of the supervisory and regulatory responsibilities of the Administrator and, in addition hears appeals from any finding, ruling, order, decision, or final action of the Administrator.

In both of these instances the Commissioner's and Administrator's regulatory and enforcement authority in statute is much more explicit than that of the Executive Director of the Racing Commission. However, the Racing Commission may delegate to the Executive Director authority necessary to implement and enforce the act. Such delegation may result in the director having a more significant role in implementation of the act than one would glean from a simple reading of statute. Also, as discussed above, the appointment authority of the Executive Director gives that position significant influence over enforcement and implementation of the act.

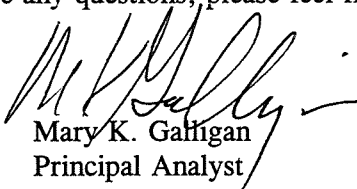
- **Healing Arts Board and Executive Director.** The Board is appointed by the Governor, but not subject to Senate Confirmation. The Executive Director is appointed by the Governor, subject to confirmation. The Executive Director's powers and duties are: "under the supervision of the board, the Executive Director shall be the chief administrative officer of the board and shall perform such duties as may be specified by the board and as may be required by law." (K.S.A. 65-2878)
- **Lottery Commission and Executive Director of the Lottery.** Both the Commission and the Executive Director are appointed by the Governor subject to confirmation by the Senate. Previous discussions of the Lottery and the Racing

Commission have highlighted differences between them as it pertains to regulation and enforcement. The Lottery is not a regulatory entity and to that extent is very different from the Racing Commission and other state entities that license and regulate industries or professions. Primary statutory authority to administer the agency and conduct the Lottery is placed with the Director. To that extent, the Governor's appointment of the Lottery director may be analogous to appointment of the head of any other nonregulatory agency.

- **Wildlife and Parks Commission and Secretary of Wildlife and Parks.** The Governor appoints both the Commission and the Secretary. The Secretary is subject to confirmation by the Senate, the board is not. The Commissioners who serve four-year terms and can only be removed by the Governor for cause, are not subject to Senate Confirmation, but have a significant role in the rule making process: "Other than rules and regulations pertaining to personnel matters of the department, the secretary shall submit to the commission all proposed rules and regulations. The commission shall either approve, modify and approve, or reject such proposed rules and regulations. The secretary shall adopt such rules and regulations so approved or so modified and approved. Fees established for licenses, permits, stamps, and other issues of the department shall be subject to the approval of the commission." The Commission is also charged in statute to advise the Governor and the Secretary in formulation of policies and plans for the Department. (K.S.A. 32-805)

The Kansas Corporation Commission might be another example of a regulatory entity with broad authority over an industry. The Corporation Commission presents another organizational scheme -- that of a full-time regulatory body that has both quasi-legislative and quasi-judicial powers, as does the Racing Commission, and administrative responsibilities. The chief administrative officer of the Commission, if it chooses to appoint one, is the Executive Director who also serves as Secretary to the Commission, who exercises authority delegated by the Commission. The Corporation Commission also is authorized to appoint the major division officers whose positions are unclassified. For this discussion, one important distinction between the Racing Commission and the Corporation Commission is the fact that members of the latter serve full-time. Presumably, that status is a major justification for placing the chief administrative officer in a subordinate position.

I hope this information is useful. If you have any questions, please feel free to call.


Mary K. Galligan
Principal Analyst

MKG/pb