

MINUTES OF THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairman Pete Brungardt at 10:30 a.m. on March 4, 2004 in Room 231-N of the Capitol.

All members were present except:
Senator James Barnett- excused

Committee staff present:
Russell Mills, Legislative Research
Dennis Hodgins, Legislative Research
Theresa Kiernan, Revisor of Statutes' Office
John Beverlin, Committee Secretary

Conferees appearing before the committee:
Garry Winget, Kansans For Addiction Prevention
Norm Jennings, Kansas Grape Growers and Wine Makers Association
John McElroy, Executive Director, Kansas Gaming Commission

Others attending:
See Attached List.

Chairperson Brungardt called the meeting to order. He told the committee that they would be continuing discussion on **SB 402, Farm wineries; rights of licensees; fees; ownership restrictions**. He welcomed Garry Winget to the podium.

Mr. Winget was unable to provide testimony to the committee at the previous meeting because of a funeral. He presented testimony against **SB 402**.

Chairperson Brungardt thanked Mr. Winget. He told the committee that he felt like there was interest in the topic, but the unanticipated problems and unresolved issues will prevent the committee from taking further action on the bill at the time being.

Norm Jennings asked the committee to oppose any bills that would allow for the shipping of unavailable wine to customers in the state because of the unfair advantage those wines would have over Kansas made wines.

Chairperson Brungardt stated the committee would take Mr. Jennings' suggestion into consideration. He then asked Russell Mills to provide an overview of **SB 533, Racing and gaming commission, authority to appoint additional assistant attorney general**.

Mr. Mills presented a Senate Subcommittee Report on **SB 533 (Attachment 1)**.

Chairperson Brungardt asked if it was standard for attorneys to come from the Attorney General's office.

Mr. Mills stated it was standard practice.

Senator Clark asked whether there was a specific number of Assistant Attorneys General that had to be assigned according to statute or if there was an allowance of Assistant Attorneys General.

Mr. Mills explained that it was common for the statutes to allow a number of Assistant Attorneys General, but he could not say how many statutes and how many numbers of assistants were allowed.

Senator Vratil stated he was concerned with the idea of the Attorney General appointing an attorney for the Agency. He stated he did not believe that it was the Governor's intention. He explained that the situation poses ethical difficulties for the attorney who is employed by the Attorney General, but works for a separate agency. He stated it was a problem of trying to figure out who is the master.

Senator Teichman asked Mr. Mills why a third Assistant Attorney General was needed for the Racing and

CONTINUATION SHEET

MINUTES OF THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE at 10:30 a.m. on March 4, 2004 in Room 231-N of the Capitol.

Gaming Commission.

Mr. Mills differed the question to John McElroy.

Mr. McElroy explained that it was too much for him to act as both a lawyer and run the Gaming Agency. He stated that when things got busy, in the past, the Agency has had to borrow an Assistant Attorney General from the racing side of the Racing and Gaming Commission.

Senator Teichman observed that there are two attorneys in the Racing and Gaming Commission.

Mr. McElroy explained that they were both on the racing side of the Commission.

Senator Vratil asked Mr. McElroy which he would prefer, the ability to appoint his own attorney or to have one appointed for him by the Attorney General.

Mr. McElroy stated that he would prefer to appoint his own attorney.

Senator Vratil asked why Mr. McElroy wants to appoint his own attorney.

Mr. McElroy explained that an attorney who is hired by him would have to answer to him. He explained the attorney would not have to serve two masters.

Senator Clark asked Mr. McElroy about the number of FTE positions in the Subcommittee Report presented by Mr. Mills.

Mr. McElroy explained that there was a mistake made, but the Division of Budget corrected the mistake.

Senator Clark asked how many FTE positions would be authorized.

Mr. McElroy stated that there would be 24 FTE positions authorized.

Senator Vratil stated he would like to offer an amendment to **SB 533** adding language to authorize the Kansas Gaming Agency to employ an attorney in an unclassified position without increasing the number of authorized FTEs.

Senator Vratil made a motion to amend **SB 533**. The motion was seconded by Senator Teichman.

Senator Clark observed that it was a different procedure than what is done by the Racing Agency.

Senator Vratil stated that if he had the opportunity to change in totality, he would change the Racing Agency too.

Senator O' Connor explained that the Attorney General represents the state, and the Gaming Agency is supposed to comply with state laws. She stated that she was unable to see the conflict observed by Senator Vratil.

Senator Vratil explained that situations may arise where the Attorney General disagrees with the interpretation of a statute rather than a state agency. He further explained that you would not want to put an attorney in that position.

Chairperson Brungardt asked whether the committee would be doing something unprecedented by allowing the agency to hire its own attorney.

Senator Vratil explained that it was not uncommon. He further explained that the Governor has hired her own counsel and that both methods are employed.

CONTINUATION SHEET

MINUTES OF THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE at 10:30 a.m. on March 4, 2004 in Room 231-N of the Capitol.

Chairperson Brungardt called for other discussion on the amendment.

Senator Clark stated he would like to offer a substitute motion. He stated that he would prefer the Attorney General to appoint an Assistant Attorney General for the Gaming Agency with the approval of the Director of the Gaming Agency.

Chairperson Brungardt asked the committee to first vote on Senator Vratil's motion.

The amendment failed. The bill was not amended.

Senator Clark made a motion to amend SB 533 to allow the Attorney General to appoint an Assistant Attorney General for the Gaming Commission with approval of the Director of the Gaming Agency. The motion was seconded by Senator Lyon.

Senator Vratil stated he appreciates Senator Clark's amendment, but that it does not solve the conflict of interest problem.

Senator Lyon stated that it seemed like the practice was a broader issue.

Chairperson Brungardt asked the committee to vote on Senator Clark's amendment.

The motion to amend SB 533 passed.

Senator Clark made a motion to recommend SB 533 favorable for passage as amended. The motion was seconded by Senator Teichman. The motion to recommend SB 533 favorable for passage as amended passed.

Chairperson Brungardt asked the committee for further business.

Senator Gilstrap asked the committee to introduce a bill relating to a city's quarterly report to the Treasurer's office.

Senator Gilstrap make a motion to introduce the bill. The motion was seconded by Senator Lyon. The bill was introduced.

Chairperson Brungardt thanked the committee.

The meeting was adjourned at 11:30 a.m. The next meeting is scheduled for March 9, 2004, at 10:30 a.m. in room 231-N.

Senate Federal and State Affairs Committee

Date: ~~MAR-01~~ 4, 2004

Name:

Representing:

John McElroy

KSEA

Greg Shipe

Self

Janna Danbar

Commerce

Norm Jennings

RCCWMA

Garry Winget

KAF

Jean Deahl

Self

John Deahl

" "

Comie Kangas

AG's office

Ron Feerber

High Law Firm

JUCK DUNCAN

KS wine & spirits wholesalers

Senate Subcommittee Report

Agency: Kansas Racing and Gaming Commission

Bill No. 538

Bill Sec. 23

Analyst: Efird

Analysis Pg. No. 594

Budget Page No. 333

Expenditure	Agency Req. FY 05	Governor Rec. FY 05	Subcommittee Recommendation*
Operating Expenditures:			
State General Fund	\$ 0	\$ 0	0
Other Funds	6,621,543	6,437,554	(95,624)
TOTAL	\$ 6,621,543	\$ 6,437,554	\$ (95,624)
FTE Positions			
Reportable Budget	67.0	68.0	(1.0)
Non FTE Perm. Uncl. Pos.	9.0	9.0	0.0
TOTAL	76.0	76.0	(1.0)

* The adjustment reflects deletion of the Governor's recommended pay plan adjustments.

Agency Request/Governor's Recommendation

Several enhancements, including 1.0 FTE position and general office moving expenses, result in a 4.1 percent increased budget request by the **agency**. Excluding \$244,817 associated with enhancements, the net budget request increase is \$14,334, or slightly more than 0.2 percent. Absent any enhancement financing, the expenditures from the State Racing Fund would be the same in the FY 2004 and FY 2005 requests. The **Governor** concurs with the agency requests, with the following adjustments in FY 2005. Salary plan financing of \$72,282 is added, and funds of \$53,562 and 1.0 FTE new position also are added. Shrinkage is increased by \$65,016 and BEST adjustments of \$23,342 also are reflected in the Governor's recommendations for FY 2005.

The **agency** estimates State Gaming Revenues Fund (SGRF) transfers of \$0 in FY 2005. The Governor recommends transfers from the State Racing Fund to the SGRF at \$115,016 in FY 2005. The Governor's recommendation includes \$65,016 for a shrinkage adjustment and \$50,000 to reduce the fund's cash balance.

The **Governor's** BEST adjustments total \$23,342, and the Governor recommends transferring \$11,845 of the savings to the SGF in FY 2005, including \$308 from the Racing Reimbursable Expense Fund, \$565 from the Horse Fair Racing Benefit Fund, and \$10,972 from the State Racing Fund. Excluded from the transfers is \$11,497 from the Tribal Gaming Fund.

Senate Subcommittee Recommendation

The Subcommittee concurs with the Governor's recommendation and makes the following adjustments:

1. Delete \$95,624, of which none is from the State General Fund, \$32,501 from the State Gaming Operations, and \$63,123 from Racing Operations, to remove pay plan funding recommended by the Governor (a 3.0 percent base salary adjustment for all state employees) for consideration in a separate bill.
2. Concur with the Governor to add funding for an attorney, but recommend a bill to amend current law in order to authorize the new position as a third Assistant Attorney General. Adding a third attorney in the Racing and Gaming Commission will allow the State Gaming Agency its own legal counsel. However, since the other two attorneys who work for the Racing Agency are authorized in KSA 74-8809 as Assistant Attorney General positions and the statute limits the agency to "no more than two such unclassified attorneys who shall be assigned to the Commission to assist in all matters, including enforcement of the Tribal Gaming Act," the Subcommittee believes amending current law is prudent in this case. Under the Governor's recommendation, the State Gaming Agency attorney would be hired as an unclassified staff, but the agency did not seek a statutory amendment in order to employ that attorney as a third Assistant Attorney General.
3. Reduce the FTE positions for the State Gaming Agency by 1.0 in order to accurately reflect the correct number of staff as recommended in Governor's Budget Amendment No. 1 Item 2 as technical correction to the State Gaming Agency's FTE limitation.
4. Concur with the Governor on total expenditures of \$1,650,753 for the Tribal Gaming Fund, but change a no limit account to an account with an expenditure limitation on the Tribal Gaming Fund. Currently, only the State Racing Fund in this agency is recommended to be appropriated with an expenditure limitation and all other funds in the agency have "no limit" appropriations. The Subcommittee notes that the Governor recommends BEST adjustments in FY 2005, but no funds are transferred to the SGF from the Tribal Gaming Fund. An expenditure limitation provides a means of adjustment to enforce the Governor's BEST expenditure recommendations to parallel the adjustments to the State Racing Fund which has both its expenditure limitation reduced by BEST adjustments in FY 2005 and the savings transferred to the SGF. In the case of the Tribal Gaming Fund where no transfer of BEST savings is recommended in FY 2005, the tribes will have a reduced assessment in FY 2006 if all the money collected is not spent in FY 2005. The Subcommittee notes an unbudgeted FY 2003 and FY 2004 expenditure for information technology of \$48,965 for a server based computer network with high speed internet access. FY 2003 expenses were \$40,714 and FY 2004 expenses were \$8,250 for hardware, software and DISC materials and labor. The Subcommittee does not object to the expenditure, but cites it as an example of the flexibility enjoyed previously by the State Gaming Agency with no limit on its expenditures from the Tribal Gaming Fund.
5. Note the State Racing Fund FY 2004 and FY 2005 ending balances are decreasing from the historical ending balance of \$300,000. Previously, the Legislature since the 1980s had authorized a \$300,000 ending balance in order to provide a cash balance sufficient to cover costs of closing out racing operations in an orderly manner if one or more tracks were to close. Such a situation arose when Camptown Race Track closed and the Commission had expenses for a number of months as those operations were terminated. The following fee fund analysis shows the impact on net receipts and ending balances of the Governor's

SB
533

recommendations which anticipate transferring \$265,613 in FY 2004 and \$115,016 in FY 2005 to the SGRF.

State Racing Fund Resource Estimate	Actual FY 2003	Agency Estimate FY 2004	Gov. Rec. FY 2004	Agency Request FY 2005	Gov. Rec. FY 2005
Beginning Balance	\$ 563,935	\$ 448,822	\$ 448,822	\$ 291,538	\$ 244,995
Net Receipts	2,652,445	2,909,273	2,797,487	3,063,100	2,937,112
Total Funds Available	<u>\$ 3,216,380</u>	<u>\$ 3,358,095</u>	<u>\$ 3,246,309</u>	<u>\$ 3,354,638</u>	<u>\$ 3,182,107</u>
Less: Expenditures	2,767,558	3,066,557	3,001,314	3,063,100	3,047,161
Ending Balance	<u>\$ 448,822</u>	<u>\$ 291,538</u>	<u>\$ 244,995</u>	<u>\$ 291,538</u>	<u>\$ 134,946</u>
Ending Balance as Percent of Expenditures	16.2%	9.5%	8.2%	9.5%	4.4%

Senate Subcommittee Recommendation

The Committee concurs with the FY 2005 Subcommittee recommendation.