

PERFORMANCE AUDIT REPORT

Reviewing the Regulatory Activities Of the Kansas Racing Commission

**A Report to the Legislative Post Audit Committee
By the Legislative Division of Post Audit
State of Kansas
January 1996**

Legislative Post Audit Committee

Legislative Division of Post Audit

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PERFORMANCE AUDIT REPORT

REVIEWING THE REGULATORY ACTIVITIES OF THE KANSAS RACING COMMISSION

OBTAINING AUDIT INFORMATION

This audit was conducted by Cindy Lash, Chris Clarke, and Laura Cummings. If you need any additional information about the audit's findings, please contact Ms. Lash at the Division's office.

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REVIEWING THE REGULATORY ACTIVITIES OF THE KANSAS RACING COMMISSION

Summary of Legislative Post Audit's Findings

Has the Kansas Racing Commission effectively enforced the provisions of the Kansas Parimutuel Racing Act? As a regulatory agency, the Racing Commission is charged with protecting the public interest by ensuring that parimutuel racing in Kansas is conducted fairly and without criminal influence. We found that the Commission has adopted reasonable practices in a number of areas related to the regulation of parimutuel racing, but its enforcement in several areas--including timely completion of background reports, testing winning greyhounds for illegal use of controlled substances, licensing of judges, having written policies and procedures, following up on problems identified in annual reviews, and oversight of oral contracts--was weak.

Differences of philosophy among past Commissioners and Executive Directors, and the failure to fill some key positions, may have contributed to weaknesses in the Commission's operations. However, most people we talked to thought current Commissioners were taking appropriate enforcement actions and were applying laws and regulations consistently to all licensees.

The Commission has taken some actions that, in our opinion, conflict with the intent of the Legislature when it passed the Kansas Parimutuel Racing Act. For example, the Commission approved the Woodlands' request to shorten its live horse racing season to fewer days than required by the Legislature, and approved racetracks' charity payments that are not in compliance with a strict reading of State statutes.

A consultant hired by the Commission in 1994 indicated the Commission had a higher budget and more staff than similar regulatory bodies in other states. Based on our review, however, we think the differences between states in terms of staffing structures, funding sources, and attitudes toward regulation, make appropriate comparisons virtually impossible.

This report includes recommendations for the Kansas Racing Commission in a number of areas, including developing policies and procedures in a number of areas, filling vacancies on a timely basis, testing racing animals for controlled substances as required by law, assessing stricter penalties for animal health violations, and ensuring that racetrack charity payments comply with State law. We would be happy to discuss these recommendations or any other items in the report with any legislative committees, individual legislators, or other State officials.



Barbara J. Hinton
Legislative Post Auditor



Reviewing the Regulatory Activities Of the Kansas Racing Commission

During the 1995 legislative session, owners of Kansas race tracks approached the Kansas Legislature for authorization to have slot machines located on race track property. Track owners cited stiff competition from riverboat gambling in Missouri and suggested that if casino-style gambling operations were not allowed at the tracks, they likely would have to cease racing operations.

Legislators raised questions about whether the financial conditions at the race tracks were as bleak as the owners stated. They also expressed concerns about whether the owners were profiting from certain financial arrangements between themselves, the tracks, and the other entities with which they do business. Legislators also expressed concerns about the level of charitable contributions provided by track operations, whether all regulatory requirements were being met, and whether races were being run as required.

As part of the appropriations process, the 1995 Legislature enacted legislation calling for one or more audits of entities regulated by the Kansas Racing Commission. The audits were to address various aspects of the entities' financial operations, as well as their compliance with State law and Racing Commission regulations.

The law required the scope of each audit to be reviewed and approved by the Legislative Post Audit Committee. Also, it required the Racing Commission to reimburse the Division of Post Audit for any expenses incurred in conducting the audits.

At its May 11, 1995 meeting, the Legislative Post Audit Committee approved audits of the entire racing industry in Kansas, including the three major race tracks, related licensees, and the Kansas Racing Commission. The Committee directed Legislative Post Audit to conduct the audits of the Woodlands and the Racing Commission. It approved contracting out the audits of Wichita Greyhound Park, Camptown Greyhound Park, and the parimutuel tote system provided to all three race tracks by United Tote Company.

This audit covers the regulatory activities of the Kansas Racing Commission and addresses the following question:

Has the Kansas Racing Commission effectively enforced the provisions of the Kansas Parimutuel Racing Act?

To answer this question, we reviewed the provisions of the Kansas Parimutuel Racing Act, and interviewed or surveyed Commission staff as well as current and former members of the Commission and racetrack officials. We reviewed Commission licensing records and procedures, animal drug testing policies and outcomes, parimutuel auditing activities, security procedures, and timeliness of background investigations. In addition, we looked at correspondence, complaints, and minutes of Commission meetings. Finally, we contacted officials in other states to gather information about their staffing levels and budgets.

In conducting this audit work, we followed all applicable government auditing standards set forth by the U.S. General Accounting Office.

In general, we found that the Commission has adopted reasonable practices in a number of areas related to the regulation of parimutuel racing, but its enforcement in several areas--including timely completion of background reports, testing winning greyhounds for controlled substances, licensing of judges, having written policies and procedures, and oversight of oral contracts--was weak.

Differences of philosophy among past Commissioners and Executive Directors, and the failure to fill some key positions, may have contributed to weaknesses in the Commission's operations. However, most people we talked to thought current Commissioners were taking appropriate enforcement actions and were applying laws and regulations consistently to all licensees.

The Commission has taken some actions that, in our opinion, conflict with the intent of the Legislature when it passed the Kansas Parimutuel Racing Act. In addition, we found that although a consultant hired by the Commission in 1994 indicated that the Commission had a higher budget and more staff than similar regulatory bodies in other states, we think the difference between states in terms of staffing structure, funding sources, and attitude toward regulation, make appropriate comparisons virtually impossible.

Overview of the Kansas Racing Commission

In 1986, Kansas voters passed a constitutional amendment to allow parimutuel horse racing and greyhound racing in the State. The 1987 Legislature created the Kansas Racing Commission to administer the provisions of the Kansas Parimutuel Racing Act. The Act also included legislation that defined the structure of the racing industry in Kansas.

The Kansas Racing Commission is a State agency governed by a five-member commission. Members are appointed by the Governor and confirmed by the Senate to serve staggered, three-year terms of office. Current members of the Racing Commission are listed in Appendix A.

The primary duties of the Commission are to :

- approve track ownership and management
- issue racing, occupational, and concessionaire licenses
- approve rules and regulations
- regulate track activities, including the conduct of races, parimutuel wagering, and submission of tax payments
- promote the horse and greyhound breeding industries and
- ensure the health and safety of the animals involved in racing

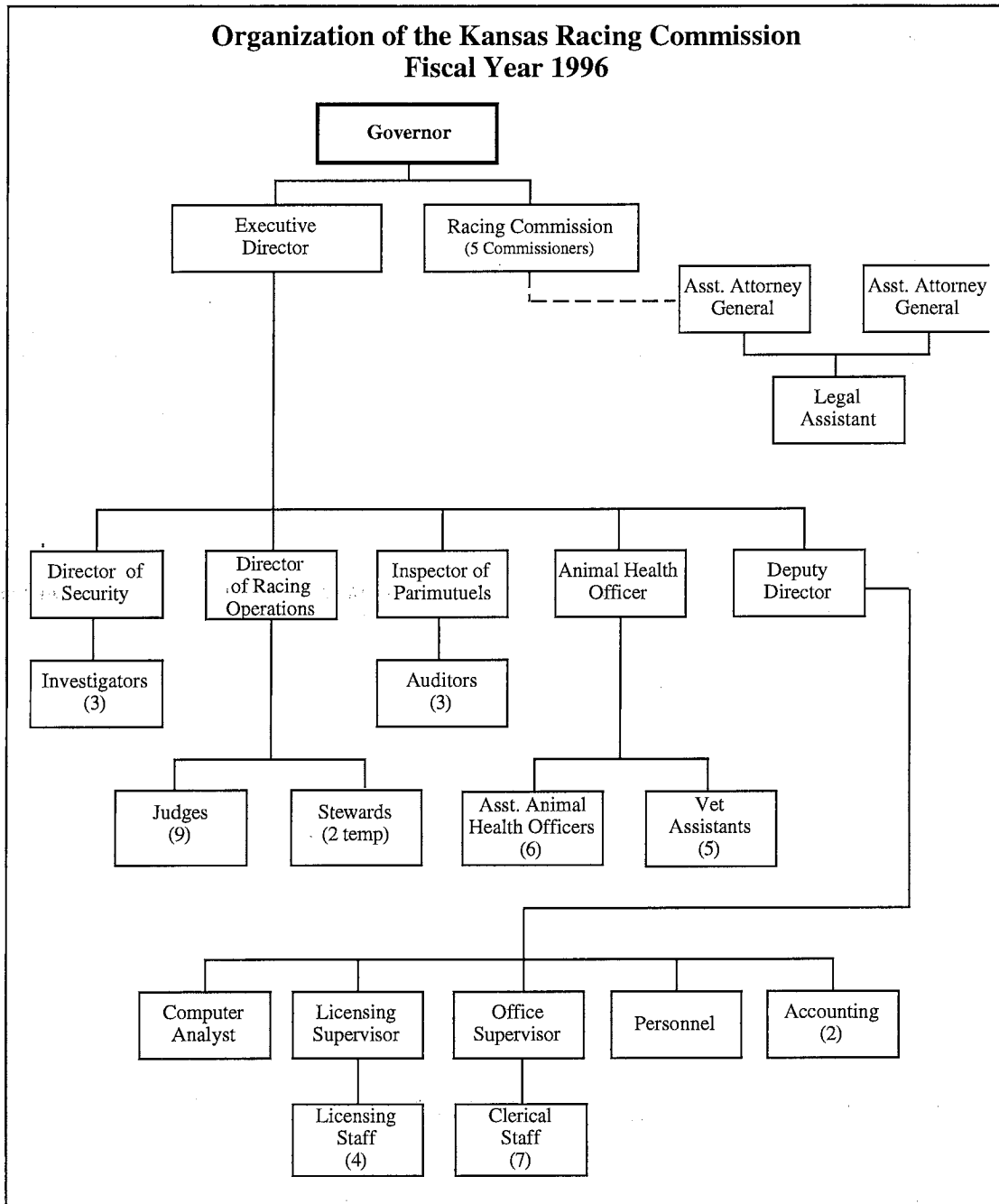
The Commission has a staff of about 50 employees to assist in carrying out its responsibilities. The Executive Director, who is appointed by the Governor, is responsible for the day-to-day operations of the agency. In addition, statutes authorize the Executive Director to appoint an Inspector of Parimutuels, a Director of Security, and a Director of Racing Operations. An organization chart for the agency is shown on the next page.

The Inspector of Parimutuels, currently a vacant position, supervises auditors located at each track who are responsible for reconciling monies wagered, taxes paid, simulcast expenses, and other special accounts. The Director of Security trains and supervises field investigators who enforce security rules and regulations, perform spot searches of barns and lockers, conduct background investigations, and watch for illegal activity at the tracks.

The Director of Racing Operations supervises racing judges and stewards, and supervises the conduct of races. This position has never been filled, and other staff have assumed some of these responsibilities.

Other important agency divisions are Animal Health and Licensing. The animal health division has veterinarians and other staff at each track who monitor the health of the racing animals, test the animals for illegal use of drugs, and provide emergency medical care to injured racing animals. The licensing division has staff located at each track who process applications, issue badges, monitor licensing problems, and verify licensure on a daily basis. The remaining Commission employees are office, clerical, computer, and accounting staff.

Organization of the Kansas Racing Commission Fiscal Year 1996



In addition, two Assistant Attorneys General are permanently assigned to the Commission and are located in Commission offices. One attorney serves as general counsel to the agency, the other serves as litigation counsel.

The Racing Commission receives revenues from taxes on parimutuel and simulcast wagering, admissions taxes, licensing fees, and fines. During fiscal year 1995 the Commission's revenues were approximately \$6.2 million. It spent about

\$4.7 million, primarily on salaries and wages (\$1.9 million), contractual services (\$1.1 million), and assistance, grants and benefits (\$1.6 million). More than half the money spent on contractual services was for laboratory fees and for other professional services. The \$1.6 million in assistance, grants and benefits provided grants to three fair associations, awards for Kansas-bred horses, and grants for greyhound research.

Over the last five fiscal years, the Commission's expenditures have increased about 23%, from about \$3.9 million to more than \$4.7 million, while deposits to the State Racing Fund, the Commission's main source of revenue, have decreased 33%, from \$9.2 million to about \$6.2 million. Expenditures and deposits to the State racing fund are shown below.

**Kansas Racing Commission Expenditures
and Deposits to the State Racing Fund
for Fiscal Years 1991 through 1995**

<u>Fiscal</u> <u>Year</u>	<u>Expenditures</u>	<u>Percent</u> <u>Change</u>	<u>Deposits to</u> <u>State Racing Fund</u>	<u>Percent</u> <u>Change</u>
1991	\$3,857,670	—	\$9,213,267	—
1992	\$3,349,233	(13.2%)	\$9,034,547	(1.9%)
1993	\$3,529,131	5.3%	\$7,604,220	(15.8%)
1994	\$4,235,463	20.0%	\$8,052,472	5.9%
1995	\$4,745,274	12.0%	\$6,169,601	(23.4%)

A significant part of the increase in expenditures between 1991 and 1995 can be attributed to a \$500,000 increase in other assistance to county fairs, breed awards for Kansas-bred horses, and grants for greyhound research. In addition, there have been incremental increases in staff over the years. The decline in deposits is largely attributable to a decline in track attendance and the total amount wagered at the tracks, which has reduced the amount of admissions and parimutuel taxes collected by the Commission.

Has the Kansas Racing Commission Effectively Enforced The Provisions of the Kansas Parimutuel Racing Act?

As a regulatory agency, the Racing Commission is charged with protecting the public interest by ensuring that parimutuel racing in Kansas is conducted fairly and without criminal influence. We found that the Commission has adopted reasonable practices in a number of areas related to the regulation of parimutuel racing, but its enforcement in several areas--including timely completion of background reports, testing winning greyhounds for controlled substances, licensing of judges, having written policies and procedures, and oversight of oral contracts--was weak.

Differences of philosophy among past Commissioners and Executive Directors, and the failure to fill some key positions, may have contributed to weaknesses in the Commission's operations. However, most people we talked to thought current Commissioners were taking appropriate enforcement actions and were applying laws and regulations consistently to all licensees. Appendix B contains results of our survey of Commission staff, past and current Commissioners, and racetrack officials.

The Commission has taken some actions that, in our opinion, conflict with the intent of the Legislature when it passed the Kansas Parimutuel Act. In addition, we found that although a consultant hired by the Commission in 1994 indicated that the Commission had a higher budget and more staff than similar regulatory bodies in other states, we think the difference between states in terms of staffing structure, funding sources, and attitude toward regulation, make appropriate comparisons virtually impossible. These and other findings are discussed in the sections that follow.

As a Regulatory Agency, the Commission's Actions Should be Directed Toward Protecting the Public By Ensuring That Races Are Clean and Fair

The primary purpose of a regulatory agency is to protect the public from the industry being regulated. In the course of regulating the horse and greyhound racing industry—including parimutuel wagering on that industry—the Commission is responsible for ensuring that the industry is operating with integrity and honesty, and that the safety and welfare of racing animals is protected. The following activities are essential to effectively carry out that purpose:

- conducting background investigations on companies that finance, operate, or provide services at the racetracks, on individuals who work at the racetracks, and on members and staff of the Kansas Racing Commission
- licensing people who are employed by the racetracks, or who are actively associated with racing (such as jockeys, trainers, and judges)
- auditing results of parimutuel wagering
- providing security at the racetracks
- checking the physical condition of racing animals before races, and testing for illegal use of drugs in the animals
- taking appropriate enforcement action when problems are identified

In addition, it is important to have a clear sense of purpose and direction, so that all those involved in regulating the industry are working toward a mutual goal.

As part of our audit, we tested or reviewed the Commission's activities in each of the areas listed above. Within the time available for this audit, it was not possible for us to test all of the Commission's procedures in each area. Therefore, much of our work focused on specific concerns identified by legislators.

**Although the Commission Has Adopted Reasonable Practices
In Many Areas of Its Operations, We Found a Number of Weaknesses
In Its Enforcement of the Parimutuel Racing Act**

Among the areas we reviewed in this audit were licensing, animal health, auditing of track operations, and security. In the course of our testwork, we found things the Commission does well in each of these areas. We also noted that the Commission responded promptly to a sample of complaints we reviewed, took timely action when regulatory violations occurred, and had recently acted to provide more flexibility for the operators of the racetracks by reducing the number of occupational licensing categories for workers at the tracks, and by adopting a regulation that will allow the tracks more flexibility in scheduling staff.

However, we noted a number of weaknesses in the enforcement of parimutuel laws and regulations, as discussed below.

Background investigations are not always conducted on a timely basis. Background investigations help keep the racing industry clean by keeping crime and undesirable characters out of racing in Kansas. Background investigations may be done either by the Kansas Bureau of Investigation or by the Commission's security staff. An agreement between the two agencies makes the Bureau responsible for investigating corporate entities, board members, racing commissioners, and high-level racetrack and Commission staff. The Commission's security staff conduct the investigations for racetrack staff such as kennel masters, lure operators, and starters, as well as for most of the Commission's non-management staff. Background investigations are quite extensive and thorough for high-level licensees, but are less so for lower-level staff. At a minimum, all individuals are required to submit fingerprints for a criminal history check.

To most effectively protect racing, background investigations should be completed on companies and individuals before they are allowed to work in the industry or the State's regulatory agency. In some instances this has not happened. Two cases in particular—Hollywood Park and United Tote Company—have drawn legislative scrutiny.

- Hollywood Park's background investigation was not completed until 16 months after it was requested. In February 1994, the Commission approved the sale of Sunflower Racing, Inc., the facility owner/manager licensee for the Woodlands, to Hollywood Park, a California gaming company. The sale was approved pending a favorable background investigation of Hollywood Park by the Kansas Bureau of Investigation. Although Sunflower became a wholly owned subsidiary of Hollywood Park that month, the background investigation was not completed until September 1995, 16 months after it was requested. Bureau officials identified a number of reasons for the delay, including:

- the Commission gave higher priority to background investigations related to the new racetrack in Frontenac (Camptown Greyhound Park)
 - Bureau agents had to travel to nine states to investigate numerous officers and directors of Hollywood Park
 - the Bureau did not receive timely responses to requests for information from several individuals
- United Tote's investigation is more than three years late. The 1992 Legislature passed legislation requiring companies providing totalisator, photo finish, and certain other services to be licensed by the Commission, which would require a background investigation. United Tote Company, which supplies computerized totalisator equipment to calculate payments to winning bettors, has been operating at Kansas tracks since 1989. Bureau officials indicated the Commission did not direct them to begin a background investigation of United Tote until June 1994, even though one should have begun when the law took effect in mid-1992. A Bureau official said that, once begun, the investigation was delayed because of a change in ownership of United Tote. He indicated the investigation is currently on hold because another change in ownership is pending.

Concerns also have been expressed about whether background investigations of Commission employees have been conducted on a timely basis. A Commission official told us the Commission recognizes the importance of having background investigations completed before staff begin work, but does not have a written policy requiring this. We found that many Commission staff had begun work before their background investigations were completed. For current high-level staff, 8 of 29 did not have background investigations completed before starting work. However, most of the delays, which ranged from two months to two years, were for people hired between 1991 and 1993. Recent background investigations have been much more timely. Of seven employees hired in 1994 and 1995, only one was hired before the background investigation was complete. It was completed about two months after the employee began work.

In addition to Commission employees who began work before background investigations were completed, we identified two racing commissioners who also began work shortly before their background investigations were completed.

In 1995, the Legislature amended the Parimutuel Racing Act to require several Commission executives to have updated background investigations. The Bureau has started all these investigations.

Assistant animal health officers have not tested all winning greyhounds for controlled substances, as required by State regulations. Kansas regulations require that the winning horse and the winning greyhound from each race—as well as other race animals designated by the racing judges—be tested for the presence of controlled substances.

When we reviewed three days of animal testing, we found that the testing of horses complied with the State regulations. However, the winning greyhounds were not always tested as required, and for some races, no greyhounds were tested. In our sample, we found that winning greyhounds were tested in only 63 of 136 races, or slightly less than half the time.

Legislators Have Raised Questions About Background Investigations

We were asked to look specifically at two issues—whether a background investigation was ever conducted on Kansas Gaming Partners (a company that proposed financing for Camptown), and whether the Commission has a uniform process for informing rejected applicants for occupational licenses about why they were rejected.

Kansas Gaming Partners is a limited liability company with two members—Kansas Magic Corporation (a wholly-owned subsidiary of Casino Magic Corporation, a Minnesota corporation), and Kansas Gaming Venture, Inc., (a wholly-owned subsidiary of United Gaming, Inc., a Nevada corporation). Officials with the Kansas Bureau of Investigation told us that a limited background investigation of Kansas Gaming Partners was completed. The officials said the Kansas Attorney General advised the Commission that the proposed financing contract between Camptown and Kansas Gaming Partners was not in the best interest of the State because it would give Kansas Gaming Partners too much control over racetrack construction and operation. The Attorney General was reportedly concerned about provisions that would allow Kansas Gaming Partners to place two representatives at Camptown's site, to jointly develop a budget with Camptown for development costs, to have access to Camptown's correspondence with its contractor and other parties, and to require Camptown to repay the loan within three years if the agreement was terminated. We were unable to locate any correspondence documenting the Attorney General's advice to the Commission. However, correspondence from an attorney for Kansas Gaming Partners to the Attorney General in mid-July 1994 refers to the General's concerns.

On August 5, 1994, minutes show the Commission voted not to approve financing by Kansas Gaming Partners because the corporate entities did not satisfactorily complete the background investigations. Kansas Gaming Partners subsequently withdrew its name from the financing proposal. However, on September 2, 1994, the Commission voted to "set aside its motion of 8/5/94 regarding the amended financing plan due to the inadequate time to complete the KBI background investigation." It further voted to approve financing for the track from Boatmen's Bank. The loan from Boatmen's was fully collateralized by a certificate of deposit purchased by Kansas Gaming Partners. According to Bureau officials, a corporate background investigation was done on Boatmen's, but there was no need to complete a background investigation on Kansas Gaming Partners because that company was no longer providing direct financing.

We also were asked to look at whether the Commission treats applicants for occupational licenses differently by disclosing to some applicants the information in the background investigation that caused the application to be rejected, and not providing that information to others. In looking at one application that was called to our attention, as well as two others, we found that sometimes the Commission discloses its reasons for rejection, and sometimes it doesn't. State statutes designate background information as confidential, and allow, but do not require, the Commission to discuss the information with the applicant during an executive session.

The Commission's legal staff told us the Commission will discuss background information with applicants unless the information was provided to the Kansas Bureau of Investigation by an individual whose identity must remain confidential. Bureau officials have told Commissioners that if they release this type of information (which may be the reason the person was rejected), future background reports will be based only on publicly available information. In the three cases we reviewed, two applicants were told why their applications were rejected. In both cases, rejection was based on information the applicants themselves had provided during their background investigations. In the third case, the applicant was notified privately by Commission staff that the Commission was "taking no action" on his application. He was not allowed to discuss the reasons with Commissioners. This applicant could have requested a hearing under the Kansas Administrative Procedures Act, but chose not to do so. If his rejection was based on information deemed confidential by the Bureau, it is not clear whether the courts would force the Commission to disclose this information during a hearing. A case currently is pending that centers on this particular issue.

We also found that, until recently, the Commission has not made any mention in its official minutes of applicants who are rejected. Commissioners receive background investigation reports in executive session. In the past, if Commissioners did not wish to accept the applicant because of information disclosed during executive session, there was simply no further mention of the applicant during the open meeting. Rejected applicants were notified privately that the Commission was taking no action on their application. The Commission recently has adopted a new practice for documenting its decisions. Recent Commission minutes indicate that the Chair will ask for a motion to approve the applicant, and if no motion is made, the applicant is effectively denied.

The Commission Has Simplified Its Occupational Licensing Process

An occupational license is required for any individual who works at the track, or who serves on the board of directors of a non-profit or for-profit licensee. Concerns have been raised that Kansas' system of occupational licensing was too rigid and too complicated. The Kansas system had 72 different license categories, and licensees were not allowed to perform work in a category other than that which they were licensed for. For example, a person licensed as a parking attendant could not work in maintenance, if needed.

The Racing Commission has recently reduced the number of occupational license categories by more than one-third. The new categories are more in-line with those of other racing jurisdictions. Also, the Commission is considering an amendment to a regulation which would allow the tracks more latitude in shifting employees from one position to another. This crossover regulation may help the tracks operate more efficiently. However, Commission staff have expressed concerns that track employees may now have access to areas that formerly required more thorough background investigations than those employees have had.

The Commission's Animal Health Officer, the chief veterinarian, said he was aware of the requirement to test all winning horses, but said he didn't realize there was a similar requirement for greyhounds. He stated that his staff test 15-20 dogs per performance (although in the performances we reviewed they tested slightly fewer), and they don't always test the winning greyhound because it is not always possible to get a urine sample from the dog. (A greyhound performance is typically comprised of 13 races.) He also stated that blood samples, which are the alternative suggested in State regulations, usually are not taken from greyhounds for the following reasons:

- chemists prefer to test urine rather than blood, because they are much more likely to get a reliable reading
- only small quantities of blood can be taken from the dogs,

which also hinders testing (larger quantities can readily be taken from larger animals, like horses)

- owners and trainers do not like having blood samples taken from their dogs because of the swelling that usually develops

Although these may be legitimate reasons, the failure to test the winning dog from each race violates State regulations. It also means the betting public has no assurances that the winning greyhound was drug-free and the legitimate winner of the race.

When animals have been found to have controlled substances in their systems, the Commission's hearing officers have not imposed strong penalties. When racing animals test positive for controlled substances, a hearing is conducted to assess penalties. The hearing officers (frequently the racing judges) are appointed by the Commission in accordance with the Kansas Administrative Procedures Act. Our review of hearing files for five greyhounds and five horses indicated that the consequences for positive drug test results may not be effective in deterring drug use on animals. The penalties were particularly lenient for the trainers of horses in our sample.

Of the five horse hearings we reviewed, four horses tested positive for Class IV prohibited drugs. [Horse drug violations are classified from I (most serious) to V (least serious)]. Kansas regulations state that a Class IV positive test shall result in one or more of the following penalties:

- a disqualification of the animal and redistribution of the purse
- a return of any trophy or other award delivered to the owner or owners

- a fine of up to \$1,000
- a suspension of up to 60 days

Although all four horses with Class IV violations in our sample were winners, in only one case was the horse disqualified from the race and the purse redistributed. The trainer of that horse also was fined \$25. In the other three cases, one trainer was fined \$150 and two were fined \$50.

Apparently others consider the penalties to be ineffective as well. In response to our survey of track officials, one respondent commented, "the fines for 'Bute' (phenylbutazone—a class IV drug) were the laughing topic of conversation on the backside."

The Commission has allowed unlicensed individuals to judge races, in violation of the Parimutuel Racing Act. State law requires every steward or racing judge to be licensed before performing any duties, and requires them to pass an exam before getting a license. (The term "steward" refers to judges for horse races; "racing judge" refers to judges for greyhound races.) Stewards and racing judges must be appointed by the Commission, although Kansas regulations allow the chief judge or steward at a racetrack to appoint a substitute in an emergency.

Donation of Moneys to Charity Varies from State to State

During this audit, we contacted Arizona, Arkansas, Colorado, Connecticut, Iowa, Massachusetts, Oregon, West Virginia, and Wisconsin to determine if any of these states had a legal requirement that a portion of track revenue be given to charities. Only two states, Iowa and Texas, said they have a legal requirement for tracks to give a portion of racing proceeds to charity although several states conduct charity race days. Three states have no provisions in their laws regarding donations to charities. The information we obtained from the states is summarized below:

- Arizona tracks can dedicate up to three days of racing proceeds to charity each year. The state's share of revenues and a matching donation from the track goes to charity. Each track decides which charity the moneys are given to. In general, the tracks have contributed three days of proceeds to charities.
- Arkansas law allows the dog track (but not the horse track) to hold additional racing days with the net proceeds from those days going to a variety of charities. In general, the track has held additional charity racing days.
- Colorado has no provision for donation of racing moneys to charity.
- Connecticut has established a set fee per performance that is given to gamblers anonymous groups.
- Iowa law requires a certain amount of dog and horse racing revenue to go to charities. In general, the revenues given to charity are those above and beyond necessary expenses. In addition, any unrelated business income (as defined by the Internal Revenue Code) of a track must be distributed to charities.
- Massachusetts requires one of the state's tracks to give \$100,000 per year to the Massachusetts Compulsive Gamblers Association.
- Oregon has no provision for donation of racing moneys to charity.
- Texas law states that the racing commission "shall" grant a certain number of race days for charities. The number of charity race days is different for each track. The commission has interpreted this law as a legal requirement and a commission rule says at least two percent of a track's handle on a designated day must be given to charity.
- West Virginia has no provision for donation of racing moneys to charity.
- Wisconsin has no mandate for charity race days, but some tracks do conduct charity race days.

The Commission's Deputy Director served as a racing judge at the Woodlands greyhound races on Wednesday afternoons from September through November 1995, a time when she also was serving as Acting Executive Director of the Commission. She had not taken the required exam nor had she been licensed by the Commission. The Chief Judge at the Woodlands said he appointed the Deputy Director to serve in an emergency capacity after one of the full-time racing judges at the Woodlands resigned, and the alternate racing judge was not able to work those afternoons because of other job commitments. The Chief Judge also said he didn't think emergency appointees needed to have taken or passed the exam.

Based on the length of time the Deputy Director served as a racing judge at the Woodlands, the appointment did not appear to us to qualify as an emergency. In addition, nothing in the statute implies that an unlicensed person can substitute as a racing judge in an emergency. The Commission proposed legislation in 1995 to allow qualified Commission staff to serve as temporary racing judges or stewards without a license, but the bill was not acted upon by the Legislature. That legislation will be considered again by the 1996 Legislature.

Commission staff pointed out to us that if the statute is strictly interpreted, it would be unlikely that anyone could ever be appointed to fill in on an emergency basis. They said it is expensive to become licensed, and that there is no pool of licensed people out there waiting to be called on an emergency basis.

In March 1995, the Commission approved the Animal Health Officer's son to serve as an alternate associate steward, and later as an alternate racing judge. This individual served as a steward at Eureka Downs and briefly as a racing judge at Wichita Greyhound Park, even though nothing in the Commission's records indicated he had taken and passed the required exam for either position. In addition, he was not licensed as a steward or racing judge by the Commission.

In a few cases, Commission staff didn't identify owners or trainers who weren't properly licensed. Commission officials told us that licensing staff at the racetracks compare every racing program to a licensee list to verify that owners and trainers for animals entered in races are appropriately licensed. When we reviewed programs for five races at the Woodlands and five races at Wichita Greyhound Park, we found a small number (3 out of 160, or 1.9%) of those listed as owners and trainers were not licensed for the job they were performing, although they did hold other licenses issued by the Commission. According to Commission officials, this should have resulted in the animal being scratched (or removed) from the race. However, records kept at the racetracks showed that licensing clerks did not identify any problems with these licensees. This suggests that licensing clerks may not always compare the racing programs to the licensee lists.

We also found that the Commission doesn't have any procedures to prevent staff from issuing combinations of licenses that are not allowed by law. (For example, a person licensed as the owner of a racing animal can't also be licensed as a veterinarian, racing official, jockey, or employee of the facility manager licensee). We identified six people who had been issued disallowed combinations of licenses during 1995. All six were racetrack employees who also were licensed as owners or assistant trainers of racing animals.

Commissioners Do Not Have the Ability To Access Commission Records From Home

Legislators expressed concerns that the Kansas Racing Commissioners had State computers at home, and were able to access Commission records, and other State records, from these computers.

We looked into this issue and found that no Commissioners have, or have ever had, State computers at home. Further, no Commissioners have personal home computers with access to the Commission's mainframe.

Two current Commission staff members, the deputy director and computer specialist, have

home computers that can access the mainframe. The deputy director primarily has access to electronic mail, but does not have access to sensitive Commission data from this computer. A former executive director also had similar access. The Commission's computer specialist has access to all Commission records from home.

The Commission field offices, located at each track, can transfer certain data electronically to and from the Commission's mainframe computer in Topeka.

The Commission doesn't have adequate procedures for following up on problems it finds in annual reviews of racetrack operations. State law requires the Commission to conduct an annual review of each track. Each year, Commission personnel in the animal health, judges, legal, security, licensing, and parimutuel areas review the racetracks' performance and write a report identifying strengths and weaknesses in each area. The racetracks submit a written response to the report, and both sides make an oral presentation to the Commission and answer questions. Commissioners then issue an order, which identifies problems that need to be resolved.

Commission officials told us their staff at the track are supposed to note if a problem has been resolved, and report this to appropriate personnel. However, there is no formal system to periodically review all orders and determine whether the tracks have corrected the problems. We found several instances in which the Commission noted the same issues in consecutive annual reviews— inadequate racetrack lighting, greyhound crates that needed to be repaired, insufficient plumbing in the barn where drug testing is performed—indicating the problems were not adequately resolved from the prior year. A systematic procedure for following up on Commission orders could help ensure that deficiencies are being corrected in a timely manner.

The Commission appears to lack sufficient audit capabilities at the racetracks. Auditors at the tracks are necessary to reconcile the numerous accounts required by statute and regulation. Daily and monthly reconciliations help ensure that all monies are being deposited, or paid out correctly. Positions authorized for the Commission for fiscal year 1996 provide for one auditor to be stationed at each racetrack, and an Inspector of Parimutuels to supervise the auditors. The Commission has not had an auditor at the Woodlands for the last two years, and the Inspector of Parimutuels position has been vacant for more than one year. We received the following comments about auditing when we surveyed Commission staff about the adequacy of staffing levels:

- "Parimutuel auditing is presently inadequately staffed. Wichita auditor has too heavy a work load. In effect, he basically takes care of parimutuel auditing for all three tracks."
- "There has not been an auditor stationed at the Kansas City track for two years. This position needs to be filled with a qualified individual to perform the auditing function. The Inspector of Parimutuels position has been vacant for over a year. This vacancy has stretched the auditing staff, not allowing in-depth auditing to occur."

- "Wichita Greyhound Park auditor is exceptional but this section is seriously understaffed with too heavy a workload."
- "There is no auditor at the Woodlands. If there were an auditor it would have been them rather than you that discovered the non-payment to the charities. Makes one wonder what else is not being done."

Commission auditors did not check to make sure breakage monies from greyhound racing are being accounted for properly by the racetracks. "Breakage" is the odd cents by which the amount payable on each dollar wagered exceeds a multiple of 10 cents. For example, if the actual odds on a \$2 bet result in a winning payout of \$3.62, the actual payout would only be \$3.60, and the remaining two cents on each winning ticket would be breakage. State law requires the tracks to distribute breakage from live and simulcast greyhound races equally between open stakes races and purses for breeders of Kansas-whelped greyhounds. In addition, Kansas regulations require the tracks to submit monthly reports detailing deposits to and distributions from breakage funds. In fiscal year 1995, greyhound breakage for all racetracks totaled more than \$360,000.

Before December 1995, Commission auditors had not requested, nor had the tracks provided, monthly reports on greyhound breakage. We weren't able to determine if the appropriate amounts were being distributed for open stakes races and purses. The Commission auditor in Wichita currently is working with the racetracks to obtain monthly information on greyhound breakage for verification.

Oral Agreements for Racetrack Alliance and The Clinton Group Were Not Initially Filed With the Commission

Kansas Racetrack Alliance was an informal agreement between the Woodlands and Wichita Greyhound Park established to promote the passage of Senate Concurrent Resolution 1608 during the 1994 legislative session. Camp-town Greyhound Park also was asked to participate, but contributed no money. Wichita Greyhound Park sent \$50,000 to the Woodlands for this effort, and the money was deposited in the Sunflower Racing, Inc., operating account. No contract for Racetrack Alliance has ever been filed with the Commission.

Sunflower used the Racetrack Alliance money for consultation from the Clinton Group, a public affairs communications company with offices in Washington, D.C., and Louisville, KY. The Clinton Group provided assistance for a grass roots political effort by helping Sunflower set up a phone bank, and later by making calls and sending letter writing kits. The Commission only became aware of the Clinton Group when security staff observed the phone bank in operation.

Although the Clinton Group was paid slightly more than \$100,000—mainly for letter-

writing kits, telephone calls, professional fees, and travel—the Woodlands maintained it did not have a contract for these services. The track was not up-front about the Clinton Group, and the Commission did not receive complete information until November 1995. We did not find any document filed at the Commission that explains the Racetrack Alliance arrangement. This group has letterhead, and is registered as a lobby group, even though the track maintains it was just an informal agreement.

In addition, we noted that Racetrack Alliance only reported about \$9,000 in lobbying expenses in 1994. We checked with the Kansas Commission on Governmental Standards and Conduct on whether all of the expenses listed above should have been reported as lobbying expenses. They indicated that the letter-writing kits seemed to fall under the definition of lobbying "expenditure," as set out in State regulation, while the other expenses were not as clear-cut. Governmental Standards Commission officials told us they will likely be looking into these expenses further.

The Commission has not developed procedures for its security staff to follow. The agency has no written policies or procedures detailing what investigators at the racetracks are supposed to do, how to do it, or how often. The Director of Security told us investigative staff are responsible for such things as:

- watching for illegal activities of staff and public
- conducting barn and locker searches
- conducting background investigations

We examined Commission records but were unable to verify that the investigators perform these functions regularly. The investigators submit a weekly activity report to the Director of Security in Topeka. These weekly summaries often simply say "routine activities," but sometimes note special work the investigators are doing, like background investigations.

Investigators told us that, in order to protect innocent parties, they do not document rumors or other unsubstantiated information they are investigating unless the information subsequently is found to be true. The investigators indicated they inform the Director of Security by telephone of everything they are working on.

Because it may not be feasible for investigators to fully document their activities, it becomes even more important that there are clear guidelines and procedures for their work. Without such guidelines, and with little paper documentation of work activities, the Commission increases its risk that security staff are not engaged in appropriate and productive work.

Procedures for filing oral contracts and agreements need to be strengthened. State regulations require the racetracks to file copies of all contracts, written or oral, with the Commission. Reviewing contracts is one of the Commission's tools for keeping the industry clean—it allows the agency to determine whether the racetracks are doing business with companies that may have ties to organized crime.

Recent audits of the State's three racetracks have identified written or oral contracts at the tracks that weren't on file with the Commission. At least one track has acknowledged that it inadvertently did not file some contracts, and Commission staff acknowledged that some contracts were misplaced during personnel changes. However, officials from the Woodlands and Wichita Greyhound Park each reported that they subsequently developed a tracking system for the contracts they file, and the Commission has reinstated a mail log which will document the contracts it receives.

Our review of contracts at the Commission found that the Woodlands had about 40% fewer contracts on file (229) than Wichita Greyhound Park (374). Camp-town had the fewest contracts on file—66—which is not surprising considering the short time it was in operation. During our audit of the Woodlands, track officials told us they did not have contracts with many of the vendors with which they did business.

For any vendor with whom a track spends a significant amount of money, or does business on a repeated basis, there must be some sort of understanding about what is going to be supplied and at what cost. This type of understanding or agreement is required to be summarized in writing and submitted to the Commission. With few exceptions, the tracks have not submitted their oral agreements with vendors.

The Commission must have this information in order to adequately monitor the integrity of the industry. Currently, it relies on the tracks to identify and submit their oral agreements, but has no way to determine what might be missing. By requiring each track to submit an annual list of vendors (with payment amounts), the Commission could identify the arrangements that needed to be filed.

**Conflicts Between Commissioners and Executive Directors,
As Well As Some Long-Term Vacancies In Key Positions,
May Have Contributed to Weaknesses in the Commission's Operations**

The Commission's budget indicates that the agency's mission is to maintain public confidence in the parimutuel wagering system, ensure the safety and welfare of racing animals, monitor the public health and safety at Kansas racetracks, and encourage the growth of the horse and greyhound breeding industry.

Within any regulatory body, there can be differences of opinion among those who favor stricter regulation to ensure absolute protection of the public's interest, and those who favor less regulation to ensure the industry being regulated remains viable. Within the last several years, such differences have apparently caused considerable turmoil within the Commission.

Half the respondents to a survey we sent to Commission staff indicated that, over the years, Commissioners have not maintained a consistent approach to regulation and promotion of the racing industry. Commissioners themselves cited a variety of opinions on their roles as regulators and promoters of the industry, as can be seen in the comments in the box below.

Commissioner Comments on Regulation

All regulatory agencies face an inherent conflict between regulating the industry strictly enough to protect the public interest and maintaining the economic viability of the industry. Commissioners expressed a range of attitudes on the proper role of the Racing Commission, including:

- "The current financial problems of the tracks make it very difficult to be an even-handed Commission by regulating properly and at the same time trying to help the tracks and hence forth the whole racing industry in Kansas."
- "Have to work together with the racing industry for success of industry....Give help when you can, but keep the industry honest. I do trust the industry as they have too much to lose by being dishonest."
- "When there have been commissioners that serve the agendas of the tracks and have the power of the chair behind them, the executive director and staff are at the mercy of de-regulatory forces. Examples are the sale of the Woodlands, not carrying out fines when direct violations occurred, and keeping materials from the Commission."
- "I believe the Racing Commission should regulate to the law as directed by the Legislature. I believe every effort should be made to see that all Commission members are directed that this is their first and most important duty."
- "I feel the Commission is primarily a regulatory agency and active promotion of parimutuel betting, and breeding of race animals is not a primary function of the Commission."
- "The primary, seminal mission of the Commission is to regulate so as to ensure the integrity of racing—in this respect, which is 90% of its function, it has done an outstanding job over the years. Kansas is regarded among other states, and within the industry, as one of the two or three most strictly, but reasonably, regulated racing jurisdictions."

Dollars Wagered on Simulcast Races Have Increased While Total Amounts Wagered Continue to Decrease

The 1992 Kansas Legislature passed a law allowing Kansas racetracks to simulcast with other racetrack facilities. The law was intended to strengthen the economic conditions and promote growth of the industry and, at the same time, protect the live racing industry from being replaced by simulcasting. The statute requires racetracks to conduct a minimum number of days of live racing annually, and essentially requires a minimum number of live races on the days simulcast races are displayed, unless otherwise authorized by the Commission. Other states we reviewed have built similar protections into their laws.

Although Kansas law essentially requires a specified number of live races to be run when a track is simulcasting, this provision does not ensure that the racing facility will attract more bettors. There also is the possibility that simulcast races may reduce the amount of money wagered on live racing by drawing the betting public away from the live races.

Kansas racetracks began simulcasting in 1992 and the impact on live racing can be seen in the graph at right.

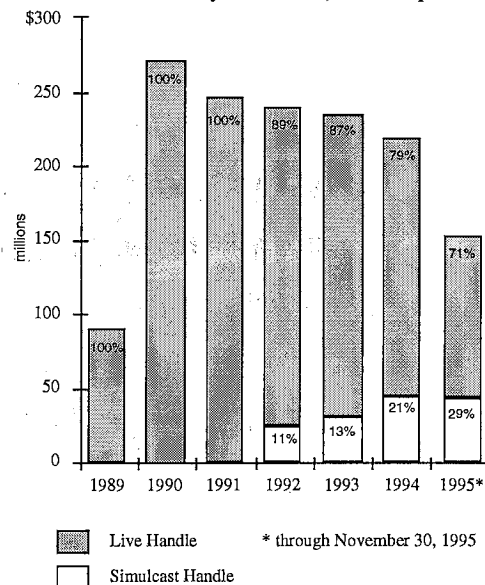
As the graph shows, the total amount wagered at the tracks peaked in 1990, and has been declining every year since then. The introduction of simulcasting in 1992 appeared to have temporarily slowed the drop in the total amount wagered. It also appears that the introduction of simulcasting briefly slowed the drop in the amount wagered on live races. However, the portion of the total amount wagered from simulcast races continues to increase.

In our survey of the Arizona Racing Commission, the Colorado Racing Commission, and the Iowa Racing and Gaming Commission, we found that those states also have provisions to protect the live racing industry from simulcasting, including:

- Arizona racetracks are required to conduct a minimum number of live racing days, and live races per race day, in order to simulcast. On a limited basis, tracks are allowed to conduct simulcasting on days when no live races are run.
- Colorado racetrack facilities earn three simulcast days for each live day of horse racing. In addition, wagering is permitted at off-track-betting sites.
- Iowa racetracks must schedule no fewer than 60 performances of nine live races each day of the season in order to simulcast.

In spite of these provisions, in 1994 the amount wagered in Iowa on simulcast races exceeded the amount wagered on live racing. In Arizona, simulcast wagers accounted for about 35% of the total amount wagered on all races, while in Colorado, which combines amounts wagered at off-track-betting sites with amounts wagered on simulcasting, these wagers accounted for more than 50% of all wagers.

Live and Simulcast Handle as a Percentage of Total Handle, from CY 1989 to 1995, for the Woodlands, Wichita Greyhound Park, and Camptown



Differences in approaches to regulation over the years seem to have manifested themselves in turnover in the Executive Director position. The Commission had five executive directors in the first seven years of its existence. Most recently, the position was vacant for eight months until it was filled in December 1995.

The last two executive directors to leave the Commission, Janet Chubb and Art Neuheidel, were widely believed to have held different regulatory philosophies than the Chairman of the Commission at the time each resigned. Janet Chubb, who was executive director from February 1993 to August 1994, reportedly favored more strict regulation of the industry than the majority of the Commission she reported to. In her resignation letter to then-Chairman Oscar Peltzer, Ms. Chubb cited a fundamental difference of opinion about the regulatory responsibilities of the agency and the administration of the Commission office. Two Commission members voiced public concerns that the Commission was moving toward deregulation of the industry.

Ms. Chubb was replaced by Mr. Neuheidel, the Commission's Inspector of Parimutuels. Mr. Neuheidel was chosen by a three-to-two vote of the Commission. The three members who voted for Mr. Neuheidel reportedly favored less strict regulation of the industry. He served as Acting Director from September through December 1994, and as executive director from January to March 1995. Membership of the Commission changed while he was executive director, and Mr. Neuheidel had immediate conflict with the new Chairman, Denise Kobuszewski, who favored strict regulation of the industry. Mr. Neuheidel resigned when it became clear his appointment would not be confirmed by the Senate.

The 1995 Legislature passed a bill requiring the Executive Director to be appointed by the Governor, rather than the Commission. The legislation—which was effective July 1, 1995—was passed to give the Governor greater accountability over activity at the Commission office. The Governor appointed a new executive director, Myron Scafe, in December 1995. In addition, two new Commission members were appointed in August 1995.

In our survey of Commission employees, most employees indicated the current Commission applied laws and regulations consistently, and took appropriate enforcement actions. However, the current stabilized situation will last only as long as Commission members share a common philosophy toward the degree of regulation. In addition, there is no guarantee that future Commission members and executive directors will not have different regulatory philosophies.

Vacancies in the Executive Director position and in a number of other high-level positions have negatively affected the agency's ability to carry out its responsibilities. In addition to all the turnover in the Executive Director position, there have been long-term vacancies in a number of other key staff positions at the Commission.

In 1990, the Parimutuel Racing Act was amended to allow the Executive Director to appoint a Director of Racing Operations. This position was added to the racing statutes to ensure that the Commission would always have a senior staff person with a strong background in racing. However, the position never has been filled.

The Commission hasn't had an Inspector of Parimutuels since September 1994. That position is responsible for supervising the auditing of parimutuel wagering at the racetracks, recommending proper accounting procedures to the organization licensees, and establishing policies for collection of taxes and fees.

Over the years, there also have been extended vacancies in the Director of Security position (for nearly two years in the early 1990s, and for six months before the current director of security began in July 1993), and in the Assistant Attorney General for litigation (vacant for 10 months before the current attorney started in February 1995).

Regardless of the reasons for the vacancies, all of these are important positions designed to help ensure the integrity of racing operations in Kansas. Not filling these positions has contributed to the impression that the Commission has had a "permissive" attitude toward the racing industry.

When we surveyed them, 75% of the tracks, 60% of the past and present Commissioners, and 60% of the Commission's staff agreed that high-level vacancies have affected agency functioning. We received comments such as:

- "We are in critical need of an executive director and director of parimutuels."
- "Morale of staff will be greatly enhanced once a new executive director is on board and the high rate of turnover in that position stops."
- "The revolving door that has existed at the Commission in both executive staff and Commission seats for the past couple of years has made consistency in operating procedures extremely difficult at times. We understand some of the [changes] have been due to circumstances beyond anyone's control, but others tended to be a result of political infighting and the result counterproductive to parimutuel racing in the State."

Also, although the ties may not always be direct, it seems likely to us that the significant turnovers and vacancies that have occurred have contributed to many of the problems described earlier in this audit.

Some Actions Taken by the Commissioners May Contradict the Intent of the Legislature When the Parimutuel Racing Act Was Passed

Kansas statutes give the Commissioners broad powers to regulate the racing industry. Recently however, legislators have raised questions about whether certain Commission actions fulfilled the Legislature's intent when it passed certain provisions of the Parimutuel Racing Act.

The Commission has approved financial arrangements for payments to charity that don't appear to comply with the law. K.S.A. 74-8813(d) states that the nonprofit organization licensee shall distribute all of its net earnings from the conduct of horse and greyhound races—less certain allowable deductions for debt service, improvements, or repair—to charitable organizations. Over the years, the Commission has approved the following arrangements at the tracks:

- Wichita Greyhound Charities receives 1% of the total amount wagered at Wichita Greyhound Park (plus \$100,000) for its administrative expenses and for distribution to charity.
- TRAK Southeast (Camptown) receives .5% of the total amount wagered at Camptown Greyhound Park for distribution to charity.
- TRAK East (Woodlands) received an annual guaranteed fixed payment for distribution to charities until June 1995. It will receive no money for distribution to charity from June 1995 to June 1996. At that point, TRAK East will receive annual fixed payments as follows: \$500,000 if no expanded gaming legislation passes during the 1996 legislative session, and \$750,000 if such legislation does pass.

In our opinion, none of these arrangements meet the requirement specified in the law. A fixed percentage of the handle or a fixed dollar amount is not the equivalent of "net earnings" as defined in the statute.

We discussed this issue with the assistant attorney general at the Commission. He agreed that these arrangements may not meet the letter of the law, but suggested that Commission approval of these arrangements was done in the general spirit of the law, which was to ensure that a portion of the money wagered went to charity. He told us that, because the Commission approved these arrangements, Commissioners must have believed the arrangements fell within the parameters of the statute, and that Commissioners may have believed that more money would be distributed to charity under these agreements.

The Racing Commission relied on a State Supreme Court decision as its basis for establishing a horse racing season at the Woodlands that is shorter than the statutes appear to call for. State statutes require the Woodlands to conduct horse races on at least 20% of the track's annual racing days. The Commission approved 300 days of racing at the Woodlands for 1995, which would require a horse racing season of not less than 60 days.

In late June 1995, Woodlands officials asked the Commission's permission to shorten the racetrack's planned 60-day horse racing season to 45 days. The track cited financial losses associated with horse racing, and indicated a shortened season would increase purse amounts for the remaining races and, hopefully, attract higher-quality horses.

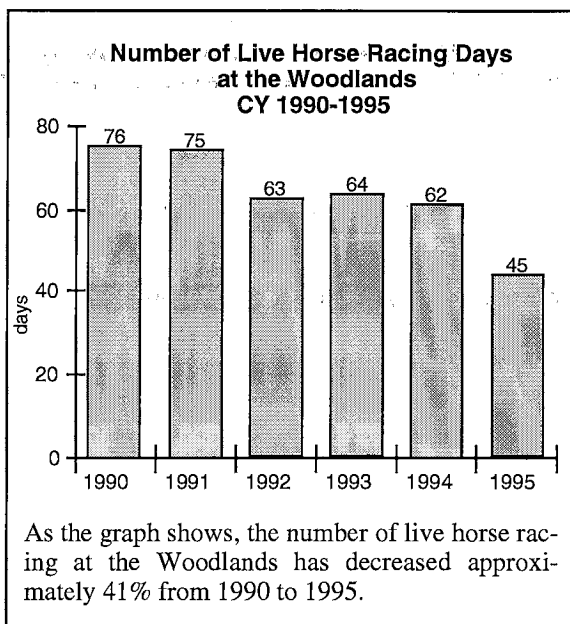
Commissioners approved the shortened horse racing season, even though the number of live horse race days does not appear to equal 20% of the total race days at the Woodlands. In taking this action, the Commissioners relied on an unpublished June 1995 State Supreme Court decision which found that both simulcast races and live races are considered to be "conducted" by the organization licensee. By counting simulcast horse races as horse races conducted, the Woodlands could still meet the

statutory 20% requirement, even with the shortened season.

Already a trend toward fewer and fewer live horse racing days is developing at the Woodlands. The graph shows the live horse racing days conducted by the Woodlands annually:

We think the Court's interpretation of the statute may not provide the result the Legislature intended when it passed the law. Under the Supreme Court's interpretation, no live horse racing would be required.

The Commission has recognized this problem and has proposed legislation for consideration by the 1996 Legislature that would amend the statute to clarify the requirement that live horse racing be conducted on 20% of the total live racing days at the Woodlands.



Too Many Variables Exist to Allow Meaningful Comparison Of Expenditures and Staffing Between Kansas and Other States

In 1994, the Racing Commission hired Bill Linton & Associates, a consulting firm based in Phoenix, Arizona, to conduct a study on the structure of the Racing Commission staff. Among other things, the study indicated that the Commission had a generous budget and more staff than other racing jurisdictions with similar activities.

However, in our survey of Commission employees, many respondents indicated they thought the Commission was understaffed, and made such comments as:

- "Security at the tracks are overworked and do not have enough time to properly work the backside and frontside of the tracks."
- "There has not been an auditor stationed at the Kansas City track for two years. This position needs to be filled with a qualified individual to perform the auditing function."
- "The judges are understaffed due to turnover and the time it takes to get replacements."
- "Animal health and security are understaffed, especially during the horse season."
- "The licensing office completely shuts down and people must wait because the only licensing clerk had to run to the post office or bank on behalf of the Commission."

We surveyed racing officials in Arizona, Colorado, and Iowa, and tried to compare the Commission to these states on expenditures and staffing levels. We found that, although each state offers both horse and greyhound racing, each has a different number of racetracks with different lengths of racing seasons at each track, which makes comparisons difficult.

In addition, the states have very different staffing structures—for example, some have security staff while others rely on their state investigative agency for these

Camptown Chronology

On September 16, 1988, the Kansas Racing Commission granted a conditional organization license to TRAK Southeast. The Commission found that TRAK Southeast had filed a timely and complete application, and had contracted with Sunflower Racing, Inc., for management of the facility. The Camptown track did not open until May 1995, nearly 7 years after the original racing license was granted, and temporarily closed in November 1995.

Concerns have been raised that the Commission should not have granted the license, or that the Commission should have taken stronger action when the applicant requested numerous delays and should possibly have revoked the license. These concerns focus, in part, on the decline in monies wagered at the existing Kansas tracks during the long Camptown application period, and in part on the applicants' inability to provide an adequate financing plan.

1990 was the peak year for the Woodlands and Wichita Greyhound Park, with more than \$229 million wagered. The amount wagered fell consistently each year thereafter. Compared to 1990 levels, the amount wagered at the two tracks fell 7% in 1991, 11% in 1992, 14% in 1993, and 27% in 1994, sparking controversy about whether a third racetrack could be financially viable. The following is a chronology of events surrounding the Camptown application, and attempts to secure financing.

- | | |
|-----------------|---|
| 9/16/88 | TRAK Southeast is granted a conditional organization license to conduct races. |
| 5/12/89 | TRAK Southeast and Sunflower Racing request an extension of time to file their financing documents. The Commission grants an extension until 6/23/89. |
| 6/23/89 | Sunflower Racing asks for approval to transfer its conditional license to another entity. |
| 10/6/89 | The Commission denies Sunflower Racing's request to transfer its license, and Sunflower Racing surrenders its license. |
| 10/13/89 | TRAK Southeast is given 60 days to come up with a new facility owner/manager. |
| 2/21/90 | TRAK Southeast says it is negotiating with the Wisconsin Group. The Commission gives TRAK Southeast until 3/31/90 to submit a new proposal for facility owner/manager. |
| 2/29/90 | TRAK Southeast presents the Commission a letter of intent from Dairyland Greyhound Park to submit a proposal for a facility in Crawford County. |
| 5/4/90 | Dairyland requests a 60-90 day extension to submit a complete application. The Commission deferred its decision until 5/18/90. One Commissioner moves to revoke TRAK Southeast's license. The motion dies for lack of second. |
| 5/18/90 | TRAK Southeast requests a 60-day extension. The Commission gives TRAK Southeast until 6/25/90 to show cause why its license should not be revoked. |
| 6/29/90 | TRAK Southeast says it has reached an agreement with Camptown Development Limited Partnership to build and operate a track. The Commission establishes a deadline of 7/29/90 for submitting a formal application and financial information. |
| 7/20/90 | Camptown Development Limited Partnership tells the Commission it will file a complete application by 8/3/90, and requests a transfer of interest to a new corporation, Camptown Greyhound Racing, Inc., to be formed later. |
| 8/3/90 | The Commission begins to review the application. |

- 12/13/90** The Commission votes that the application and all related documents submitted over the past few months have met the minimum requirements, but all required documents have not been submitted.
- 6/28/91** The applicants present proposals for the construction and operation of the track in Crawford County. The Commission requests background investigations.
- 9/11/91** After reviewing the background reports, the Commissioners begin questioning officials, and request more information (which was presented 2/28/92).
- Summer 92** The Commission investigates certain issues, conducts depositions, and requests additional information.
- 9/24/92** Camptown Development Limited Partnership is dissolved and reorganized into Camptown Greyhound Racing, Inc. Camptown Greyhound Racing says it will submit a new application (submitted 11/5/92).
- 12/28/92** Facility owner/manager license granted to Camptown Greyhound Racing, with the condition that the closing of financing transactions be completed and approved by the Commission by 5/1/93.
- 3/16/93** Columbian Securities, which was to provide financing for racetrack construction, ceases doing business. The licensee is given 30 days to arrange new financing.
- 4/16/93** The Commission grants Camptown Greyhound Racing until 6/4/93 to arrange financing. After numerous extensions, the licensee submits a financing package on 8/13/93.
- 8/27/93** The Commission accepts Camptown Greyhound Racing's financing package, subject to background investigations. Financing package subsequently falls through because two individuals did not submit background disclosure forms.
- 2/17/94** Continuation of hearing on a new financing plan, containing an option agreement with Robert Terlip and Waldo Morris who will have the first right to operate a casino if casino gambling is legalized in Kansas. This option agreement is later amended.
- 6/27/94** The Commission gives contingent approval to the amended financing package - Kansas Gaming Partners (Casino Magic Corp. and United Gaming, Inc.) agrees to loan Camptown Greyhound Racing and TRAK Southeast \$3.1 million, in exchange for the exclusive right to open and operate a casino. Commission requests a background check on Kansas Gaming Partners.
- 8/5/94** The Commission hears background reports, and moves to not approve this financing package.
- 9/2/94** The Commission reviews a loan commitment from Boatmen's Bank, and approves a new financing plan subject to a corporate background check of Boatmen's.
- 11/1/94** Camptown Greyhound Racing admits the loan commitment expired, and promises to secure another loan by 11/10/94. It did not and was given 30 days to arrange financing. The Commission approves a new financing plan with Boatmen's Bank on 11/22/94.
- 5/17/95** The Camptown track opens.
- 11/3/95** The Commission allows the Camptown track to temporarily close after the races run on 11/5/95, due to Camptown Greyhound Racing's financial difficulties.

services. Some combine auditing and licensing functions in one staff position. Some require the racetracks to reimburse the costs of judges and veterinarians, while others do not. Finally, some states regulate more strictly and extensively than others. All of these factors have a significant effect on the racing agencies' budget and staffing figures. Without a detailed understanding of each state's staffing structure, funding sources, and attitude toward regulation, it is impossible to make appropriate comparisons. Appendix C summarizes the information we obtained from the other states.

The Linton report has been controversial. The report, completed at a cost of \$14,000, was presented to the Commission in July 1994. The Commission took no action on the report for almost a year and a half.

During that time, concerns were expressed that the report was "bought and paid for by the industry," or unduly reflected the opinions of racetrack operators on how the Commission should be structured. Commission staff also expressed concerns about the quality of the report, since the consultants apparently spent very little time with them--interviews conducted by Mr. Linton reportedly lasted only minutes.

In September 1995, the Special Committee on Federal and State Affairs asked the Commission what action had been taken on the Linton report. The current Commissioners reviewed the report's recommendations, and expect to have a response for the Committee in January 1996.

Conclusion

The Kansas Racing Commission has not effectively enforced all the provisions of the Parimutuel Racing Act, primarily because of a lack of leadership, and a lack of clear and consistent policies and procedures. The Commission has had high turnover in some positions, and failed to fill other key positions within the agency. Without these top management positions, operating policies and procedures have not been developed in some areas, and adequate management oversight has not been provided in others. By most accounts, however, the current Commission has consistently enforced racing laws, and staff members are working to develop policies and procedures that will provide consistency in the day-to-day operations of the Racing Commission.

Recommendations

1. To help the agency operate more effectively and efficiently, the Kansas Racing Commission should develop policies and procedures for:
 - a. work performed by field investigators
 - b. work performed by animal health officers and technicians
 - c. follow-up of annual review orders
 - d. issuance of multiple licenses

2. To carry out its regulatory duties more effectively, the Commission should fill vacant positions--including the Inspector of Parimutuels, the Director of Racing Operations, and the Woodlands auditor positions--on a timely basis.
3. To comply with State law and ensure that racing judges and stewards are qualified, the Commission should make sure that all persons acting as racing judges and stewards have passed the required examinations and are properly licensed.
4. Because the current charity payment arrangements at the tracks do not comply with a strict reading of the statute, the Commission should either propose legislation to legalize the existing arrangements, or enforce the State law as written.
5. The Commission should ensure all Commission staff have completed background investigations before starting work.
6. To help ensure that owners and trainers of racing animals are properly licensed, the Commission should verify that its licensing field staff are checking program proofs daily.
7. To help ensure the integrity of racing, and to conform with State regulation, the Animal Health Officer should make sure that all winning horses and greyhounds are tested for controlled substances, in addition to other race animals designated by the judges.
8. To deter possible controlled substance violations, the Commission-appointed hearing officers should assess stricter penalties for animal health violations. The current penalties appear to be ineffective because they are set at such a low level.
9. Because a recent State Supreme Court decision can be interpreted as eliminating the requirement that 20% of all racing days at the Woodlands be devoted to live horse racing, the Commission should actively pursue its proposed amendment to K.S.A. 74-8813 (t).
10. To help ensure that the tracks are not doing business with vendors connected to organized crime, the Commission should more strongly enforce its existing requirement that the tracks file oral contracts and arrangements with the Commission.

APPENDIX A

Past and Present Members and Executive Directors of the Kansas Racing Commission

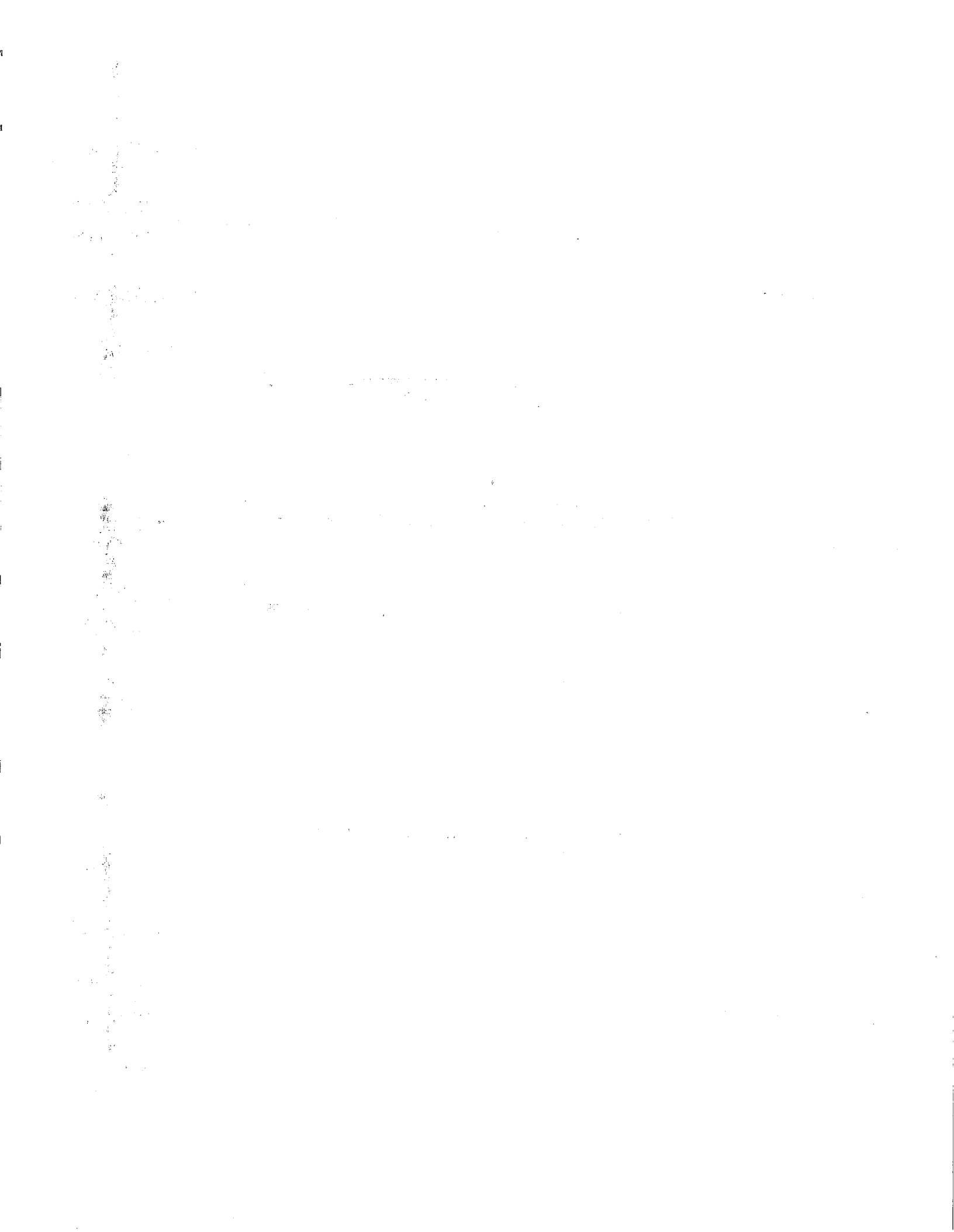
Past and Present Members of the Kansas Racing Commission

Kansas statutes require the governor to make appointments to the Commission in such a way so that each congressional district has at least one Commission member who resides in that district at the time of appointment. Historically, two of the five Commissioners have been from the fourth Congressional district.

<u>Congressional District 1</u>	<u>Year Term Began</u>	<u>Year Term Ended</u>	
Martin, H. Phil (Larned)	1987	1993	
Janssen, Jack (Lyons)	1994		
 <u>Congressional District 2</u>			
Anthony, Harry (Manhattan)	1987	1992	
Kobuszewski, Dr. Denise (Valley Falls)	1992	1995	
Olander, Gene (Topeka)	1995		
 <u>Congressional District 3</u>			
Cantwell, Bert (Kansas City)	1987	1990	(Resigned)
Londerholm, Robert (Olathe)	1991	1995	
Palmer, Dr. Keith (Bucyrus)	1995		
 <u>Congressional District 4</u>			
Schroeder, Alfred (Madison)	1987	1990	
Coder, Peggy (Independence)	1990	1993	
Francisco, Kenneth (Maize)	1993		
Arvin, Kay (Wichita)	1987	1991	
Melton, Robert (Wichita)	1991	1991	(Deceased)
Peltzer, Oscar (Wichita)	1991	1995	(Resigned)
Miller, Bob (Wellington)	1995		

Past and Present Executive Directors

<u>Executive Director</u>	<u>Date Appointed</u>	<u>Date Vacated</u>
Grenz, Jimmy	Nov. 1987	Jan. 1990
Hamer, Dan	Jan. 1990	Mar. 1991
Nelson, Dana	Feb. 1991	Feb. 1993
Chubb, Janet	Feb. 1993	Aug. 1994
Neuhedel, Art	Sept. 1994	Mar. 1995
Safe, Myron	Dec. 1995	



APPENDIX B

Survey Responses From Kansas Racing Commission Staff, Organization and Facility Owner/Manager Licensees, and Current and Former Commissioners

As part of this audit, we surveyed all current Commission staff, the organization and facility owner/manager licensees, and all current and former Commissioners to obtain their opinions on whether the Racing Commission has effectively enforced the provisions of the Kansas Parimutuel Racing Act. We sent a total of 71 surveys, and received 52 responses for a response rate of 73.2%. The results of the three surveys are printed in this appendix.

Surveys Sent and Responses Received

<u>Group</u>	<u>Surveys Sent</u>	<u>Responses Received</u>	<u>Response Rate</u>
Commission Staff	51	37	72.5%
Past and Current Commissioners	14	11	78.5
Organization and Facility Owner/Manager Licensees	6	4	66.7

Survey of Racing Commission Staff

The Legislative Post Audit Committee has directed the Legislative Division of Post Audit to conduct a performance audit of the Kansas Racing Commission. The main objective of the audit is to determine if the Commission has effectively enforced the provisions of the Kansas Parimutuel Racing Act. To help us meet this objective we are conducting a survey of current Commission staff. Unless otherwise specified, all questions refer to current Commission members and staff.

We would appreciate if you would take the time to answer the following questions. This survey does not require that you give your name. The results will be tabulated and reported in such a way that you cannot be personally identified, but the returned surveys will be included in the audit working papers which will become part of a public document once the audit is completed.

Please return the completed survey in the enclosed, self-addressed, post-paid envelope by November 13, 1995. If you have any questions related to the survey, please contact Leo Hafner or Cindy Lash at Legislative Post Audit, 8th and Jackson, Topeka, KS 66612, (913) 296-3792.

For each of the following statements, please circle one of the following responses:

- | | |
|-----------------------------|------------------------------|
| 1 = Strongly Agree | 4 = Disagree |
| 2 = Agree | 5 = Strongly Disagree |
| 3 = Don't Agree or Disagree | 6 = No Opinion or Don't Know |

Management	Strongly Agree or Agree	Don't Agree or Disagree	Disagree or Strongly Disagree	No Opinion or Don't Know
1. The Commission's top-level management staff are generally qualified for their jobs. (This includes Executive Director, Deputy Director, Director of Security, and Inspector of Parimutuels.)	56.8%	13.5%	27.0%	2.7%
2. The Commission's mid-level management staff are generally qualified for their jobs. (This includes the Animal Health Officer, Licensing Supervisor, Chief Stewards and Judges)	73.0%	10.8%	10.8%	5.4%
3. Vacancies in top-level management positions have not affected the functioning of the Commission.	27.0%	10.8%	62.2%	0.0%
4. Management follows-up and takes appropriate action on violations by licensees in a timely manner.	64.9%	8.1%	18.9%	8.1%
5. Management applies laws and regulations to all licensees consistently.	62.2%	13.5%	13.5%	10.8%

	Strongly Agree or Agree	Don't Agree or Disagree	Disagree or Strongly Disagree	No Opinion or Don't Know
6. Management is receptive to input from industry groups, such as the Horseman's Benevolent Protection Association and the National Greyhound Association.	56.8%	21.6%	8.1%	13.5%
7. Management is receptive to input from track officials.	51.4%	18.9%	24.3%	5.4%
8. Management keeps Commissioners informed of changes in track operations and financial status.	56.8%	8.1%	18.9%	16.2%

Commission

9. Commissioners are generally qualified for their jobs.	62.2%	18.9%	16.2%	2.7%
10. Commissioners apply laws and regulations to all licensees consistently.	48.6%	24.3%	13.5%	13.5%
11. Commissioners take appropriate enforcement actions on violations by licensees in a timely manner.	59.5%	10.8%	18.9%	10.8%
12. Over the years, commissioners have maintained a consistent approach to regulation and promotion of the racing industry.	27.8%	16.7%	50.0%	5.5%
13. Commissioners are receptive to input from the public.	54.1%	21.6%	18.9%	5.4%
14. Commissioners are receptive to input from industry groups, such as the Horsemen's Benevolent Protection Association and the National Greyhound Association.	59.5%	21.6%	8.1%	10.8%
15. Commissioners are receptive to input from track officials.	58.3%	16.7%	13.9%	11.1%
16. Commission decisions too often favor the tracks.	30.6%	41.7%	25.0%	2.8%
17. Commission decisions are too hard on the tracks.	2.8%	47.2%	47.2%	2.8%

General

18. Security at the tracks is adequate to enforce laws and regulations.	59.5%	10.8%	21.6%	8.1%
19. Animal Health Officers do a good job of ensuring that animal health and welfare are not jeopardized.	91.7%	0.0%	0.0%	8.3%
20. Staff working in the licensing area do a good job of ensuring that all applicants meet requirements outlined in regulations.	68.6%	5.7%	17.1%	8.6%
21. Auditors at the tracks do a good job of ensuring that the tracks are accurately reporting parimutuel activity.	58.3%	11.1%	11.1%	19.5%

	Strongly Agree or Agree	Don't Agree or Disagree	Disagree or Strongly Disagree	No Opinion or Don't Know
22. Confidential records received by the Commission are kept locked and access is limited.	48.6%	8.1%	16.2%	27.0%
23. All records maintained by the Commission are organized and filed in such a way that they can be quickly and easily located.	32.4%	18.9%	24.3%	24.3%
24. As a staff member, I have adequate authority to carry out my responsibilities without undue interference.	83.8%	0.0%	16.2%	0.0%
25. If I identify and report problems related to the tracks, I feel confident that top-management and the Commission will take appropriate action.	59.5%	18.9%	21.6%	0.0%
26. The Commission has an adequate number and type of staff in each operational area to carry out duties.	41.7%	16.6%	41.7%	0.0%

26a. If you marked disagree or strongly disagree to question 26, please indicate below which area(s) you feel is not properly staffed.

- 14% Management
- 11% Security
- 10% Accounting
- 11% Parimutuels Auditing
- 11% Judges and Stewards
- 11% Licensing
- 13% Personnel
- 6% Animal Health
- 11% Support Staff
- 2% Other (please state _____)

Please explain your answer to 26a:

Additional Comments:

Survey of Past and Current Commissioners

The Legislative Post Audit Committee has directed the Legislative Division of Post Audit to conduct a performance audit of the Kansas Racing Commission. The main objective of the audit is to determine if the Commission (members and staff) has effectively enforced the provisions of the Kansas Parimutuel Racing Act. To help us meet this objective we are conducting a survey of current and past Commissioners.

We would appreciate if you would take the time to answer the following questions. This survey does not require that you give your name. The results will be tabulated and reported in such a way that you cannot be personally identified, but the returned surveys will be included in the audit working papers which will become part of a public document once the audit is completed.

Please return the completed survey in the enclosed, self-addressed, post-paid envelope by Monday, November 13, 1995. If you have any questions related to the survey, please contact Leo Hafner or Cindy Lash at Legislative Post Audit, 8th and Jackson, Topeka, KS 66612, (913) 296-3792.

For each of the following statements, please circle one of the following responses:

1 = Strongly Agree

2 = Agree

3 = Don't Agree or Disagree

4 = Disagree

5 = Strongly Disagree

6 = No Opinion or Don't Know

	Strongly Agree or Agree	Don't Agree or Disagree	Disagree or Strongly Disagree	No Opinion or Don't Know
1. The Racing Commission should regulate the racing industry in Kansas.	100.0%	0.0%	0.0%	0.0%
2. The Racing Commission should promote parimutuel racing in Kansas.	63.7%	27.3%	0.0%	0.0%
3. The Racing Commission should promote the breeding of racing animals in Kansas.	81.8%	9.1%	9.1%	0.0%
4. The Racing Commission should maximize revenues to the State by helping to ensure the tracks remain financially sound.	90.9%	0.0%	0.0%	9.1%
5. The Racing Commission should maximize revenues to the State by ensuring all taxes and fees are collected from the tracks and remitted to the State.	100.0%	0.0%	0.0%	0.0%

6. Please list the dates you served on the Commission
 Year Appointed
 Year Term Ended

For each of the following questions, please circle "yes", "no", or "no opinion" and provide a brief explanation for your answer if required.

- | | | | |
|---|-------|-------|---------------|
| 7. During the time you served on the Commission, was administrative staff generally qualified for their jobs? | Yes | No | No
Opinion |
| | 88.9% | 11.1% | 0.0% |

If you answered **no**, please state why you feel staff was not qualified.

- | | | | |
|--|-------|-------|---------------|
| 8. During the time you served on the Commission, was the number and type of staff in each operating area adequate to carry out duties?
(Divisions include management, security, accounting, licensing, parimutuels auditing, stewards and judges, personnel, animal health, support staff, other) | Yes | No | No
Opinion |
| | 60.0% | 40.0% | 0.0% |

If you answered **no**, please state which divisions were not adequately staffed and why.

- | | | | |
|--|-------|-------|---------------|
| 9. Do you have any concerns about current vacancies in high-level staff positions at the Commission? | Yes | No | No
Opinion |
| | 60.0% | 10.0% | 30.0% |

If you answered **yes**, please describe your concerns.

- | | | | |
|---|--------|------|---------------|
| 10. Did you receive adequate and timely information from staff to make informed decisions while you served on the Commission? | Yes | No | No
Opinion |
| | 100.0% | 0.0% | 0.0% |

11. Did you receive adequate and timely information from the Kansas Bureau of Investigation staff while you served on the Commission?	Yes	No	No Opinion
	100.0%	0.0%	0.0%

12. In your opinion, are the current statutes and regulations adequate to regulate the racing industry?	Yes	No	No Opinion
	70.0%	30.0%	0.0%

12a. If you answered no to question 12, do you think the statutes and regulations are: – too restrictive on the industry?	Yes	No
	66.7%	33.3%

– not restrictive enough on the industry?	Yes	No
	33.3%	66.7%

13. Please make any overall comments you have on the effectiveness of the Racing Commission (members and staff) in regulating the racing industry in the space below or attach additional pages.

Survey of Organization and Facility Owner/Manager Licensees

The Legislative Post Audit Committee has directed the Legislative Division of Post Audit to conduct a performance audit of the Kansas Racing Commission. The main objective of the audit is to determine if the Commission has effectively enforced the provisions of the Kansas Parimutuel Racing Act. To help us meet this objective we are conducting a survey of the organization licensees and facility owner/manager licensees.

We would appreciate if you would take the time to answer the following questions. The returned surveys will be included in the audit working papers which will become part of a public document once the audit is completed. Please return the completed survey in the enclosed, self-addressed, post-paid envelope by November 13, 1995. If you have any questions related to the survey, please contact Leo Hafner or Cindy Lash at Legislative Post Audit, 8th and Jackson, Topeka, KS 66612, (913) 296-3792.

1. Please indicate your affiliation with the Kansas Racing Commission:

Organization Licensee - please circle one:

Wichita Greyhound Charities TRAK East TRAK Southeast

Facility Owner/Manager - please circle one:

Wichita Greyhound Park The Woodlands Camptown Greyhound Park

2. Have you encountered any specific problems with Commission policies or procedures for issuing occupational licenses? Yes No
75.0% 25.0%

If **yes**, please describe these problems:

- License fees for some occupations are too costly for some positions, especially those that only pay minimum wage.
- The Commission office at the track may close for the day or shut down early with little or no notice which is an inconvenience to the track and any new employees scheduled to begin work that must be licensed.
- The procedure for approval of Racing Officials is burdensome.
- A Racing Official license should allow a person to perform in other capacities without additional licensing fee and requirements.
- Background investigations take too long to complete.

- | | | |
|---|-------------|--------------|
| 3. Have you encountered any specific problems with Commission policies or procedures for approving contracts and agreements? | Yes
0.0% | No
100.0% |
|---|-------------|--------------|

If **yes**, please describe these problems:

- No problems reported

- | | | |
|--|--------------|-------------|
| 4. Have you encountered any specific problems with Commission policies or procedures for filing contracts and agreements? | Yes
33.3% | No
66.7% |
|--|--------------|-------------|

If **yes**, please describe these problems:

- Communication from the Commission was vague regarding the type of contracts and agreements that are required to be filed with the Commission.

- | | | |
|--|--------------|-------------|
| 5. Have you encountered any specific problems with Commission policies or procedures for auditing parimutuel wagering? | Yes
66.7% | No
33.3% |
|--|--------------|-------------|

If **yes**, please describe these problems:

- The reporting of simulcast expenses requires the track to estimate some expenses that results in later corrections to reports issued and fees paid by the track.

- | | | |
|---|-------------|--------------|
| 6. Does the Commission's annual review provide information that is useful in track operations or aids in compliance with laws and regulations?
If no , please list suggestions for improvement: | Yes
0.0% | No
100.0% |
|---|-------------|--------------|

- The Annual Review is no longer beneficial to the tracks.

- | | | |
|---|--------------|-------------|
| 7. Have you encountered any specific problems with Commission policies or procedures governing animal health? | Yes
75.0% | No
25.0% |
|---|--------------|-------------|

If **yes**, please describe these problems:

- The requirement to change sand in the kennel turnout pens once every 12 months provides no benefit.
- The examination of greyhounds prior to post is too lengthy.
- Animal Health Officers should be able to take a more active role in emergency situations.
- Kennel owners should be allowed to decide when the greyhounds can run .

8. Have you encountered any specific problems with Commission policies or procedures regarding safety and security at the track?	Yes 100.0%	No 0.0%
--	---------------	------------

If **yes**, please describe these problems:

- Kansas needs a standard ID for all Kansas tracks.
- Due to declining attendance level and the low number of security-related incidents at the tracks, the Commission should review its policies regarding the required number and placement of track security officers.

9. Have you encountered any specific problems with Commission hearing procedures for alleged violations of statutes or regulations?	Yes 100.0%	No 0.0%
---	---------------	------------

If **yes**, please describe these problems:

- The Commission staff needs to do a better job in communicating information regarding hearings called by the Board of Judges.
- Judges are not properly trained in hearing procedures.
- Fines for drug violations on horses are “the laughing topic of conversation on the backside”.

10. Have you encountered any specific problems with Commission policies and procedures governing simulcasting?	Yes 0.0%	No 100.0%
--	-------------	--------------

If **yes**, please describe these problems:

Although two respondents did not answer “yes” or “no to this question, they made the following comments:

- Approval of simulcast contracts is slow.
- Reporting individual races added to programs and signal problems is cumbersome.
- Mutuel teller payroll should be included in costs that may be deducted from gross simulcast revenues when determining the net revenues that are split 50/50 between the track and the breed groups.

11. Do you have any concerns about current vacancies in high-level staff positions at the Commission?	Yes 75.0%	No 25.0%
---	--------------	-------------

If **yes**, please describe any problems that resulted from the vacancy(ies):

- The high rate of turnover in Executive Directors and Commissioners has made consistency in operating procedures difficult.

For the following question, please circle one of the following responses:

1 = Excellent 3 = Unsatisfactory 5 = No Opinion
 2 = Satisfactory 4 = Very Unsatisfactory

	Excellent	Satisfactory	Unsatisfactory	Very Unsatisfactory	No Opinion
12. How would rate the current Commission on the following:					
Fairness in dealing with issues affecting your operations?	0%	75%	25%	0%	0%
Timeliness in dealing with issues you bring before the Commission?	0%	50%	50%	0%	0%
Overall effectiveness in regulating the racing industry in Kansas?	0%	75%	0%	25%	0%

13. Please list the name and phone number of the person completing the survey or someone we may contact for follow-up on any concerns noted in the survey.

Name _____

Phone _____

APPENDIX C

Summary of Survey Responses from Other States

On November 1, 1995, we mailed surveys to racing regulatory agencies in Arkansas, Arizona, Colorado, Iowa, and Oregon. We received responses from Arizona, Colorado, and Iowa. This appendix is a summary of selected responses from the returned surveys.

Area Reviewed	Kansas Racing Commission (data is for fiscal year 1995)	Arizona Racing Commission (data is for fiscal year 1995)
Total Agency or Racing Staff	51	56 (does not include 2 County Fair)
Operating Expenditures Only:	\$2,851,497	\$2,570,590
Salaries and Wages	\$1,839,395	\$1,671,082
Total Handle	\$219,146,713	\$259,244,912
Average Staff Member Salary	\$36,067	\$29,841
Number of Commercial Horse Tracks	1	2 (a)
Number of Commercial Dog Tracks	3	3
Total weeks of horse racing	12	49
Total weeks of dog racing	112	122
Track Ownership	Tracks are owned and managed by for-profit corporations. Racing licenses are issued to nonprofit organizations.	All of the tracks are owned by different individuals or corporations. Two of the tracks are operated by nonprofit organizations. Racing licenses are issued to track owners.
Occupations Required to be Licensed	Horse/greyhound owners and anyone whose work is conducted within a racetrack facility owned or leased by an organization licensee (44 categories)	All persons participating in any capacity must be licensed. (50 categories)
Disclosure of Reasons for Rejecting Applicants	Reasons for denial may be disclosed in a KAPA hearing for all licensees other than organization licensees and facility owner/manager licensees.	Reasons for denial are reported in writing to applicant and to the ARCI.
Monitoring compliance with laws and statutes in general, for animal health, and licensing	Security staff monitor activities of employees and patrons, monitor jockeys, administer drug tests to jockeys, inspect jockeys and their lockers, inspect barns and kennels, investigate patron complaints conduct background investigations, work with KBI on criminal violations. Animal health staff conduct drug testing and physical exams of racing animals, inspect barns and kennels, work with contagions, check sanitation, remain trackside during races in case of an emergency. Licensing staff perform ARCI checks on all applicants, review proofs of racing programs to ensure trainers, owners and kennels are licensed, track information on simplified and KAPA hearings.	Security staff monitor all licensing activities, jockeys' quarters, paddock, starting gate, and horse test barn. The agency maintains a dialogue with the State Veterinarian concerning disease outbreaks and coordinating preventative measures. The agency conducts all licensing. Licensing and Investigations Division completes all processing prior to approval by stewards.
Monitoring and Auditing of Parimutuel Wagering	Audit work is performed on the following: simulcast revenues and expenses for all incoming signals, breakage, payouts from wagering pools, track take-out, purses, admissions tax, parimutuel tax, unclaimed ticket proceeds, and test tote system when new simulcast signals are brought in or when major system software updates are made.	Parimutuel tax receipts are verified daily. Tote tests to verify correct payout of different wagers, requests for tote reports, and visits to tote rooms are done periodically.
Location of Auditors	Currently an auditor at Wichita and Camptown.	Auditors are not present at each track to monitor daily parimutuel activities.

(a) The number of horse tracks includes a county fair track with a season similar in length to the Woodlands.

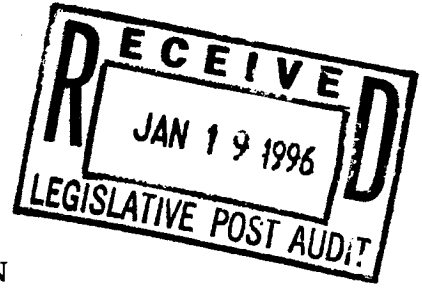
Colorado Racing Commission (data is for calendar year 1994)	Iowa Racing & Gaming Commission (data is for calendar year 1994)
38.5	39
\$1,964,280	\$1,551,006
\$1,504,279	\$1,309,215
\$220,885,928	\$101,292,310
\$39,072	\$33,570
1	1
5	2 plus 1 with license in question
16	12
105	92
All of the tracks are owned and operated by for-profit corporations who also receive the racing license.	Tracks are owned or operated by cities, nonprofits, for-profit corporations, or counties. Racing licenses are issued to nonprofit organizations.
All persons working or operating at the track are required to be licensed. (48 categories)	All persons participating in any capacity in a race meeting are required to obtain a license from the Commission. (37 categories)
They disclose general information, i.e. applicant failed to reveal record of criminal convictions, to provide both the applicant and Division Field staff with the reason for proposed denial. They also disclose general reasons to the ARCI.	Reasons are disclosed to applicant only.
Security staff perform kennel/stable inspections, OTB inspections, wagering and totalisator monitoring. Kennels and stables must be inspected annually. Few resources are devoted to licensing compliance. Quarterly performance measures show growing noncompliance as evidenced by the number of falsified applications and applications requiring investigations.	All monitoring for law and rule violations is done by the Gaming Representatives and the Division of Criminal Investigation agent assigned to the track. If a law violation is cited, it is turned over to the Division of Criminal Investigation agent who will follow through with criminal charges. Any rule violation is turned over to the Gaming Rep. for administrative action. Gaming Reps/stewards, assigned to live race meet, conduct kennel/stable inspections to ensure that tracks are complying with laws and regulations and making sure that the animals are being cared for. All background checks are conducted by the Div. of Criminal Investigation. Any criminal information discovered, not listed on the application, is turned over to the Gaming Rep for administrative action.
Compliance officers at the track are available to answer questions and make some limited decisions. They test all new versions and updates of software or hardware, and are present when "outs" are purged. They conduct pre-meet tote tests, supervise testing with new simulcast hosts, receive and investigate tote or mutuel incident reports submitted by the licensees and sometimes send out people to investigate rumored or suspected activities or malfunctions.	Licensing Assistants assigned to each track verify that all parimutuel information received from the track is correct.
No auditors at the tracks. Compliance officers perform some auditing duties.	No auditors in the agency.

APPENDIX D

Agency Response

On January 9, we provided a copy of the draft audit report to the Kansas Racing Commission. Their response is included as this appendix.

STATE OF KANSAS



KANSAS RACING COMMISSION

3400 Van Buren
Topeka, Kansas 66611-2228
(913) 296-5800
FAX (913) 296-0900

January 19, 1996

Ms. Barbara Hinton
Legislative Post Auditor
Legislative Division of Post Audit
800 SW Jackson
Mercantile Bank Tower, Suite 1200
Topeka, KS 66612-2212

Dear Ms. Hinton:

Please find enclosed the agency's response to the Legislative Post Audit report on the Kansas Racing Commission. Please do not hesitate to contact me if you have any questions or concerns regarding these responses.

Respectfully,

A handwritten signature in cursive script, appearing to read "Myron E. Scafe".

Myron E. Scafe
Executive Director

96MES6-cd

Enclosure

Reviewing the Regulatory Activities Of the Kansas Racing Commission

1. Background investigations are not always conducted on a timely basis.

Agency Response:

Since the commission's current security director came on board in July, 1993, every attempt has been made to complete backgrounds in a timely manner. Several activities during that period interfered with that effort.

- a. *Camptown Greyhound Park came on line in May, 1995 which required a large number of backgrounds to be conducted at one time. The commission security staff (3) devoted as much time as possible to complete this task and not stop security at the other two operating tracks.*
- b. *Hollywood Park background. Background information from Hollywood Park was very slow in being return to the commission. Thirteen individual backgrounds, plus a corporate background were conducted covering a larger geographic area. It wasn't until March 1995 that the information requested for one of the directors was received from Hollywood Park.*
- c. *United Tote. K.S.A. 74-8837 was passed by the legislature in 1992. In June 1992 the commission passed a recommendation that in-house security conduct the background. Apparently no action was taken until March 1993 when a survey was made by commission staff to determine in what states United Tote was licensed. In March 1994 Video Lottery Technologies was in the process of purchasing United Tote. This purchase was completed in May 1994. In April 1994 the commission voted that K.B.I. background investigations be conducted on all totalisator companies. In June 1994 a request was made to the K.B.I. to conduct the background investigation of United Tote which had recently been sold to Video Lottery Technologies. Backgrounds were put on hold until September 1994 when a new request was made for background information from Video Lottery Technologies which consisted of 16 individual backgrounds and one corporation background. Several months ago it was revealed that Video Lottery Technologies was negotiating the sale of United Tote back to the original owner. This sale would reduce the number of individual backgrounds required. After receiving a preliminary background report on Video Lottery Technologies at its November 17, 1995 meeting, the commission approved United Tote conditioned on satisfactory completion of the background investigation by the K.B.I. During this time the K.B.I. was doing extensive work on financial investigations for Camptown which was a priority so it could open.*

Commission employee backgrounds.

It is the current commission's policy that no commission employee start work until a background is completed.

2. Assistant animal health officers have not tested all winning greyhounds for controlled substances, as required by State regulations.

Agency Response:

The present commission was not aware that any animal health officer did not know of the requirement to test all winning greyhounds. Neither was the commission aware of the commission's animal health officer's opinion that the law should be changed.

The integrity of the testing program is a priority of the commission. The commission will take immediate action to deal with these weaknesses.

3. When animals have been found to have controlled substances in their systems, the Commission's hearing officers have not imposed strong penalties.

Agency Response:

Legal has been conducting an ongoing review of the manner in which hearings on all types of parimutuel racing act and commission rule and regulation violations are being handled. Among the recommendations to the commission that are expected to be forthcoming from this review is a recommendation that all positive drug test results be forwarded to the litigation and disciplinary counsel for the filing of a formal petition for disciplinary action and request for a hearing pursuant to the Kansas Administrative Procedures Act (KAPA) to be conducted by a commission appointed hearing officer other than a steward or racing judge. It is counsel's opinion that the commission's simplified hearing procedures were never intended to be used for these kinds of serious disciplinary matters. The commission should also consider setting up a penalty matrix similar to the criminal sentencing guidelines so that hearing officers will have some guidance as to what the commission feels should be appropriate penalties for different types of offenses.

4. The Commission has allowed unlicensed individuals to judge races, in violation of the Parimutuel Racing Act.

Agency Response:

Procedures are now in place to ensure that all stewards and racing judges are licensed after passing the commission's written exams and to make certain it doesn't happen again.

The commission disagrees that the Acting Executive Director should have been licensed and that the circumstances under which she acted as a racing judge did not constitute an emergency.

Due to the following circumstances, the racing commission experienced a shortage of full-time and alternate racing judges.

- *Chief Judge, Camptown, was terminated August 22, 1995;*
- *Associate Judge, Woodlands, resigned September 8, 1995;*
- *Associate Judge, Wichita Greyhound Park, on vacation and extended sick leave September 18 to November 1, 1995;*
- *Associate Judge, Camptown, resigned November 1, 1995;*
- *Associate Judge, Wichita Greyhound Park, resigned November 1, 1995.*

Traditionally, there has been little turnover in these positions. Therefore, the alternates have handled most situations. The list of alternates included only three individuals who were already scheduled or unavailable.

An emergency existed because there were no qualified applicants to serve as alternate racing judges. The following criteria was used:

- *The level and mix of experience for the three judges at each racetrack (it was necessary at times to juggle judges from track to track to keep the best mix of experience).*
- *Whether the commission had approved the employee's background.*
- *Whether there were three judges on duty at all times.*

It would be fair to say that generally an emergency would be something that might occur at the last minute, an illness on the judge's part, but this would be the first time in our history that we did not have a sufficient number of qualified backup personnel. The necessity to have three judges available for each racing performance was, in the agency's opinion, an emergency.

K.A.R. 112-6-2. Commission officials, racing judges. (d) If a vacancy occurs among the racing judges, a substitute may be appointed by the chief judge in an emergency. The Deputy Director, under the authority as Acting Executive Director, made a conscious business decision to utilize existing commission staff to fill vacant full-time racing judge positions due to the extenuating circumstances.

5. In a few cases, Commission staff didn't identify owners or trainers who weren't properly licensed.

Agency Response:

Legislative post audit indicated that one person was licensed as a Fair Owner rather than an Owner and raced at Wichita Greyhound Park on November 18, 1995. A check of the licensing records indicates the individual was licensed as a 3 Year Owner on November 11, 1995. Legislative post audit also stated the other three individuals not properly licensed were Kennel Owners listed as Trainers in the program who were not licensed as Trainers. It was verified with the Chief Judge at Kansas City that Kennel Owners at the Woodlands have been permitted to operate as Trainers without a Trainer's license. All kennel owners are now required to be licensed as trainers before performing any duties of a trainer.

Licensing Division does have a written procedure for checking the race program proof prior to each performance and prior to schooling races. The clerks have several tools available to check the proofs. The tools include a licensee list, a multiple ownership list, kennel/stable name list and the kennel roster, all of which can be generated from the computer. The clerk at each track checks approximately 10-12 proofs per week for the greyhound races and 4-5 proofs per week during the horse race meet. This figures to approximately 510-612 greyhound proofs for each greyhound track and 56-70 horse proofs during the race meet at the Woodlands. Proofs are also checked at the county fair meets by the licensing clerks.

The current procedure will be evaluated to determine its efficiency and application at the tracks.

The Director of Licensing and the Computer Systems Analyst are working on establishing a check in the licensing program to prohibit the issuing of multiple licenses which are a conflict in the rules and regulations. A procedure is being developed to assist clerks, judges and stewards in determining when multiple licenses are a conflict and the necessary changes to the computer program will be pursued.

The six individuals who held improper combinations of licenses have either voluntarily cancelled one of their licenses or have terminated their employment at the racetrack facility.

6. The Commission doesn't have adequate procedures for following up on problems it finds in annual reviews of racetrack operations.

Agency Response:

In its annual review order the commission has begun including certain dates by which problems identified in annual reviews are to be corrected. These dates will then be docketed in a tickler file by commission staff for follow up to determine if the commission's orders have been complied with. If staff determines that a problem that has been ordered to be corrected by the commission has not been corrected by the date it should have been a request for hearing will be forwarded by commission staff to the commission's litigation and disciplinary counsel. The

commission's litigation and disciplinary counsel will then file a petition to convene a KAPA hearing before the commission to assess an appropriate penalty against the offending licensee for failure to carry out a commission order.

7. The Commission appears to lack sufficient audit capabilities at the racetracks.

Agency Response:

The commission is confident that the reconciliation of parimutuel taxes, which is a field auditor's primary duty, has not been compromised.

The audit of racetrack corporate finances was not previously considered to be a function of the inspector of parimutuels' field audit staff.

The commission has broadened the scope of audit functions to include, charities payments, purses, tote tests and simulcasting.

8. Commission auditors did not check to make sure breakage monies from greyhound racing are being accounted for properly by the racetracks.

Agency Response:

This area will now be covered by the expanded scope of the commission's audit function.

9. The Commission has not developed procedures for its security staff to follow.

Agency Response:

The commission is currently developing written policies and procedures for areas where they may be lacking.

10. Procedures for filing oral contracts and agreements need to be strengthened.

Agency Response:

Current statutory provisions and rules and regulations of the commission provide sufficient notice to the licensees of what kind of information relating to contracts must be filed with the commission. The required periodic filing of vendor payment and receipts lists by the tracks which has recently been instituted should provide legal staff with a starting point for comparison of who the tracks are conducting business with by comparing who the tracks are making payments to or receiving commissions from to the list of contracts on file with the commission. When a payment is identified that cannot be matched to a contract on file a written request for a copy of the contract or an explanation for the lack thereof will be sent to the licensee. The matter will then be forwarded

to the commission's litigation and disciplinary counsel for convening a KAPA hearing to impose a fine on the offending licensee for failure to file the contract as required. At its January 12, 1996 meeting the commission gave final approval to a regulation that has been in the works for the last several months which imposes a civil fine of \$50 per day for failure by a licensee to file any contract within five days after it has been entered into or failing to timely respond to a commission request for information.

11. Conflicts Between Commissioners and Executive Directors, As Well As Some Long-Term Vacancies In Key Positions, May Have Contributed to Weaknesses in the Commission's Operations.

Agency Response:

The Kansas parimutuel race act gives the Kansas racing commission broad authority in carrying out the intent of the Legislature and maintaining the interest of the people in Kansas. The differences in regulatory philosophy among the commission, the executive director, the staff, the governor and legislators has been the major weakness in carrying out the intent of the legislature protecting the interests of the people of Kansas. This weakness has been exploited by a powerful industry that would prefer less rather than more regulatory oversight.

The commission and staff have been criticized and charged with "micro managing" the racetracks when requesting information even though there was statutory authority to do so.

In order to guarantee that future commission members and executive directors maintain some continuity in regulatory philosophies and carrying out the intent of the Kansas Legislature, the Kansas racing commission recommends the legislature require regular periodic performance audits. The scope of the audit should include but not be limited to:

- ensuring the commission's minutes reflect actions taken by the commission to enforce the Kansas parimutuel racing act and its administrative regulations;*
- ensure the requirements of all other audits are carried out from year-to-year.*

12. Differences in approaches to regulation over the years seem to have manifested themselves in turnover in the Executive Director position.

Agency Response:

The Kansas Racing Commission has progressed from a start-up agency to an agency in transition. During FY 95 there have been changes in the governor's office, commission executive directors, commission chairpersons and commission members. It has been reported that controversy and difference of opinion in the commission's regulatory responsibilities existed among commissioners. This no longer appears to be the case.

The commission and staff believe the following would ensure less disruption during transition periods.

- *a mission and philosophy statement be adopted by the commission and incorporated in the official minutes*
- *the executive director have the discretion and authority to handle daily administrative and personnel matters, and regulatory or other matters as designated by the commission and as ratified in the official minutes*
- *written policies and procedures be approved by the commission and incorporated in the official minutes.*

The 1995 Legislature's action to make the appointment of the commission chair and the executive director a gubernatorial responsibility should increase the accountability of the persons holding those positions and help to ensure compatibility between the regulatory philosophies of those persons.

13. Vacancies in the Executive Director position and in a number of other high-level positions have negatively affected the agency's ability to carry out its responsibilities.

Agency Response:

Vacancies in key positions in FY 95 have been the primary reason for the delay in developing written procedures. The vacancy in the position of the inspector of parimutuels has left a weakness in the area of corporate finance. The commission concurs that the timely filling of vacancies in key positions is critical.

14. The Commission has approved financial arrangements for payments to charity that don't appear to comply with the law.

Agency Response:

K.S.A. 74-8813(d) requiring parimutuel non-profit organizations to distribute their "net earnings" from the conduct of horse and greyhound races to charitable organizations does not define "net earnings." Each of the three major racetracks have entered into lease management agreements that effectively set the rental and management fees to be paid to the facility owner manager licensee as whatever is left over after paying expenses. In exchange for that arrangement the respective organization licensee receives either a fixed minimum dollar amount or percentage off the top of the total handle whichever is greater. Arguably, the amounts paid to the organization licensees as minimum payments or percentages off the top of the handle then represent the "net earnings" of the organization licensee which are distributed to charity. Each of the parties that have entered into these types of arrangements believed, as the commission at that time apparently also believed, that this arrangement would maximize the amount of money available for distribution

to charitable organizations through the non-profit organization licensees. Hindsight would seem to bear out that this belief was correct. To say that these arrangements violate the law may overstate the case. The law is not "clear and unambiguous." Therefore, the agency charged with interpreting and enforcing the law has significant discretion in determining how best to carry out the law's intent.

15. The Racing Commission relied on a State Supreme Court decision as its basis for establishing a horse racing season at the Woodlands that is shorter than the statutes appear to call for.

Agency Response:

The commission is seeking to introduce legislation in the 1996 legislative session to clarify that the 20% rule means 20% "live" racing.

16. The Linton report has been controversial.

Agency Response:

The commission finds both areas agreement and disagreement with the Linton report. On those portions where there is agreement, action has been taken and where there is disagreement an explanation is stated in the soon to be released commission response now in final draft form.

