



INSPECTOR GENERAL REPORT

2010-01-0025

September 2, 2011

HORSE RACING COMMISSION

Inspector General David O. Thomas and OIG Attorney Kristi Shute, after an investigation by OIG Special Agent Michael Mischler and Indiana State Police Detective Paul Baker, report as follows:

Summary

A review of the Indiana Horse Racing Commission reveals no criminal or code of ethics violations, but results in multiple findings and recommendations.

This report reviews the Indiana Horse Racing Commission (HRC). The purpose of the HRC, established in 1989, is to develop the Indiana horse racing community and regulate pari-mutuel wagering on Standardbred (trotters and pacers), Thoroughbred, and Quarter-horse racing in Indiana. Horse racing wagering occurs in two locations in Indiana, namely at Hoosier Park in Anderson, Indiana, and Indiana Downs in Shelbyville, Indiana. Wagering also occurs at certified off-site locations.

Pari-mutuel betting, “pari-mutuel” being a French term meaning mutual betting, is a wagering system in which all bets of a particular type are placed together in a pool. Taxes and a house "take" or "vig" are then removed, and payoff odds are calculated by sharing the pool among all winning bets.

Pari-mutuel wagering is statutorily defined in Indiana as “a system of wagering in which those persons who wager on horses that finish in specified positions share the total amount wagered, minus deductions permitted by law.” IC 4-31-2-12.

This report will first briefly discuss the history of pari-mutuel horse race wagering in Indiana. Second, we will outline the jurisdiction of the Office of the Inspector General (OIG) and address the scope of our investigation. Third, this report will make several findings and recommendations.

I

Horse racing has a rich heritage in Indiana, starting in the 19th century.¹ The 1851 Indiana Constitution, however, prohibited gambling, which prevented pari-mutuel betting on horse racing.²

In 1988, sixty-two percent (62%) of Hoosiers voted to remove this

¹ Those within the horse-racing industry understand the significance of the famous pacer Dan Patch being born in Oxford, Indiana. On September 8, 1906, Dan Patch set the one-mile world record at the Indiana State Fair Grounds with a winning time of one minute and fifty-five seconds, earning the title the "World's Champion Harness Horse" and the “greatest harness horse in the history of the two-wheel sulky.” This crown and one-mile world record has been equaled only once but never broken. *See authorities cited currently at: www.danpatch.com.*

² Indiana Constitution, Article 15, Section 8 (1987).

constitutional ban.³

In 1989, legislation was then passed which created the Indiana Horse Racing Commission⁴ to oversee pari-mutuel gambling in horse racing. The State Lottery Commission was created that same year.⁵ State-sponsored charitable gaming followed in 1992,⁶ and in 1993, legislation permitting the state's riverboats to operate was enacted.⁷

In 1994, the first pari-mutuel horse track opened at Anderson, Indiana.⁸

Later in 2007, legislation was passed which permitted the operation of electronic (Racino) gaming at the state's two pari-mutuel horseracing tracks.⁹

II

The OIG, created in 2005, is charged to investigate and "recommend policies and carry out other activities designed to deter, detect, and eradicate fraud, waste, abuse, mismanagement, and misconduct in state government." IC 4-2-7-3.

Several entities requested a review of the HRC, including a member of the

³ See: *Indiana Racing and Breeding Industry Survey Report* (Economic Impact Study 2010), page 1, currently cited on the HRC website: <http://www.in.gov/hrc/2469.htm>.

⁴ See: IC 4-31 (1989)(horse racing).

⁵ See: IC 4-30 (1989)(lottery).

⁶ See: IC 4-32.2 (1992)(charitable gaming).

⁷ See: IC 4-33 (1993)(riverboat gaming).

⁸ See: *Economic Impacts of Indiana's Pari-Mutuel Horse Industry on Indiana*, at page 2, Purdue University Department of Agricultural Economics (2001).

⁹ See: IC 4-35 (2007).

Indiana Legislature, the Office of the Governor, and various persons within the horse racing community. Over 100 witnesses were interviewed. Legal research and the review of articles involving the Indiana and nation-wide horse racing communities were also made. A review of the HRC enabling statute (IC 4-31 and 35) and promulgated rules (71 IAC) was also made. Economic studies performed by Purdue University were also examined. The Executive Director and Chair of the HRC were interviewed, and provided the opportunity to file a response to this report, which is attached as Exhibit A.

III

Based upon this information, the OIG makes the following findings and recommendations.

A

Our investigation revealed no criminal or Code of Ethics (42 IAC 1-5) violations.

B

Many complaints were made to the OIG during the course of our investigation, some of which were unmeritorious, but the majority of which centered on the HRC adjudication process. Adjudication is the process of the HRC issuing and processing complaints against those in the horse racing community, such as rule violations resulting in monetary fines, suspensions or

other disciplinary actions.

We make the following recommendations regarding HRC adjudication. It is our belief that these recommendations may address the majority of the complaints, meritorious or unmeritorious, we examined and may prevent future complaints with an improved adjudication process.

These recommendations are limited to complaints initiated by the HRC, such as when HRC employees issue a fine, suspension, or disciplinary action. *See: 71 IAC 10.* The OIG recognizes that in order to maintain an orderly caseload, the HRC must retain its ability to screen from full adjudication the complaints it receives from non-HRC complainants such as members of the horse racing community and the general public. However, these non-HRC member complainants retain a legal remedy to pursue their complaints against the HRC, as with any state agency, through the judicial review process of the Administrative Orders and Procedure Act (AOPA). IC 4-21.5.

It is further recognized that HRC staff must retain their ability to issue fines and suspensions in a post-deprivation hearing manner (a complainant's hearing to contest the violation is after the violation is first issued). For example, in order to preserve the integrity of racing, HRC judges must have the authority to immediately suspend jockeys, drivers and trainers who commit serious violations. Likewise, monetary fines should only be payable by the wrongdoer at the conclusion of the HRC adjudication process, as is done in traffic and criminal dockets throughout Indiana and the many states. See e.g. IC 35-50-1-1 (fine and penalty fixed and payable only after the conviction, not the arrest or issuance of a

ticket or summons).

1

We recommend the HRC in its statutory discretion (or the Indiana General Assembly through legislation) eliminate the initial and duplicative Disciplinary Hearing procedure. Instead, HRC complaints should be directly adjudicated before the HRC Commission.¹⁰ Alternatively, if the duplicative Disciplinary Hearing procedure is retained, several procedural safeguards should be instituted to improve its fairness in both appearance and substance.

Currently, the HRC is authorized, in its discretion, to adjudicate complaints in the field through a Disciplinary Hearing.¹¹ IC 4-31-13-2; 71 IAC

¹⁰ We recognize that an adjudication by an Administrative Law Judge appointed by a Commission is a common alternative in many Indiana administrative adjudications. Although we believe, as addressed below, a bi-partisan Commission adds a benefit to any adjudication, we believe that most of these recommendations can be accomplished by the HRC in retaining its current use of an ALJ functioning on behalf of the HRC Commission. Accordingly, we refer herein to the HRC Commission in the adjudicatory process with the recognition that an ALJ may perform that function.

¹¹ IC 4-31-13-2, Disciplinary hearings; suspension of license; limitation of actions; appeal
Sec. 2. (a) The commission may adopt rules under IC 4-22-2 to delegate to the stewards and judges of racing meetings under the jurisdiction of the commission the power to conduct disciplinary hearings on behalf of the commission. The stewards and judges shall give at least twelve (12) hours notice of any such hearing. The stewards and judges, on behalf of the commission, may impose one (1) or more of the following sanctions against a licensee who violates this article or the rules or orders of the commission:

- (1) A civil penalty not to exceed one thousand dollars (\$1,000).
- (2) A temporary order or other immediate action in the nature of a summary suspension if a licensee's actions constitute an immediate danger to the public health, safety, or welfare.
- (3) Suspension of a license held by the licensee for not more than sixty (60) days. The suspension of a license under this subdivision is:
 - (A) valid even though the suspension extends beyond the period of the racing meeting for which the stewards and judges have been appointed; and
 - (B) effective at all other racing meetings under the jurisdiction of the commission.
- (4) A rule that a person must stay off the premises of one (1) or more permit holders if necessary in the public interest to maintain proper control over recognized meetings.
- (5) Referral of the matter to the commission for its consideration.

10-2-2.

We view this current procedural system (the adjudication) as the root of many, if not most, of the complaints we reviewed. We speculate that the Indiana Legislature may have intended to provide an immediate, responsive adjudication in the field for the benefit of the horse racing community with this Disciplinary Hearing authorization. Our investigation, however, revealed that this current system provides many challenges which may, in fact, be detrimental to the horse racing community as the adjudication is currently being applied by the HRC.

First, the HRC staff in the field adjudicating the citations are the same persons (or their co-workers) who have issued the violations, thereby challenging the appearance of impartiality.¹²

Second, this current procedure loses the independence the HRC *Commission* could add by being the adjudicating body. Not only would the HRC

However, at least two (2) of the stewards or judges at a racing meeting must concur in a suspension or civil penalty.

(b) The suspension of a license or the imposition of a civil penalty under this section must occur within sixty (60) days after the date of the violation.

(c) A suspension or civil penalty under this section may be appealed to the commission. The commission shall adopt rules establishing procedures for appeals and stays of appeals.

¹² There are examples where Indiana government permits its officials to sit in judgment of (and perhaps correct) their previous actions. *E.g.* Indiana Trial Rule 59 (Motion to Correct Error). However, even though procedural rules are often relaxed in administrative hearings, *e.g.* IC 4-21.5-3-25 (“The administrative law judge shall regulate the course of the proceedings . . . in an informal manner without recourse to the technical, common law rules of evidence applicable to civil actions in the courts”), a “fair trial in a fair tribunal is a basic requirement of due process. *This applies to administrative agencies which adjudicate as well as to courts.* Not only is a biased decisionmaker constitutionally unacceptable but our system of law has always endeavored to prevent even the probability of unfairness (citations omitted)(emphasis supplied).” *Withrow v. Larkin*, 421 US 35, 46-47, 95 S.Ct. 1456, 1464, 43 L.Ed.2d 712, 723.

Commission add the benefit of a new group of persons reviewing the citations by the HRC employees, it would reflect the independence of the Commission's bipartisan constitution. IC 4-31-3-1.

Third, the current HRC adjudication authorizes the duplication of time, energy and resources of both the aggrieved horseman and the HRC through a *de novo* (start all over again) review of the citation by the HRC Commission. 71 IAC 10-3-1. There even remains an additional adjudicative step which may occur if a suspension is issued. 71 IAC 10-2-3(b).

Despite not having a log of adjudications regarding the volume of current HRC adjudications (as addressed, *post*), it does not appear that the historic number of complaints challenged through adjudication would be unmanageable by the HRC as a volunteer commission. An example of a similar functioning protocol is the State Ethics Commission, where complaints are filed by the Inspector General, agreed settlements are most often reached, and the volunteer State Ethics Commission adjudicates those that aren't resolved, in addition to its other commission duties. IC 4-2-6-4.

In concluding this point, we recognize the valid concern raised on behalf of the Indiana horseracing community by the HRC staff in our exit process, pointing out that adjudications by the HRC Commission may impose travel time to the horse racing community in traveling to Indianapolis for Commission adjudications. If the HRC retains its current process of adjudicating by an administrative law judge (ALJ) as appointed by the HRC Commission, this concern might be resolved by requiring the HRC ALJ to travel to the racetracks or

areas more convenient to the alleged violator. In any event, we respectfully contend that the above points in pursuit of a fair adjudication process outweigh this valid travel concern, noting that actual adjudications are infrequent when compared to the number of citations issued and paid without further adjudication.

2

Whether or not the Disciplinary Hearing adjudication is retained, we make the following recommendations.

We recommend that the advance \$500 fee to adjudicate before the HRC Commission be eliminated. 71 IAC 10-2-9. We likewise recommend the elimination of the requirement of the payment of the “costs” by the unsuccessful complainant adjudicating before the HRC Commission. *Id.* The unsuccessful complainant currently incurs what could be substantial expense, defined as follows: “The costs of appeal shall consist of the cost of the court reporter, the cost of the transcript required for the appeal, and the cost of the administrative law judge.” *Id.*

With revenues in the horse racing process being substantial, we respectfully submit these adjudication costs should be incurred by the HRC, and that the current promulgation requiring these fees could be considered by some (and as alleged to the OIG by several complainants) as discouraging aggrieved members of the horse racing community from adjudicating before the HRC Commission, especially when these fees include the salary of the complainant’s judge.

9

These fees would likewise be unnecessary with a *single* adjudication to the HRC Commission as addressed above.

3

We also recommend the elimination or modification of the “preliminary report” procedure granted by promulgation to the HRC Executive Director. 71 IAC 10-3-20(b).¹³ We found this to be the most frequent complaint in our investigation, with allegations that the increases in fines were arbitrary.

Specifically, after the Disciplinary Hearing is concluded, a violation has been proven, and a fine has been issued, the HRC Executive Director currently has the additional and subsequent authority to adjust the penalty. *Id.*

In our exit process, HRC staff pointed out that IC 4-31-13-2 limits fines imposed by stewards and judges to \$1,000, and that this preliminary report process was instituted to elevate the more serious offenses to fines greater than \$1,000 under the statutory authority of IC 4-31-12-16 which permits the Commission (or the Commission’s designee) to impose fines up to \$5,000.

Although the language of 71 IAC 10-3-20 does not limit this preliminary

¹³ (b) The commission delegates to the executive director the authority to prepare and issue preliminary reports pursuant to the Act. If, after examination of a possible violation and the facts relating to that possible violation, the executive director determines that a violation has occurred, the executive director shall issue a preliminary report that states the facts on which the conclusion is based, the fact that an administrative penalty is to be imposed, the amount to be assessed, and any other proposed sanction, including suspension, or revocation. Furthermore, when the judges have issued a ruling that a violation has occurred, the executive director may issue a preliminary report identifying the underlying ruling that serves as the basis for the preliminary report, the fact that an administrative penalty is to be imposed, the *additional* amount to be assessed, and any other proposed sanction including *additional* suspension or revocation. The amount of the penalty may not exceed five thousand dollars (\$5,000) for each violation. Each day or occurrence that a violation continues may be considered a separate violation. In determining the administrative penalty, the executive director shall consider the seriousness of the violation (emphasis supplied).

report enhancement to those limited circumstances, the HRC staff also contends that this is necessary to ensure uniformity in fines between the various classes of horsemen.

We find this adjustment authority continues to promote complaints of arbitrary action and recommend the HRC modify this adjudication process to remove the apparent arbitrariness of the enhanced penalty process.

4

We also recommend the HRC staff compile and regularly update a log of all complaints and their dispositions, and that this information be regularly shared with the HRC Commission.

C

We respectfully recommend to the Indiana Legislature that the selection and reporting of the HRC Executive Director be similar to that at the Indiana Gaming Commission and Indiana Lottery Commission.

The Executive Directors of the Gaming and Lottery Commissions are appointed by, and serve at the pleasure of, the Governor. IC 4-33-3-18 and IC 4-30-5-1. In contrast, the HRC Executive Director is appointed by, and serves at the pleasure of, the HRC Commission. IC 4-31-3-10.

To maintain similar accountability, and due to the oversight of over \$140 million in annually wagered funds,¹⁴ we respectfully recommend the HRC

¹⁴ HRC Annual Report, page 7, currently online at: www.in.gov/hrc/files/09_Annual_Report.pdf.

Executive Director be directly accountable to an elected official.

D

We also were asked to investigate numerous allegations of inappropriate wagering.

1

Many complaints were made that jockeys and horse owners were illegally wagering on their own races.

However, a review of Indiana law, IC 4-31, and many other state jurisdictions throughout the nation, revealed that such conduct is not prohibited. *See Exhibit B, attached.*

The Indiana Legislature has delegated wagering restrictions to the HRC. IC 4-31-3-9.

We have received and considered various arguments as to why the lack of this prohibition to jockeys and owners is allegedly acceptable. If the Indiana Legislature wishes to curtail this activity, especially in light of the fact that over \$50 million currently is annually being paid in purse awards to these same persons,¹⁵ we respectfully recommend a statutory prohibition within IC 4-31-3-9.

2

Complaints were also made with regard to HRC employee wagering.

¹⁵ 2009 HRC Annual Report, at page 11.

The HRC has promulgated restrictions to prohibit its employees from wagering *at the track where they are employed*. 71 IAC 2-5-1(c) and (d).

Accordingly, HRC employees may bet on races at a track where they are not employed and at off-site locations. “Racing officials” are restricted only “while serving in an official capacity at a race meeting.” 71 IAC 3-1-3.

In contrast, the Indiana Gaming Commission prohibits its employees from any gaming, and extends this restriction to the employees’ spouses and agents. 68 IAC 9-4-2; IC 4-33-4-1 through 3.

Likewise, the Indiana Lottery Commission restricts lottery ticket purchases from its employees and those living within their households, contract vendors and persons within their households, and retailers and persons within their households. IC 4-30-12-2 through 4.

Due to the volume of complaints we received alleging inappropriate wagering, we likewise recommend that the HRC restrict its employees’ wagering to at least those prohibitions imposed by the Indiana Gaming Commission.

E

We were also asked to review the payment of legal expenses by the HRC. Unlike most state agencies, the HRC contracts the entirety of its legal services through private law firms.

We found the private legal contracts to have been properly approved by the Attorney General (IC 4-13-2-14.1 and IC 4-6-5-3), and the invoices for payment to be properly itemized. IC 5-11-10-1.

However, these private legal expenses exceed an annual amount of \$300,000.

We recommend the HRC evaluate and consider employing, similar to the Indiana Gaming Commission, the Indiana Lottery Commission, and most state agencies, internal general counsels, and to reserve the hiring of private counsel for areas of specialty. In addition to monetary savings, internal general counsels provide the benefit of full-time employees more familiar with the many aspects of Executive Branch government.

F

Assuming that a continued subsidy to the horse racing community is deemed proper by the Indiana Legislature, we respectfully recommend that the Legislature consider evaluating the amount of the subsidy and consider a monetary cap at pre-Racino figures.

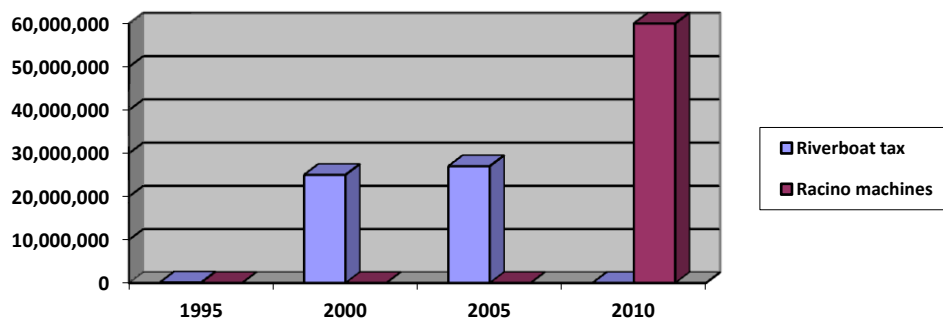
This subsidy is ultimately received by the Indiana horse community (rather than the HRC) through the Breed Development Funds. IC 4-31-11. The HRC reports that this subsidy (for example: \$28 million in 2009) is distributed to the Indiana horse community through purse supplements and awards to individual horsemen.¹⁶

The subsidy to the Indiana horse community has historically occurred in two ways. First, beginning in 1993, through a three-dollar (\$3) admission tax on

¹⁶ 2009 HRC Annual Report, at page 10.

riverboat gaming,¹⁷ and then in 2007, through legislation which authorizes a portion of the proceeds from Racino machines.¹⁸

A historic breakdown of these subsidies to the Indiana horse racing community are outlined on Exhibit C, attached, with the following five-year highlights:



Since its inception in 1993, the Indiana horse racing community has received, in total, over four hundred twenty-seven million dollars (\$427,000,000). *See Exhibit C, supra.*

Perhaps what commenced as a subsidy to jump-start an industry is in need of re-evaluation.

In addition to a discussion of this issue in the past legislative session,

¹⁷ See: *Economic Impacts of Indiana's Pari-Mutuel Horse Industry on Indiana*, at page 5, Purdue University Department of Agricultural Economics (2001).

¹⁸ HRC Annual Report, at page 10.

others have questioned this continuing subsidy.¹⁹

G

The OIG, as in many investigations, has received in this review valuable and extensive support from the Indiana State Board of Accounts (SBOA). We have also reviewed, endorse and recommend the review comments issued by the SBOA, a copy of which is attached hereto as Exhibit D.

The OIG stands ready to provide more research or information upon request of the Indiana Legislature or Office of the Governor.

Dated this 2nd day of September.

Respectfully submitted,

/s/ David O. Thomas, Inspector General

¹⁹ The Indiana Office of Management and Budget in its 2006 PROBE Report stated: “Between 1995 and 2005, nearly \$223 million of riverboat revenue has been allocated to the horse racing industry. In 2005, \$10.8 million went directly to the two race tracks, another \$10.8 million was allotted to purses, and \$5.4 million went to breed development funds (much of which is also used to supplement purses at the tracks). It is unclear if these subsidies are intended to exist in perpetuity, or if the horse racing industry is expected to become self-sufficient sometime in the future. Equally unclear is the economic return on the taxpayer dollars spent on these subsidies.”

Indiana Horse Racing Commission Response To Inspector General Report

The Indiana Horse Racing Commission (the "Commission") is appreciative of the joint efforts of the Inspector General and the Indiana State Police relative to the exhaustive, recently completed 16 month investigation that was prompted by "persistent rumors of illegal activity."¹ It comes as no surprise to the Commission that it has been fully exonerated. The report points to no wrongdoing of any kind by the Commission as a whole, any individual Commission member or by any member of the Commission staff.

Likewise, the Commission is not surprised by the calculated attacks that led to the circulation of rumors of "illegal activity." This is not the first time that fabricated charges have been levied against the Commission, its staff or other industry participants. Since my tenure as Chair began in 2005, I have sadly learned that spreading misinformation is an all-too-common way for a small number of industry participants to pursue their personal and/or political agendas.

I believe most all of the complainers disagree with the Commission's strong, proactive, integrity-based approach to regulation. Some others may disagree with us on regulatory policy decisions. The complainers are far outnumbered by the over 5,000 horsemen licensed each year by the Commission who display respect for and play within the rules that the Commission has established. These people quietly support the industry and horse racing regulation because they benefit by being able to compete on a level playing field.

As an example of our strong regulatory approach, I will offer the example of standardbred trainer, Noel Daley. Mr. Daley was refused a license to participate in Indiana racing in 2006. Mr. Daley was refused due to his history of positive tests and his possession of numerous controlled and dangerous substances, medications and drug paraphernalia that were discovered during a prior search at his stables in New Jersey. Mr. Daley served his agreed penalty in New Jersey and was subsequently licensed in that state, Kentucky, Illinois and Ohio. When Indiana refused to license him in 2006, he claimed that Indiana had violated his constitutional rights in doing so. The essence of his argument was that Indiana was required to license him because he had been cleared to race in other states since his New Jersey violation had occurred. The Honorable John Tinder, now serving on the U.S. Court of Appeals for the Seventh Circuit, disagreed and held that the Commission had acted appropriately in exercising its administrative discretion when it refused to license Mr. Daley.

Mr. Daley has not sought licensure in Indiana since 2006, but he has been licensed and raced in Pennsylvania, New Jersey, Delaware and New York. Since his refusal in 2006,

¹ Rumors, no evidence of illegal horse racing activity; The Herald Bulletin, May 29, 2010
Senator calls for horse racing inquiry; WISH TV I-Team 8; WISHTV.com, May 27, 2010
Much ado; The Shelbyville News, June 3, 2010

Mr. Daley has been repeatedly fined and suspended for positive tests in race horses including three separate Class 3 positives.

Mr. Daley is just one of many examples over the years of the Commission's commitment to protect the integrity of Indiana horse racing.

As an ESPN commentator wrote March 21, 2007,

*"The norm isn't good enough anymore. With Indiana having provided a blueprint, other commissions are running out of excuses for their propensity to sit back and do nothing. If Indiana can put some serious teeth into its suspensions, clamp down on wayward vets, test for milkshakes before races, etc., any state can. Indiana is leading. It's time for others to follow."*²

This was not the only time the Commission has been cited in the national press for its strong pro-integrity approach.³

Critics may prefer the status quo "don't rock the boat" philosophy. I feel, however, that the vast majority of horsemen would suffer significant consequences if the Commission fails to – or is prohibited from – effectively discharging its regulatory responsibilities.

I would like to comment on our adjudication process since much of the report refers to this issue. It is consistent with long-established best industry practices. Most of the disciplinary action is administered by the standardbred judges or thoroughbred stewards as it involves infractions that take place on our race tracks. Indiana is extremely fortunate to have thoughtful and widely respected individuals placed in those positions of authority. Because of their limited statutory authority (maximum 60 day suspension and \$1,000 fine), the judges and stewards are not able to fully and appropriately assess sanctions commensurate with the most significant violations.

Pursuant to its statutory authority, the Commission has delegated to its Executive Director the authority to recommend more serious sanctions than the judges or stewards are able to impose. Due process violation claims are typically a part of a judicial challenge to the exercise of the Commission's discretion in disciplinary and licensing matters. Not once during its 18 year history of pari-mutuel racing has a reviewing court rendered a final decision against the Commission. Nor has a court found that the

² Indiana leads, other states should follow; ESPN.com, March 21, 2007

³ Indiana and Integrity, USTA Hoof Beats, June 2008
Indiana a step ahead of the pack, Daily Racing Form, January 27, 2006
Hoosier Daddy, The Blood-Horse Magazine, March 24, 2007
Closing a Loophole, USTA Hoof Beats, May, 2007
One racing official with a backbone, Daily Racing Form, August 2007
Gorajec's Got Guts, USTA Hoof Beats, October 2007
Indiana Commission Marches To Own Beat, The Horseman And Fair World, April 18, 2007
Indiana's Top Driver Gets Two Years For Whipping; Daley Loses In U.S. Court, Harness Tracks of America, August 6, 2007

Commission has acted outside of its legislative authority or in an arbitrary and capricious manner. To the contrary, in a recent decision, the Indiana Court of Appeals held that the imposition of significant sanctions by the Commission following the issuance of a preliminary report was both substantively and procedurally appropriate. See, Mark P'Pool v. Indiana Horse Racing Commission, (Ind. App.) 916 N.E 2d 668, 675-676.

Our past record in court notwithstanding, I am a firm believer that we should always strive to improve the regulatory framework in which our industry operates. Based upon the comments of the Inspector General, I am comfortable recommending to my colleagues on the Commission some changes related to the adjudication process.

First, the Commission would consider and potentially ratify **all** fully adjudicated disciplinary matters at a public meeting. This would include:

- 1) All rulings issued by the Judges and Stewards;
- 2) All settlement agreements and recommended orders from Administrative Law Judges, and;
- 3) The Commission would continue to hear and decide all contested disciplinary matters.

Second, in order to move closer to the single adjudication process the Inspector General prefers – particularly for serious infractions – the Judges and Stewards would refer to the Indiana Horse Racing Commission (without conducting a hearing on the merits) cases in which the proposed penalty would likely be in excess of their statutory jurisdiction (60 day suspension and a \$1,000 fine). However, the Judges and Stewards would continue to issue summary suspensions and conduct a hearing on the summary suspension, if requested.

Other changes I can endorse would be to eliminate the \$500 deposit for appeals and the payment of related expenses. I'd also like to change the name of our "preliminary reports" to "complaints" in order to conform to the common usage of that term.

The Inspector General Report has included a number of other suggestions that have been generated as a result of this investigation. I will not comment on the invitation for the Legislature to revisit (and potentially reduce) the amount of the monies horsemen receive from the slot subsidy. We have never inserted ourselves in this particular public policy issue in the past, and will not do so now.

Thank you for giving me this opportunity, on behalf of the Indiana Horse Racing Commission, to submit a response to your thoughtful Report.

Over the course of the next several months, the Commission will give serious thought to those suggestions for which we have jurisdiction. There will be careful consideration of the public interest, the interests of various racing industry constituents, relevant legal authority, public comment and industry best-practices.

*Sarah McNaught, Chairman
Indiana Horse Racing Commission
November 3, 2011*

The Herald Bulletin

May 29, 2010

Rumors, no evidence of illegal horse racing activity

Sen. Kenley calls for investigation, audit to preserve reputation

By Justin Schneider

The Herald Bulletin

— ANDERSON — A state senator has called for an investigation into Indiana horse racing despite a lack of evidence of rumored “illegal activity.”

State Sen. Luke Kenley, R-Noblesville, sent a letter to Chairwoman Sarah McNaught and the rest of the Indiana Horse Racing Commission, or IHRC, on April 9, expressing his concern over “persistent rumors of illegal activity” and later suggested that there has also been a “fix involved in some racing.”

Kenley said the letter was borne out of April 6 talks with commission members and a breeders group. When inquiries with the Indiana State Police proved “unsatisfactory,” he took the matter up with J. Sebastian Smelko and Earl Goode in the office of Gov. Mitch Daniels.

“The problem was that there wasn’t very much evidence to support it,” Kenley said of the rumors. “I was told that a certain state policeman had information, but his comments weren’t very persuasive. This is a state-subsidized industry, and I think we need a clean bill of health.”

In his letter, Kenley suggested that the State Board of Accounts conduct an audit on money generated by casinos and channeled through race tracks and the IHRC to ensure that racing purses are funded properly. Jeff Smith, president of racing at Hoosier Park Racing & Casino in Anderson, said breeder funding and purse structure are constantly under discussion in the industry.

“The introduction of gaming at race tracks has provided a boost to our racing programs, and there is constant dialogue within the industry, between tracks and regulators on the programs in place in offering input and suggestions,” Smith said. “That sort of exchange is normal within the industry.”

Law enforcement officials deny that any investigation is under way.

“The only information I have is that there is no ongoing investigation,” Indiana State Police Sgt. Dave Bursten told WISH-TV.

But Smith said questions over integrity in the sport are normally addressed by the Indiana Horse Racing Commission before reaching law enforcement or state legislators.

“The Indiana Horse Racing Commission really enjoys a national reputation for being at the forefront of integrity initiatives and has really been a leader in national initiatives that other states have gotten behind,” Smith said. “I think integrity is of the utmost importance to the commission and for all of us at Hoosier Park.”

Kenley said his letter was not intended as an insinuation that the commission has failed.

"I felt like the best way to exonerate them is through an outside agency," Kenley said. "On the one case, the State Police, and on the other the State Board of Accounts."

Contact Justin Schneider: 640-4809, justin.schneider@heraldbulletin.com

Senator calls for horse racing inquiry

Updated: Thursday, 27 May 2010, 10:03 PM EDT
Published : Thursday, 27 May 2010, 5:16 PM EDT

• By: Rick Dawson

INDIANAPOLIS (WISH) - I-Team 8 has discovered a state senator's call for a state investigation into Indiana's Horse Racing Industry.

That request comes after what the senator calls persistent rumors of illegal activities.

I-Team 8 obtained a copy of a letter Senator Luke Kenley wrote to the Sarah McNaught, the chairman of the Indiana Horse Racing Commission. The IHRC is the government body that oversees the state's racing industry and all the money wagered on it.

The letter follows an April meeting Senator Luke Kenley had with McNaught and a group of concerned horsemen. In letter, Kenley requested the commission examine several requests. A State Board of Accounts audit on all the money horse tracks get as a subsidy from Indiana's casinos, a review of the purse structure for next year, and for Indiana State Police to investigate "persistent rumors of illegal activities."

Here's how the paragraph reads:

"Integrity through the industry is critical. This is a primary function of the Commission. Without confidence that we are squeaky clean, we could jeopardize everything with the public and the legislature. As I informed you, I have asked the Superintendent of the State Police to investigate persistent rumors of illegal activities. We need to put this behind us."

But whether a state police investigation on horse racing has left the starting gate or already crossed the finish line is unknown.

Indiana State Police spokesperson First Sgt. Dave Bursten would only provide a single five word statement.

"There is no ongoing investigation," said First Sgt. Bursten. When I-Team 8 asked to confirm Senator Kenley requested an investigation, Bursten repeated, "The only information I have is that there is no ongoing investigation."

Senator Kenley clarified what he wanted investigated.

"(In) some element of racing, particularly standardbred racing, there was a question as to whether there was a fix involved in some racing that was going on," said Senator Kenley.

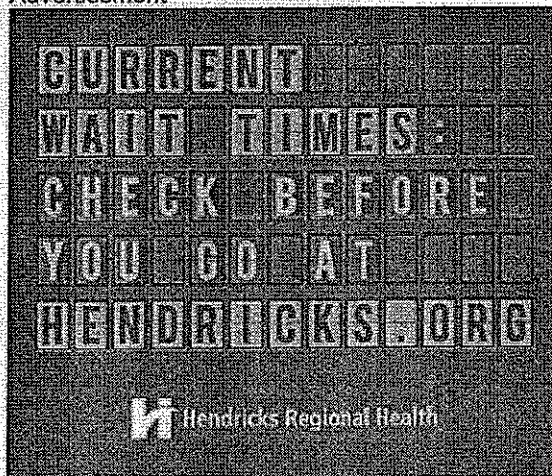
I-Team sources inside the horse racing industry say the rumors of illegal activity go beyond race fixing, in which a number of people conspire to influence outcomes. The allegations also include ghost ownership of horses by commission officials and improper wagering by commission officials at both of Indiana's tracks.

Sen. Kenley says it's critical to find out what's actually happening.

"It's very important because this is a state subsidized industry and we've tried to build it up as an agribusiness, and it's very important that it be maintained as a clean legitimate business and that was my concern," he said.

We requested an interview with Joe Gorajec, the Executive Director of the Horse Racing Commission and told him what we'd been hearing. He said he'd call back. He didn't.

Advertisement



I-Team 8 will continue to follow up on any new information in this investigation. The original intent of the meeting Kenley had with the Commission chair and the horsemen was to exchange ideas on how the commission could help make horse racing in Indiana, a bigger player in the national picture by encouraging bigger payouts and more breed development in the state.

shelbynews.com

A newspaper for all the people

Sports

Much ado

Print Page

Rumors about race-fixing at Indiana Downs bother GM Schuster

By Paul Gable
Staff writer

Published: Thursday, June 3, 2010 7:13 AM US/eastern

As long as there has been horse racing, there have been rumors of participants fixing races.

That is one reason why Indiana Downs general manager Jon Schuster does not put a whole lot of stock into a cry for an investigation, despite the fact that a state senator has called for such an investigation despite a lack of evidence of rumored "illegal activity."

"There have been no legitimate claims that I am aware of. It's real simple, if you know something, step forward and say it. If a person knows of a violation and does not report it, they are in violation as well," Schuster said.

Horse trainer Randy Klopp said rumors are commonplace around the track.

"I'd imagine it's like working in a factory. You can tell one person a story and by the time it gets down the line, the story has changed 10 times," Klopp said of rumors.

Schuster's comments come in the wake of a letter State Sen. Luke Kenley, R-Noblesville, sent to Chairwoman Sarah McNaught and the rest of the Indiana Horse Racing Commission in April, expressing his concern over "persistent rumors of illegal activity." The IHRC is the government body that oversees the state's racing industry and the money wagered on it.

The letter originated out of a meeting of commission members and a breeders' group.

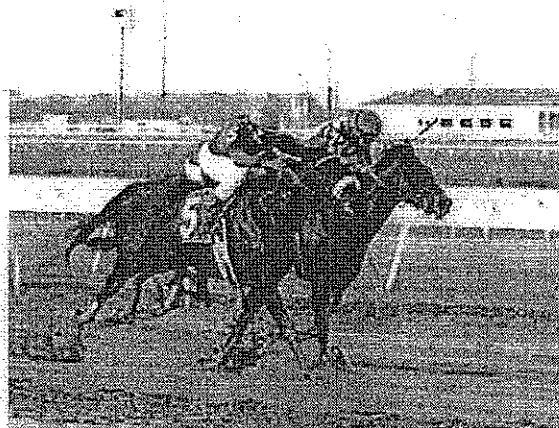
"I think what Sen. Kenley is doing is acknowledging their claims," Schuster said.

In his letter, Kenley requested the IHRC examine several items, including an audit on all the money horse tracks get as a subsidy from Indiana's casinos.

In the letter, Kenley writes that it is his belief that everything could be jeopardized with the public and the legislature if there are wrongdoings taking place.

The IHRC's rule book states that any licensees who are found betting with bookmakers may be deprived of their licenses, ejected from the grounds and denied entrance to any race meet in Indiana.

"Again, it's real cut-and-dry, if you know of something that is in violation, I ask that you step up and say it," Schuster said.



Jenn Gable photo Despite a call for an investigation by state Sen. Luke Kenley, horsemen and fans continue to turn out in droves at Indiana's horse tracks, including Indiana Downs. Indiana Downs general manager Jon Schuster says the allegations are without merit.

With that said, the racing industry veteran admits he has not and will not shy away from an investigation.

"We have investigated allegations before. I have personally gone back and looked at the footage from races where people have questions and the allegations have been without merit," Schuster said.

Copyright © 2011 - The Shelbyville News

[x] Close Window

 **PRINT** ESPN.com: HorseRacing[\[Print without images\]](#)

Wednesday, March 21, 2007

Indiana leads, other states should follow

By Bill Finley
Special to ESPN.com

While it may be true that the entire racing industry is trying to deal with integrity and drug issues, some are trying harder than others. Once again, the Indiana Horse Racing Commission is leading the way and, hopefully, leading by example. In its latest attempts to make Indiana racing as clean as possible, it has put in new regulations that will actually make trainer suspensions mean something. Good for them.

It was announced last week that any trainer who receives a drug-related suspension of 15 days or more will not be allowed to transfer the horses in his or her stable to a spouse, family member, assistant or any employee. In Indiana, horses from the stable of a suspended trainer either can't run during the course of the suspension or their owners will have to transfer them to a new trainer. That should make owners think twice about employing the latest miracle-working trainer whose horses somehow mysteriously improve a dozen lengths once coming under their care.

That will prevent the sort of situation that occurs in every other racing state when a trainer is suspended. They turn the horses over to an assistant and run the show by telephone, with the stable humming right along almost as if nothing has happened. It's a ridiculous situation that has made suspensions laughably weak and hardly any deterrent at all.

"From an integrity standpoint, a suspension should mean something; it should mean during the period a person is suspended that person is not participating in any way in the horse racing business," Indiana Horse Racing Commission executive director Joe Gorajec, said. "It's obvious that trainer suspensions have become, in some cases, meaningless because the trainer, especially if he's stabling off the grounds, may not have any change in his or her routine at all. In order to make these suspensions meaningful, I think a regulator needs to assure himself and the industry that a suspended person is actually out of the business during the time they are suspended."

The new regulations regarding trainer suspension is just the latest move on Indiana's part to ensure that racing in that state is as clean as possible. This is a commission that gets it. It understands that horse racing must do more to make sure that the playing field is a level one in which honest horsemen can compete and bettors can wager with confidence.

Indiana has moved toward stiffer penalties for drug positives, while improving backstretch security and enhancing its drug testing methods. That includes pre-race tests for milkshakes. Most importantly, though, is a recently adopted policy that prevents veterinarians from seeing a horse on the day it races. The only exceptions are cases when a horse is ill and when a horse is given a Lasix shot. Even in those cases, the vets are under observation by track security.

"Unfortunately, in horse racing, nothing is 100 percent honest," Gorajec said. "I think the Indiana Horse Racing Commission strives to make it as honest as possible and have the most level playing field. I am pleased with the progress we have made. Having said that, I'm not satisfied. I think we can do more and we will do more. I'd leave it to others to judge how we stand versus other racing jurisdictions, but I'm pleased with where we're at. We can, though do more and I have no doubt we will do more."

Indiana is hardly the center of the horse racing universe but Gorajec and his staff are doing important work. If nothing else, they are proving that racing commissions don't have to roll over and play dead and that getting tough isn't that hard a thing to do.

"Generally speaking, no racing commission, and that includes Indiana, is doing enough to protect the integrity of its racing product," Gorajec said. "Having said that, I think every racing commission should use all of the resources at its disposal to protect the integrity of their horse racing. I am hopeful that between all of the negative press the horse industry has received, combined with the efforts of a few states that are doing something rather unique and, hopefully, successful, that might capture the attention of other regulators and cause them to copy the commissions that are going above and beyond the norm."

The norm isn't good enough anymore. With Indiana having provided a blueprint, other commissions are running out of excuses for their propensity to sit back and do nothing. If Indiana can put some serious teeth into its suspensions, clamp down on wayward vets, test for milkshakes before races, etc., any state can. Indiana is leading. It's time for others to follow.

ESPN.com: [Help](#) | [PR Media Kit](#) | [Sales Media Kit](#) | [Report a Bug](#) | [Contact Us](#) | [Site Map](#) | [Jobs at ESPN](#) | [Supplier Information](#) | [Copyright ©2007 ESPN Internet Ventures](#). [Terms of Use](#) and [Privacy Policy](#) and [Safety Information/Your California Privacy Rights](#) are applicable to you. All rights reserved.

Dean's List

by Dean A. Hoffman

Indiana and Integrity

What's happened to Indiana harness racing in the last 14 years is simply amazing.

Until Hoosier Park opened in 1994, racing had been limited to county fairs and the Indiana State Fair with its Grand Circuit traditions. A lot of good horses and horsemen came out of Indiana over the years, but they came out of the state because there was little reason to stay.

Now Hoosier harness racing has moved into the slots era, and I don't think anyone yet fully appreciates how purses will explode.

One Hoosier who fell in love with racing long before the riches arrived is Sarah McNaught, chairman of the Indiana Horse Racing Commission. Her father, Bill Welch, was the presiding judge at the State Fair from the late 1950s through the mid-1960s.

"My memories of those years include sitting in the enormous grandstand with my mother, brother and grandmother," said McNaught. "That's what the State Fair was to me—harness racing—and maybe some salt water taffy."

Her father rubbed elbows with legends like Delvin Miller, Stanley Dancer, Billy Haughton, Frank Ervin, Joe O'Brien, John Simpson Sr. and Don Taylor. Those horsemen probably wouldn't believe how bright racing's future in Indiana now looks.

"I'm an optimist by nature," McNaught said, "so I think everyone will realize this [slots] opportunity needs to be nurtured, meaning that we work feverishly to entice fans back into the stands, offer new and bold racing programs, ensure the safest environment for the participants, provide the highest level of integrity, attract new owners, and create the kind of 'buzz' about our sport that rivals poker and NASCAR competitions."

The slots money is starting to flow, but that alone doesn't guarantee success, said McNaught.

"The only thing which will prohibit success will be our failure to imagine the racing world in Indiana as we want it to be," she said. "Both tracks are now going to be part of a destination where customers can decide to play slots, eat a gourmet meal, grab a cup of coffee, enjoy live entertainment, and watch horse racing. We must figure out how the



latter activity becomes a real crowd-pleaser.

"We can't tread water or be lulled into thinking that we will just have more money to do the things we've always done. My dream would be that everyone involved—from the veterinarians to the food service workers to the security guards to the horse owners—thinks about the product we offer, and how we can make it better."

The commission that McNaught chairs maintains high standards to assure racing's integrity. That was demonstrated in 2006 when trainer Noel Daley was refused a license.

Daley had been suspended for nine months for possession of drugs but was reinstated by the New Jersey Racing Commission. He sent horses to race in Indiana and applied for a license on the day they were to race. Based on his record, Indiana refused his application.

Daley did not appeal, but he and owner Adam Victor sued the Indiana Horse Racing Commission in federal court. In a ruling that makes for interesting reading, the case was tossed out by Judge John Daniel Tinder in the U.S. District Court.

"Our refusal of his license was the right thing to do for Indiana racing," said McNaught. "We have always had our own standards for licensing, and those standards have served us well over the years."

She added that rehashing the case doesn't help racing.

"To those who still want to rehash the particulars of this case, I suggest they instead focus on a positive idea for horse racing's future," she said.

McNaught said that having the highest level of integrity is important to assuring bettors that they have a fair chance.

"The only thing which will prohibit success will be our failure to imagine the racing world in Indiana as we want it to be," said Sarah McNaught.

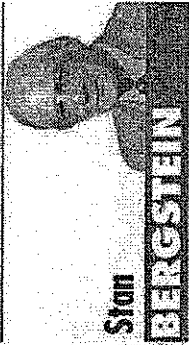
The Indiana commission's executive director, Joe Gorajec, was recently elected to the prestigious position as chairman of the Association of Racing Commissioners International.

McNaught downplays her own leadership role, preferring to give credit to others for the fine reputation of Indiana racing.

"Long before I arrived on the scene three years ago, Indiana had an exemplary reputation," she said. "Our job as commissioners now is to continue that fine tradition."

Dean A. Hoffman is a member of the Communicator's Corner, located at the Hall of Fame, and the former editor of Hoof Beats. To comment on this column, e-mail us at readerforum@ustrotting.com.

Indiana a step ahead of the pack



TUCSON, Ariz. — You may not know Joe Gorajec's name unless you're from Indiana, but he is a mover and a shaker whose voice in racing administration is heard well beyond Hoosierdom.

Gorajec is the only executive director for the Indiana Horse Racing Commission has ever had. He was determined, when he took the job 15 years ago, to make Indiana a leader in racing, and he has worked hard and productively toward that goal.

This week, the Indiana commission considered a proposal from Gorajec that would expand his horizons, and Indiana's.

It is called Integrity '06, and is strong medicine. Its focus is deterring administration of unauthorized medication on race days, and many of its recommendations extend far beyond current industry practices. If adopted, it could boost Indiana's already lofty status as a leader in tough enforcement.

Gorajec proposes identifying each horse scheduled to race with a highly visible stall sign reading "In Today." The track would be required to

employ additional security to deter and detect any prohibited practices. Ship-ins — those horses coming from offtrack facilities, a major security problem in racing — would have to arrive early on race day "to provide some level of oversight parity between horses stabled on and off the track."

Gorajec makes no secret that he thinks veterinarians are part of racing's medication problem. He proposes requiring practicing veterinarians to be escorted by a track employee during the period of time that Salix (furosemide, commonly known as Lasix) is administered, and that all race-day draws of Salix into the syringe for administration be made by, or in view of, an association employee.

To Gorajec's and the Indiana Racing Commission's credit, nothing other than Salix can be administered to a horse racing in Indiana during the 24 hours prior to post time. All racing jurisdictions should have that courage and foresight.

No pretrace injectibles can be used or possessed, and under Gorajec's proposal daily medication reports would have to be filed by veterinarians. They also would have to file medication reports of all administrations to horses racing in Indiana but stabled offtrack. And trainers or other licensees would be prohibited from utilizing offtrack services of veterinarians who are suspended,

excluded, or ineligible for licensing. Indiana's blood gas program — the detection of milkshaking — differs from industry standards in two ways. First, there is a testing laboratory on track, so horses with high blood gas levels can be scratched prior to the start of a race, rather than be disqualified after, as in most other racing jurisdictions. This protects the public, and in some cases trainers and owners, from receiving penalties after the fact. Second, the Indiana program runs blood gas tests on both harness horses and Thoroughbreds, not true in many states.

Gorajec proposes having the tracks pay for testing and increased security by deducting 3 percent from their subsidies from Indiana's unique program where riverboat admissions taxes are used to help offset the floating casinos' heavy contribution to the state's racing industry. The riverboat subsidy payments to tracks are not insignificant. Last year they amounted to \$27,083,893.

Gorajec said he feels he can cut this subsidy because Indiana racing law says the commission may make a subsidy grant only for purses, promotions, and routine operations of the racetrack. He considers security a routine operation of the track. Rick Moore and Jon Schuster, who run Indiana's two tracks, Hoosier Park and Indiana Downs, both believe in limiting race-day medica-

tion. They think Gorajec's plan has merit, but say his funding formula needs study and discussion. The Indiana Horse Racing Commission on Tuesday agreed, deferring action on Gorajec's proposal until its next meeting on March 7, in order to give the tracks and other involved parties an opportunity to study the proposal.

The transfer of all costs to the track may be convenient and easy, but it is not necessarily equitable. Horse racing is an agricultural industry in all states that present it. Indiana understands that, as its riverboat subsidy bill protecting racing indicates clearly. Policing racing is the state's job as well as the track's, and the state should share the cost, not merely dump it on tracks already hard-pressed economically.

Gorajec surveyed other racing commissions regarding their security practices and received 16 responses. Of the states that answered, only one — Minnesota — requires supervisors of the Salix draw. Only three prohibit veterinarians from possessing predrawn or loaded syringes in their vehicles. Only four prohibit trainers stabled offtrack from utilizing services of suspended vets. And only one, again Minnesota, requires licensed vets to be escorted by a commission or track employee on race day.

That noise you hear is Joe Gorajec, shaking things up again.

WHAT'S Going On Here

HOOSIER DADDY

Many state racing commissioners talk about cracking down on cheaters in our sport. Indiana regulators are taking serious action.

On March 16, the Indiana Horse Racing Commission approved regulations designed to end the "business as usual" activities in the stable of a suspended trainer. The new rule, pushed by the commission's executive director, Joe Gorajec, prevents a trainer banned for more than 15 days from transferring horses in his stable to a family member or employee. It's been the custom in racing for years that trainers who receive a suspension turn their horses over to a spouse or assistant trainer until they are allowed to return. The suspensions, thus, are ineffective as punishment. This new rule will force owners to transfer their horses from the suspended trainer to another barn if they wish to race them during the term of the suspension.



The Indiana rule also gives the commission the discretion to require that horses be stabled on the grounds of a racetrack if their trainer has been suspended. Horses from out of state also may be ruled ineligible to compete in Indiana if they are trained by an employee or family member of a trainer suspended in another jurisdiction.

Indiana regulators are setting the standard for other racing states, and not just through this latest regulation. Stiff penalties, tighter backstretch security, and enhanced drug testing are being used as deterrents to cheaters in Indiana, and a new program, Integrity '06, provides some of the details.

Practicing veterinarians are prohibited from seeing a horse on the day it races, with two exceptions: health emergencies and administration of the anti-bleeding medication Salix. Security personnel are required to observe all Salix shots, including the drawing of the medication from an unopened package.

Integrity '06 also clearly identifies horses on raceday and requires tracks to hire additional security whose sole re-

sponsibility is to watch those horses. An additional element of Integrity '06 is blood-gas (or milkshake) testing before a race, allowing stewards to scratch a horse in the event of a higher-than-permitted level.

Over the past year, according to Gorajec, four trainers found to have administered the corticosteroid dexamethasone (a Class 4 drug) on raceday received one-year suspensions, with two of the trainers agreeing not to re-apply for a license before 2010. Two veterinarians were suspended for a year for giving vitamin injections on the day of a race, and Gorajec has recommended a seven-year suspension to

a trainer whose horse tested positive for the Class 1 drug mephentermine, a blood-pressure medication.

Indiana is not only tough on licensees that violate its rules. The commission has refused to license 53 applicants in 2005 and '06; 32 of those applicants held licenses from other states.

The horsemen are happy with these get-tough policies,

Indiana regulators are setting the standard for other racing states

according to the results of a survey conducted by Indiana University on behalf of the commission. According to the survey, 40% of respondents said regulatory efforts in Indiana were either better than average or the best they have experienced. The state's drug-testing program rated high, too, with 48% saying it was the best or better than average compared with other states. Only 14% said Indiana's penalties are too strict, with 46% saying they are about right and 22% saying they are too lenient.

(Complete results of the survey and details about Integrity '06 can be found at <http://www.in.gov/ihrc/>.)

The commission's latest action, prohibiting the transfer of horses to an employee or family member in the event of a suspension to a trainer, is going to make life more difficult for those individuals who break the rules.

Good for Indiana. When will regulators in other states do more than just talk about cleaning up the sport? ☐

Ray Paulick
Editor-in-Chief

In Harness

by Stanley F. Bergstein

Closing a Loophole

For years in our sport, regulators who talk about integrity issues have looked the other way on a glaring loophole in the administration of justice. In doing so, they have made a mockery of suspensions in the sport.

Allowing suspended trainers to turn their horses over to assistant trainers, or family members, or employees or household members, makes a joke of justice. It allows the suspended trainer to thumb his or her nose at penalties. It has been a custom in the sport forever, and finally a racing commission executive has had the guts and common sense to put a stop to it.

Joe Gorajec, the executive director of the Indiana Racing Commission, takes security and integrity seriously. He has the total confidence of his commission, and has introduced meaningful integrity programs that have won quick approval from Chairwoman Sarah McNaught, Vice Chairman Alan Armstrong, and members Doug Grimes, Jim Lauck and Steve Schaefer.

The new rules have not won total and complete approval from horsemen— isn't that amazing?—but those racing in Indiana are learning that the measures are designed to protect them as well as the betting public. Those smart enough realize Gorajec really is on their side.

Gorajec's latest regulation will do away with the charade of a suspended trainer turning over his horse to an assistant and running his stable by telephone or remote control. That practice is a cruel joke, rendering suspensions totally meaningless, and has been prevalent in a number of major racing states, including New Jersey and Illinois last year.

Gorajec, who spoke on a panel of racing regulators discussing integrity at the recent Harness Tracks of America/Thoroughbred Racing Associations meeting, started his talk by saying he believed enhanced penalties for integrity-related violations are absolutely essential. He admitted, proudly, that Indiana was "right of center" when it comes to assessing penalties for such violations, and gave as an example the minimum one-year suspensions the commission handed out to two practicing veterinarians for injecting horses with vitamins on race day.

Under Gorajec's stewardship, Indiana has a 24-hour pre-race ban on any type of medication, and any type of



injection. Four trainers were suspended for a year for violation of that rule, even though they typically would be given 15 to 60 days, since the substances were class 4.

Gorajec believes security plus drug testing plus penalties equals a deterrent, and that enhanced security, drug testing and penalties equal clean racing. But he does not think penalties in themselves are enough.

Gorajec summarized the situation this way: "If you look at it from the standpoint of a horseman who is contemplating cheating, he knows what the rewards are: purse money, possible betting income, status and success—particularly in attracting new owners. When he looks at the risk, it's not only the risk as far as what the penalty should be, or will be, but the key is the likelihood, or the chances, that he will be caught.

"You can have the stiffest penalties in the world—draconian penalties, firing squad, guillotine, disembowelment in the public square—and none of those things are going to stop someone from cheating if they perceive that the chances of being caught are remote."

What we need, Joe Gorajec believes, is to focus on not only drug testing but also on security.

What we need, Gorajec believes, is to focus on not only drug testing but also on security. He said "a very smart person"—Dr. Scot Waterman, leader of the Racing Medication and Testing Consortium—told him that if someone is trying to influence the outcome of a race and give a horse a foreign substance, he's going to do it shortly before post time—two hours, four hours, six hours, maybe as far as eight hours before post.

"So we as an industry," Gorajec said, "have to develop programs—security programs—to combat the actual administration of drugs and medication just prior to post time." Gorajec's Integrity '06 program in Indiana did that.

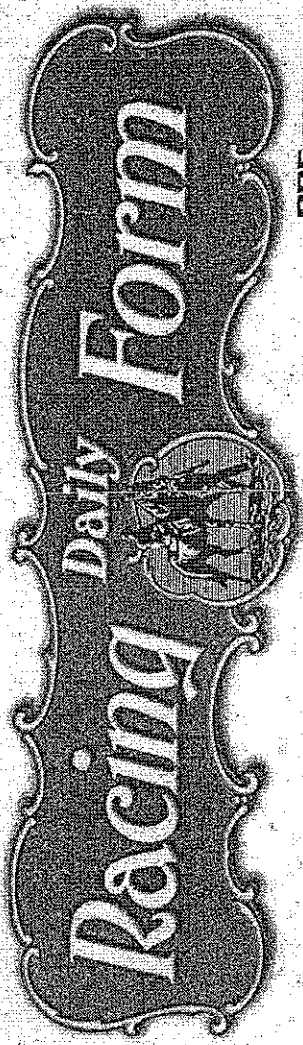
Returning from the HTA/TRA convention, Gorajec announced Indiana's new rule on no buddy-buddy suspension substitutions.

It makes complete and total sense.

A suspended trainer should have no contact, no say, no control over horses that he trained before he was suspended. To do otherwise is foolhardy, and an insult to the intelligence of the public, whose support of racing in America is waning, for multiple reasons including integrity issues.

The Gorajec rule should be adopted everywhere, and all who really value integrity should support the idea.

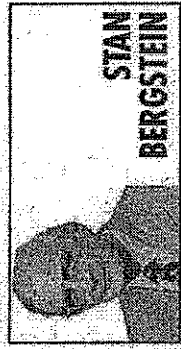
Stanley F. Bergstein is the executive vice president of Harness Tracks of America and a member of the Living Hall of Fame in Goshen, N.Y. To comment on this column, e-mail us at readerforum@ustrotting.com.



DRF.COM

THURSDAY, AUGUST 23, 2007

One racing official with a backbone



STAN BERGSTEIN

TUCSON, Ariz. — They don't give Eclipse Awards for racing officials with guts, but if they ever get around to it, Joe Gorajec, the veteran executive director of the Indiana Racing Commission, will win by 20 lengths, handsly. Events two weeks ago showed why.

A federal judge in Indianapolis, ruling in a case in which a well-known trainer and his wealthy principal owners challenged Gorajec's refusal to license the trainer because of his past record, made it clear that Gorajec acted clearly within his authority.

Then Gorajec sidelined the leading harness driver at both of Indiana's tracks, Hoosier Park and Indiana Downs, for two years for abusive and excessive whipping.

Gorajec has been the Indiana commission's executive director for 17 years, before there was horse racing in the state. He helped write the rules and set up off-track betting and full-card simulcasting. Before that he was executive director of the Missouri Racing Commission, gener-

al manager of a racetrack at 27, a director of racing, and worked in track marketing and mutuels. He knows the territory, and its perils and pitfalls.

He is the Clark Kent of racing officials, mild-mannered and soft-spoken in civilian garb, but with a big red "S" on his chest when he slips into his role as arbiter of justice in Hoosierland. He is the Man of Steel in that role, and has the strong support of a racing commission that respects and trusts him.

Gorajec came to racing never wanting to do anything else. His father took him to Saratoga Race Course when he was 8, and he was infected by the racing bug that day, with no cure. When he was 20, he enrolled in the Race Track Industry Program at the University of Arizona, and graduated in 1981 with a bachelor of science degree in agriculture. He was off and running.

The U.S. court victory and the whipping suspension are typical of Gorajec's courage and determination to keep racing clean and above-board.

In the federal court case, a successful harness trainer named Noel Daley sent four horses owned by the powerful Adam Victor and Son stable to Indiana Downs for racing, including stakes engagements. The Victorians spent considerable money

staking and shipping the horses. Daley did not show up personally until the day of the first stakes race, and when he applied for a license, the racing commission, on orders from Gorajec, refused to grant it.

Daley, licensed in New Jersey, Kentucky, Illinois, and Ohio, had been suspended for 270 days in New Jersey, fined \$20,000, and assessed another \$20,000 in costs after drugs and drug paraphernalia were found in his stable. Daley admitted having possession of numerous controlled, dangerous substances. He served the suspension, his assistant trainer taking over the stable during the entire span.

Gorajec said Daley was not welcome in Indiana, his past record making his presence not in the public interest or in the best interest of racing. Daley and the Victorians sued, claiming bad faith and constitutional due process protection. The matter wound up in the United States District Court in Indianapolis. Federal judge John Daniel Flinder, in a 28-page decision, called the constitutional argument "an odd claim," saying the commission did not deprive the Victors of property or liberty, a basis of due process arguments. He found the commission had the discretion to deny the application in the public interest and for the purpose of maintaining proper control over horse racing.

As for whipping, it is the silent, unspoken scourge of American racing. Rules governing excessive whipping exist in almost every racing jurisdiction, but judges and stewards are reluctant to use them because they involve subjective judgment, and the possibility of litigation. No one knows how many patrons abandon racing, or never embrace it, because of their distaste for seeing horses whipped, but it is clear millions do not like to see animals abused. Ask Michael Vick.

Josh Sutton, leading driver at both Hoosier Park and Indiana Downs last year, had numerous whipping violations in 2005 and 2006. In the second race at Hoosier Park on May 19 this year, he inflicted what the racing commission called "severe multiple lacerations" to the horse Staley Lane, using a 10-inch "snap-pear" at the end of his whip, four inches longer than allowed in Indiana.

Joe Gorajec dropped the hammer, suspending Sutton for six months, fining him \$2,500, and requiring him to sign an agreement that he will not apply for an Indiana license before June 20, 2009.

Joe Gorajec was named outstanding executive director by his peers in 1999, and now is chairman-elect of the nation's racing commissioners. North American racing needs to find a way to clone him.

In Harness

by Stanley F. Bergstein

Gorajec's Got Guts

The sins of cheating trainers and their cheating sponsors have so clouded the racing horizon that another sin of our sport—excessive whipping—has slid from public view.

Until recently, that is, when two of the toughest racing officials in North America—executive director Joe Gorajec of the Indiana Racing Commission and his presiding judge Tim Schmitz—took whips into their own hands.

Josh Sutton was the leading driver at both Hoosier Park and Indiana Downs in 2006. He also had multiple whipping offenses in both 2005 and 2006, and was driving on a probationary license as a result.

In the second race at Hoosier Park on May 19, Sutton drove a pacer named Staley Lane. When Sutton returned to the paddock after finishing a slashing fourth, the horse had “severe multiple lacerations,” according to the commission report. Investigation showed a 10-inch “snapper” at the end of Sutton’s whip, four more inches than are allowed. Tim Schmitz notified Gorajec.

Gorajec, tired of repeated violations, set Sutton down for six months and fined him \$2,500. But he went a long step further.

Calling Sutton’s actions “an inexcusable act of cruelty,” and saying “the welfare of our horses and the perception and goodwill of our fans demand a significant penalty,” he told Indiana’s leading driver that he must sign an agreement not to apply for a license to race in the state until June 20, 2009—an effective two-year suspension.

The same day Gorajec set down Sutton for savage whipping, a U.S. federal judge in Indianapolis handed Gorajec a rousing victory in another case.

In August 2006, trainer Noel Daley shipped four horses owned by Adam Victor and Son to Indiana Downs for stakes competition. They had paid substantial nominating and sustaining fees, and sizeable shipping fees.

Daley was licensed in New Jersey, Kentucky, Illinois and Ohio, but not in Indiana. He had received a 270-day suspension in New Jersey, and \$40,000 in fines for possession of illegal drugs and paraphernalia. When he showed up in Indiana on the day the first Victor horse was to race, Gorajec refused to issue him a license, and the horses were scratched.



Daley and the Victors sued Gorajec and the commission, contending they had acted “summarily and in bad faith” and violated their constitutional rights.

They lost on both counts.

U.S. Judge John Daniel Tinder called the constitutional issue “an odd claim,” saying the commission did not deprive the Victors of property or liberty, the basis of due process action under the 14th Amendment to the U.S. Constitution. He ruled that Gorajec had full discretion to deny the license application if the refusal or denial “is in the public interest for the purpose of maintaining proper control over pari-mutuel wagering.”

A few days after the Daley decision was handed down, Gorajec won still another victory for fortitude.

Churchill Downs announced that because of a clause in the contract under which it sold Ellis Park, it could not allow its Arlington or Calder signals to be simulcast to Indiana Downs’ Evansville, Ind., OTB.

Gorajec quickly recommended to his Racing Commission that it bar all Churchill signals from being simulcast

anywhere in Indiana unless they were simulcast to all tracks and their OTBs in the state. The commission took action immediately, and Churchill suddenly lifted the ban on signals going to Indiana Downs’ Evansville OTB.

On the subject of owners and their trainers, a significant thought from Ogden Phipps, the patriarchal chairman of Thoroughbred racing’s Jockey Club. “To be

If owners are picking trainers who are routinely fined or suspended for medication infractions, we should reconsider an owner responsibility rule.

quite candid,” he said, “the stewards of the Jockey Club think it’s a disgrace that numerous horses in our sport’s most prominent and highly visible races are routinely trained by people who have repeated medication-related violations. If owners are picking trainers who are routinely fined or suspended for medication infractions, we should reconsider an owner responsibility rule.”

As for whipping, it creates not only pain on a horse, but disgust in the millions who dislike seeing animals abused. Ask Michael Vick. No one knows how many have abandoned racing because they dislike seeing horses whipped.

As for Joe Gorajec, some thought he overreacted. We think he showed guts, and wish there were more like him.

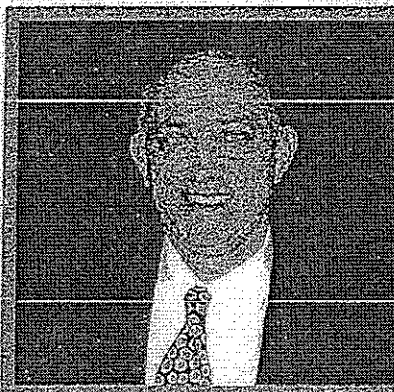
Stanley F. Bergstein is the executive vice president of Harness Tracks of America and a member of the Living Hall of Fame in Goshen, N.Y. To comment on this column, e-mail us at readerforum@ustratting.com.

Indiana Commission Marches To Own Beat

By James Platz

HARNESS racing has had its fair share of negative publicity as a result of scandal within the last year. As a result, many racing jurisdictions have made headlines with efforts to curb wrongdoing on the backstretch of tracks in the U. S. and Canada.

The Indiana Horse Racing Commission (IHRC) is one of the agencies garnering attention for the actions it has taken to level the playing field and eliminate illicit activity. The IHRC and its executive director, Joe Gorajec, have been both applauded for their efforts, as well as serving as a lightning rod for criticism. For Gorajec, this is nothing new. He both recognizes and expects those reactions as the IHRC moves forward with improving Indiana's racing environment.



"...the commission is focused on providing a playing field that is as level as can possibly be..."

—Joe Gorajec

"Many people fear and abhor change. This commission does not make change just for the sake of change; the commission, through its chairman, Sarah McNaught, makes change in order to improve Indiana's reputation," explained Gorajec, who has served as executive director of the IHRC since its inception. "More importantly, the commission is focused on providing horsemen with a playing field that is as level as can possibly be."

Gorajec and his staff have an established track record in instituting policy changes meant to improve racing in

Indiana. In April 2004 commissioners unanimously approved the advent of testing for erythropoietin (EPO). Indiana became the first jurisdiction in the Midwest to test for EPO. In fall 2005 Gorajec and his staff began working on a proposal to clamp down on the administration of illegal race day medications.

"The primary focus is on deterring and/or detecting unauthorized medication on a race day," the executive director commented. "Over a period of time, basically through anecdotal information and from prosecution of a couple practicing veterinarians and hearing from my peers and colleagues on what was going on in other states, it was apparent to me that there was a serious issue that needed to be addressed."

Deemed Integrity '06, the program consisted of several measures meant to beef up security in the barn area during live racing while adding greater restrictions on "in today" horses and significant punishment for those administering illegal race day substances. The measures were hotly contested by Standardbred and Thoroughbred horsemen before their adoption prior to the 2006 racing season.

One of the primary concerns of horsemen was the funding mechanism. Hoosier Park and Indiana Downs picked up 40 percent of the tab, leaving

the remaining 60 percent of the \$540,000 annual cost to the horsemen.

"There's an overall cost, then there's the horsemen's share. So, when you look at the horsemen's share, it breaks down to \$625 a day; that is \$50 per race," Gorajec said of the first year of the Integrity '06 program. "That's \$6.65 per starter. I think it's difficult to argue with a straight face that that is an onerous burden on the horsemen."

Earlier this year new initiatives were passed that further prevent suspended trainers from having involvement with horses. It also bars the transfer of horses to friends or employees of a trainer that has been banned.

Despite the IHRC's work to level the playing field, there are still those that do not support the program.

"I think overall in Indiana the horsemen are very supportive of the program. That's certainly not a unanimous opinion. I think there was an initial push back on straying from the status quo in spring 2006," Gorajec surmised. "I think the horsemen that race in Indiana want a level playing field; they're supportive of the commission to do just that."

If the implementation of new rules last year was not enough to deter horsemen from trying to skirt the rules, enforcement of rules has attracted the attention of many. The most publicized example came when seven Standardbred horsemen were fined and suspended for dexamethasone positives during Hoosier Park's spring meet. Three of the horsemen implicated received a \$5,000 fine, were suspended for one year, and agreed not to apply for a license in Indiana until January 1, 2010. Two other horsemen received a one-year suspension. Two of the cases are still pending.

The Association of Racing Commissioners International recommends a penalty of 15-60 days, up to a \$1,000 fine, and loss of purse for any Class 4 violation, the category dexamethasone falls under. Indiana statutes limit judges from assessing more than a 60-day suspension and \$1,000 fine. However, judges can give the maximum penalty and refer the case to the IHRC. There is no restriction on penalties the commission can hand down with the

exception that the executive director can only impose a maximum fine of \$5,000 per violation.

Gorajec is sending a clear message to those breaking the rules—cheating will not be tolerated in Indiana. The IHRC considers a race day violation as significant, handing down punishment that the executive director feels is “consistent with the nature of the infraction.”

Gorajec declined to discuss the dexamethasone penalties because of cases that are still pending. “I will say this: Overall, Indiana, when it comes to integrity violations, has always been to the right of center in assessing penalties,” Gorajec noted. “Some individuals feel the RCI model rules are the ultimate. There are some things that can be improved. In many cases, the RCI guidelines should be looked at as the minimum standard.”

The IHRC isn’t just tough on horsemen racing in Indiana, but also on applicants hoping to compete in the Hoosier State.

Last August four horses entered at Indiana Downs were scratched from the card after trainer Noel Daley was denied a license. Three of the horses—Irene’s Lucky Lady, Cantor’s Daughter and Little Miss Dragon—were slated to compete in the Kentuckiana Stallion Management Stakes. Since then, Daley and owner Adam Victor & Son Stable LLC have filed lawsuits over the matter. The attorney for the commission has filed a motion to dismiss the lawsuit, and has vigorously defended the IHRC’s position.

Denial of licensure is not unusual in Indiana. According to statistics provided by the IHRC, there were 53 refusals in 2005 and 2006—30 for Standardbred horsemen and 23 for Thoroughbred horsemen. Of those 53 that were denied a license, 32 applicants—Daley included—were actively participating in other racing jurisdictions.

“Based upon the information I received, I determined that the refusal of Mr. Daley’s license was in the best interest of racing in Indiana,” commented Gorajec. “This certainly isn’t the first time we’ve been sued. I think it’s most relevant to point out that

The IHRC isn’t just tough on horsemen racing in Indiana, but also on applicants hoping to compete in the Hoosier state.

we’ve never lost any lawsuit of any kind either against the commission as the commission or against myself as executive director. I think that’s a validation of how professional and appropriate the commission and its staff conduct its business.”

With the flurry of regulatory activity in the last 16 months, one might wonder how the IHRC is perceived by horsemen participating at Hoosier Park and Indiana Downs. Last fall the staff sent out a survey to the 3,975 horsemen licensed by the state, ask-

ing them to rate the performance of the state agency. Gorajec believes Indiana is the first jurisdiction to solicit such feedback.

A total of 1,378 horsemen completed the survey, good for a 35 percent response rate. The results seem to indicate the IHRC is making the right calls.

“We asked each horseman how you would rate the effectiveness of the regulatory efforts of the commission in the state of Indiana. That was the catch-all question,” Gorajec said of the independent survey, conducted by the Indiana University School of Public and Environmental Affairs. “The response was overwhelmingly positive; 67 percent rated the commission as either excellent or good. For a regulatory body, I think that’s absolutely outstanding.”

The executive director noted that, when offering a survey of this nature, there’s always the potential for receiving more negative feedback than positive.

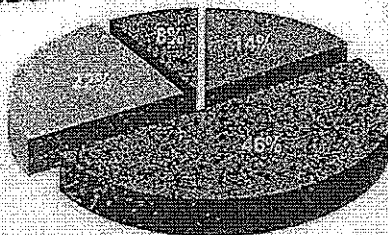
But Gorajec’s belief is that the IHRC, led by its commissioners, is moving Indiana’s racing program forward.

Gorajec cites McNaught, who was reappointed chairman in January, as being a catalyst for change.

“Because I’m the most visible, people tend to mistake that all of the happenings in Indiana, whether they’re good or bad, are attributed to me or my staff, and that’s not really true. The commissioners, in particular Sarah McNaught, are probably to be accredited more than anyone else for Indiana’s lofty reputation,” Gorajec explained. ■

How strict do you think penalties are in Indiana for rule violations?

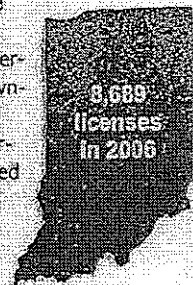
- Too strict - 14 percent
- About right - 46 percent
- Too lenient - 22 percent
- Don't know/not sure - 8 percent



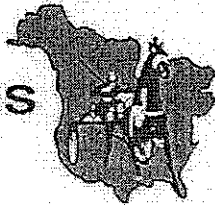
Results of a survey of 3,975 racing participants conducted by Indiana University's School of Public and Environmental Affairs Center for Urban Policy.

Approximately 34 percent indicated that horse racing is their full-time occupation, with 52 percent of the respondents holding a license for Standardbred racing. Sixty-three percent categorized themselves as owners, 36 percent as trainers, and 10 percent as drivers. Eighty-nine percent of respondents are also licensed in another state besides Indiana.

The Indiana Horse Racing Commission issued 8,689 licenses in 2006.



HARNESS



TRACKS
OF AMERICA, INC.

**TRACK
TOPICS**

Week of August 6, 2007

INDIANA'S TOP DRIVER GETS TWO YEARS FOR WHIPPING; DALEY LOSES IN U.S. COURT

There were two big harness racing stories out of Indiana this week, both involving Joe Gorajec, the state's iron tough executive director of the Indiana Horse Racing Commission.

In the first, Josh Sutton, the leading driver at both Indiana Downs and Hoosier Park last year, was in effect set down for two years for continued violations of excessive whipping.

In the second, Noel Daley, who had been suspended for 270 days in New Jersey and assessed \$40,000 in fines and investigatory costs on illegal substance and related drug violations, subsequently was refused a license in Indiana. He sued Gorajec and the commission, and on August 7 lost in federal court.

The Sutton whipping penalty is the most severe in memory. It developed after a race on May 19 this year at Hoosier Park, where Sutton, who was on probationary status for numerous whipping violations in 2005 and 2006, inflicted severe multiple lacerations on the pacer Staley Lane. Investigation showed that Sutton's whip included a 10-inch snapper at the end, four inches longer than allowed in Indiana. Gorajec called Sutton's actions "an inexcusable act of cruelty."

He suspended Sutton for six months and fined him \$2,500. But he also took an extra step, making Sutton agree not to seek licensure in Indiana until June 20, 2009, two years from the date on which he last raced at Hoosier Park. Explaining the penalty, Gorajec said, "The welfare of our horses and the perception and goodwill of our fans demand a significant penalty."

In the Noel Daley case, the trainer and his principal owners, Adam Victor and Son, sued both Gorajec and the full racing commission, alleging violation of constitutional rights and due process and charging "bad faith" on the part of the defendants. The commission members were quickly granted summary judgment to be dismissed from the case, since Gorajec alone had taken the action. Daley had shipped four Victor-owned horses to Indiana Downs, for races including two stakes. He did not apply for a license until the day of the race, and Gorajec refused to grant it, given Daley's past history. Indiana's racing laws provide for license refusal if "the refusal, denial, revocation, suspension or other penalty is in the public interest for the purpose of maintaining proper control over horse racing meetings or pari-mutuel wagering." They also provide for refusal if "the applicant or licensee had a license of the legally constituted racing authority of a state, province, or country denied, suspended, or revoked for cause within the preceding five years." Citing those rules, the court found for Gorajec and against Daley, in a 29-page decision filled with discussion of the propriety of motions filed and procedures followed in the case.

Indiana's victory in the Daley matter, and Gorajec's strong action in the Sutton whipping case, should be heartening news to racing. More jurisdictions should pay attention to previous violations and make their own decisions as to whether these are the people they want racing at their tracks. As for excessive whipping, there are rules and statutes on the books in all states, and judges need only exercise their subjective judgment to enforce them. Indiana is fortunate in having not only a very forceful commission executive director, backed fully by his commission, but also one of the best judges in the business in Tim Schmitz.

It is worth noting that New York also has amended its whipping rule, presumably for uniformity. It had read, in part, "Drivers shall keep a line in each hand from the start of the race until the head of the stretch finishing the race." It now reads, "...until one-quarter of one mile before the finish of the race." Since harness racing is conducted on different sized tracks in New York, the previous rule meant different distances at different tracks. Good move.

State	HR Gambling? Yes-in a limited manner	Jockey gamble?	Authority (Jockey bets)
Alabama	Yes-in a limited manner		
Alaska	No		
Arizona	Yes	Yes	R19-2-109
Arkansas	Yes	Yes	Ark. Admin. Code 006.06.4-28
California	Yes	Yes	4 CCR § 1971
Colorado	Yes	Yes	1 CCR 208-1:3.400 See 3.425
Connecticut	Yes	Yes	Regs. Conn. State Agencies § 12-574-A36
Delaware	Yes	Yes	3 Del. Admin. Code 1001-8.0 See 8.12
Florida	Yes	Yes	Fla. Admin. Code r. 61D-2.004
Georgia	No		
Hawaii	No		
Idaho	Yes	Yes	IDAPA 11.04.10
Illinois	Yes	Yes	11 Ill. Adm. Code 1411.50
Indiana	Yes	Yes	71 IAC 7-3-3
Iowa	Yes	Yes	Iowa Admin. Code 491-10.5(2)b
Kansas	Yes	No	K.A.R. 112-11-21(c) and K.A.R. 112-9-34
Kentucky	Yes	Yes	810 KAR 1:009 Section 13 and 811 KAR 2:050 Section 11
Louisiana	Yes	Yes	La. Admin. Code tit. 35, pt. XLI, § 739
Maine	Yes	?	01-017 CMR Ch. 7, § 66
Maryland	Yes	Yes	COMAR 09.10.01.21K
Massachusetts	Yes	Yes	205 CMR 4.15(16)
Michigan	Yes	Yes	Mich. Admin. Code R. 431.3265(1)
Minnesota	Yes	Yes	Minnesota Rules, part 7877.0180
Mississippi	No		
Missouri	Yes	Yes	11CSR 45-65.040(3)(B)
Montana	Yes	Yes	Mont. Admin. R. 32.28.705(21)
Nebraska	Yes	Yes	Neb. Admin. R. & Regs. Tit. 294, Ch. 11, § 001.12
Nevada	Yes	Yes	Nev Gaming Reg. 30.307
New Hampshire	Yes?	Yes-rules silent	N.H. Code Admin. R. Pari 100 - 700
New Jersey	Yes	Yes	N.J.A.C. 13:70-14.11
New Mexico	Yes	unclear	N.M. Admin. Code 15.2.1
New York	Yes	Yes	9 NYCRR 4040.1
North Carolina	No		
North Dakota	Yes	Yes-rules silent	NDAC 69.5-01 & 02
Ohio	Yes	Yes	OAC 3769-7-18
Oklahoma	Yes	Yes	Okla. Admin. Code 325:35-1-30
Oregon	Yes	Yes	OAR 462-140-0340
Pennsylvania	Yes	Yes	58 Pa. Code § 163.180
Rhode Island	Yes	Uncertain	§ 41-3-9
South Carolina	Yes	No	§ 52-5
South Dakota	Yes	Yes	§ 20:04:22:18
Tennessee	Yes	Uncertain	§ 4-36-302(5)
Texas	Yes	No	16-8-311(c), §311.205
Utah	Yes	Uncertain	R52-7-4(7)
Vermont	Yes	Uncertain	31 V.S.A. § 605
Virginia	Yes	Yes	11 VAC 10-60-120(U)
Washington	Yes	Yes	WAC 260-32-170
West Virginia	Yes	Yes	§178-1-45.14
Wisconsin	Yes	No	Game 16.03(4)
Wyoming	Yes	Yes	Chapter 2, §2(j)

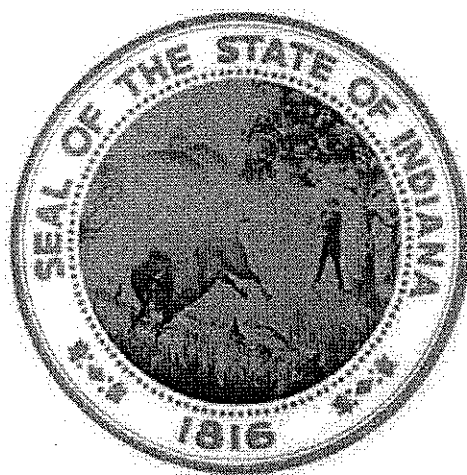
Exhibit B

SUBSIDIES TO HORSE RACING COMMUNITY (in millions)

CALENDAR YEAR:	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	TOTAL	SOURCE
Riverboat Tax Revenue Subsidy	\$ -	\$ 0.10	\$ 6.09	\$ 16.15	\$ 22.25	\$ 24.70	\$ 25.10	\$ 26.80	\$ 23.60	\$ 23.40	\$ 27.50	\$ 27.00	\$ 27.30	\$ 26.60	\$ -	\$ -		\$ 276.59	
Racino Tax Revenue Subsidy (15% AGR minus Integrity Fee)																			
Subsidy to Thoroughbred Breed Development (-purse)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 5.63	\$ 11.66	\$ 10.61	\$ 27.90	HRC Annual Reports
Subsidy to Standardbred Breed Development (-purse)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 6.97	\$ 14.43	\$ 13.26	\$ 34.66	HRC Annual Reports
Subsidy to Quarter Horse Breed Development (-purse)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 0.78	\$ 1.62	\$ 1.38	\$ 3.78	HRC Annual Reports
Subsidy to Thoroughbred Purses	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 7.84	\$ 16.23	\$ 15.43	\$ 39.50	HRC Annual Reports
Subsidy to Standardbred Purses	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 6.50	\$ 13.46	\$ 12.80	\$ 32.76	HRC Annual Reports
Subsidy to Quarterhorse Purses	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 1.56	\$ 3.23	\$ 3.07	\$ 7.86	HRC Annual Reports
Subsidy to Equine Promotion/Welfare	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 0.15	\$ 0.31	\$ 0.30	\$ 0.76	HRC Annual Reports
Subsidy to Backside Benevolence	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 0.75	\$ 1.56	\$ 1.48	\$ 3.79	HRC Annual Reports
Racino Total	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 30.18	\$ 62.50	\$ 58.33	\$ 151.01	
TOTAL GAMING RIVERBOAT/RACINO SUBSIDIES TO HORSE RACING COMMUNITY	\$ -	\$ 0.10	\$ 6.09	\$ 16.15	\$ 22.25	\$ 24.70	\$ 25.10	\$ 26.80	\$ 23.60	\$ 23.40	\$ 27.50	\$ 27.00	\$ 27.30	\$ 26.60	\$ 30.18	\$ 62.50	\$ 58.33	\$ 427.60	

STATE BOARD OF ACCOUNTS
302 West Washington Street
Room E418
INDIANAPOLIS, INDIANA 46204-2769

REVIEW REPORT
OF
INDIANA HORSE RACING COMMISSION
STATE OF INDIANA
May 1, 2008 to September 30, 2010



FILED
10/31/2011

EXHIBIT D.

TABLE OF CONTENTS

<u>Description</u>	<u>Page</u>
Agency Officials	2
Independent Accountant's Report.....	3
Review Comments:	
Verification of Tote Report Data	4
Internal Controls Over Horsemen's Purses	4-5
Outs Revenue.....	5
Satellite Facility Taxes.....	5-6
Internal Controls Over Opening Mail.....	6
Cash Book	6-7
Bond Coverage.....	7
Exit Conference.....	8
Official Response.....	9-10

AGENCY OFFICIALS

<u>Office</u>	<u>Official</u>	<u>Term</u>
Executive Director	Joseph Gorajec	07-01-07 to 06-30-11
Chairman	Sarah McNaught	04-01-05 to 09-01-14



STATE OF INDIANA
AN EQUAL OPPORTUNITY EMPLOYER

STATE BOARD OF ACCOUNTS
302 WEST WASHINGTON STREET
ROOM E418
INDIANAPOLIS, INDIANA 46204-2769

Telephone: (317) 232-2513
Fax: (317) 232-4711
Web Site: www.in.gov/sboa

INDEPENDENT ACCOUNTANT'S REPORT

TO: THE OFFICIALS OF THE INDIANA HORSE RACING COMMISSION

We have reviewed the receipts, disbursements, and assets of the Indiana Horse Racing Commission for the period of May 1, 2008 to September 30, 2010. The Indiana Horse Racing Commission's management is responsible for the receipts, disbursements, and assets.

Our review was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants. A review is substantially less in scope than an examination, the objective of which is the expression of an opinion on the receipts, disbursements, and assets. Accordingly, we do not express such an opinion.

Financial transactions of this office are included in the scope of our audits of the State of Indiana as reflected in the Indiana Comprehensive Annual Financial Reports.

Based on our review, nothing came to our attention that caused us to believe that the receipts, disbursements, and assets of the Indiana Horse Racing Commission are not in all material respects in conformity with the criteria set forth in the Accounting and Uniform Compliance Guidelines Manual for State and Quasi Agencies, and applicable laws and regulations, except as stated in the review comments.

STATE BOARD OF ACCOUNTS

December 28, 2010

INDIANA HORSE RACING COMMISSION
REVIEW COMMENTS
September 30, 2010

VERIFICATION OF TOTE REPORT DATA

The Indiana Horse Racing Commission (Commission) did not have adequate procedures in place to verify the validity of daily Tote report data generated at the Hoosier Park and Indiana Downs race tracks as well as five off track betting satellite facilities. The information presented within the Tote reports includes, but is not limited to, total amount wagered, number of tickets sold and redeemed, and total amount paid out. This information is used to compute the percentage of tax revenue remitted to the State which includes, but is not limited to, pari-mutuel taxation of amounts wagered, pari-mutuel satellite facility taxes, breakage revenue (odd cents from winnings distributions), and outs revenue (unclaimed pari-mutuel tickets). Tote report data is also used to compute amounts due to the horsemen's "purse" accounts, and the Commission's breed development funds.

Indiana Code 4-31-3-8 states:

"The commission shall initiate safeguards as necessary to account for the amount of money wagered at each track or satellite facility in each wagering pool."

Each agency, department, quasi, institution or office should have internal controls in effect to provide reasonable assurance regarding the reliability of financial information and records, effectiveness and efficiency of operations, proper execution of management's objectives, and compliance with laws and regulations. Among other things, segregation of duties, safeguarding controls over cash and all other assets, and forms of information processing are part of an internal control system. (Accounting and Uniform Compliance Guidelines Manual for State and Quasi Agencies, Organizational Overview, Summary of Agency Accounting Responsibilities)

INTERNAL CONTROLS OVER HORSEMEN'S PURSES

While the Commission implemented 71 IAC 4-2-7 concerning purse monies, effective November 15, 2009, and subsequently began performing audits of the purses, the Commission did not have adequate internal controls in place to verify the accountability of purse monies prior to the implementation of 71 IAC 4-2-7. This Indiana Administrative Code provides that unfunded purse liabilities of the racetracks which accrued prior to November 15, 2009, were due to be paid to the purse accounts on or before July 1, 2010. We noted that while the Commission's audit procedures included verification that unfunded liabilities were paid to the respective purse accounts, the Commission's audit procedures did not include verifying the accuracy of the existing purse account balances as of November 15, 2009.

Indiana Code 4-31-3-11 states:

"A permit holder shall give each racing inspector full and free access to the books, records, and papers pertaining to the pari-mutuel system of wagering and to the enclosure or space where the pari-mutuel system is conducted, for the purpose of ascertaining whether the permit holder is retaining the proper amount of commission. The racing inspector shall investigate and ascertain whether this article or rules adopted by the commission are being violated at the racetrack or enclosure. The racing inspector shall immediately report a violation in writing and under oath to the commission."

INDIANA HORSE RACING COMMISSION
REVIEW COMMENTS
September 30, 2010
(Continued)

Each agency, department, quasi, institution or office should have internal controls in effect to provide reasonable assurance regarding the reliability of financial information and records, effectiveness and efficiency of operations, proper execution of management's objectives, and compliance with laws and regulations. (Accounting and Uniform Compliance Guidelines Manual for State and Quasi Agencies, Organizational Overview, Summary of Agency Accounting Responsibilities)

OUTS REVENUE

Outs revenue is generated from the unclaimed winnings at both tracks, their satellite facilities, and also from simulcast races shown at out-of-state tracks and/or satellite facilities.

The Commission did not have adequate procedures in place to verify the completeness and accuracy of outs revenues that the Commission received. Sixty days after the conclusion of the calendar year in which tickets were purchased, the Commission receives a check and summary report from each track for the total value of unclaimed or unrepresented pari-mutuel tickets. While the Commission compared the amounts of the checks to the summary totals, the Commission did not verify the summary totals to supporting documentation such as a detailed listing of unclaimed tickets and related Tote reports.

Indiana Code 4-31-3-11 states in part, the commission shall employ or contract for racing inspectors to attend each recognized meeting held under a permit issued under this article. A permit holder shall give each racing inspector full and free access to the books, records, and papers pertaining to the pari-mutuel system of wagering and to the enclosure or space where the pari-mutuel system is conducted, for the purpose of ascertaining whether the permit holder is retaining the proper amount of commission. The racing inspector shall investigate and ascertain whether this article or rules adopted by the commission are being violated at the racetrack or enclosure. The racing inspector shall immediately report a violation in writing and under oath to the commission.

Each agency, department, quasi, institution or office should have internal controls in effect to provide reasonable assurance regarding the reliability of financial information and records, effectiveness and efficiency of operations, proper execution of management's objectives, and compliance with laws and regulations. (Accounting and Uniform Compliance Guidelines Manual for State and Quasi Agencies, Organizational Overview, Summary of Agency Accounting Responsibilities)

SATELLITE FACILITY TAXES

The Commission did not have procedures in place to verify the completeness and accuracy of satellite facility taxes due to the State from the racetracks' off track betting satellite facilities. Even though Indiana Code 4-31-9-9 provides that the permit holder or racetrack shall forward to the Auditor of State the amount of the satellite facility tax and the Auditor of State shall distribute these funds to the Indiana State Fair Commission and the Livestock Industry Promotion and Development Fund, it is still the Commission's responsibility to verify the amount of taxes generated at and remitted by each satellite facility.

Indiana Code 4-31-3-8 states:

"The Commission shall initiate safeguards as necessary to account for the amount of money wagered at each track or satellite facility in each wagering pool."

INDIANA HORSE RACING COMMISSION
REVIEW COMMENTS
September 30, 2010
(Continued)

Indiana Code 4-31-3-11 states:

"A permit holder shall give each racing inspector full and free access to the books, records, and papers pertaining to the pari-mutuel system of wagering and to the enclosure or space where the pari-mutuel system is conducted, for the purpose of ascertaining whether the permit holder is retaining the proper amount of commission."

Each agency, department, quasi, institution or office should have internal controls in effect to provide reasonable assurance regarding the reliability of financial information and records, effectiveness and efficiency of operations, proper execution of management's objectives, and compliance with laws and regulations. (Accounting and Uniform Compliance Guidelines Manual for State and Quasi Agencies, Organizational Overview, Summary of Agency Accounting Responsibilities)

INTERNAL CONTROLS OVER OPENING MAIL

The Commission did not have adequate controls in place for opening mail in its main office. We noted that mail, which includes revenues in the form of a check, was usually opened by one employee without the direct observation of another employee.

When mail is opened by one employee without the direct observation of another employee, the possibility that funds may be misplaced or stolen increases.

Each agency, department, quasi, institution or office should have internal controls in effect to provide reasonable assurance regarding the reliability of financial information and records, effectiveness and efficiency of operations, proper execution of management's objectives, and compliance with laws and regulations. Among other things, segregation of duties, safeguarding controls over cash and all other assets, and forms of information processing are part of an internal control system. (Accounting and Uniform Compliance Guidelines Manual for State and Quasi Agencies, Organizational Overview, Summary of Agency Accounting Responsibilities)

CASH BOOK

The Commission did not properly maintain a cash book of revenues collected at its main office. We noted that the cash book was incomplete as it did not specifically identify the amounts deposited with the Treasurer of State and lacked corresponding deposit ID numbers. Additionally, we found no evidence that the cash book was approved by the State Board of Accounts.

When a cash book is not properly utilized, the possibility that funds could be misplaced or stolen increases.

Indiana Code 5-13-5-1(a) states:

"Every public official who receives or distributes public funds shall:

- (1) keep a cash book into which the public officer shall enter daily, by item, all receipts of public funds, and
- (2) balance the cash book daily to show funds on hand at the close of the day."

INDIANA HORSE RACING COMMISSION
REVIEW COMMENTS
September 30, 2010
(Continued)

If money is received on a regular basis, some type of cash book (paper or electronic) is required. This cash book must list the revenue by classification and amount in detail. The cash book may include the receipt number or daily summaries from a source document or data processing listing. The amount deposited with the Treasurer of State and the corresponding ENCOMPASS Deposit ID must also be shown on the cash book. This is a method of assuring that these monies reconcile with the actual deposits with the TOS. Since there is no standard cash book prescribed for state agencies, all types of internal cash books or journals must be approved in writing by the State Board of Accounts. (Accounting and Uniform Compliance Guidelines Manual for State and Quasi Agencies, 4.4.1.2)

BOND COVERAGE

The Commission did not have bond coverage in effect as required by IC 4-31-3-6 for one of the commissioners since that commissioner's appointment in 2007.

IC 4-31-3-6 states:

"Each member of the commission shall execute a surety bond in the penal sum of ten thousand dollars (\$10,000)."

INDIANA HORSE RACING COMMISSION
EXIT CONFERENCE

The contents of this report were discussed on May 24, 2011, with Sarah McNaught, Chairman; Alan J. Armstrong, Vice Chairman; Joseph Gorajec, Executive Director; and Wendi Samuelson-Dull, Controller. The official response has been made a part of this report and may be found on pages 9 and 10.



Indiana Horse Racing Commission State of Indiana

Mitchell E. Daniels, Jr., Governor

www.in.gov/ihr

TO: Bruce A Hartman, State Examiner
State Board of Accounts

FROM: Sarah McNaught
Chairman

Joe Gorajec
Executive Director

DATE: June 3, 2011

RE: Official Response to Review Results and Comments for the Period
05/01/08 through 09/30/10

The Indiana Horse Racing Commission (hereinafter the "Commission") has oversight or control over a number of funds that, in the aggregate, total several millions of dollars. Some of these funds and their approximate annual amounts include: IHRC operating budget appropriations (\$2.4 million), standardbred breed development (\$11.9 million), thoroughbred breed development (\$10.3 million), Quarter Horse breed development (\$1.3 million) and standardbred advisory board (\$240,000).

Utilizing these funding sources, the Commission pays all of its operating expenses and over \$20,000,000 in awards and purse supplements to horse owners, breeders, pari-mutuel and county fair tracks annually.

The Commission is pleased to note that during the course of the review period that spans almost two and a half (2 ½) years, ***no findings have been made that would suggest or lead to the conclusion that any of these funds have been inappropriately processed, used or otherwise expended.***

The State Board of Accounts has, however, made comments and suggestions regarding some of the Commission's internal controls during the relevant time period. The Commission would generally note that compliance with these findings will enable the Commission to continue to improve the service it provides to the public. Accordingly, the Commission is appreciative of and would like to thank the State Board of Accounts for its thoughtful review. As always, representatives of the State Board of Accounts have conducted themselves with the highest degree of professionalism.

The following are the Commission's responses to the specific findings contained in the review:

1) VERIFICATION OF TOTE REPORT DATA

We concur. This has been an issue that has long perplexed and stymied regulators across the nation. Until recently, there has not been a reliable, accessible and cost efficient way to independently determine the accurate implementation of state specific software requirements. It is important to note that both Indiana vendors (United Tote and Scientific Games) have periodic independent SAS 70 Audits that have given regulators a certain level of comfort as to the integrity of their tote systems. The Commission is pleased to be one of the first jurisdictions in the nation to have internationally recognized Gaming Laboratories International perform totalizator testing at its pari-mutuel facilities. The Commission approved GLI's proposal for totalizator testing at its public meeting on January 25, 2011. The result of GLI's review will be made available to the public upon its completion.

2) INTERNAL CONTROLS OVER HORSEMEN'S PURSES

We concur. The Commission has amended its regulation (71 IAC 4-2-7) which now requires an annual audit or review for each horse industry trust purse account.

3) OUTS REVENUE

We concur. The agency accountant and controller have solicited information from other jurisdictions relating to their policies and procedures in place for auditing outs. Once received, the Commission will be working on establishing and implementing similar policies and procedures.

4) SATELLITE FACILITY TAXES

We concur. The Commission accountant and controller are working on policies and procedures to "verify the completeness and accuracy of satellite facility taxes due the State from the racetracks' off track betting satellite facilities."

5) INTERNAL CONTROLS OVER OPENING MAIL

We concur. The Commission staff will work to insure there are two employees present when opening the mail in the main office.

6) CASH BOOK

We concur. The Commission currently has a cash book in place that will be updated and submitted to the State Board of Accounts for approval.

7) BOND COVERAGE

We concur. Subsequent to the review period, bond coverage had been obtained for the Commissioner referenced in the finding.