

JANUARY 12

TENTATIVE AGENDA

LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

January 12, 1988 --- 1:00-4:00 p.m.

COMMITTEE MEETING ROOM, M-438

1. Approval of Minutes - Meeting December 8, 1987
2. REVIEW OF LEGISLATIVE RULES:
 - *** a. Workers' Compensation - Medical Fee Schedule
 - *** b. Dept. of Energy - Surface Mining Reclamation Regulations
 - *** c. Health Care Cost Review Authority - Exemptions from Certificate of Need Review
 - *** d. Tax Dept. - Consumers Sales and Service Tax and Use Tax
 - e. Health Dept. - Trauma Center or Facility Designation
 - f. Dept. of Highways - Traffic and Safety Rules and Regulations
 - g. Dept. of Highways - Construction and Reconstruction of State Roads
 - h. Dept. Natural Resources - Solid Waste Management Regulations
 - i. WV Dept. of Labor - WV Occupational Safety and Health Act - adoption of Federal Standards
 - j. WV Dept. of Labor - Wage Payment and Collection Act
 - k. WV Dept. of Labor - Steam Boiler Inspection Fee Schedule
 - l. Board of Chiropractic Examiners - Rules of the West Virginia Board of Chiropractic Examiners
 - m. Dept. of Corrections - WV Minimum Standards for Construction, Operation & Maintenance of Jails

n. Dept. of Human Services - Guidelines for Child Support Awards

***** o. Dept. of Commerce - Rules Governing Public Use of WV State Parks, State Forests and State Hunting and Fishing Areas

3. Other Business:

Racing Commission - Review of operation of dog tracks under 1987 legislation

Review of requirements of the Federal Freedom of Information Act

*** Carried over

***** Previously considered by Committee Modified, Amended and Approved 8-7-87 Motion of Del. Murphy to reconsider

Tuesday, January 12, 1988

1:00 - 4:00 P.M.

Legislative Rule-Making Review Committee
(Code §29A-3-10)

Dan Tonkovich,
ex officio nonvoting member

Robert "Chuck" Chambers,
ex officio nonvoting member

Senate

House

Tucker, Chairman
Boettner
Holmes
Tomblin
Harman
Hylton

Knight, Chairman
Burk
Murphy
Givens
Faircloth
Pritt

The meeting was called to order by Mr. Tucker, Co-Chairman.

The minutes of the December 8, 1987, meeting were approved.

Harry Buch, Chairman, West Virginia Racing Commission, presented a report to the Committee regarding implementation of the operation of dog tracks under 1987 legislation. He answered questions from the Committee. Mr. Buch asked that the Committee reconsider its action whereby they amended the thoroughbred rules.

Michael Romaine, General Manager of Wheeling Downs, and Doug Skaff, General Manager of Tri-State Greyhound Park, distributed reports to the Committee and outlined the uses to which they have put the additional money received under last year's legislation. They answered questions from the Committee.

Leonard Coleman, representing the Jockeys Guild, asked to address the Committee regarding the amendments it had made to the

Thoroughbred rule. Without objection, he addressed the Committee and answered questions.

Debra Graham, Committee Counsel, informed the Committee that the rule proposed by the Workers' Compensation Fund, Medical Fee Schedule, has been modified to meet the objections of all concerned parties.

Mr. Givens moved that the proposed rule be approved as modified. The motion was adopted.

Mike Mowery, Committee Counsel, explained that the rule proposed by the Department of Energy, Surface Mining Reclamation Regulations, has not been abstracted. Thomas O. Morgan, Federal Office of Surface Mining, informed the Committee that a review of the proposed rule revealed several problems which they hoped to resolve with the Department of Energy within the next two or three weeks. In response to question, Roger Hall, told the Committee that he thought the rule as filed was complete and that the December 18 letter from OSM took them by surprise. He answered other questions from the Committee.

Mr. Knight moved that upon receipt of a list of mandated amendments from OSM that the Committee consider only those amendments and that the rest of the proposed rule be considered at a later time.

Mr. Morgan answered questions from the Committee regarding the feasibility of considering only certain portions of the proposed rule.

Mr. Knight asked unanimous consent to withdraw his motion. There being objection, the motion was withdrawn.

Mr. Hylton moved that the proposed rule lie over until the next meeting. The motion was adopted.

John Kozak, Counsel for Health Care Cost Review Authority, told the Committee that the Authority and the Hospital Association had come to an agreement in principal regarding modifications to the rule proposed by the Authority, Exemptions from the Certification of Need Review. He stated that the modifications were not in writing but that he hoped to have them to the Committee by the end of the week.

Mr. Givens moved that the proposed rule lie over until the next meeting. The motion was adopted.

Mr. Mowery updated the Committee regarding action it had previously taken on the rule proposed by the Tax Department, Consumers Sales and Service Tax and Use Tax. John Montgomery, Counsel for the Tax Department, distributed and discussed three pages of proposed modifications to the rule.

Sue Sergi, representing Community Council, addressed the Committee regarding the impact of the rule on human service non-profit organizations and requested that the rule be modified to exempt such organizations from the proposed rule. Betty Anne Smith, representing Family Service of Kanawha Valley, told the Committee that she agreed with Ms. Sergi's comments.

Mr. Murphy moved to amend the proposed rule to redefine "occasional" from four times per year to twelve times per year. After discussion, Mr. Murphy asked unanimous consent to withdraw his motion. Without objection, his motion was withdrawn.

Mr. Boettner moved that the staff be authorized to draft a bill proposing legislation exempting charitable organizations which are exempt from taxation under Section 501(c)(3) and 501(c)(4) of the internal revenue code. After discussion on motion and questions directed to John Montgomery of the Tax Department, Mr. Boettner asked unanimous consent to withdraw the motion. Without objection, the motion was withdrawn.

Mr. Boettner moved that the Committee recommend for passage a bill to be drafted by Ms. Pritt exempting certain charitable organizations from the Consumers Sales Tax law. The motion was adopted.

Mr. Givens moved that the proposed rule be approved as modified and amended. The motion was adopted.

Ms. Graham reviewed her abstract on the rule proposed by the Health Department, Trauma Center or Facility Designation.

Mr. Murphy moved that the proposed rule be approved. The motion was adopted.

Ms. Graham reviewed the rule proposed by the Department of Highways, Traffic and Safety Rules and Regulations. She explained that the Department had submitted a minor modification at her request.

Ed Keeling, Department of Highways, gave the Committee some background information on the proposed rule. Dan Blackwood of the Department of Highways, answered several questions from the Committee.

Mr. Boettner moved that Section 7.6 (6) of the proposed rule be modified by increasing to four cents per ton mile the overweight fee to be assessed in addition to the basic fee for a special permit. The motion was adopted.

Mr. Boettner moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham reviewed her abstract on the rule proposed by the Department of Highways, Construction and Reconstruction of State Roads. Bill Hanshaw of the Department of Highways addressed the Committee and answered questions.

Mr. Givens moved that the proposed rule be approved. The motion was adopted.

Mr. Tucker informed the Committee that several representatives of the Jockeys Guild were still present and were interested as to whether or not the Committee would reconsider the action whereby it amended the rule proposed by the Racing Commission, Thoroughbred Rules. Fred Kratz, a former jockey, told the Committee that West Virginia is the only state in which jockeys have not received a raise in twenty years. He answered questions from the Committee.

Ms. Pritt moved that the Committee direct its counsel to write a letter to the Racing Commission outlining the manner in which jockey fees could be increased through the rule-making process. The motion was adopted.

Ms. Graham reviewed the rule proposed by the Department of Natural Resources, Solid Waste Management Regulations. Paul Hill of the Department of Natural Resources, responded to the Committee's questions.

Mr. Murphy moved that the proposed rule be modified that land fills be inspected at least three times annually. The motion was adopted.

Mr. Murphy moved that the proposed be approved as modified. The motion was adopted.

Ms. Graham discussed her abstract on the rule proposed by the Department of Labor, West Virginia Occupational Safety and Health Act, adoption of Federal Standards. Andrew Brown of the Department of Labor, answered questions.

Mr. Knight moved that the proposed rule be approved. The motion was adopted.

Ms. Graham reviewed the rule proposed by the Department of Labor, Wage Payment and Collection Act. She stated that she had suggested several minor modifications to the Department.

Ms. Pritt moved that the rule lie over to the next meeting. The motion was adopted.

Mr. Mowery reviewed the rule proposed by the Department of Labor, Steam Boiler Inspection Fee Schedule.

Mr. Givens moved that the proposed rule be approved. The motion was adopted.

Ms. Graham reviewed the rule proposed by the Board of Chiropractic Examiners, Rules of the Board of West Virginia Chiropractic Examiners. She explained the problems that she had with the rule and informed the Committee that the Board had agreed to modify the rule in accordance with her directions. Doris Mays, Executive Secretary to the Board, said that the Board would make the modifications.

Mr. Knight moved that the proposed rule be approved as modified. The motion was adopted.

Mr. Mowery reviewed the rule proposed by the Department of Corrections, West Virginia Minimum Standards for Construction, Operation and Maintenance of Jails. Mary Downey, counsel for the Juvenile Justice Committee, answered questions from the Committee.

Mr. Hylton moved that the proposed rule be approved. The motion was adopted.

Mr. Knight told members of the Committee that he had been informed that the rule proposed by the Civil Service System, Rules and Regulations of the West Virginia Civil Service System, relating to grievance procedure were not ready for presentation

to the Committee and that the Commissioner intends to file the proposed rule as an emergency rule on Friday.

Mr. Knight moved that the Committee recommend to the Secretary of State that he not accept the emergency rule. The motion was adopted.

Mr. Knight moved that the proposed rule lie over until the next meeting. The motion was adopted.

Mr. Mowery explained his abstract on the rule proposed by the Department of Human Services, Guidelines for Child Support Awards and informed the Committee of the meeting to be held on Friday, January 15, 1988, 9:30 a.m. to 4:30 p.m., in the Conference Center, State Capitol Complex, with an expert from the State of Delaware who would discuss problems and issues involved in implementing child support guidelines.

Mr. Hylton moved that the rule lie over. The motion was adopted.

Ms. Graham told the Committee that she had been unable to meet with the Attorney General's office regarding the rule proposed by the West Virginia State Board of Registration for Professional Engineers, Rules of the West Virginia State Board of Registration for Professional Engineers.

Mr. Hylton moved that the proposed rule lie over until the next meeting. The motion was adopted.

Mr. Tucker told the Committee that Mr. Murphy's motion to reconsider the rule proposed by the Department of Commerce, Rules

Governing Public Use of West Virginia State Parks, State Forests and State Hunting and Fishing Areas, was improper in that it was not made at the next meeting following Committee action on the proposed rule.

Mr. Murphy asked unanimous consent that the Committee reconsider its action on the proposed rule. Without object, the Committee agreed to reconsider its action. Mr. Murphy explained that he would like to amend the proposed rule to require step aside and doubling up on the state park golf courses. He said that Commissioner Trocin of the Department of Commerce was working on some language to amend the proposed rule.

Mr. Murphy moved that the proposed rule lie over until the next meeting. The motion was adopted.

Mr. Mowery briefed the Committee on his research of the State and Federal Freedom of Information Laws. In response to the Committee's inquiry, Rich Hartman, Director, Administrative Law Division of the Secretary of State Office, informed the Committee that the Department of Energy has not final filed its procedural rule on Freedom of Information.

Ms. Pritt moved that the Department of Energy's procedural rule be brought before the Committee for its consideration.

The meeting was adjourned.

ROLL CALL - LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

DATE: 1-12-88

TIME: 1:00-4:00

NAME	Present	Absent	Yeas	Nays
Chambers, Robert "Chuck", Speaker				
Knight, Thomas A.	✓			
Burk, Robert W., Jr.	✓			
Givens, Roy E.	✓			
Pritt, Charlotte	✓			
Larry V. Faircloth	✓			
Murphy, Patrick H.	✓			
Tonkovich, Dan, President				
Tucker, Larry A.	✓			
Boettner, John "Si"	✓			
Harman, C. N.	✓			
Holmes, Darrell E.	✓			
Hylton, Tracy W.	✓			
Tomblin, Earl Ray	✓			
TOTAL				

RE: _____

REGISTRATION OF PUBLIC
AT
COMMITTEE MEETINGS
WEST VIRGINIA LEGISLATURE

COMMITTEE: Leg. Rule-Making Review

DATE: JANUARY 12, 1988

NAME	ADDRESS	REPRESENTING	PLEASE CHECK (X) IF YOU DESIRE TO MAKE A STATEMENT
Please print or write plainly JOHN MONTGOMERY	CHARLESTON	TAX DEPARTMENT	X
David Mason	Huntington	Chiropractic Board	
Ray J. Burch	W.V.	W.V. Racing Com.	
John T. Thompson	Charleston WV	" " "	
John D. Hagan	Charleston WV	Racing Commission	
John Kuhn	Charleston	HCCRA	If Committee wishes,
Robert Park	Charleston	HCCRA	" "
Jim Vandeyn	C/HR	WVHA	
Billy S. Roberts	Chas	WVHA	
Bill DeHaura	Chas	WVHA	
Bob Parker	Chas	HCCRA	
Maggie Belle	Chas	LINX	
LEONARD COLEMAN	Ch	JUCRSIS FUILD	✓
FRAN KATZ	Ch	JUCRSIS FUILD	
William D. Haffner SR	Charleston	W.V. Dept of Labor	
Andy Brown	"	"	
Sue Serigi	Charleston	Community Council	✓
Martin Hankins	"	" "	

REGISTRATION OF PUBLIC
AT
COMMITTEE MEETINGS
WEST VIRGINIA LEGISLATURE

COMMITTEE: Rule-Making Review

DATE: 1/12/88

NAME	ADDRESS	REPRESENTING	PLEASE CHECK (X) IF YOU DESIRE TO MAKE A STATEMENT
Please print or write plainly			
Barbara E. Mershock	Charleston	Kanawha Hospice Care	
Ray Doward	Charleston	Health Department	
Bill Hansbrow	Charleston	Highways	X
MICHAEL H. ROMAINE	WHEELING	WHEELING DOWNS	
Douglas SKAFF	Charleston	Tri-State Grayhound Park	
Kenneth Webb	Charleston	W. Va. Dept Highways	
Roger T. Hall	Charleston	DOE	
Jeffrey W. VanHelen	Charleston	Spilman, Thomas	
Ed Keebler	DOH - Ches	DOH	
Elizabeth McElroy	Charleston	Kanawha Hospice	
F.M. Cooley, MD	61	Health Dept - Trauma Ctr	
Bob Workman	Charleston	W.V. Broadcasters	
Betty Anne Smith	Charleston	Family Service of Kan Valley	X
David P. Drape	Charleston	Daymark, Inc.	
Carol S. Baird	Charleston	Central Ches Care	
Marianne Penning	Charleston	Girl Scouts	
Robert McAuliffe	Ches.	AFSCME/WU	X
David Fisher	Charleston	WC Fee Schedule	

REGISTRATION OF PUBLIC
AT
COMMITTEE MEETINGS
WEST VIRGINIA LEGISLATURE

COMMITTEE: Rule Making Review

DATE: 1-12-88

NAME	ADDRESS	REPRESENTING	PLEASE CHECK (X) IF YOU DESIRE TO MAKE A STATEMENT
Please print or write plainly	1800 Washjean St.		
Paul L. Hill	Charleston, W	WVDNR	
Louis Henson	24 Chas	WVDOT	
A. D. Blackwood	Charleston	WVDOT	

1-12-88 meeting
Handout

COMMUNITY COUNCIL/CONFERENCE OF AGENCY EXECUTIVES/UNITED WAY

NON-PROFIT TAXATION

POSITION PAPER

I. Background

Until 1987, non-profit organizations were not subject to the consumer sales tax for either the purchase or delivery of goods and services. Agencies designated as 501(c)-3 were exempted from such taxation since they were operating for purposes other than the generation of profits.

A bill was passed during the 1987 state legislative session which restructured the overall tax system in West Virginia. This bill has been interpreted by state tax officials as removing the consumer sales tax exemption for non-profit organizations.

II. Issue

The state tax reform of 1987 has led to the imposition of a tax burden on non-profit groups which they had previously not been encumbered with. These organizations for the first time are being forced to collect the state consumer sales tax on the delivery of goods and services to their client groups. They are also being forced to pay this sales tax on the purchase of goods and services.

The question is whether it was the legislators' intent to impose such taxation on non-profit organizations. If such intent did not in fact exist, the question then becomes whether state tax officials are over-reaching their authority in interpreting the bill contrary to legislative intention.

III. Need

Most non-profit organizations provide services which by their very nature do not lend themselves to normal for-profit business administration. Due to the various special populations targeted for these services, there is no expectation that a profit will be generated. In fact, the economic resources available to such organizations are currently so scarce that, if anything, deficits are the most common occurrence, not profits.

Due to this limited resource base, any additional expense simply reduces the funds available for service delivery. Thus, the imposition of the consumer sales tax on non-profit organizations simply diverts resources way from those social functions for which they are incorporated.

If these agencies are required to tax the delivery of their goods and services, then not only do they incur administrative costs but their client groups are forced to pay the additional costs associated with the tax. Due to the regressive nature of the sales tax, it tends to fall

hardest on those least able to afford the additional expense, the very groups generally served by non-profit agencies.

The payment of the sales tax on the purchases of non-profit organizations creates an even more direct drain on their limited resources. Each additional dollar spent by these agencies to pay the sales tax represents a dollar which cannot be spent on providing aid to those in need.

IV. Remedy

Some form of governmental resolution is required to clear up the non-profit taxation problem. Organizations which do not operate to generate profits should not be subject to the state consumer sales tax. Administrative, judicial, and/or legislative remedies should be employed to resolve this situation by reinstating the non-profit exemption.

V. Costs

Since the law has only been in effect since July 1, 1987, there are no reliable figures available as to the costs involved in exempting non-profit organizations from the consumer sales tax. There are therefore no data currently available concerning the impact of this change on state tax collections or on the budgets of the agencies affected.

VI. Recommendation

The Community Council of Kanawha Valley/Conference of Agency Executives/United Way should support whatever governmental remedies are necessary to restore the tax-exempt status of non-profit organizations in the state of West Virginia. Administrative, judicial and/or legislative resolution of this issue should be sought as soon as possible.



STATE OF WEST VIRGINIA

DEPARTMENT OF ENERGY

1816 WASHINGTON STREET, EAST
CHARLESTON, WEST VIRGINIA 25311
TELEPHONE: 348-3600

ARCH A. MOORE, JR.
GOVERNOR

January 12, 1988

KENNETH R. FAERBER
COMMISSIONER

The Honorable Larry A. Tucker
Senator
The Honorable Thomas A. Knight
Delegate
Legislative Rulemaking Review Committee
Room M 438
State Capitol Complex
Charleston, West Virginia 25305

Dear Messrs. Tucker and Knight:

You have before your committee proposed regulations relating to this Department's Surface Mine Reclamation Program. As you are aware from discussions in previous committee meetings, the action we have taken in filing this regulatory reform package is mandated by federal requirements that our regulations be consistent with federal provisions. A recent informal review of the proposed reform package by the Federal Office of Surface Mining (OSM) has resulted in their determination that although approximately sixty percent of the inconsistencies have been satisfied, there remains a number of outstanding issues to be resolved. These issues have been outlined to us in a letter from the OSM regional office dated December 18, 1987. Since that time, we have met with OSM in an effort to resolve these issues and of those that were discussed, we have reached agreement on all of them. We are continuing our discussions with OSM and expect to conclude this process in the near future with the same level of success. I have attached a copy of a letter from Mr. James C. Blankenship, Jr., Director of OSM's Charleston field office, in support of the foregoing.

It is my understanding that your committee has scheduled review of the reform package on January 12, 1988. Unfortunately, our discussions with OSM will result in several amendments to the package before you, and we are not prepared at this time to submit to the committee a complete description of the required amendments.

The Honorable Larry A. Tucker
The Honorable Thomas A. Knight
Page two
January 12, 1988

Therefore, I must ask that the committee delay action on this proposal until we conclude our discussions with OSM and can present to you a complete package with all amendments. I think the committee should be advised that approval of this proposed regulatory package during the current legislative session is important to the citizens of the State of West Virginia. We have the full support of OSM in this effort and with the continued support and cooperation of the committee, we will achieve this mutual objective.

I ask for your favorable consideration of this request. If I can be of further assistance, please feel free to advise.

Sincerely,



Kenneth R. Faerber
Commissioner

KRF:cc



United States Department of the Interior

OFFICE OF SURFACE MINING

Reclamation and Enforcement
603 Morris Street
Charleston, WV 25301

In Reply Refer To:
4320
INE 1

JAN 12 1988

Mr. Kenneth R. Faerber, Commissioner
West Virginia Department of Energy
1615 Washington Street, East
Charleston, West Virginia 25311

Dear Mr. Faerber:

We wish to express our appreciation for the cooperation of your staff at our January 7 meeting during which the comments relating to your proposed regulations were discussed. As your staff may have informed you, we completed discussion on about fifteen percent of the comments and were able to reach a resolution on nearly every issue.

Although discussion of each individual issue is very time consuming, we wish to again express our commitment to completing the process in a timely manner. We are aware of the time constraints placed on the Department of Energy due to consideration of the proposed regulations by the 1988 Legislature and want to assure you that we will make every effort to work with you to allow submission of a final package to the Legislature in time to ensure approval. Based on the results of our first meeting we feel confident that most, if not all of the issues can be resolved.

We look forward to continuation of our discussions and are prepared to meet daily until the issues are resolved.

Sincerely,

Thomas C. Morgan

for James C. Blankenship, Jr., Director
Charleston Field Office

1-12-88
Handout



STATE OF WEST VIRGINIA
OFFICE OF THE ATTORNEY GENERAL
CHARLESTON 25305

CHARLES G. BROWN
ATTORNEY GENERAL

(304) 348-2021

CONSUMER HOT LINE
(800) 368-8808

December 23, 1987

Harry L. Buch, Chairman
West Virginia Racing Commission
Suite 310
Charleston, West Virginia 25301

Dear Mr. Buch:

This will acknowledge receipt of your letter of October 9, 1987, in which you request the opinion of the Attorney General with respect to the authority of the West Virginia Racing Commission. The specific question raised is whether or not the West Virginia Racing Commission may through the promulgation of rules and regulations regulate the fees paid to jockeys.

The authority of the West Virginia Racing Commission to regulate the racing of horses generally is found in Chapter 19, Article 23 of the Code of West Virginia of 1931, as amended (hereinafter Code). The West Virginia Racing Commission is established by Code 19-23-4. The powers and authority of the Racing Commission are found in Code 19-23-6 which provides in full as follows:

"The racing commission shall have full jurisdiction over and shall supervise all horse race meetings, all dog race meetings and all persons involved in the holding or conducting of horse or dog race meetings, and, in this regard, it shall have plenary power and authority:

"(1) To investigate applicants and determine the eligibility of such applicants for a license or permit or construction permit under the provisions of this article;

"(2) To fix, from time to time, the annual fee to be paid to the racing commission for any permit required under the provisions of section two [§ 19-23-2] of this article;

"(3) To promulgate reasonable rules and regulations implementing and making effective the provisions of this article and the powers and authority conferred and the duties imposed upon the racing commission under the provisions of this article, including, but not limited to, reasonable rules and regulations under which all horse races, dog races, horse race meetings and dog race meetings shall be held and conducted, all of which reasonable rules and regulations shall be promulgated in accordance with the provisions of article three [§ 29A-3-1 et seq.], chapter twenty-nine-A of this Code;

"(4) To register colors and assumed names and to fix, from time to time, the annual fee to be paid to the racing commission for any such registration;

"(5) To fix and regulate the minimum purse to be offered during any horse or dog race meeting;

"(6) To fix a minimum and maximum number of horse races or dog races to be held on any respective racing day;

"(7) To enter the office, horse racetrack, dog racetrack, kennel, facilities and other places of business of any licensee to determine whether the provisions of this article and its reasonable rules and regulations are being complied with, and for this purpose, the racing commission, its racing secretary, representatives and employees may visit, investigate and have free access to any such office, horse racetrack dog racetrack, kennel, facilities and other places of business;

"(8) To investigate alleged violations of the provisions of this article, its reasonable rules and regulations, orders and final decisions and to take appropriate disciplinary action against any licensee or permit holder or construction permit holder for the violation thereof or institute appropriate legal action for the enforcement thereof or take such disciplinary action and institute such legal action;

"(9) By reasonable rules and regulations, to authorize stewards, starters and other racing

officials to impose reasonable fines or other sanctions upon any person connected with or involved in any horse or dog racing or any horse or dog race meeting; and to authorize stewards to rule off the grounds of any horse or dog racetrack any tout, bookmaker or other undesirable individual deemed inimicable to the best interests of horse and dog racing or the parimutuel system of wagering in connection therewith;

"(10) To require at any time the removal of any racing official or racing employee of any licensee, for the violation of any provision of this article, any reasonable rule and regulation of the racing commission or for any fraudulent practice;

"(11) To acquire, establish, maintain and operate, or to provide by contract for the maintenance and operation of, a testing laboratory and related facilities, for the purpose of conducting saliva, urine and other tests on the horse or dog or horses or dogs run or to be run in any horse or dog race meeting, and to purchase all equipment and supplies deemed necessary or desirable in connection with the acquisition, establishment, maintenance and operation of any such testing laboratory and related facilities and all such tests;

"(12) To hold up, in any disputed horse or dog race, the payment of any purse, pending a final determination of the results thereof;

"(13) To require each licensee to file an annual balance sheet and profit and loss statement pertaining to such licensee's horse or dog racing activities in this State, together with a list of each such licensee's stockholders or other persons having any beneficial interest in the horse or dog racing activities of such licensee;

"(14) To issue subpoenas for the attendance of witnesses and subpoenas duces tecum for the production of any books, records and other pertinent documents, and to administer oaths and affirmations to such witnesses, whenever, in the judgment of the racing commission, it is necessary

to do so for the effective discharge of its duties under the provisions of this article;

"(15) To keep accurate and complete records of its proceedings and to certify the same as may be appropriate;

"(16) To take such other action as may be reasonable or appropriate to effectuate the provisions of this article and its reasonable rules and regulations;

"(17) To provide breeders' awards, purse supplements and moneys for capital improvements at racetracks in compliance with section thirteen-b [§ 19-23-13b] of this article.

"The racing commission shall not interfere in the internal business or internal affairs of any licensee."

It is a clear rule of law in West Virginia that administrative agencies such as the West Virginia Racing Commission have only those powers which are expressly conferred upon them by statute or which arise out of necessary implication from those powers expressly conferred upon them by statute. Mohr v. County Court of Cabell County, 145 W. Va. 377, 115 S.E.2d 806 (1960).

If the West Virginia Racing Commission has the power to establish regulations governing the fees paid to jockeys, that power must be expressly conferred upon it by statute or arise by necessary implication from a power conferred upon the West Virginia Racing Commission by statute.

The Legislature has the authority to regulate horse racing. Hubel v. West Virginia Racing Commission, 376 F. Supp. 1 (S.D. W. Va. 1974); aff'd, 513 F.2d 240 (4th Cir. 1975). The Legislature by enacting Code 19-23-1 et seq. permitted horse racing under the supervision and control of the State of West Virginia through the West Virginia Racing Commission. State ex rel. Morris v. West Virginia Racing Commission, 133 W. Va. 179, 55 S.E.2d 263 (1949); State ex rel. Spiker v. West Virginia Racing Commission, 135 W. Va. 512, 63 S.E.2d 831 (1951); Santiago v. Clark, 444 F. Supp. 1077 (N.D. W. Va. 1978). In delegating its authority to regulate horse racing to the West Virginia Racing Commission, the Legislature is not required to "set up standards for the guidance of such boards and commissions in the use and the application of the power granted." State of W. Va. ex rel.

Morris v. West Virginia Racing Commission, ibid, at 192-193. "As enacted, our racing laws delegated the management (of horse racing) to a racing commission, and gave it complete power to adopt rules and regulations therefor." State of West Virginia ex rel. Morris v. West Virginia Racing Commission, ibid, at 201. The adoption of a regulation by the West Virginia Racing Commission is a "plain exercise of naked, but necessary, power to control a business which, in its very nature requires strict control."

Code 19-23-6 provides, in pertinent part, as follows:

"The racing commission shall have full jurisdiction over and shall supervise all horse race meetings, all dog race meetings and all persons included in the holding or conducting of horse and dog race meetings, and, in this regard, it shall have the plenary power and authority:

* * *

"(3) To promulgate reasonable rules and regulations implementing and making effective the provisions of this article and the powers and the duties imposed upon the racing commission, under the provisions of this article, including, but not limited to, reasonable rules and regulations under which all horse races, dog races, horse race meetings and dog race meetings shall be held and conducted, all of which reasonable rules and regulations shall be promulgated in accordance with the provisions of article three * * *, chapter twenty-nine-A of this Code;

* * *

"(16) To take such other action as may be reasonable or appropriate to effectuate the provisions of this article and its reasonable rules and regulations; * * *" (Emphasis added.)

It was the clear intention of the Legislature to give the West Virginia Racing Commission broad powers to regulate the horse racing industry. The Legislature has the authority to delegate broad police powers to regulate the horse racing industry to the West Virginia Racing Commission without providing or setting up standards for the guidance of the Commission. State ex rel. Morris v. West Virginia Racing Commission, supra. The

express authority granted to the Commission is broad enough to permit the West Virginia Racing Commission to promulgate rules and regulations establishing a minimum fee to be paid to jockeys.

Although the Supreme Court of West Virginia has never addressed the issue, several other jurisdictions have addressed the issue of whether or not a racing commission under color of a general statute may regulate jockey fees. These jurisdictions have uniformly held that the test of whether or not a racing commission with general powers to regulate the horse racing industry may promulgate regulations regarding the fee to be paid jockeys is whether or not the regulation has a direct relation to horse racing. State Racing Commission v. Robertson, 172 N.E.2d 628 (Ohio, 1960); Brann v. Mahoney, 48 A.2d 605 (Md., 1946); Euster v. Eagle Downs Racing Association, 677 F.2d 992 (1982); Horsemen's Benovolent and Protective Association v. Pennsylvania Horse Racing Commission, 530 F. Supp. 1098 (1982); Gilligan v. Pennsylvania Horse Racing Commission, 432 A.2d 275 (1981); Gilligan v. Pennsylvania Horse Racing Commission, 422 A.2d 487 (1980); Collella v. State Racing Commission, 274 N.E.2d 331 (1971); Department of Business Regulation v. Vandervoort, 273 So.2d 66 (1972). The jurisdictions are split with the majority of jurisdictions holding that the payment of fees to a jockey is an appropriate matter for regulation. However, Florida has held that the payment of fees to a jockey is not a subject of regulation. Department of Business Regulation v. Vandervoort, id.

The West Virginia Racing Commission is authorized to make a determination that a minimum fee for jockeys is necessary and directly related to the conduct of horse racing. Accordingly, the West Virginia Racing Commission has the authority under its general enabling act to promulgate a regulation establishing a minimum fee for jockeys. Further, the language of Code 19-23-6 emphasized above expressly authorizes the West Virginia Racing Commission to regulate all aspects of the conduct of horse races. It is the opinion of the Attorney General that the West Virginia Racing Commission may regulate the minimum fee paid to jockeys by administrative regulation.

Very truly yours,

CHARLES G. BROWN
Attorney General

By  Solicitor General
STEPHEN D. HERNDON



Wheeling, West Virginia, 26003

S. PENN & STONE ST.
PHONE 304 • 232-5050

*Handout
1-12-88*

Michael H. Romaine
General Manager

A SPECIAL REPORT ON
THE EFFECT OF H.B. 2367

The following is a year-end report that gives an overall view of the effects of House Bill 2367.

Under this new law, \$105,155 was generated to increase marketing activities. However, Ogden Allied provided additional monies to make the actual increase in marketing activities \$138,843.

Commissions paid to the City of Wheeling were \$244,394, or an increase of \$136,207 over 1986 figures. The County received \$72,627 as first ever revenues from Wheeling Downs. This was all attributed to House Bill 2367.

Purses paid to the dog men grew to an all time high of \$3,527,383.12, or an increase of \$281,570.98 over the amount of purses paid in 1986.

Due to the closing of the Bridgeport Bridge on March 31, 1987, and the added competition from Simulcast and Tele-Bet Wagering at The Meadows, Wheeling Downs experienced a smaller total handle in 1987 as compared to 1986.

Under House Bill 2367, Wheeling Downs paid \$681,268.03 to the State of West Virginia upon the conclusion of the 1987 racing season. This amount represents the figures needed to provide the minimum commission promised to the State of West Virginia as guaranteed by this Bill, \$6,848,023.47.

I would like to inform this Committee that as a part of this law, a Capital Improvement Fund of \$525,773 was set aside in 1987.



Wheeling, West Virginia, 26003

**S. PENN & STONE ST.
PHONE 304 • 232-5050**

Michael H. Romaine
General Manager

Wheeling Downs has planned and is currently involved in the construction of 30,000 square feet of building at an estimated cost of \$5,000,000. This will create a true Clubhouse effect, giving us a much up-graded facility, not only in respect to size and atmosphere, but allowing us to be more competitive with the added competition created by The Meadows.

These factors, I believe, show the progress that not only greyhound racing has made in West Virginia, but more particularly, at Wheeling Downs. The increases in purses most definitely will have a long range beneficial effect as they represent our product. The increases of the revenue to the City and County are obvious, and the State cannot suffer a commission tax loss on this Bill.

Admittedly, there was a reduction in the pari-mutuel handle and some of the reduction may be attributed to the new legislation. Wheeling Downs has been very sensitive to many factors over the years; the unstable economic conditions that exist in the Wheeling-Pittsburg area, the increased competition, adverse weather conditions during winter months, the attrition of bettors over long periods of time. A prime example of this is the fact that the mutuel handle in 1985 was 12 million dollars less than the handle in 1984. Increased competition from existing competitors and the strong possibility of additional competition from new sources makes it imperative that this facility be upgraded. We are now in a reconstruction process. And our endeavoring to keep the track open during this reconstruction period, which is approximately one year. We are of the opinion that the inconveniences created thereby will have a substantial effect on the total mutuel handle during this period.



Wheeling, West Virginia, 26003

**S. PENN & STONE ST.
PHONE 304 • 232-5050**

Michael H. Romaine
General Manager

Any excess profits anticipated by reason of this legislation will be plowed back for several years in order to make this facility competitive.

The capital improvement fund and the capital improvements to which we are committing will only prove to enhance our business in the years ahead.



Handwritten:
1/11/88



• P. O. Box 7118 • Cross Lanes, WV 25356 • 304-776-1000

SPECIAL REPORT
FOR
RULE MAKING REVIEW COMMITTEE
ON
TRI STATE GREYHOUND PARK

January 12, 1988

SPECIAL REPORT

ON

TRI STATE GREYHOUND PARK

This special report was prepared to provide members of the legislature a synopsis of the progress made during 1987 at Tri State Greyhound Park since passage of H.B. 2367 that provided for changes in the commission from pari-mutuel pools.

The purpose for this legislation was to provide increased funds for the association to:

1. maintain and increase Employment levels and to avoid layoffs;
2. retire existing Debt or allow capitol improvements;
3. increase dog Purse;
4. extend Marketing efforts.

The law became effective on April 3, changing the purse from 3% to 3.75% and added .03% tax for the Department of Highways. However, the increased commissions for the association (Tri State) were not available until May 4, 1987. Thus, Tri State has only had eight months to operate with any increased funds.

A review of the four major purposes for the legislation are as follows:

EMPLOYMENT

Tri State Race Track operation provides direct employment for over 400 employees. This includes the Association, the concessionaries, and the kennel operators. Most importantly, the threat of layoffs was avoided and the employment levels currently are above 1986. Tri State had a low of 223 employees in February, 1987, and has steadily increased with a peak of 249 in August. The attached chart showing payroll wages, revealed that Tri State alone paid \$2,407,000 in 1987, an increase of \$104,000 over 1986. This represents a change of several part-time employees to full time, and an individual salary increase of approximately 5%.

DEBT SERVICE

The legislature mandates that 25% of the increased commissions difference be set aside for debt service. This amounted to \$558,137 in 1987. Tri State, as shown on the attached chart, has spent approximately \$3,550,000 for debt service. The interest alone was \$1.65 million. Without the new legislation, Tri State would not have been able to refinance or to meet its debt obligations.

DOG PURSE

The increased Purse commission for the kennel operators has provided an increase to them of \$364,280 or an increase of 14.5% over previous year. See attached chart.

This increase enabled us to have more graded dogs and successful kennel operations and better quality racing. Better racing attracts more customers and ultimately raises the handle. Also, several local kennel operations have developed.

MARKETING

The legislation provides for 5% of the increased commission difference to be set aside for expanding marketing, this amounted to \$111,624 in 1987. See attached chart, which shows Tri State's increased spending.

To expand our market to more potential customers, we have used the additional advertising funds provided by the legislature as well as our existing funds to develop a \$780,000 market strategy that includes the following points:

- 70 new billboards in Kentucky, West Virginia, and Ohio
- 30 Station radio blitz in Northeastern Kentucky
- Develop and run new radio and TV spots in markets never before reached
- Make sales calls in North Carolina, South Carolina, Ohio, Michigan,

Indiana, Illinois, Kentucky, Tennessee, Virginia

- Conducted out-of-state bus group market places to attract more motor coach business from Detroit, Cincinnati, Cleveland, Columbus, and Indianapolis
- Developed Southwestern Virginia contacts
- Advertised more heavily in surrounding states

These expanded marketing efforts were necessary to counter a downward trend in local attendance which began in January, 1987, as our state economy began to become more uncertain.

The sales numbers, or handle, at a race track are very much dependant on outside factors, such as the area economy, employment, weather conditions, and competition for the excess leisure dollar.

These factors, can cause a deviation in the handle and historically have shown the States race track business to fluctuate following economic trends of the State. An example of this would be Wheeling Downs 1985's reduction of \$12 million in its pari-mutuel pool as compared to 1984.

Tri State was successful in attracting customers from outside our local market area and used increased advertising dollars as a means to increase its business.

While lottery sales (off 33%), liquor sales (off approximately 45%), and retail sales are all down dramatically, it is indeed encouraging that Tri State's handle was \$81,080,000 in 1987, and provided \$4,934,144, or 6.1% to the State of West Virginia in pari-mutuel taxes. In a time when all other tax revenue sources are down, state revenues from dog racing remain constant, as required by the new legislation.

Another important side of the legislation, as you know, guaranteed the State revenue from both dog tracks, and although we are off slightly, the State received its full amount of \$11,874,117.

While the attached chart will show the effect of the new legislation on the operation it is important to note that the additional funds were used for employee wages, debt service, increased marketing, increased dog purse, and captiol improvements and increased operating expenses. No funds were used for distribution or profits for any stockholder.

Briefly, this report has outlined Tri State's accomplishments with this legislation in the last eight months. Obviously, this short period of time has not provided us nor you with enough operating experience to fully assess this legislation. The legislation also allows Tri State to automatically reduce the commission take-out if it becomes detrimental.

During this short period, there has been enough positive response to encourage management and to urge you to give this legislation sufficient time so as its effects can be fully evaluated.

In summary, it is fair to state that although the new legislation became effective in May, 1987, it is far too soon to predict that the commission take-out has negatively affected the handle.

Any conclusion that the commission structure needs to be changed without taking into consideration many factors including the present economic conditions is simply unfounded.

TRI STATE COMPARATIVE ANALYSIS

	1986	1987	DIFFERENCE	% INC./(DEC)
HANDLE (Gross Wagering)	\$ 83,959,225	\$ 81,080,048	\$ (2,879,177)	(3.43)%
TOTAL Commissions and Breakage	\$ 13,848,816	\$ 15,605,599	\$ 1,756,783	12.69 %
<hr/>				
State Tax	\$ 4,934,144	\$ 4,934,144	\$ -0-	
Daily State Fee	46,050	46,350	300	
County Tax	83,959	81,080	(2,879)	
Highway Department Tax	-0-	180,371	180,371	
Track Provided Stakes	-0-	25,000	25,000	
State Provided Stakes	125,000	-0-	(125,000)	
Dog Purse	2,518,977	2,883,251	364,280	
Balance Avail. for Operation	6,140,692	7,455,403	1,314,711	
<hr/>				
<u>MAJOR EXPENSES:</u>				
Payroll Wages	\$ 2,303,046	\$ 2,407,153	\$ 104,107	4.52%
Payroll Taxes and Benefits	414,935	441,000	26,605	6.41%
Marketing and Advertising	587,049	888,000	300,951	51.00%
Debt Service:				
Principle	448,035	1,900,000	1,251,965	279.00%
Interest	1,835,689	1,650,000	(85,689)	(10.00)%
TOTAL Debt Service	2,283,724	3,550,000	1,266,276	55.00%
Utilities	375,781	400,000	24,219	6.44%
Dog Urine Tests	87,390	88,000	610	.07%



JANUARY 27

TENTATIVE AGENDA

LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

January 27, 1988 - 10:00 a.m.

COMMITTEE MEETING ROOM, M-438

1. Approval of Minutes - Meeting January 12, 1988
2. Unfinished Business - Motion by Delegate Pritt to call up procedural rules of Dept. of Energy
3. REVIEW OF LEGISLATIVE RULES:
 1. Dept. of Energy - Surface Mining Reclamation Regulations
 2. Health Care Cost Review Authority - Exemptions from Certificate of Need Review
 3. WV Dept. of Labor - Wage Payment and Collection Act
 4. Dept. of Human Services - Guidelines for Child Support awards
 5. Civil Service System - Rules and Regulations of the WV Civil Service System
 6. WV St. Bd. of Registration for Professional Engineers - Rules of the WV State Board of Registration for Professional Engineers
 7. Dept. of Commerce - Rules Governing Public Use of WV State Parks, State Forests and State Hunting and Fishing Areas
 8. State Board of Examiners of Land Surveyors - Rules and Regulations for the practice of land surveying in WV
3. Other Business:

Wednesday, January 27, 1988

10:00 - 11:00 A.M.

Legislative Rule-Making Review Committee
(Code §29A-3-10)

Dan Tonkovich,
ex officio nonvoting member

Robert "Chuck" Chambers,
ex officio nonvoting member

Senate

House

Tucker, Chairman
Boettner
Holmes
Tomblin (absent)
Harman (absent)
Hylton

Knight, Chairman
Burk
Murphy
Givens
Faircloth
Pritt

The meeting was called to order by Mr. Knight, Co-Chairman.

The minutes of the January 12, 1988, meeting were approved.

Mr. Tucker requested that the motion by Ms. Pritt on unfinished business be placed at the bottom of the agenda until Ms. Pritt could be available.

Mike Mowery, Committee Counsel, explained that the rule proposed by the Department of Energy, Surface Mining Reclamation Regulations, is about to be refiled with the Committee, having been modified by the Department in response to comments from Federal Office of Surface Mining. Roger Hall, Administrator of the Department of Energy, updated the Committee on the proposed rules progress and answered questions from the Committee.

Mr. Tucker moved that the proposed rule lie over until the next meeting. The motion was adopted.

Debra Graham, Associate Counsel, explained the status of the rule proposed by the Health Care Review Authority, Exemptions

from Certificate of Need Review. John Kozak, Counsel for HCRRRA, told members of the Committee that the modifications that he had filed had been agreed upon by all parties.

Mr. Givens moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham explained why the rule proposed by the West Virginia Department of Labor, Wage Payment and Collection Act, had been laid over at the last meeting due to some Committee questions regarding the statute. Andrew Brown, Assistant to the Commissioner of Labor, explained the statutory problems and answered questions from the Committee.

Mr. Tucker moved that the proposed rule be approved as modified. The motion was adopted.

Mr. Mowery explained the current posture of the rule proposed by the Department of Human Services, Guidelines for Child Support Awards. He stated that although the guidelines as drafted are a good foundation they need further amendment. He told the Committee that both Judiciary Chairmen have agreed to appoint sub-committees to consider possible amendments and that because of time constraints, he would suggest that the Committee approve the rule as filed.

Mr. Tucker moved that the proposed rule be approved. The motion was adopted.

Mr. Tucker moved that the rule proposed by the Civil Service System, Rules and Regulations of the Civil Service System, be placed at the bottom of the agenda. The motion was adopted.

Ms. Graham reviewed her abstract on the rule proposed by the West Virginia State Board of Registration for Professional Engineers, Rules of the West Virginia State Board of Registration for Professional Engineers, and stated that the Board had agreed to several minor modifications.

Mr. Tucker moved that the proposed rule be approved as modified. The motion was adopted.

Mr. Murphy asked unanimous consent to withdraw his request that the Committee reconsider the rule proposed by the Department of Commerce, Rules Governing Public Use of West Virginia State Parks, State Forests and State Hunting and Fishing Areas. There was no objection. .

Mr. Mowery explained the one unresolved issue regarding curriculum standards in the rule proposed by the State Board of Examiners of Land Surveyors, Rules and Regulations for the practice of land surveying in WV. Bryant Bowman, Chairman of the Board of Examiners, explained several needed modifications to the language relating to curriculum standards and answered questions from the Committee.

Mr. Givens moved that the proposed rule be approved with the further modifications. The motion was adopted.

Mr. Knight asked unanimous consent that the Committee reconsider its action on the rule proposed by the Racing Commission, Thoroughbred Rules. Without objection, the Committee agreed to reconsider its action. Mr. Givens pointed that all interested parties had not been notified of the meeting. Mr. Knight asked unanimous consent that the proposed rule lie over until the next meeting and that all interested parties be notified.

Mr. Knight asked unanimous consent that Robert McCauley, representing AFSME, and Tim Basford, Acting Director, Civil Service System, be allowed to address the Committee regarding the rule proposed by the Civil Service System. Mr. McCauley and Mr. Basford each addressed the Committee and answered questions.

Mr. Tucker moved that due to the convening of the Senate, the proposed rule lie over until the next meeting. The motion was adopted.

The meeting was adjourned.

ROLL CALL - LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

DATE: 1-27-88

TIME: 10:00 a.m.

NAME	Present	Absent	Yeas	Nays
Chambers, Robert "Chuck", Speaker				
Knight, Thomas A.	✓			
Burk, Robert W., Jr.	✓			
Givens, Roy E.	✓			
Pritt, Charlotte	✓			
Larry V. Faircloth	✓			
Murphy, Patrick H.	✓			
Tonkovich, Dan, President				
Tucker, Larry A.	✓			
Boettner, John "Si"	✓			
Harman, C. N.				
Holmes, Darrell E.	✓			
Hylton, Tracy W.	✓			
Tomblin, Earl Ray				
TOTAL				

RE: _____

REGISTRATION OF PUBLIC
AT
COMMITTEE MEETINGS
WEST VIRGINIA LEGISLATURE

COMMITTEE: Rule Making Review

DATE: 1-27-88

10:00 AM.

NAME	ADDRESS	REPRESENTING	PLEASE CHECK (X) IF YOU DESIRE TO MAKE A STATEMENT
Please print or write plainly			
John H. Kozak	100 DEE DR., CHAS	HCCRA	X
Charles R. Dyball	Rt 77 Glenville	WVa Assoc of Land Surveyors	X
Gregory A. Smith	P.O. Box 150 Glenville	WVALS	X
George V. Pagan	1519 DOGWOOD ROAD	ENERGY	
Robert T. Hall	Charleston	DOE	
RICHARD HULL	ATTY GEN'S OFFICE	BOARD OF ENERS	
John T. Poffenbarger	W.V. Racing Commission	—	^
Robert McCawley	Charleston	AFSCME/WV	X
Lowell Dastard	1900 WASH ST E	WV CIVIL SERVICE	X
Mar Farley	1900 WASH ST. E.	WV CIVIL SERVICE	
SANDRA K. Gilmore	1900 WASH ST E	WOODS	
John Yearly	1900 WASH ST E	WV DOTS	
BRYANT BOWMAN	PO BOX ALLAN CREEK	LAND SURVEYORS	X
Ronald Greenwood	PO BOX 5160 ^{Charleston} 25301	Land Surveyors	
LEONARD COLEMAN	1500 ONE VALLEY SQ	JOCKEY'S FILES	X
G. DELAPRA	Charleston	WVHA	
Frank Dunder	Charleston	WVHA	
Sally Roberts	WVHA	WVHA	

REGISTRATION OF PUBLIC
AT
COMMITTEE MEETINGS
WEST VIRGINIA LEGISLATURE

COMMITTEE: Rule-making Review

DATE: 1-27-88

10:00 A.M.

NAME	ADDRESS	REPRESENTING	PLEASE CHECK (X) IF YOU DESIRE TO MAKE A STATEMENT
Please print or write plainly			
<i>Andy Brown</i>	<i>Dept of Labor</i>	<i>Labor</i>	