STATE OF ARIZONA
OFFICE OF THE
AUDITOR GENERAL

A PERFORMANCE AUDIT
OF THE

# ARIZONA RACING COMMISSION

MARCH 1982

A REPORT TO THE
ARIZONA STATE LEGISLATURE

REPORT 82-2

DOUGLAS R. NORTON, CPA
AUDITOR GENERAL

STATE OF ARIZONA
OFFICE OF THE
# AUDITOR GENERAL

March 19, 1982

Members of the Arizona Legislature
The Honorable Bruce Babbitt, Governor
Mr. Chet E. Johns, Chairman
Arizona Racing Commission

Transmitted herewith is a report of the Auditor General, A Performance Audit of the Arizona Racing Commission. This report is in response to a September 11, 1980, resolution of the Joint Legislative Budget Committee.

The blue pages present a summary of the report; a response from the Arizona Racing Commission is found on the yellow pages preceding the appendix.

My staff and I will be pleased to discuss or clarify items in the report.

Respectfully submitted,

Douglas R. Norton

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OFFICE OF THE AUDITOR GENERAL

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## SUMMARY

The Office of the Auditor General has conducted a performance audit of the Racing Commission in response to a September 11, 1980, resolution of the Joint Legislative Budget Committee and in accordance with the provisions of Arizona Revised Statutes (A.R.S.) §41-1279 et seq.

The Racing Commission was created by the Legislature in 1949. The Commission is comprised of five Commissioners who serve without pay. Commissioners are appointed by the Governor and serve six-year terms.

The principal functions of the Commission are the licensing of racing personnel, granting of race permits for commercial greyhound and horse race meets and granting of horse racing permits to county racing associations.

The Commission was previously reviewed by the Office of the Auditor General in Report 81-5 A Performance Audit of the Arizona Racing Commission, which was released in April 1981. At that time it was noted that Report 81-5 was to be the first of two reports on the Commission and that work on the second report would commence as audit staff resources became available. This report constitutes that second report.

During the course of the audit we reviewed the procedures used by track and Commission officials in a number of operational areas, as well as Commission policy and actions concerning track operations, to determine if actual practice was in compliance with statutes and administrative rules and regulations. This review encompassed the track operations of

- Commercial horse tracks;
- County fair race meets; and
- Dog tracks.

Each area was found to have procedures that 1) do not comply with rules or regulations or 2) need improvement to ensure the integrity of racing in Arizona.

Corrective action is needed in the operations of the two commercial horse tracks we observed. In order to prevent improper actions by jockeys, the Commission should 1) amend its administrative rules to prohibit jockeys from betting on days they ride, except through the owners of and on the horses they ride and 2) ensure that permittees do not allow improper contact between jockeys and the public at one of the tracks. (see page 5)

Procedures for weighing jockeys are not in compliance with Commission rules at either track. Further, the stewards at one track are aware of the noncompliances but have failed to take corrective action. Finally, scales used to weigh jockeys at both tracks were uncertifiable by the Department of Administration - Weights and Measures Division, and one scale may have been tampered with. We recommend that the Commission take the necessary administrative actions--including disciplinary action against stewards failing to enforce Commission rules--to correct the problems identified. (see page 5)

Significant problems existed in the track operations of the county fair race meets with regard to the procedures used for weighing jockeys. However, the Commission has since taken corrective actions on this matter. Security at the receiving barn still needs to be improved by developing formal guidelines for the county fair race meets explaining the duties and responsibilities of the peace officers. (see page 11)

Commission action is needed at the dog tracks to see that an adequate amount of samples from winning dogs are obtained in a secure area and submitted for testing. Postrace sampling procedures should be implemented to supplement prerace sampling, including enforcement of the administrative rule that requires permittees to provide a receiving pit area. The practice of not submitting all samples obtained from winning dogs should also be reviewed to determine if it meets Commission intent. Further, the Commission needs to ensure that weigh-in weights are posted at Tucson Greyhound Park and should consider amending its rule requiring certification of scales to allow servicing by registered service agencies to suffice. (see page 14)

The Commission's use of full-time mutuel supervisors at the seven tracks with fully automated totalisator equipment is a misallocation of resources. The traditional duties performed by the supervisors do not provide needed controls over the computerized operations and are, in fact, duplicative of functions performed by the computers. Appropriate review procedures could be performed by a person with the necessary background in reviewing computer controls, thus eliminating mutuel supervisor positions at the tracks with fully automated totalisator systems, at a net savings of $37,000. (see page 21)

The State is failing to assess sales tax on claiming races despite the fact that such sales may fall under the statutory provisions for these taxes. Failure to assess this tax may cost the State approximately $150,000 this year in lost revenue and the Department of Revenue is now reviewing the matter. To eliminate any question on the issue, we recommend statutory changes be made to specifically provide for collecting sales tax on claiming races. At least 14 other states collect sales tax on claiming races. (see page 27)

The Commission has failed to take timely action on cases referred to it by the stewards. As a result, individuals disciplined by the stewards for serious violations are allowed to resume racing before final dispositions are reached. We recommend that the Legislature 1) amend A.R.S. §5-104, subsection E, to allow stewards to suspend licenses for up to 60 days and/or 2) appropriate funds to allow the Commission to appoint a hearing officer. Such funds could largely be derived by eliminating unneeded mutuel positions. (see page 31)

One of the most serious findings of the previous performance audit was that the Commission was not fulfilling its statutory responsibility to regulate racing participants through the licensing process. Since the time of that report, controls over the licensing process have been significantly improved, although some further improvements are still needed. Specifically, the Commission needs to 1) more fully implement the procedures available to prevent unlicensed activity and 2) ensure that <u>all</u> licensing procedures are followed. (see page 37)

Auditor General Report 81-5 disclosed that the Commission had improperly granted approval to permittees to withhold capital improvement funds and had, in the past years, made illegal loans to licensees. Also, the Commission had never determined whether funds from the county fairs and racing breeders' award fund should be used to pay for the salary of a manager-supervisor. Once notified of these problems, the Commission did not take timely action to recover the funds or correct the situations. (see page 41)

The previous review also found a number of deficiencies in the Commission's programs to control illegal drug usage in race animals. The Commission has taken action to correct deficiencies in the procedures used to 1) obtain samples, 2) take blood samples, and 3) select and evaluate the contract chemist. Due to inadequate records we could not evaluate Commission actions taken with regard to the taking of additional samples. We recommend that the Commission 1) improve its records regarding drug tests and 2) continue to monitor the performance of the official racing chemist. (see page 45)

Auditor General Report 81-5 found that 1) stewards' hearings did not comply with the public notice requirements of the Open Meeting Law, and 2) the Commission did not enforce an administrative rule concerning the Workmen's Compensation Law. Although the Commission has since taken action to improve compliance in both areas, Commission employees may now be violating State statutes by not retaining tape-recorded minutes of the stewards' hearings. These minutes should be either 1) retained indefinitely or 2) transcribed before the tape recordings are erased. (see page 49)

# INTRODUCTION AND BACKGROUND

The Office of the Auditor General has conducted a performance audit of the Racing Commission in response to a September 11, 1980, resolution of the Joint Legislative Budget Committee and in accordance with the provisions of Arizona Revised Statutes (A.R.S.) §41-1279 et seq.

The Racing Commission was created by the Legislature in 1949. The Commission is comprised of five Commissioners who serve without pay. Commissioners are appointed by the Governor and serve six-year terms.

The principal functions of the Commission include the licensing of racing personnel, granting of racing permits for commercial greyhound and horse race meets and granting of horse racing permits to county racing associations.

The Commission is funded by appropriations from the Legislature. Expenditures for fiscal years 1976-77 through 1980-81 and estimated expenditures for fiscal year 1981-82 are shown in Table 1.

TABLE 1

ACTUAL EXPENDITURES FOR RACING COMMISSION FOR
FISCAL YEARS 1976-77 THROUGH 1980-81 AND ESTIMATED EXPENDITURES FOR FISCAL YEAR 1981-82

| | 1976-77 | 1977-78 | 1978-79 | 1979-80 | 1980-81* | 1981-82* |
|---|---|---|---|---|---|---|
| Full-time equivalent positions | 16.5 | 17.5 | 20.0 | 20.0 | 36.4 | 40.9 |
| Expenditures: | | | | | | |
| Personal services | $356,175 | $377,810 | $434,175 | $461,315 | $ 577,100 | $ 693,700 |
| Employee-related | 49,491 | 62,541 | 71,388 | 71,726 | 98,500 | 130,400 |
| Professional and outside services | 91,630 | 104,636 | 105,956 | 140,684 | 171,600 | 268,500 |
| Travel: | | | | | | |
| In-State | 59,340 | 63,719 | 56,602 | 72,098 | 99,700 | 107,500 |
| Out-of-State | 1,700 | 4,607 | 5,500 | 4,822 | 4,400 | 5,500 |
| Other operating expenses | 26,127 | 36,420 | 35,938 | 40,890 | 53,900 | 59,200 |
| Equipment | 600 | 5,185 | 1,364 | 199 | | 8,700 |
| Total | $585,063 | $654,918 | $710,923 | $791,734 | $1,005,200 | $1,273,500 |

* Excludes expenditures of $15,100 in 1980-81 and estimated expenditure of $53,700 in 1981-82 for county fair racing administration. These are nonappropriated funds representing 0.5 percent of total receipts in the County Fairs Racing and Breeders Award Fund. The County Fairs Racing Administration program supervises the funds distributed to county fairs to ensure that subsidies are spent in accordance with Commission guidelines.

The Commission was previously reviewed by the Office of the Auditor General in Report 81-5 A Performance Audit of the Arizona Racing Commission, which was released in April 1981. At that time it was noted that Report 81-5 was to be the first of two reports on the Commission and that work on the second report would commence as audit staff resources became available. This report constitutes that second report.

In reviewing areas not previously addressed in Report 81-5, we found improvements are needed with respect to

1. Daily operations of the race tracks;

2. Supervision of mutuel activities;

3. Failure to collect transaction privilege taxes on the sales of horses through claiming races; and

4. Timeliness of the Commission's disciplinary processes.

The Commission has made significant progress in correcting the majority of the deficiencies identified in the previous report. Nevertheless, some areas still need improvement, and it appears that the Commission unnecessarily delayed some corrective actions.

The Auditor General expresses gratitude to the Racing Commission and its staff for their cooperation and assistance during the course of the audit.

## FINDING I

### PROBLEMS EXIST IN THE PROCEDURES AND OPERATIONS OF THE STATE'S RACE TRACKS WHICH COULD AFFECT THE INTEGRITY OF RACING.

During the course of the audit we reviewed the procedures used by track and Commission officials in a number of operational areas, as well as Commission policy and actions concerning track operations, to determine if actual practice was in compliance with statutes and administrative rules and regulations. This review encompassed the track operations of

- Commercial horse tracks;
- County fair race meets; and
- Dog tracks.

Each area was found to have procedures that 1) do not comply with rules or regulations or 2) need improvement to ensure the integrity of racing in Arizona.

### TRACK OPERATIONS - COMMERCIAL HORSE TRACKS

During the time of our audit two commercial horse tracks, Turf Paradise and Rillito Downs, were in operation. Reviewing the operations of these tracks we noted the following deficiencies:

- The Commission rule governing betting by jockeys does not adequately control against improper actions;
- Jockeys are not properly isolated from contact with the public at Rillito Downs;
- Jockeys are not properly weighed before races at Rillito Downs and the stewards have knowingly allowed this practice;
- Jockeys are not properly weighed-out after races at either Turf Paradise or Rillito Downs;
- Weight variances are not properly posted or announced; and
- Scales used to weigh jockeys at both tracks were uncertifiable by the Department of Administration - Weights and Measures Division. Further, one scale may have been tampered with.

Betting by Jockeys

Betting by jockeys is restricted by Rule R4-27-203.Q which states:

> "No jockey shall bet on any race except through the owner of and on the horse which he rides...."

According to the Commission, this rule applies only to the time prior to fulfillment of the jockey's engagements. Jockeys are allowed to bet on any race after fulfilling their engagements and on days on which they do not ride.

The Commission's current rule does not control against jockeys improperly affecting the outcome of a race. According to the Commission chairman, restrictions on betting prior to fulfilling riding engagements are intended to prevent jockeys from betting on horses other than their own which might result in the "throwing" of a race. Permitting jockeys to bet after fulfilling their engagements creates the potential for a jockey to receive money and place bets for other jockeys who have not fulfilled their engagements. Since jockeys are supposed to be isolated from contacts with other persons during the races only other jockeys who have finished their races could place bets for them. (see page 7)

Fifteen of the twenty-seven states regulating horse racing have greater restrictions on jockeys betting than does Arizona:

- Six states (Arkansas, New Hampshire, New Mexico, Oregon, South Dakota and Wyoming) do not allow jockeys to bet on any races;
- Eight states (Colorado, Idaho, Illinois, Montana, New York, Pennsylvania, Washington and Delaware) only allow jockeys to bet on horses they are riding; and
- One state (Vermont) only allows jockeys to bet on days they are not riding.

## Jockeys Are Not Properly Isolated From Contact With the Public

Administrative Rule R4-27-203.B prohibits jockeys from leaving the jockey room prior to fulfilling their engagements except to ride in a race. Access to the jockey room is restricted to the jockeys, their attendants and the racing officials. These procedures are designed to prevent jockeys from betting or placing bets through other persons. Jockeys are allowed to leave the room to watch the races from certain designated areas in which there should be no opportunity for communication with the public.

At Rillito Downs, jockeys watch the races in an area near the dismount scale. This area is separated by only a chain link fence from the area where the public watches the races. On several occasions jockeys were observed speaking with the public from this area.

Use of this area by jockeys appears to circumvent Commission intentions to isolate jockeys to prevent improper betting activities. Further, it appears unnecessary in that there is a television in the jockey room to enable them to watch the races.

## Jockeys Are Not Properly Weighed Before Races at Rillito Downs

The weight a horse carries is a critical factor influencing the outcome of a horse race. In a mile thoroughbred race a difference of one pound can affect a horse's performance by as much as one length. Thus, proper and accurate weighing procedures are essential to protect the interests of the betting public, owners and trainers. However, we found at Rillito Downs that 1) jockeys are not being weighed before each race as required, 2) some jockeys are improperly allowed to weigh without clothes or gear, and 3) the stewards have knowingly allowed these practices to occur.

Jockeys are required to be weighed before each race they ride because their weights can vary depending upon what they eat and drink between races. According to the Commission's Executive Secretary, jockeys can add several pounds after the initial weigh-in just by the amount of liquids they consume. Such differences can be significant enough that Turf Paradise provides facilities where jockeys can "flip," or vomit, after eating so that they will not exceed their declared weights.

The clerk of scales at Rillito Downs does not always weigh jockeys before each race. In 28 out of 45 instances (62 percent) observed by audit staff, jockeys who had ridden earlier in the day were not required to be reweighed before later races. Further, in another four instances jockeys were allowed to weigh in one race prior to the race in which they rode.

Also, some jockeys at Rillito Downs are weighed without gear. According to the Commission's Executive Secretary all jockeys should be weighed with clothes and gear* to reflect their actual weights when riding. Weighing without clothing or gear can result in a "hidden" increase of up to five pounds once the clothing and gear is donned. During our observations two jockeys were allowed to weigh without gear.

The stewards are aware that required weighing procedures are not followed at Rillito Downs, but they have not taken corrective action. While discussing the fact that jockeys were not weighed before each race, the stewards advised us that they were aware of the situation but that such a procedure had in the past delayed the races.

Commission rules require the stewards to enforce the rules and regulations and statutes of the State of Arizona. Failure to do so is grounds for disciplinary action.

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* Clothing and gear includes boots, pants, t-shirt, colors, saddle, overgirth, undergirth and pad.

## Jockeys Are Not Properly Weighed After Races

Administrative rules require the clerk of scales to weigh each jockey after the race. If a jockey does not present himself to be weighed, or if he is more than one pound short of his assigned weight, his horse may be disqualified and the jockey fined or suspended. According to the Commission Chairman, postrace weigh-outs are necessary to ensure that a horse carried his assigned weight and did not have an unfair advantage over other entrants. Jockeys weigh in with their saddles. Equipment, including any necessary weights in the saddle, is made up based on this weigh-in. The weigh-out ensures that no one removes weights prior to or during the race.

Actual practice does not serve its intended purpose, rendering the postrace weigh-out essentially meaningless. Jockeys at both tracks simply walk across the scale, stepping off before the needle registers a weight. The clerk checks off the weight on a weight sheet without verifying it. According to the clerk of scales at Rillito Downs, the weigh-out is a traditional practice and performed only for the benefit of the public.

It should be noted that inadequate weigh-in procedures used at Rillito Downs compound the problem. Because jockeys are not weighed in prior to each race it would be impossible to determine if a jockey had lost weight even if weigh-out procedures were properly performed.

## Weight Variances Are Not Properly Announced

Because weight can directly affect the outcome of a race, jockeys' weights are listed in the official race programs. If a jockey's weight varies from the program weight, Commission rules require that

- The public be informed either by public announcement or posting;
- If the jockey is more than two pounds overweight, consent to ride must be obtained from the owner or trainer of the horse; and
- If the jockey is more than seven pounds overweight, consent must be obtained from the stewards.

These requirements exist so that the 1) public is aware when wagering of any weight handicaps, 2) owners or trainers can choose whether they want their horses to carry a handicap, and 3) stewards can determine whether the jockey should be allowed to ride.

Our review revealed that procedures at Turf Paradise and Rillito Downs do not adequately protect the betting public or horse owners and trainers.

Weight variances are not always announced and when announced are not always correct at Turf Paradise. Of the ten weight variances observed by audit staff which were required to be posted or announced, one was not announced and two were incorrectly announced.

A trainer at Rillito Downs is "notified" by announcing the variance over the public-address system rather than contacting the trainer. If the trainer does not notify the clerk that he does not wish his horse to carry an overweight jockey, it is assumed that he approves. This procedure does not ensure that the trainer learns of the overweight, since he may not be present when weights are announced.

Scales Are Not Certifiable

At our request, Department of Administration - Weights and Measures Division (WAM) inspectors tested the scales at Turf Paradise and Rillito Downs and found two of them to be inadequate for their intended uses.

The scale in the jockey room at Turf Paradise, used to weigh jockeys prior to races, could not be certified. The scale had been certified in October 1981 but registered a quarter pound behind the zero reading at retesting in February 1982. According to the WAM inspector, it is possible that someone tampered with the scale since screws holding on the back of the scale were loose, and several pieces were found behind the dial which did not belong there.

The clerk of scales notified the State steward of the problem. The scale has been repaired by a registered service agency approved by WAM.

The dismount scale at Rillito Downs, used to weigh jockeys after the race, could not be certified because it exceeded WAM tolerances in the weight ranges required to be accurate for use in weighing jockeys.

## TRACK OPERATIONS - COUNTY FAIR RACE MEETS

During the time of our audit one county fair race meet was conducted. Reviewing the operations of this meet we noted the following problems:

- Jockeys were not properly weighed before races;
- The public, owners and trainers and stewards were not properly informed of jockeys who weighed as much as 13 pounds in excess of their posted weights;
- Procedures were not followed to prevent improper contacts between jockeys and other persons;
- One scale used to weigh jockeys was defective, and the other was inappropriate for use in weighing jockeys; and
- Security in the receiving-barn area needed to be improved.

However, Commission action has since been taken to correct many of these problems.

### Jockeys Are Not Properly Weighed

As discussed previously in this Finding, jockeys are required to be weighed before each race to ensure that their weights do not change between races. Jockeys are also required to be weighed with their clothing and gear to reflect their actual riding weights. (see page 8)

We found that 1) three jockeys were never officially weighed on one race day, 2) jockeys were weighed only at the beginning of the race day and not before each race as required, and 3) almost half of the jockeys were weighed without clothes or gear.

Jockey Overweights Not Announced

As discussed previously on page 9, jockeys' weights are listed in the official race programs. If a jockey's weight varies from the program weight, Commission rules require that

- The public be informed either by public announcement or posting;
- If the jockey is more than two pounds overweight, consent to ride must be obtained from the owner or trainer of the horse; and
- If the jockey is more than seven pounds overweight, consent must be obtained from the stewards.

Fourteen instances occurred in which jockeys' weights varied from those in the official programs. In four of these instances the public announcement was not properly made. In one instance the public was informed that a jockey who was thirteen pounds overweight (without clothes or gear) was two pounds overweight. If properly weighed with clothing and gear, this jockey could have been as much as 18 pounds overweight. Such a difference constitutes a significant handicap, but the public was not informed of this handicap.

In addition, consent was not obtained from the 1) owners or trainers in six instances in which jockeys were more than two pounds overweight or 2) stewards in three instances in which jockeys were more than seven pounds overweight.

Procedures To Prevent
Improper Contacts Not Followed

Contacts between jockeys and other persons are supposed to be strictly controlled while races are occurring. Commission Rule R4-27-203.B. requires jockeys to remain in the jockey room between races until they have fulfilled their engagements for the day. No one but the jockeys, their attendants and racing officials are permitted in the room. According to the Commission Executive Secretary, this procedure is intended to prevent jockeys from placing bets through other persons or engaging in other actions that may be undesirable.

We found jockeys were allowed to leave the jockey room prior to completing all races. Also in one instance, a jockey was observed speaking with an owner beside the jockey room prior to a race.

Inadequate Scales
Used To Weigh Jockeys

At our request, the Department of Administration - Weights and Measures Division (WAM) reviewed the scales used to weigh jockeys. The WAM inspector found the scale used to weigh the jockeys before the races was defective due to a missing bearing. According to the WAM inspector, the absence of this bearing would 1) condemn the scale for any use and 2) make it impossible to determine the degree to which the scale may be inaccurate.

The scale used to weigh the jockeys after the races was also found to be inadequate. According to the WAM inspector, the scale, which is an ordinary bathroom scale, simply cannot provide the degree of accuracy needed to weigh jockeys. We were informed that the Commission had been aware for more than one year that the scales were inadequate.

Receiving-Barn Security
Needs Improvement

Because many prohibited drugs used on race horses must be administered immediately before a race, the Commission requires permittees to provide receiving barns. Horses are brought to these barns approximately 40 minutes before a race where they are under the observation of the officials. The Commission also requires that a uniformed, certified peace officer be present at the receiving barns to restrict access to the area to only authorized persons and provide security. This is done to further reduce the likelihood of drugs being administered to horses.

However, the peace officers have not received instructions on what they are to do or why. Consequently, during the period observed by audit staff an officer was not present in the receiving barn when horses were present prior to one race, and on at least four occasions, persons not displaying Commission licenses needed for access to the area were allowed to enter the area.

Corrective Action Has Been Taken

Commission action has since been taken to correct many of the problems identified during the audit. The Commission has discharged* the clerk of scales on the county fair circuit whose responsibility it was to see that weighing procedures were conducted properly. Also on January 7, 1982, the Commission took formal action to arrange for new scales to be purchased for the county fair race meets.

## TRACK OPERATIONS - DOG TRACKS

During the course of our audit three greyhound racing facilities, Phoenix Greyhound Park, Tucson Greyhound Park and Yuma Greyhound Park, were in operation. Reviewing the operations of these tracks we noted the following deficiencies:

- Sampling procedures** are deficient in that they do not provide for collection of samples from a sufficient number of winning dogs;
- Weigh-in weights are not posted at Tucson Greyhound Park; and
- Some scales are not certified as required.

Sampling Procedures Are Deficient

As with horse racing, the Commission relies on drug testing procedures to detect and prevent the use of illegal drugs in dog racing. Unlike horse racing, however, the Commission primarily uses prerace rather than postrace sampling procedures to obtain samples for testing in dog racing. We found that

- Prerace sampling alone does not provide samples of a sufficient number of winning dogs;

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* According to Commission officials there were several reasons, including the problems with weighing jockeys at the meet we observed, that led to the decision not to retain the clerk of scales.

** Administrative Rule R4-27-107.Q. provides that "All entries in every race, may be subjected to a saliva, urine or blood test for the purpose of determining the presence of any prohibited drug...." The rules further state that samples of the test substance must be taken by persons appointed by the Commission, and submitted for chemical analysis by the official racing chemist.

- The limited postrace sampling that is done is not conducted in a secured area with witnesses and could be subject to challenge; and
- The Commission has a rule on its books, which, if enforced, could alleviate these problems.

We also noted Commission veterinarians sometimes fail to submit samples of winning dogs in favor of dogs that ran "off-form." Further review by the Commission is needed of this practice.

Prerace sample collection does not provide for testing a sufficient number of winning dogs. Our review of a sample of 107 races revealed that samples were submitted for analysis for only 25 percent of all winners. Further, the percentage of winners tested varies significantly by track; one track obtains and submits samples on as few as 5 percent of the winning dogs.

The number of samples collected and available for analysis varies by track and is dependent upon such factors as age of the dogs and the ambient temperature. At least one track collects samples from almost all winners. Others collect as few as 5 percent. The use of postrace testing in addition to prerace sampling would provide for the collection of more samples at facilities where these factors adversely affect prerace collection.

Yuma Greyhound Park, which uses postrace collection, illustrates the advantage of this procedure. During 14 races observed by audit staff, assistant veterinarians were only able to collect samples from 18 percent of the entrants, including 14 percent of the dogs "in the money" (finishing in win, place or show positions). However, almost one-third of these samples were postrace samples. Had only prerace sampling been conducted, samples would have been available from 13 percent of the entrants and from 7 percent of the dogs in the money. It is evident that postrace sampling increases the total number of samples collected thereby increasing the likelihood of collecting samples from winning dogs.

Inadequate security exists over the postrace sampling that is done. Whereas prerace sampling is done in the paddock area with the veterinarian and other officials present, postrace sampling is currently done in an unsecured area where dogs are taken after the race to cool out. To take a postrace sample, the veterinarian assistants must go to the far end of the track and then carry the unsealed sample back to the paddock area. There is no witness to the actions of the assistant veterinarian other than the owner or trainer who could be expected to challenge the sampling procedures if positive test results were found.

Commission rules already include a rule which, if implemented, would facilitate the use of postrace sampling in a secured area.

Administrative Rule R4-27-309.Y.6. requires that each greyhound track provide a receiving pit to which dogs are to be taken after races for sample collection. Such receiving pits would increase the number of postrace samples taken and would allow the samples to be taken in a secured area under Commission control.

Finally, we noted one Commission veterinarian submits for testing from 60 to 80 percent of the samples he obtains from winning dogs. He submits instead samples from dogs that ran "off-form"--particularly dogs heavily favored by the odds that do not finish in the money. He does so because he believes that with the use of lock-out kennels* it would be easier to affect the outcome of a race by causing a dog to lose rather than win. We believe the Commission should review this practice and determine whether it adequately fulfills the Commission's intentions in conducting drug testing.

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* Dogs are placed in "lock-out kennels" at the beginning of the day's races and are not brought out until it is time for them to race. These "lock-out kennels" are secured areas and only officials have access to the areas.

Weigh-In Weights Are Not Posted

The weight of a greyhound can critically affect its racing performance. Because of this fact, greyhounds race at established racing weights. Each greyhound must be weighed in before being placed in the lock-out kennel, and if its weight varies by more than 1 1/2 pounds in either direction of its established weight it is scratched. The dogs are also weighed out upon leaving the kennel.

The weigh-in weights are recorded by the clerk of scales or paddock judge. Administrative Rule R4-27-309.V.1. requires the clerk of scales to post all variances from the dogs' established weights. According to the Commission Executive Secretary, these weights should be posted because some bettors may wish to determine the amount of weight a dog has lost in the lock-out kennel by comparing the weigh-in weights to the weigh-out weights.

This procedure is not followed at Tucson Greyhound Park. As a result, the betting public does not have access to all information that it needs or wants for wagering purposes.

Scales Are Not Certified by WAM

Administrative Rule R4-27-309.V.1. requires that the accuracy of the scales used to weigh greyhounds be certified by the Department of Administration - Weights and Measures Division (WAM). During our review we found that two of the three scales used by greyhound permittees are not in compliance with this requirement.

The scales used at the Phoenix- and Tucson-area tracks are not certified by WAM. The scales are, however, reviewed by registered service agencies (RSAs) prior to each meet and, if necessary, during the meet.

Registered service agencies are licensed by WAM to repair and test scales rejected by WAM inspectors. They follow the standards and tolerances established by WAM. According to the WAM Deputy Director, servicing by these agencies should be adequate to ensure the accuracy of the scales.

CONCLUSIONS

1. Corrective action is needed in the operations of the two commercial horse tracks we observed. The Commission rule restricting betting by jockeys does not adequately control against improper actions. Jockeys are not properly isolated from contact with the public at Rillito Downs. Also, procedures for weighing jockeys are not fully in compliance with requirements at either track. Finally, problems were found with scales used to weigh jockeys at both tracks.

2. Significant problems existed in the track operations of the county fair race meets with regard to the procedures used for weighing jockeys. However, the Commission has since taken corrective actions on this matter. Security at the receiving barn still needs to be improved to ensure that a peace officer is always present at the receiving barn and that access to the area is restricted to authorized persons.

3. Commission action is needed at the dog tracks to see that adequate numbers of samples from winning dogs are obtained and are obtained in a secure area. In addition, some veterinarians do not submit for analysis all samples obtained from winning dogs. Weigh-in weights are not posted at Tucson Greyhound Park as required and some scales are serviced by registered service agencies rather than certified as required by administrative rules.

RECOMMENDATIONS

1. The Commission amend Rule R4-27-203.Q to prohibit jockeys from betting on days they ride, except through the owners of and on the horses they ride.

2. The Commission ensure that improper contact does not occur between jockeys and the public at Rillito Downs.

3. The Commission take the necessary action to see that
   - All jockeys are weighed before each race they ride;
   - All jockeys are weighed with clothes and gear;
   - All jockeys are actually weighed after each race; and
   - All weight variances are properly announced and all trainers specifically notified of variances when necessary.

4. The Commission take appropriate disciplinary action against officials, including stewards, who fail to enforce Commission requirements.

5. The Commission ensure that scales used to weigh jockeys are certifiable by the Department of Administration - Weights and Measures Division. Also, the Commission review whether security measures are needed to prevent possible tampering with the scales.

6. The Commission develop formal guidelines for the county fair race meets explaining the duties and responsibilities of the peace officers. The Commission then require that permittees ensure that the officers receive the instructions prior to the beginning of each county fair race meet.

7. The Commission implement postrace sampling procedures at the dog tracks to supplement prerace sampling. Also, the Commission enforce the provisions of Administrative Rule R4-27-309.Y.6. and require that permittees of tracks where an adequate number of samples are not collected provide a receiving-pit area.

8. The Commission review the practice of not submitting all samples obtained from winning dogs and see if it meets the Commission's intent.

9. The Commission direct the clerk of scales at Tucson Greyhound Park to post prerace weights.

## FINDING II

### COMMISSION CONTROL OVER THE MUTUEL FUNCTION COULD BE INCREASED AND COSTS REDUCED BY $37,000 IF NEEDED CHANGES ARE MADE.

Arizona Revised Statutes (A.R.S.) §5-106 requires that the Commission appoint a supervisor of mutuels to "...supervise the wagering and pari-mutuel departments at all race meetings...."* The specific duties to be performed are not identified in either the statutes or the administrative rules promulgated by the Commission. Currently, the Commission has a mutuel supervisor on duty at each track during all hours of operation. Such full-time coverage is not effective at the tracks with sophisticated totalisator systems** in that the duties performed by the supervisors do not address critical controls needed in a computerized environment. Further, the full-time coverage is not necessary and many of the duties performed by the supervisors duplicate those performed by the computers. Controls could be improved and approximately $37,000 per year saved by 1) obtaining a person with the necessary background to review the controls in and around the computerized systems and 2) eliminating unneeded positions.

#### Controls Over the Computerized Environment

The present activities performed by the supervisors fail to address the need for additional controls over the automated system or the adequacy of existing controls. As a result, at least two mutuel systems exhibit control weaknesses that create a potential for abuse.

Results of a general controls review of two totalisator systems performed by the Auditor General's Electronic Data Processing (EDP) Support staff found that

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* Pari-mutuel wagering is a form of betting in which those holding winning tickets divide the total amount bet in proportion to their wagers, less a percentage for taxes, management, etc.

** Totalisator equipment records amounts wagered and calculates betting pools and payoffs.

- State mutuel supervisors are not aware of, and do not use, controls designed into the computer systems; and
- General controls over the computerized environment are weak.

Control weaknesses or failure to use existing controls creates the potential for misuse of the totalisator system. For example, inadequate controls identified at one track could allow counterfeiting and cashing of unclaimed winning tickets. At another track, access to the system which allows adjustments to teller balances does not require a password or code for authorization. This could allow concealment of overages and shortages by tellers.

Duplicate and Unnecessary Functions

The advent of computerized technology has rendered obsolete the traditional roles and functions of many State mutuel supervisors. Whereas in the past the presence of State mutuel supervisors was necessary to oversee the integrity of the hand calculations and actions of track mutuel employees, mutuel functions are now largely performed by computer at seven of the tracks. However, the duties and functions of the supervisors at these tracks have not kept pace with the technology.*

Mutuel supervisors at commercial racing facilities perform the following duties:

- Observe sellers and cashiers;
- Investigate complaints;
- Compute monies due the State and track, determine the total dollar amount wagered and amount wagered in each pool and verify the accuracy of payoffs; and
- Prepare a recapitulation of financial information for the Commission accountant.

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* Two commercial racing facilities and most county fair race meets use manual pari-mutuel systems. In effect, all calculations are performed manually. In addition, county fair race meets do not employ track mutuel supervisors; the State mutuel supervisor must perform all administrative functions. The absence of an automated system requires that calculation of pools, odds and payoffs be verified. It appears that a State mutuel supervisor is necessary at these tracks.

The use of automated totalisator equipment has virtually eliminated the need for these activities as they duplicate activities which are or could be performed by the computer, the track mutuel manager, or the stewards. Additionally, some functions are performed so infrequently that a full-time supervisor is not needed. These conclusions are based on the following facts.

- The track mutuel manager is responsible for all personnel-related functions, including observing the sellers and cashiers to ensure that they comply with the rules and regulations. Additional observation by Commission employees could be made on a periodic basis.
- Complaint investigation and resolution occurs infrequently and could be handled by the State steward and the track mutuel manager.
- The automated totalisator systems perform all calculations including computing pool amounts, payoffs and monies due the State. Mutuel supervisors then verify these calculations manually. This verification procedure is essentially meaningless in that 1) a mistake has never been observed, and 2) the supervisors perform their calculations using data generated by the computers. Such a procedure does not ensure that fraud has not occurred since it does not include a review of the data input and processing. Applications and general controls reviews, performed by a qualified EDP auditor, would provide control over these factors.
- The recapitulation report is prepared by transferring figures from a computer-generated report to a form prescribed by the Commission. Since the figures are already prepared by the computer, the computer could be programmed to produce the report in a format identical to that of the recapitulation sheet. This procedure is, in fact, used at Turf Paradise.

A number of other agencies that regulate pari-mutuel wagering do not utilize mutuel supervisors. Our survey of 34 regulatory bodies in other states indicated that 15 do not use supervisors. Additionally, of those that do employ mutuel supervisors, one does so on a part-time basis and another is changing from full to part time.

## $37,000 Cost Savings Possible

The elimination of full-time mutuel supervisors at fully automated tracks would yield significant cost savings. During fiscal year 1981-82, the Commission will spend approximately $77,000 for mutuel supervisors' salaries. Elimination of unnecessary positions would produce cost savings of approximately $37,000. This would occur by 1) obtaining a person with the necessary background to review controls in a computerized environment and 2) eliminating unneeded positions.

A person with the necessary background to review controls in a computerized environment could be hired by the Commission for approximately $27,000 per year. This person could work year-round, monitoring the systems at the seven tracks with computerized systems. The person could also review the general controls at the seven tracks without computerized systems.

Hiring such a person would allow the elimination of full-time coverage by mutuel supervisors at the seven tracks with computerized systems. Eliminating these positions, which pay as much as $95 per race day, would allow for a net savings of approximately $37,000, even after funding the position described above.

## CONCLUSION

Use of full-time mutuel supervisors at tracks with fully automated totalisator equipment is a misallocation of resources. The duties currently performed by mutuel supervisors are 1) essentially meaningless in that they do not provide adequate monitoring of computer functioning or controls and 2) duplicative of functions which are or could be performed by the computer or track personnel. Appropriate review procedures could be performed on a periodic basis by a person with a background in reviewing computer controls, eliminating the need for such positions at seven tracks with fully automated totalisator systems. Elimination of these positions would result in a $37,000 cost savings.

RECOMMENDATIONS

1. The Commission eliminate the position of mutuel supervisor at tracks with fully automated totalisator systems.

2. The Commission hire a person with the necessary background to review controls in a computerized environment. This person should then periodically review the controls and functions of the totalisator systems at the seven tracks with fully automated systems.

## FINDING III

### THE STATE MAY LOSE APPROXIMATELY $150,000 THIS YEAR IN REVENUES BECAUSE SALES TAX IS NOT ASSESSED ON ANIMALS SOLD IN CLAIMING RACES.

Claiming races are races in which licensed owners may purchase any horse entered in the race at a price established by the Racing Secretary. Prior to the race, owners submit claim forms indicating that they wish to purchase a specific horse. If the form is executed and deposited with the permittee in accordance with the Commission's administrative rules, title is transferred to the claimant.

Arizona does not assess sales tax on these claiming races. Reviewing this practice we found

- Sales through claiming races may fall within the statutory provisions relating to transaction privilege taxes,
- Fourteen of the twenty-six other states that regulate horse racing assess sales tax on claiming races, and
- Failure to assess sales tax on these transactions is costing the State approximately $150,000 per year in lost revenues.

#### Sales Tax Is Not Assessed On Claim Transactions

Arizona Revised Statutes (A.R.S.) §42-1309 provides for the levy of transaction privilege tax on the proceeds of certain business transactions, including retail sales of tangible personal property. This tax is not presently assessed on the sale of animals through claiming races.

According to a Legislative Council memorandum dated February 18, 1982,* the determining factor in assessing sales tax is whether the seller is engaging in the "business" of selling tangible personal property since casual sales are exempt under the provisions of A.R.S. §42-1301. The Legislative Council interpretation is based partly upon the Department of Revenue (DOR) definition of casual sales as isolated transactions. According to administrative rule R15-5-1812, number and frequency determine whether a sale is casual:

> "...Provided that the seller does not make a practice of making sales of such volume or frequency as to indicate he is a dealer, the transaction is not subject to the tax...."

Legislative Council noted, "The judicial standards applied by the courts are whether such activity is 'isolated', 'unanticipated', 'irregular' or 'singular'."

Many sales through claiming races do not appear to generally be "isolated," "unanticipated," "irregular," or "singular." They do not appear to be "unanticipated" in that a person entering a horse in a claiming race is, in effect, offering the horse for sale. They are not "isolated," "irregular" or "singular" in that the majority of the races the horses are entered in are claiming races. For example, at Turf Paradise as many as ten of the eleven daily races are claiming races. Further, we noted one owner had sold 27 horses through claiming races during the 1980-81 racing meets held in Phoenix. This was an average of one sale per week.

The issue of charging sales tax for claiming races was discussed with DOR officials. According to a DOR official, sales tax has not been assessed on claims because DOR was not familiar with claiming practices. After audit staff discussed the issue with DOR, the Department began reviewing the applicability of the tax to claiming races.

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* The Appendix contains the memorandum text.

Fourteen Other States Charge
Sales Tax On Claiming Races

Although claiming races do appear to fall within the statutory provisions governing transaction privilege taxes, even if they did not there would appear to be sufficient grounds to amend the statutes so that they were covered. Fourteen of the twenty-six other states that regulate horse racing charge sales tax on claiming races. The fourteen states, which include major racing states, are these:

| | |
|---|---|
| Arkansas | Massachusetts |
| California | Nebraska |
| Colorado | Nevada |
| Florida | New Jersey |
| Idaho | New York |
| Kentucky | Pennsylvania |
| Maryland | West Virginia |

$150,000 Per Year
in Lost Revenues

Failure to assess sales tax on claiming races will cost the State approximately $150,000 this year in lost revenue. The size of this loss is due to the 1) dollar amount involved in an individual sale through a claiming race and 2) number of sales made.

The sale of a horse through a claiming race is a major sale. Claiming prices at Turf Paradise, where most claiming occurs, generally range from $2,000 to $16,000. The average claiming price at Turf Paradise this year is more than $5,200.

There are also a substantial number of sales made through claiming races. During the first 75 race days at Turf Paradise this season, 355 horses were claimed. This is an average of almost five horses per day and represents more than $1,846,000 in untaxed sales.

During fiscal year 1980-81 there were at least $3,059,650 in sales through claiming races. Failure to assess a tax on these sales resulted in lost revenues of at least $122,000. This year it appears the lost revenues may exceed $150,000.

CONCLUSION

The State is failing to assess sales tax on claiming races despite the fact that such sales may fall under the statutory provision for such taxes. Failure to assess this tax may cost the State approximately $150,000 in lost revenue this year.

RECOMMENDATIONS

1. The Department of Revenue continue its efforts to determine if sales tax should be assessed on sales made through claiming races. If it determines such sales should be taxed, we recommend the tax be immediately levied.

2. The Legislature consider amending the statutes to specifically provide for collecting sales tax on claiming races, as is done in 14 other states.

## FINDING IV

COMMISSION DISCIPLINARY HEARINGS ARE NOT CONDUCTED IN A TIMELY MANNER. AS A RESULT, UNDESIRABLE PERSONS ARE ALLOWED TO PARTICIPATE IN RACING.

The five-member Racing Commission is ultimately responsible for disciplinary action imposed on licensees who violate the statutes or rules governing racing. However, State statutes permit the Commission to delegate to the stewards the responsibility of holding an initial disciplinary hearing and imposing a fine of up to $500. If after holding their hearings the stewards feel that violations are of such a nature as to warrant more serious disciplinary measures, such as longer suspensions or revocation, the cases may be referred to the Commission. Additionally, violations such as some falsified license applications or use of prohibited drugs must by Commission policy be referred to the Commission. Because the stewards may suspend licenses for only 30 days, a speedy disposition of such referrals is critical.

Commission hearings are not held in a timely manner. Suspensions imposed by the stewards often expire before the Commission holds its hearings, allowing individuals who have been found by the stewards to have committed serious violations to resume racing. Further, although the Commission has the authority to use a hearing officer to expedite hearings, such a position is not used.

### Commission Hearings Are Untimely

Between July 1, 1980, and November 20, 1981, the Commission held 54 disciplinary hearings. Twenty-six of these, or 48 percent, were referred by the stewards for such violations as positive drug test results, possession of needles, syringes and prohibited drugs and falsification of license applications. Our review revealed that most cases are not heard prior to the expirations of the stewards' suspensions. Further, as of February 28, 1982, the Commission had a backlog of 24 cases, some of which were over 4 months old.

Historically, relatively few cases have been heard within 30 days of the issuance of the stewards' rulings. A review of the rulings and hearings between July 7, 1977, and November 20, 1981, revealed that a final disposition by the Commission was reached within 30 days of the stewards' hearings in only 37 percent of the cases. An additional 34 percent of the cases were decided within 60 days and in 18 percent of the cases, the Commission disposition was reached more than 90 days after the stewards' hearings.

Delays in hearing cases referred to the Commission appear to be attributable to the following factors:

- Notice requirements and frequency of Commission meetings;
- Unavailability of witnesses and evidence;
- Inconsistent use of scheduling criteria; and
- Continuances of hearings.

Administrative Rule R4-27-109.A.5 requires that the Commission give written notice at least 20 days prior to the date set for the hearing. This requirement, coupled with a monthly Commission meeting schedule, can result in scheduling delays of up to two months. For example, a licensee who receives a ruling on June 15 could not be afforded adequate notice to be scheduled to appear at a June 30 meeting. As a result, a hearing may not be scheduled until July 30, over seven weeks after the ruling date.

Further, unavailability of witnesses and evidence hampers timely disposition. In some instances Commission staff must locate witnesses who have moved and then wait until the individual is available to testify, since the Commission does not have authority to subpoena witnesses who are out of state. In other cases evidence such as certified court documents must be obtained. According to the Chief Investigator, this can take 30 days or longer.

Inconsistencies in prioritizing cases for hearings also causes delays. According to the Executive Secretary the severity of the violation, or the extent to which it affects the public safety and welfare, is considered when hearings are scheduled. However, this criteria is not applied consistently. For example, although some falsified license applications are considered to be serious violations, as of February 28, 1982, 17 cases involving falsified license applications have not been heard by the Commission. Two of these cases, which have been outstanding for 70 to 90 days, have been scheduled to be heard at the March Commission meeting. Other cases involving the same offense which have been outstanding for up to 140 days have not been scheduled.

Continuances also contribute to lengthy dispositions. Administrative Rule R4-27-109.C.2. provides that all parties appearing before the Commission have the right to be represented by an attorney. The Commission has granted a number of continuances because attorneys could not be present at the hearing. Because the Commission generally meets monthly, these continuances represent delays of months rather than days or weeks.

Undesirable Licensees Allowed
To Participate In Racing

According to A.R.S. §5-104, subsection E, stewards cannot suspend licenses for more than 30 days. If the Commission does not act prior to the expiration of the suspension, the individual is allowed to continue participating in racing. Because the Commission only disposes of 37 percent of its cases within 30 days of the stewards ruling, numerous persons who have committed serious offenses are allowed to resume operating on the tracks. The following cases illustrate the need for rapid disposition of matters referred to the Commission.

Case 1:

In March 1981 stewards suspended a license for 30 days and referred the case to the Commission for possession of needles and illegal substances. Final disposition was not reached until July 1981, almost four months after the initial ruling. The Commission suspended the license for six months.

Case 2:

In April 1981 a license was suspended for 30 days and a $500 fine was imposed by the stewards for possession of syringes and illegal drugs. The case was referred to the Commission. The licensee requested and received numerous continuances. As of January 28, 1982, the case was not heard by the Commission.

House Bill No. 2028, introduced in the 1982 session of the Arizona State Legislature and supported by the Commission, would allow stewards to suspend licenses for up to 60 days. Approximately 71 percent of all cases reviewed by Auditor General staff were resolved by the Commission within 60 days.

Use Of Hearing Officer
Would Expedite Hearings

The use of a hearing officer would expedite the hearing process. Where the Commission now meets monthly, a hearing officer would be available full time. Problems with the 20-day notice requirement and continuances would be minimized because scheduling would be more flexible. Further, lengthy hearings, such as one hearing which lasted more than 8 hours, would not delay other Commission business.

Administrative Rule R4-27-109 permits the Commission to appoint a hearing officer. According to the Commission Executive Secretary, one has not been appointed due to budget constraints. The salary for a hearing officer is estimated to be $38,000. If, as discussed in Finding II, unneeded mutuel positions are eliminated, $37,000 would be available for such a position. (see page 24)

Use of hearing officers by other agencies is a relatively common practice. Eighteen of the other thirty-four racing regulatory bodies surveyed use hearing officers. Additionally, numerous agencies in Arizona, including the Department of Revenue, Insurance Department and the State Personnel Board, use hearing officers.

CONCLUSION

The Commission has failed to take timely action on cases referred to it by the stewards. As a result, individuals disciplined by the stewards for serious violations are allowed to resume racing before final dispositions are reached.

RECOMMENDATION

The Legislature 1) amend A.R.S. §5-104, subsection E, to allow stewards to suspend licenses for up to 60 days and/or 2) appropriate funds to allow the Commission to appoint a hearing officer. Such funds could be largely derived by eliminating unneeded mutuel positions. (see page 24)

## FINDING V

CONTROLS OVER THE LICENSING PROCESS HAVE BEEN SIGNIFICANTLY IMPROVED. HOWEVER, SOME ADDITIONAL IMPROVEMENTS ARE STILL NEEDED.

One of the most serious findings of the previous performance audit was that the Commission was not fulfilling its statutory responsibility to regulate racing participants through the licensing process. Since the time of that report controls over the licensing process have been significantly improved, although some further improvements are still needed. Specifically, we found that

- Required investigations of license applicants, including fingerprinting, are now being conducted;
- Procedures recommended to prevent unlicensed persons from participating in racing have been implemented, however, implementation has not been complete and some unlicensed activity is still occurring;
- Commission employees are doing a better job of following established licensing procedures but still need to further improve their performance;
- Adequate controls have been placed over the collecting, recording and handling of license fees; and
- Officers and directors of permittees are now required to be licensed.

### Investigations of License Applicants

At the time of Report 81-5 the Commission was not verifying license application information and had suspended fingerprinting of applicants. In addition, stewards were not informing the investigators of information about applicants' criminal records and rulings from other jurisdictions. As a result, at least 7 percent of the persons licensed by the Commission during fiscal year 1979-80 falsified information on their license applications regarding criminal convictions, rulings by other jurisdictions or both.

Required investigations are now conducted of applicants for licenses, and procedures have been established to ensure that investigators are informed of applicants' criminal records and prior rulings. Fingerprinting of all applicants was resumed in April 1981. Whereas previously fingerprints could be found for only 19 percent of the Commission's licensees, fingerprints are now on file for 100 percent of the licensees reviewed.* From July 6, 1981, to December 17, 1981, these measures resulted in the identification of 131 individuals who falsified license applications.

Preventing Unlicensed Activity

The Commission has established procedures as recommended in Report 81-5 to prevent unlicensed activity. After finding that 5 percent of the persons and corporations we checked were unlicensed, including jockeys, stewards, permittee officials and owners, we recommended that

- Commission staff increase visual checks of licenses; and
- The names appearing in the racing programs be checked against persons licensed by the Commission.

These procedures were established and resulted in the Commission identifying and taking action against 667 percent more unlicensed individuals during July through December 1981 than it did in the same period in 1980. However, the procedures apparently have not been fully implemented as a review of a sample of 50 persons listed on the racing programs found that two unlicensed owners had participated in racing.

* Effective October 1, 1981, the Federal Bureau of Investigation placed a one-year moratorium on the processing of fingerprints for noncriminal justice agencies. The Commission has continued to take fingerprints with the intention of submitting them after the moratorium is lifted. The Commission has continued to process names through the Department of Public Safety's files.

The Commission is also imposing more stringent discipline against unlicensed individuals. Previously the most common action taken against unlicensed individuals was to "make them get a license." Further, when formal action was taken it resulted in a fine in approximately one-half of the cases. During July through December 1981 the formal actions against unlicensed individuals all resulted in fines except for one case which was referred to the Commission for further action.

Following Licensing Procedures

Commission employees are doing a better job of following established licensing procedures. Few of the license applications reviewed during Report 81-5 were properly completed. The other applications were often 1) not signed by stewards (69 percent), 2) not signed in the presence of a Commission official (53 percent), or 3) lacking such information as dates of birth, employers, names of animals, applicants' signatures, or details of prior rulings and criminal histories. Now, 63 percent of the applications are properly completed. The largest area of noncompliance is the 29 percent of the applications that are still not signed in the presence of a Commission official or notary public.

Controls Over License Fees

In Report 81-5 we noted a number of weaknesses in the accounting controls over the collecting, recording and handling of license fees. These weaknesses were demonstrated by the fact that there was an unexplainable difference of $3,969 between the license fees that were actually collected during fiscal year 1979-80 versus the fees that should have been collected based on the number of licenses issued.

A June 1981 financial audit of the Racing Commission by the Auditor General has since found that proper accounting controls are now in place. Further, a reconciliation by performance audit staff found that fees collected during the first six months of fiscal year 1981-82 versus the fees that should have been collected based on the number of licenses issued now agree.

Licensing of Officers and

Directors of Permittees

We previously noted that although the Commission had statutory authority, it was not licensing individual officers and directors of racing permittees. This left the Commission with no means to discipline officers or directors who violated Commisson rules. Individual officers and directors are now licensed pursuant to a May 21, 1981, directive of the Commission.

CONCLUSION

Controls over the licensing process have been significantly improved. However, the Commission needs to 1) more fully implement the procedures available to prevent unlicensed activity and 2) ensure that all licensing procedures are followed.

RECOMMENDATIONS

1. The licensing supervisor ensure that all names listed in the racing program are reviewed against persons licensed by the Commission.

2. The licensing supervisor periodically review license applications to ensure that all procedures, including the requirement that applications be signed in the presence of a Commission official or a notary public, are followed.

## FINDING VI

### THE COMMISSION HAS NOT TAKEN TIMELY ACTION TO RECOVER FUNDS IT GRANTED IMPROPERLY.

Auditor General Report 81-5 disclosed that the Commission had improperly granted approval to permittees to withhold capital improvement funds,* and had, in past years, made illegal loans to licensees. Also, the Commission had never determined whether funds from the county fairs and racing breeders' award fund should be used to pay for the salary of a manager-supervisor. Once notified of these problems, the Commission did not take timely action to recover the funds or correct the situations.

#### Capital Improvement Funds

In 1978 the Commission improperly approved requests from Turf Paradise and Prescott Downs to use capital improvement funds to purchase rolling stock (tractors, trucks and equipment). The cost of these items purchased by Turf Paradise and Prescott Downs was $190,122 and $38,922, respectively. However, the Prescott Downs equipment was part of a larger $100,943 request. Once the improper rolling stock costs were subtracted, this request also failed to meet the statutory requirements for capital improvements.** Thus, the Commission actually improperly approved $291,065 for capital improvements.

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* A.R.S. §5-111.02 provides for the State to subsidize capital improvements at commercial horse tracks. Commercial horse racing permittees who receive Commission approval for capital improvements are allowed to reduce the percent paid to the State by 1 percent of the total amount wagered.

** A.R.S. §5-111.02, subsection D, requires that a request total at least $100,000 to qualify as a capital improvement. After subtracting the $38,921 which was improperly approved for vehicles and equipment, the original $100,943 request failed to meet the statutory requirement.

Turf Paradise has not withheld any funds for its rolling stock. At the time of our previous report, Prescott Downs had withheld $85,974 of the total $100,943 request, including $23,953 for rolling stock. Currently, the entire $100,943 has been withheld. We recommended in Report 81-5 that the Commission do as follows:

- Rescind its approval of rolling stock as a capital improvement;
- Direct Turf Paradise not to withhold funds for the rolling stock;
- Direct Prescott Downs to repay the $23,953 withheld for rolling stock; and
- Request an Attorney General opinion to determine if Prescott Downs should be required to repay all funds withheld against the $100,943 request.

The Commission did not take timely action on these recommendations. Instead of rescinding its improper approval and requesting repayment of the funds from Prescott Downs, the Commission waited almost two months and then requested an Attorney General opinion on the entire matter. When the Attorney General opinion was received three months later supporting the conclusions of the audit report, the Commission waited an additional three months, until December 3, 1981, before requesting repayment of the funds. Further, Commission correspondence indicates it was not until a month after that action in January 1982 that the Commission notified Turf Paradise it could not withhold funds for rolling stock.

In discussing why it took so long for the Commission to rescind its approval of rolling stock as a capital improvement, particularly after the Attorney General opinion was received, we were told that the Commission was hoping that legislation could be passed which would retroactively include rolling stock as a capital improvement. When the Commission learned that this would not be possible, a request was then made for repayment.

We were also told that the former chairman of the Commission had reportedly notified Turf Paradise prior to January 1982 that approval for rolling stock had been rescinded. When no copies of the correspondence could later be found, the current chairman sent the January 1982 notification to Turf Paradise.

As of February 18, 1982, no funds had been repaid by Prescott Downs. However, the Commission and the Attorney General are studying the possibility of having the Yavapai County Fair Association, which owns Prescott Downs, use funds from the county fairs racing and breeders' award fund to purchase the items that Prescott Downs bought with the capital improvement funds. Prescott Downs would then use that money to reimburse the State.

Illegal Loans Through Benevolent Funds

Prior to March 1978 the Commission illegally loaned $51,016 to licensees through the Race Track Benevolent Fund and the Greyhound Benevolent Fund.* Although the Funds were found to be illegal and were discontinued, no effort was made to determine whether any of the $50,656 in interest-free loans that remained outstanding could be collected. Our audit recommended that an effort be made to determine whether it would be feasible to collect any, or all, of the unpaid loans.

The Commission did not initiate action to recover the unpaid loans until approximately nine months after our audit was released. In January 1982 the Executive Secretary was directed to attempt to collect the outstanding loans. As of February 18, 1982, no monies had been recovered.

Commission officials told us action was not taken earlier to recover the illegal loans because the Commission felt they had not erred when the loans were made and did not think any monies would be recovered.

Funding County Fair Manager-Supervisor's Salary

The Commission annually distributes more than $200,000 from the county fairs racing and breeders' award fund to the county fair race meets. The Commission has complete discretion in allocating the monies as long as the use of the monies is deemed "necessary for the promotion and betterment of county fair racing meets."

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* These Funds were created to provide an emergency source of financial assistance for needy individuals employed at the race tracks. Fines levied against licensees were used to establish and sustain the Funds which were controlled by the stewards.

Although most expenditures are used for physical improvements and equipment, one county did use the funds to pay the salary of a manager-supervisor. While the Commission has determined that such items as expenditures for equipment are necessary for the "betterment" of county fair racing meets, it has never made a similar determination regarding the salary of a manager-supervisor. We previously recommended that the Commission make a determination on the matter.

A request for a determination on the matter was brought to the Commission by Commission staff in December 1981. No action had been taken as of January 31, 1982. The Commission chairman told us he personally believed expenditures for a manager-supervisor's salary would be for the promotion and betterment of county fair racing. He said it was an oversight that the Commission had not addressed the issue earlier.

CONCLUSION

The Commission did not take timely corrective action with regard to the use of capital improvements for rolling stock. The Commission also had not taken timely action to attempt to recover outstanding, illegal loans nor to determine whether manager-supervisors salaries should be paid from the county fairs racing and breeders' award fund.

RECOMMENDATIONS

1. The Commission continue its efforts to recover the 1) capital improvements monies improperly approved and withheld and 2) outstanding, illegal loans made to licensees.

2. The Commission determine whether expenditures for management salaries are for the "promotion and betterment" of county fair racing meets.

## FINDING VII

### ACTIONS HAVE BEEN TAKEN TO CORRECT DEFICIENCIES IN THE COMMISSION'S PROGRAMS TO CONTROL ILLEGAL DRUGS.

Previous review found a number of deficiencies in the Commission's programs to control illegal drug usage in race animals. The more serious deficiencies included 1) the procedures followed by the Commission veterinarians to obtain some urine samples which destroyed the integrity of the sample testing process, 2) the failure to take blood samples and additional samples when appropriate, and 3) the inadequate procedures used to select and evaluate the chemist who performed the drug testing. The Commission appears to have addressed most of these deficiencies. However, due to inadequate records we could not fully evaluate the issue of taking additional samples.

#### Procedures Used To Obtain Samples

At the time of our previous report we found that Commission veterinarians were administering Lasix (a diuretic) to horses when samples could not be obtained within a specified time. Racing chemists from other jurisdictions told us that Lasix takes effect within minutes and masks the presence of virtually all illegal substances known to be used in race amimals. Commission veterinarians have since been instructed to discontinue using Lasix to collect samples. A review of test cards and veterinarians' reports indicates the practice has been discontinued.

#### Blood and/or Additional Samples

Other deficiencies noted in Report 81-5 included 1) the failure to take blood samples from all horses that died immediately before, during or after a race and 2) a decrease in the number of additional samples taken.

Blood samples are often the only samples available when a horse dies immediately before, during or after a race. We previously noted that blood samples were not taken from any horses that died at Rillito Downs and from only half of the horses that died at Turf Paradise. However, blood samples are now being taken from all horses that die immediately before, during or after a race. We identified 14 horses that died under such circumstances between May 1, 1981, and December 31, 1981. Blood samples were taken from all horses.

Additional samples are samples taken from other animals in a race in addition to the sample taken from the winner.* Additional samples are used to increase the possibility of detecting illegal drug usage and may be taken in races with particularly large purses or when an animal does not perform as expected. During the time period covered by Report 81-5, the Commission had decreased its use of additional samples. Due to inadequate records we cannot evaluate whether the taking of additional samples has since increased. The inadequacies in the records include:

- Inability to locate 8 of the 31 laboratory reports needed for our review,
- Incompleteness of 5 of the 31 laboratory reports as to notations of the types of samples (i.e., blood, urine or saliva), and
- Failure to show adequate details about samples on 14 of the 31 veterinarians' reports.

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* These samples are generally urine samples, but may also be taken as blood or saliva samples.

Procedures Used To Select
and Evaluate the Chemist

Ultimately, the Commission relies on the expertise of a racing chemist and the accuracy of his analytical testing to control and regulate illegal drug usage in racing animals. The previous performance audit found that 1) the Commission had discouraged qualified laboratories from bidding on contracts to perform the Commission's drug testing, 2) the Commission had not adequately evaluated the performance of the chemist it used, 3) the Commission did not take timely action when it found the chemist was not performing effectively, and 4) the one-page contract document used was inadequate and possibly invalid. However, effective September 8, 1981, the Commission entered into a new contract with a different racing chemist. The bidding procedures used and the provisions incorporated into the contract appear to have alleviated the previous problems. Specifically, we noted:

- The Commission advertised nationally and actively sought to obtain as large a number of qualified bidders as possible. Ten laboratories were directly contacted by the Commission and requested to bid.
- The contract includes provisions for monitoring the performance of the chemist including the use of "audit samples."* Additionally, the Commission uses split samples** to evaluate the chemist. As of January 31, 1982, 21 samples from 2 major races had been split.
- The contract requires the chemist to file a $50,000 performance bond which is due if the chemist fails to detect 90 percent of the audit samples.
- The 22-page contract was prepared by the Commission's Assistant Attorney General to ensure its soundness and validity.

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* Audit samples are samples that are specially prepared or "loaded" so that they are known to contain drugs.

** Split samples are regular samples that are split into two or more portions and submitted to additional laboratories as a cross-checking procedure. This is done without prior knowledge as to whether drugs are actually present.

## CONCLUSION

The Commission has taken action to correct deficiencies in the 1) procedures used to obtain samples, 2) taking of blood samples, and 3) procedures used to select and evaluate the contract chemist. Due to inadequate records we could not evaluate Commission actions taken with regard to the taking of additional samples.

## RECOMMENDATIONS

1. The Commission improve its records regarding drug tests by
   - Retaining and/or more carefully filing laboratory reports;
   - Ensuring that laboratory reports show details as to the types of samples tested (urine, blood or saliva); and
   - Providing more detail on the veterinarians' reports as to the number and types of samples taken per race.

2. The Commission continue to monitor the performance of the new racing chemist now under contract to the Commission.

## FINDING VIII

ACTION HAS BEEN TAKEN TO IMPROVE COMPLIANCE WITH THE OPEN MEETING LAW AND THE WORKMEN'S COMPENSATION LAW. HOWEVER, THE COMMISSION MAY NOW BE VIOLATING STATUTES PERTAINING TO THE DESTRUCTION OF PUBLIC RECORDS.

Auditor General Report 81-5 found that 1) stewards' hearings did not comply with the public notice requirements of the Open Meeting Law, and 2) the Commission did not enforce an administrative rule concerning the Workmen's Compensation Law. Although the Commission has since taken action to improve compliance in both areas, Commission employees may now be violating State law by not retaining minutes of stewards' hearings.

### Open Meeting Law

Prior to Report 81-5 the Commission did not consider stewards' hearings to be subject to the Open Meeting Law. Consequently, required public notices were not posted, minutes were not kept and public attendance was not allowed.

Commission action has been taken to correct these deficiencies, but the Commission is not complying with statutory requirements to retain minutes of public meetings.

Stewards' hearing proceedings are tape-recorded in place of taking written minutes. These tapes are erased after 72 hours unless 1) the case is referred by the stewards to the Commission for further action or 2) the person appeals the ruling. The tapes are erased after 72 hours because persons cannot appeal rulings later than 72 hours after the hearing. Despite this procedure, we found that the tapes are public documents and erasing them may violate State law.

Attorney General Opinion I80-198 reviewed the question of retaining tape-recorded minutes of public meetings and concluded that recordings, like written minutes, must be retained indefinitely. The only exception is if written minutes are later transcribed from the tape recordings; then the tape recordings can be erased. Erasing tape-recorded minutes under other circumstances may violate A.R.S. §38-421 which addresses the destruction of public records. Violations of this statute constitute a class 4 felony.

Workmen's Compensation

Commission rules require licensees to be insured under the Workmen's Compensation Law. The previous audit disclosed that this rule was not being enforced. Since the time of that audit the Commission has taken the following actions to ensure compliance:

1. The Commission has requested and received the assistance of the Industrial Commission in enforcing the provisions of the Workmen's Compensation Law.

2. Stewards have compiled lists of persons not covered by insurance which have been submitted to the Industrial Commission for further action.

3. Commission license applications have been changed to require disclosure of insurance coverage.

CONCLUSION

Commission actions have been taken to comply with the Open Meeting Law and to ensure that licensees are insured under Workmen's Compensation Insurance. However, Commission employees may be violating State statutes by erasing the tape-recorded minutes of stewards' hearings.

RECOMMENDATION

The Commission either 1) retain tape-recorded minutes of stewards' hearings indefinitely or 2) transcribe written minutes before the tape recordings are erased.

**COMMISSION**

Michael J. O'Haco, Chairman
Chet E. Johns, Vice Chairman
John K. Goodman, Commissioner
Ronald A. Lebowitz, Commissioner
R.F. Shaffer, Commissioner

# ARIZONA RACING COMMISSION

**EXECUTIVE SECRETARY**

Roy Snedigar
1645 West Jefferson
Room 437
Phoenix, Arizona 85007
(602) 255-5151

**BRUCE BABBITT**
GOVERNOR

March 18, 1982

Mr. Douglas R. Norton
Auditor General
111 West Monroe (Suite 600)
Phoenix, Arizona 85003

Dear Mr. Norton:

Your attention is invited to the attached response to the Auditor General's Performance Audit Report of March 9, 1982. Again, thank you for the opportunity to comment on the draft before it was released.

Sincerely,

Roy Snedigar

Roy Snedigar
Executive Director

Enclosure

RS/br

## AUDITOR GENERAL'S PERFORMANCE AUDIT RESPONSE

The Commission has reviewed the preliminary draft of the second phase of the Performance Audit of the Arizona Racing Commission by the Arizona State Auditor General.

This Commission is generally in agreement with the first draft and the findings therein, and appreciates the opportunity to respond to it before the audit becomes a matter of public record.

Finding #I:

Commission rules which regulate jockey betting will be reviewed and amended where necessary to control any improper betting by jockeys. A feasibility study will be made to determine the best possible means of isolating jockeys and Jockey Room employees from the public and the best possible solution to the problem will be taken.

Positive action has been taken and will continue to be taken to ensure that jockeys are weighed both in and out for every race. Any overweights or weight changes will be announced to the public in accordance with Commission Rules and Regulations.

The Stewards at the Rillito Race Track have denied that they have knowingly allowed jockeys to race without being properly weighed. Positive disciplinary action will be taken if any rule violations have occurred.

The new Clerk of Scales at Rillito Downs has been thoroughly briefed concerning his responsibilities as Clerk of Scales and Agency Investigators have been assigned the duty to monitor and ensure that

the proper scale procedures are followed. The person responsible for not weighing riders in Yuma has been dismissed. Two sets of scales and certified weights were purchased for the County Fairs and steps will be taken to obtain certified weights for use at the commercial tracks.

Duties have been defined and distributed to test barn Security Officers. Compliance will be monitored by the stewards and security people.

A greater number of winning greyhound samples will be collected under the strict supervision of the State Veterinarian, and closer attention will be paid to sample control and submission.

The Commission will consider a rule change which will require the weigh-in weights to be displayed in the grandstand area and the pre-race weights posted on the odds board.

A greater number of greyhound samples can be obtained when the lead-out people are directed to take the samples in full view of the State Veterinarian, instead of taking samples in the receiving pit. Rule R4-27-309.Y.6. is being reviewed and an amendment will be drafted which will provide for a more efficient procedure of sampling.

Finding #II:

The Commission recognizes the need for an electronic data processor to establish controls and monitor track computers used at the large horse tracks and at all of the greyhound tracks.

A review will be originated to determine if the Mutuel Supervisor activity is required as it is today, or needs some change which would incorporate some EDP function, or is completely obsolete, and the total function is in fact now an EDP function. Additional funding was requested in the Commission's FY 82-83 Budget Request for an EDP Auditor or EDP Audit Contract funding.

We feel the wagering public needs to be represented at the mutuel windows by an agent of the State, rather than an employee of the permittee. The State Mutuel Supervisor has other duties that are essential to ensure integrity and compliance of rules. The State Pari-mutuel people investigate customer complaints, ensure procedures are in accordance with racing rules and regulations, testify before the Racing Commission concerning illegal activity within the mutuel rooms.

Finding #III:

The Arizona Department of Revenue was contacted and it was determined that the sales tax issue is a matter under their cognizance. It is recommended that a final draft copy of this audit report be submitted to The Arizona Department of Revenue for whatever action they deem appropriate in this finding.

Finding #IV:

The facts and circumstances delineated within this finding are all basically true, but an additional cause for the case backlog is:

1. The official State Chemist is finding considerably more traces of foreign substances in animal samples than ever before

due to improved chemical analysis procedures. All of these findings are referred by the Track Stewards for hearings by the Commission.

2. Fingerprinting is now done on 100% of all applicants, and this has turned up considerably more falsifications which are referred to the Commission for hearing and their disposition.

3. All applicants who are found to have felony connections within the past five years, and all drug convictions within the past ten years, and all falsified race related rulings pertaining to fraudulent and corrupt practices are referred to the Commission for disposition.

The Commission was originally funded $10,000 in their FY 81-82 Budget, however, recent budget reductions forced the loss of these funds. Funding was again requested in the FY 82-83 Budget Request for a Hearing Officer.

Legislation was introduced to grant suspension authority of 60 days to the stewards, which would give the Commission additional time to process a case through the lengthy legal process to a hearing.

A Typist III position was requested in the FY 82-83 Budget Request to help eleviate the severe shortage of clerical support for the typing of hearing notices, steward rulings and reports, plus the large number of investigation reports now being generated. Concentrated effort is being placed on the development of case files and getting the more serious cases before the Commission as soon as possible.

Finding #V:

Agency concentrated efforts have been made in the licensing function of this Agency to improve efficiency and define licensing authority throughout the State. The Commission's FY 82-83 Budget Request includes a request for a new Licensing Supervisor position and one seasonal FTE position to meet the requirements of this function. In addition, detailed written operating procedures are "on the drawing board," and individual job descriptions and employee evaluations have been clearly defined which will be strictly adhered to and properly evaluated on a continuing basis. In addition, legislation has been introduced which will allow the agency to spread the licensing function over a full year instead of the two peak periods each year as it is now. Improvement is expected to continue within the Licensing Section.

Finding #VI:

When the Commission originally authorized the permittees to withhold capital improvement funds for rolling stock, it was done in good faith and thought not to be illegal until the initial Auditor General's report was received.

The reason it appears that the Racing Commission did not take timely action to recover the funds was:

1. Proposed legislation was introduced to make rolling stock a part of the capital improvement authority, retroactive to include the rolling stock at Prescott Downs and Turf Paradise. Once it becomes apparent that this legislation would not be granted, prompt action was initiated to recover the rolling stock funds.

Every recipient of Benevolent Funds, where located, was sent a collection letter demanding the repayment of the loan. It might be noted that these Benevolent Fund loans were not considered illegal when loaned, and were loans to terribly desperate people who were about die, loans for funeral expenses, and off track accident victims, etc.

Tremendous hardships will be placed on some of the payees because their financial situation has not changed since 1959 or earlier. Some loans will simply remain uncollectible. However, every effort has been made to recover these individual Benevolent Fund grants.

Funding #VII:

The Commission has adopted all new medication rules within the past year, which virtually eliminated the use of foreign substances in racing animals.

Chemist selection was done strictly in accordance with state purchasing guidelines, and a contract was issued for one full year. Split sampling has become a routine procedure now and the Arizona State Health Laboratory has been contracted to actually visit the laboratory and observe that proper analysis procedures are being utilized.

The Commission has notified the contracted chemist to include in his report the type of sample tested. The Commission's Veterinarian is reviewing the reports concerning sampling and a auditable record system will be established as soon as possible.

Finding #VIII:

The Commission requested assistance from the Arizona Industrial Commission to work out a procedure to ensure that proper Industrial Compensation laws are complied with. From this contact, a list was provided to the Industrial Commission of all those track people who should participate in the program. The Industrial Commission has taken action to enforce compliance with the laws concerning Industrial Compensation coverage.

Immediate steps have been taken to maintain a record of all steward hearings. Tape recorders were requested in the Commission's FY 82-83 Budget Request to provide for public record requirements. At the present time, hand-written minutes of the hearings will be taken by the one State Steward present at each hearing. These minutes will then become a part of the Agency's permanent records.

ADDITIONAL COMMENT

During this past year, with the assistance of the Division of Finance, Executive Budget Office and the State Personnel Division, the Commission has reorganized into five separate divisions, each with an assigned Division Chief. Each Division Chief is responsible directly to the Executive Secretary. This reorganization is in place and working exceptionally well. Every effort has been made to analyze the total Agency workload, and distribute this among all available personnel using individual written job descriptions.

Due to the limited personnel resources, there are some areas that were not assigned, and these areas were addressed in the Agency's FY 82-83 Budget Request.

# APPENDIX

LEGISLATIVE COUNCIL MEMORANDUM O-82-3,

FEBRUARY 18, 1982

# ARIZONA LEGISLATIVE COUNCIL

# MEMO

February 18, 1982

TO: Douglas R. Norton
Auditor General

FROM: Arizona Legislative Council

RE: Request for Research and Statutory Interpretation (O-82-3)

This is in response to a request submitted on your behalf by Bill Thomson in a memo dated February 11, 1982. No input was received from the Attorney General concerning this request.

FACT SITUATION:

Arizona Revised Statutes (A.R.S.) section 42-1309, subsection A provides for the levy of a transaction privilege tax "measured by the amount or volume of business transacted by persons on account of their business activities. . . ."

A.R.S. section 42-1301 defines "business" and "sale" as:

> 2. "Business" includes all activities or acts, personal or corporate, engaged in or caused to be engaged in with the object of gain, benefit or advantage, either directly or indirectly, <u>but not casual activities or sales.</u>
>
> * * *
>
> 19. "Sale" means <u>any transfer of title or possession,</u> or both, exchange, barter, lease or rental, conditional or otherwise, <u>in any manner or by any means whatever,</u> of tangible personal property, for a consideration. . . . (Emphasis added.)

Licensed horse owners may obtain title to horses through claiming races. Prior to the race, owners may enter claims indicating that they wish to purchase a horse entered in the race for a price established by the permittee. If the claim form is properly executed and deposited with the permittee, title is transferred to the claimant. (See A.C.R.R. R4-27-206 for further background.)

Owners may claim only one horse in a race but are not restricted to the total number which can be claimed in any time period. Some owners have claimed as many as 30 horses in a year.

QUESTION PRESENTED:

Are sales of horses in claiming races subject to transaction privilege taxes?

DISCUSSION:

The transaction privilege tax is imposed on the gross proceeds of sales or gross income of certain specifically enumerated transactions. A.R.S. section 42-1309. One of those transaction classifications is the retail sale of tangible personal property. A.R.S. section 42-1312. The focus is on the seller's activity, not on the buyer's. The key issue posed by your question is whether the seller of horses in a claiming race is engaging in the "business" of selling tangible personal property at retail. This issue can only be decided on a case-by-case basis.

A.R.S. section 42-1301 provides an exemption for "casual sales or activities". The Department of Revenue has further defined the meaning of "casual" in two of its regulations, as follows:

> 2. "Casual" applies to those transactions which are of an isolated nature by a person who is not engaged in business and does not represent himself as being in business (see R15-5-1812) provided, however, that:
>
> a. Retail sales by a person engaging in a taxable business are subject to tax, even though the tangible personal property sold is not normally held for sale.
>
> b. Sales made by trustees, receivers, and assignees in connection with the liquidation or operation of an established business are not considered to be casual.
>
> c. The sale of repossessed merchandise by a lending institution, not normally engaged in the business of selling, is not considered to be casual. (A.C.R.R. R-15-5-202.)
>
> A casual sale is one that is made by a person not engaged in an activity taxable under the Sales Tax statutes. Provided that the seller does not make a practice of making sales of such volume or frequency as to indicate he is a dealer, the transaction is not subject to the tax as a retail sale. Examples of casual sales include: sale of an automobile by a private party, garage sales by persons selling articles originally purchased for their own use. (A.C.R.R. R15-5-1812.)

The judicial standards applied by the courts are whether such activity is "isolated", "unanticipated", "irregular" or "singular". Arizona Department of Revenue v. Mountain States Telephone and Telegraph Co., 113 Ariz. 467, 556 P.2d 1129 (1976). The same analysis applies whether the sale activity takes place at swap meets, yard sales, public auctions or claiming races.

CONCLUSION:

The issue of whether the sale of horses in a claiming race is subject to transaction privilege taxes can only be decided on a case-by-case basis. You may wish to contact the Department of Revenue or the Tax Division of the Attorney General's office for further clarification in this regard.

cc: Bill Thomson, Acting Director
Performance Audit Division