

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

General Affairs Committee
March 29, 2010

[CONFIRMATION]

The Committee on General Affairs met at 1:15 p.m. on Monday, March 29, 2010, in Room 1510 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a confirmation hearing for reappointment of Dennis Lee to the State Racing Commission. Senators present: Russ Karpisek, Chairperson; Kent Rogert, Vice Chairperson; Tanya Cook; Merton "Cap" Dierks; Bob Krist; and Scott Price. Senators absent: Colby Coash; Annette Dubas. [CONFIRMATION]

SENATOR KARPISEK: All right. We have Dennis Lee to fill his role again. Dennis, welcome. Tell us whatever you'd like to about yourself, why you'd like to stay on. [CONFIRMATION]

DENNIS LEE: (Exhibit A) All right. Thank you, Senator, it's a pleasure for me to be here this afternoon. My current term on the Racing Commission actually expires the end of this month. I sent a letter to the Governor's Office the middle of February, asking the Governor's consideration for reappointing me to another three-year term, and I was very pleased to be advised by the Governor several weeks ago that he was reappointing me subject to the Legislature's confirmation. Before we started today, I asked the clerk to hand out to...or the page rather to hand out to the members of the committee my resume. I didn't know if you would have that, but just to give you a little bit of a summary. I've been on the Racing Commission since October of 1988. I was appointed then to fill the remaining term of Commissioner Harry Farnham which expired in '89. Since then I've been appointed every three years thereafter. I've served as the chairman of the commission since 1989. Prior to that time, from '84 to '87 I was the counsel for the Racing Commission and been involved in really the element of horse racing virtually all my adult life from probably high school on when I began working at Ak-Sar-Ben in various capacities. So I come here today, being able to answer any questions you may have and, hopefully, secure your support recommendation to the full Legislature for my confirmation to the Racing Commission. [CONFIRMATION]

SENATOR KARPISEK: Thank you, Mr. Lee. Does anyone have any questions? Senator Rogert. [CONFIRMATION]

SENATOR ROBERT: Dennis, I don't think anybody in the building or the room would say that there's anybody that is more of an out and out most knowledge about the racing industry in the state of Nebraska. In your opinion, can we save it? [CONFIRMATION]

DENNIS LEE: I think we can. I really do. We've...it's been a difficult time even since before Ak-Sar-Ben closed. This all started historically when the casinos and...well, first of all, the dog racing started in Council Bluffs and then, of course, they branched into that. But I know that the HBPA and the breeders and the tracks are doing what they can

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do. The one good thing that I've seen so far and granted, we've only had several weeks of racing at Fonner Park, but we've had full fields of horses which, in the past, there were times that we had trouble getting seven and eight horses, and we'd settle for seven or eight horses in a race. That hasn't been the issue this year, so I think the simulcasting has been a big help historically. There's another bill that's...I'm not sure exactly what the status of it is now. It comes out of the Judiciary Committee on the historical racing which will be a help too. Obviously, we continue to work hard, not only we at the commission level, but at the industry to try and maintain the sport and maintain the industry. And one real good sign, as I said, is the full field of horses this year at Fonner Park. [CONFIRMATION]

SENATOR ROBERT: Great. Thanks for your work. [CONFIRMATION]

DENNIS LEE: You bet. Thank you. [CONFIRMATION]

SENATOR KARPISSEK: Thank you, Senator Robert. Senator Coash. [CONFIRMATION]

SENATOR COASH: Thank you. Looks like you might get a couple extra commissioners. Any opinion on how that might be beneficial...not be beneficial. What's your take on that? [CONFIRMATION]

DENNIS LEE: You know, from the standpoint of the bill, I don't have any problem with any number of commissioners that we have on the commission. I know that some states have as many as seven commissioners on the Racing Commission. Other states have five, and it seems that the majority of states is three. Other than just a scheduling issue, trying to factor in two more folks' schedules into the hopper, it's...I don't have a problem with the number of commissioners. From a personal standpoint, I don't think racing commissioners should wager. I think it's...and I don't think racing commissioners should own, but that's just me personally. Even if this bill that's currently before the Legislature is passed, you won't see my name on the program owning a horse. You won't see me at the window betting. And I just think that it's not the right thing for me to do as a regulator, to have anybody at the track see Denny Lee walk up to the window even to visit with somebody because they may think, you know, he's about to make a bet. There's his name in the program here as a racing commissioner, he knows something we don't know. I just think it's the...has the potential of seeing me at a window of the appearance of impropriety, and I'm not going to go down that road. [CONFIRMATION]

SENATOR COASH: Thank you. [CONFIRMATION]

SENATOR KARPISSEK: Thank you, Senator Robert. Any other questions? Senator Krist. [CONFIRMATION]

SENATOR KRIST: I apologize for being late, but...and I hope this question...have there

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been very many questions? Okay, am I the second? [CONFIRMATION]

SENATOR KARPISEK: No, you'd be three. [CONFIRMATION]

SENATOR KRIST: Oh, okay. So if I...if someone has asked this before, I apologize. It seems to me that in my short time here, there's been a great deal of controversy on how to save the industry in the state of Nebraska. It also seems to me that there's completely disjointed views on how one would go about saving this industry. On one hand, we try to do everything we could early on in session to try to promote the industry and then, understandably, because it costs more money to run live horses, someone came in and asked if we wanted to race less days? That's sending some mixed signals. Could you talk to that for me for just a second? [CONFIRMATION]

DENNIS LEE: Sure. The whole element, if you look at the historical background to the racing statutes, the whole element is to improve the thoroughbred breeding industry in Nebraska. That's why we have parimutuel wagering and parimutuel racing, and that was the historical significance of it. And I don't think you're improving the thoroughbred breeding or the racing industry just by turning on TVs...and activating tote machines, in other words, doing simulcasting. When simulcasting came into play, this was back in the mid eighties, I was still on the staff of the Racing Commission as its counsel, and I was involved in writing the rules of simulcasting that most of which we still use today. One of the statutory provisions that kind of dovetailed with the simulcasting legislation, which was driven by the HBPA wisely, in my opinion, was that a track had to run originally...initially, it was 90 percent of the number of days that it ran in 1988 in order to be able to simulcast the following year. And, you know, racetracks are like any other businesses. From an economic standpoint, it's a whole lot cheaper to come into the day, activate your 60 or 80 TVs, have your 10 or 12 mutuel clerks come in and open up the snack bar than it is to put on a live meet and hire starting gate assistants and test barn people and everything else. It's a major financial operation. If you're going to make the economic decision, sure, it's easy...it's simulcast. But that's not meeting the spirit and intent of when the racing legislation was adopted, and the whole purpose was to improve the thoroughbred breeding industry. We've got, I believe, a good balance right now. The statute on 90 percent has been amended down. Every year when we have our dates meeting, I announce at the start of the meeting that if tracks can work it out with the HBPA and the breeders in terms of the number of live racing dates, that's great. If they can't, then we're not leaving today until we reach the minimum number of racing days that we need, not only for that individual track but also for the statutory mandate of the total number of live races for that year, so that we can simulcast the next year. And every year, we've been able to resolve it, and there hasn't been a year that I can think of over the last six or seven years that the tracks haven't been able to work together ahead of time coming up with those dates. I just think that it's important that we continue to stress the live racing end of it. Simulcasting has really been the salvation, to a great extent, of the track's ability to survive the continued competition from Iowa and, for that

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matter, other states because it's just not Iowa. The problem that we as an industry, and I see it at the commission level, run into. It's not at Fonner Park this time of year until a lesser...it begins sort of towards the middle to the end of the Lincoln meet. It's when the other tracks and the other jurisdictions that do have supplemental wagering opportunities such as slot machines and casinos and other opportunities and venues in Oklahoma and other places such as that nature. They can offer better purses than we can to the horsemen, and so it's from a business economic standpoint of a horseman. I can run against basically the same caliber of horses in another jurisdiction that does have supplemental wagering, that does offer better purses than I can run at Lincoln or Columbus, and so I want to go there. And that's where we begin to see two problems--availability of horses with regards to fill races, and we also have problems getting jockeys. Usually at Columbus, when we get to Columbus which is the end of our show, there's sometimes we have a concern of having as few as eight or nine jockeys in the room. The track then will go out, and I know the HBPA has done this too, and they've gone out, and they've contacted jockeys and brought them in from other states for that weekend meet. But the live racing is critical. I know that the tracks have sometimes discussed in the past about reducing of that live racing requirement, but from a regulatory standpoint, knowing the industry the way that I know...I know the industry, I just don't see that that would be in the best interests. Hopefully, that answers your question. [CONFIRMATION]

SENATOR KRIST: Yes, sir. Thank you very much. [CONFIRMATION]

SENATOR KARPISEK: Thank you, Senator Krist. Any further questions? Seeing none, thank you, Mr. Lee. [CONFIRMATION]

DENNIS LEE: Thank you. Thank you. I appreciate the opportunity to be here. [CONFIRMATION]

SENATOR KARPISEK: Do we have anyone to testify in support of Mr. Lee? Welcome. [CONFIRMATION]

LORAN SCHMIT: Mr. Chairman, members of the committee, I hadn't intended to testify today, but I visited with Senator Dierks, and he told me about this hearing, so I wanted to appear here today in support of Mr. Lee. He's been around for a long time and been very helpful to the industry. Seems odd that you mention simulcasting because I was the person who introduced that bill under the direction of Mr. Henry Brandt who at that time was the gentleman in charge of the Lincoln state fair. And, of course, at that time, it was very controversial, and Mr. Brandt, having more wisdom than the legislators at that time said if we're going to be competitive in the horse racing business, we need to be able to bring in the major races. The first bill only brought in the Kentucky Derby, Preakness, and the Belmont. The next year we brought in...we opened up simulcasting. And, as Mr. Lee has said, it's been very good for the racing industry. I think it's also

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been true that the entire gambling structure has had an adverse effect upon racing. It's kind of ironic that as legislators, we frequently have leaned over backward to bring new businesses into the state, and from time to time you contact or are contacted by businessmen to say, hey, what about my business? I was here for a hundred years, and there's nothing being done to keep me in business. And I think the horsemen felt that way many times as the casinos opened up and keno expanded and illegal gambling, it's kind of ironic we talk about the legal gambling being competitive with horse racing. Probably the greatest amount of gambling in Nebraska today is illegal gambling on sports; 45 years ago we were told it was two billion dollars a year. Now I've been told it's four billion dollars a year...four billion dollars a year untaxed, unlicensed, unregulated, makes no contribution to society whatsoever. And that's a job you can handle, Senator, when you get a little spare time. But I just want to point out that horse racing, if it had an equal shake at the consumer dollar, would not be doing so badly. And I think the industry has done well to survive and when I was in the Legislature we used to talk about the value of the industry being about \$300,000,000 a year to Nebraska. And if someone offered this Legislature a chance to bring a \$300,000,000 a year industry into the state, we'd all be out rolling out the red carpet and tooting our horn. But we have a major industry. We've let it decline, and I think the Legislature has been pretty good to the industry. But it's kind of interesting that if you get west of Grand Island, you can't bet on a horse race, and there was a provision in this body to take care of that to a certain extent; it didn't get treated very well, but something you might want to look at again, Senator. And the state of South Dakota, they have simulcasting in areas other than at the track sites. I think you have to remember, first of all, though, that we have major investments in certain track sites, and we should try to make sure that those track sites are protected to a certain extent, and that they do get the revenue they need to stay in business. I know in Columbus which was my backyard, they discussed whether or not they can afford to remain open. And I don't know what you do there because they have a lot of keno outlets in that town, and I can take you to some places now that operate amusement machines center that are about as much amusement machines as a slot machine in Vegas, and you've got them right in this town. And they operate openly, and I've heard, my good friend, the Attorney General, offer concern whether or not they are gambling machines or games of skill. Well, (laugh) I think Senator Dierks and I could talk about that pretty quickly, decide what they are. But I think the racing industry can compete with any kind of legal gambling, just controlled, licensed, regulated, and (inaudible) properly. You can't control, you can't compete with illegal, unlicensed, unregulated, untaxed gambling. I hope that the commission continues to do what they've been doing these last years as they've done well. I think the industry is alive and well, and I had the luxury of growing up with the Vandenberg family, went to high school with them, and still keep in touch with Jack Vandenberg. And I think they've done a lot for...those sort of people have done a lot for the state of Nebraska. We ought not to forget that. There's a lot of good horsemen in my area, and they need your help, you'd help them like Mr. Lee, and I think that racing can bring some very positive benefits to Nebraska. Thank you very much. [CONFIRMATION]

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SENATOR KARPISEK: Okay. Okay, thank you, Mr. Schmit. Any questions? Seeing none, or is there any further proponents? [CONFIRMATION]

LYNNE SCHULLER: Lynne Schuller, S-c-h-u-l-l-e-r, representing the Nebraska Horsemen's Benevolent Protective Association. I'm here to support Mr. Lee's reappointment. At this point, we're at a critical phase in horse racing and him not returning to the Racing Commission will be a very big loss for us. I probably have the distinction of appearing in front of him more often than anyone else in the state of Nebraska as the executive director and the legal counsel for the horsemen. And there are quite a few times when we disagree about things, sometimes strongly disagree, but I'm very bullheaded and I can tell you that he is the one person that if he disagrees with me about something, it makes me reevaluate maybe I better rethink my position. So I...he's got a lot of respect in the industry, and I also have the distinction of writing his biography to be inducted into the racing Hall of Fame. So he has a lifelong history with horsemen and horse racing, and there have been times when he has taken my call on a Saturday night for an emergency for a job for which he's not paid. So he's got a lot of dedication to the industry, and we would very much like to see his reappointment. [CONFIRMATION]

SENATOR KARPISEK: Thank you, Ms. Schuller. Any questions? Seeing none, any further proponents? Seeing none, any opponents? Seeing none, any neutral testimony? Seeing none, that will end the hearing. Thank you. Motion to go into Exec. [CONFIRMATION]