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COMMISSIONS?**

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At the University of Arizona's Race Track Industry Symposium, Professor Bill Eadington of the University of Nevada Reno stated, "If you have slot machines, you don't really have a race track anymore. You have slot machines that happen to be located in a place where horse run in a circle."¹

Apparently, a number of governors must have heard Professor Eadington's words and over interpreted them. They kicked it up another notch. They reasoned that if we don't have racetracks anymore, then it follows that we don't need racing commissions any more. The last several months have seen a near assault on racing commissions in the states. While most of the assaults are likely to be unsuccessful, it certainly appears that we are witnessing a new trend that could continue in the future. Several states are seriously questioning the need for racing commissions.

Some of the proposals can probably not be treated as reasoned attempts to deliver more efficient public programs and services. In many cases the assault appears to be motivated by a combination of selected fiscal economies and a desire by the Governor and others to settle some political scores.

The political scores won out in New Mexico where in November Governor Gary Johnson simply terminated three members of the racing commission. This left the five-member commission without a quorum and prevented the commission from approving a racetrack/casino in Hobbs. The city of Hobbs is located in the southeastern corner of New Mexico near the Texas border, which would presumably be the source of any market for the proposed racino in Hobbs. (Lea County – the site of Hobbs – with a population of 55,000 would by itself be insufficient to support a racino facility.) The racing commission had proposed awarding the racetrack license to controversial Ruidoso racetrack owner R. Dee Hubbard. Governor Johnson opposed the idea of a new racetrack and simply made sure that Hubbard could not get the license by crippling the racing commission. This has left Governor Johnson's successor William Richardson with the task of reassembling the racing commission.

In New Jersey, the political scores also appear to have played out. New Jersey has mandated a legislative change in the makeup of its racing commission. On Monday, March 24, Governor McGreevey had signed legislation, which terminates the current racing commission, and replaces it with a new commission, which would have geographic balance and representation from the harness and thoroughbred horsemen.² The entire current nine-member commission is terminated, although its members can hold over until their replacements are selected. The current commission is replaced by a nine-member commission with two members nominated by the thoroughbred horsemen and two members nominated by the harness horsemen. A minimum of three commissioners must be South Jersey, and at least one commissioner must be from Monmouth County, the site of New Jersey's principal thoroughbred track, Monmouth Park. This legislation did not effect any financial savings. Instead, it seems to represent recognition of the emerging political power of the New Jersey horsemen, especially the

¹ The Vegas Guy, "What Is a Racino?" United Press International, January 8, 2003.

² P.L. 2003, c. 32.

thoroughbred horsemen in New Jersey. For the 2001 election year in New Jersey, the Thoroughbred Horsemen's Association [THA] made political contributions in excess of \$300,000.³ These contributions were well distributed to both political parties. This easily made the thoroughbred horsemen one of the most potent political forces inside New Jersey. The primary sponsor of the bill terminating the existing racing commission – Senator Bark – received far more money from the THA in political contributions than she did from any other source. Additionally, the THA has been engaged in well-publicized struggle with the current racing commission in New Jersey. The racing commission issued a memorandum requesting the attorney general to investigate the THA and suggesting that the racing commission should remove the leadership of the THA.⁴ This memo was followed by a state judge freezing the assets of the THA in late 2002.⁵ Additionally, there was some talk that the attorney and chief spokesman for the THA, Denis Drazin was to become the chairman of the reformulated racing commission.⁶ Thus, it seems that in New Jersey the change in the commission that goes into effect in late March was brought on by the desire of the thoroughbred horsemen to settle some scores.

The pending legislation in Illinois seems to reflect both a desire to save state money and the need to settle political scores. Newly elected Governor Blagojevich submitted legislation, which would limit the per diem fees paid to members of boards and commissions. House Bill 3511, as applied to the racing board, would end the terms of the existing commissioners and turn the commission from an eleven-member board into a seven-member board. It would end the \$300 per diem fee for board members and provide that board members only receive reimbursement for necessary expenses. The bill would also authorize the governor to appoint the executive director of the racing board. While this bill clearly could save some money on the per diem fees to commissioners, much of the bill seems politically motivated. You don't need to terminate and replace the existing commission if your sole purpose is to save money. You don't need to change the entity that appoints the executive director of the racing board from the racing board to the governor if your sole concern is state finances. (The current executive director was the former assistant majority leader of the Illinois State senate and a member of a different party than Governor Blagojevich.) While it is questionable whether this bill will pass the full legislature, the House State Administration Committee approved it on March 25.

In other states, the approach has not been as blatantly political as in Illinois. The suggested approach is to merge the existing racing commission into a revamped gaming commission. That has been the approach in Maryland of Governor Ehrlich. His proposed video slot legislation created a joint nine-member state lottery and horse racing commission.⁷ Two members of the commission must be knowledgeable or experienced in thoroughbred racing, and two must be knowledgeable in harness racing. While this bill would replace two commissions composed of members largely appointed by Governor

³ Information is from <http://www.elec.state.nj.us>.

⁴ Matthew Futterman, "A Turf War in a Fading Horse Race Industry," Newark Star-Ledger, November 11, 2002

⁵ Matthew Futterman, "Judge Freezes Assets of Racing Association," Newark Star-Ledger, December 31, 2002.

⁶ See note 4, supra.

⁷ S.B. 322; H.B. 359.

Ehrlich's predecessor, given the merger of video lottery and horse racing interests in the bill, it could be regarded as a sensible approach to unifying the regulation of gambling in the state. Why should a racino be regulated by two different independent commissions? There would be also be savings through the consolidation of agencies. Nevertheless, subsequent amendments to the legislation in the State Senate have maintained the existence of the two racing and lottery commissions. It appears unlikely that the racing commission will be abolished in Maryland.

In the State of Washington, the governor proposed legislation that would also end the gambling commission and the horse racing commission.⁸ They would be abolished and would be replaced by a separate department of gaming. The director of the department of gaming would be a single de facto commissioner in charge of gambling policy in Washington. Thus far, this legislation has not been considered by the legislature.

There was also similar legislation in West Virginia. Senate Bill 153, as initially proposed by the governor, abolished both the lottery and the racing commission and gave their duties to a new state gaming commission. The Senate, however, reduced this sentence of abolition and let the old commissions retain their existence but lose some of their powers. They would be placed inside a new gaming division. In the case of the racing commission, it would no longer have the "authority to regulate pari-mutuel wagering." While the amended legislation did pass the Senate, it was not considered by the House before the House adjourned. Again, it seems unlikely that the racing commission will be abolished in 2003 in West Virginia.

In Arkansas, SB 45, a general government-restructuring bill would have moved the racing commission into the Department of Finance and Administration. Much of the administrative powers of the racing commission would have been lost, and these powers would have been would have been transferred to the secretary of the Department of Finance and Administration. This bill passed the State Senate but has not passed the House of Representatives.

While thus far, the gubernatorial efforts to change racing commission have not been particularly successful, there is some reason to believe these efforts will continue. If state deficits continue, there will be increasing calls for the merger and consolidation of state boards and commissions. Additionally, the movement to racinos creates entities that are subject to the regulation of both the lottery commission and the racing commission. It might make sense to put a single gaming commission in charge of regulating the entire racino.

One reason why a governor need not abolish a racing commission is because the racing commission defied the wishes of the governor. One can search recent recorded history in vain for instances where a racing commission openly defied the will of governor - who was other than a lame duck- on a policy question. As a group, racing commissioners are fairly astute political survivors and are not known for their desire to commit political hara-kiri. In New Mexico, the commissioners defied the will of a lame

⁸ House Bill 1446

duck and were executed. Sitting governors with power generally normally need not worry about a rebellion of rowdy racing commissioners.