



State of Louisiana

**OFFICE OF
STATE INSPECTOR GENERAL**

**RACING DIRECTOR
IMPROPER BEHAVIOR**

Report by

Inspector General Bill Lynch

Prepared for

Governor M.J. "Mike" Foster, Jr.

July 8, 1999

File No. 1-99-0081



State of Louisiana

OFFICE OF
STATE INSPECTOR GENERAL

Racing Director
Improper Behavior

June 18, 1999

Report by

A handwritten signature in cursive script, appearing to read "BL", written over a horizontal line.

Inspector General Bill Lynch

Approved by

A handwritten signature in cursive script, appearing to read "M.J. Foster", written over a horizontal line.

Governor M.J. "Mike" Foster, Jr.

File No. 1-99-0081

Racing Director Improper Behavior

Paul Burgess, director of the Louisiana State Racing Commission, created a hostile work environment in the office by what we believe were inappropriate relationships with various female members of the staff.

He also showed poor managerial judgment in the following:

1. Attempting to induce a subordinate to file a false expense account.
2. Allowing the sister of his live-in girlfriend retain custody of a state computer, which was used for private purposes.

The Commission failed to respond adequately to a discrimination complaint filed by a male employee who was dismissed after making allegations of improper activities in the Commission office.

Background

The Louisiana State Racing Commission was established by the Legislature to control the horse racing industry.

The Commission has the authority to institute and maintain a regulatory program for the business of racing horses with full powers to prescribe rules, regulations and conditions under which all horse racing is conducted with wagering. The Commission provides the rules and regulations for the licensing of owners, trainers, jockeys and track employees.

The Commission consists of nine persons appointed by the governor, one appointed from each congressional district and two appointed at large.

Mr. Burgess became the Executive Director in July, 1992, and is currently serving in the position.

Hostile Work Environment

Mr. Burgess has repeatedly exhibited poor judgment in his relationships with subordinate female employees, as evidenced by the following three examples.

A. Female 1

Mr. Burgess engaged in a live-in relationship for approximately one year during 1993-95 with a female member of the staff.

During this period, the employee received two promotions, the last as an assistant office manager at a track.

After the relationship ended, the female stated that Mr. Burgess continued to contact her at home by telephone in an attempt to renew the relationship. Although technically still employed she no longer actually worked for the Commission and was not being paid.

During the same period Mr. Burgess employed an off duty police woman to follow her on one occasion. Mr. Burgess acknowledged this after the activity was confirmed by the police woman.

The female employee did not file any complaint concerning Mr. Burgess and stated that he helped her find another job after she left the Commission.

B. Female 2

In 1996, Mr. Burgess brought a female staff member who was employed on a temporary basis to an International Racing Commission conference in Alberta, Canada. He acknowledged personally paying her expenses and having her stay in his hotel room during the convention, which was attended by members of the Commission. The female was on state time and had no official duties at the convention.

Mr. Burgess states attending the conference can be beneficial to Commission employees. However, while he has been the Executive Director no other Commission employee at the level she was employed has attended the conference.

C. Female 3

Both this female and Mr. Burgess denied having a sexual relationship. However, Mr. Burgess acknowledged relating to a subordinate, who taped the conversation, lurid details of a sexual relationship with the female employee in the office. Mr. Burgess stated that he fantasized the entire episode.

However, the mere telling of the story to another employee, particularly if false, poses a serious potential problem of slandering the female employee, as well as subjecting her and the employee to whom the story was told to a hostile work environment.

James Gregoire, the former employee, also taped a conversation he had with this female in which she said she believed Mr. Burgess was stalking her. She stated on the tape that she saw Mr. Burgess pass by her home six times in one hour one day. However, the female employee stated she has since come to believe she was not being stalked by Mr. Burgess. She is still employed at the Commission.

False Expense Accounts

Mr. Burgess exhibited poor managerial skills and judgment when he attempted to cause an employee to file a false expense account.

Mr. Burgess asked Mr. Gregoire to falsify his expense accounts so that funds could be amassed to funnel to a legislator for the purpose of promoting legislation to authorize slot machines at race tracks. Mr. Burgess claimed that this was an effort to determine whether an unsubstantiated allegation on padding expense accounts had any merit. Mr. Burgess acknowledged making the proposal to Mr. Gregoire, but said he abandoned the idea at the end of the meeting.

Mr. Gregoire stated he advised Mr. Burgess that he would not go along with such a scheme. He adamantly denies any impropriety on his expense accounts, and questions that such means would have been used to investigate an expense account. He said he viewed Mr. Burgess' solicitation to falsify his expense account as genuine, and states that, when he later accused Mr. Burgess of wrongdoing in the incident, Mr. Burgess' only response was that they had not gone through with it.

Misuse of Computer

Mr. Burgess misappropriated state assets.

Mr. Burgess acknowledged that he allowed a state owned computer and monitor to be taken by the sister of his live-in partner for use in her college class work. The Commission recovered the computer after an inventory audit conducted in December, 1998. The computer had originally been placed in Mr. Burgess' residence in May, 1993.

Article VII, Section 14 of the Louisiana Constitution prohibits loaning or donating things of value of the state to any person.

Discrimination

Mr. Gregoire, Racing Regulations Agent, made allegations of discrimination and sexual harassment in the work place to a member of the Commission, Jon McKinney, Feb. 1, 1999. Mr. McKinney states he took no action until Feb. 19, 1999, when he notified in separate meetings, Commission Chairman Albert Stall and Mr. Burgess. This was two days after Mr. Gregoire was dismissed from the Commission by Mr. Burgess.

Although Mr. Stall asked Mr. Burgess about the allegations, no further action was taken to begin a formal investigation into the claims. In fact, Mr. Stall states he has little recollection of the conversation with Mr. Burgess. Likewise, Mr. Burgess said he could recall few specifics about the conversation with Mr. Stall.

The Commission had a history of referring sexual harassment claims to the Department of Economic Development, which has oversight of the agency, but failed to do so in this instance.

Mr. Stall said he attempted to meet with Mr. Gregoire, but was unsuccessful and made no further efforts to pursue the allegations. Mr. Gregoire states he declined to meet with Mr. Stall on advice of counsel.

Mr. Gregoire has filed a law suit against the Commission.

Conclusions:

1. Mr. Burgess has demonstrated a lack of good judgment in his relationships with female employees.
2. The Commission paid the salary of a temporary employee to attend a conference who had no official duties at the convention.
3. Poor managerial judgment was used by Mr. Burgess when he suggested to a subordinate employee a scheme to falsify expense accounts.
4. Mr. Burgess misappropriated state assets by allowing a Commission owned computer to be used for a purpose other than Commission business.

Recommendations:

1. The Commission should consider appropriate action concerning Mr. Burgess' use of poor judgment and managerial skills.
2. The Commission should follow the policy set forth by the Department of Economic Development dealing with allegations of sexual harassment and discrimination.

Management Response:

Management responses are attached.

M. J. "MIKE" FOSTER, JR.
GOVERNOR

ALBERT M. STALL
CHAIRMAN

PAYTON R. COVINGTON
FIRST VICE CHAIRMAN

A. J. GOUBLER
SECOND VICE CHAIRMAN



LOUISIANA STATE RACING COMMISSION

COMMISSIONERS

J. D. BLONCIN
AUBREY LAPLACE
JON R. MCKINNIE
JERRY MEAUX
KENNETH "KENU" ROMERO
OSCAR J. TOLMAS

PAUL D. BURGESS
EXECUTIVE DIRECTOR

KIM CHATELAIN
ASSISTANT ATTORNEY GENERAL

June 17, 1999

Mr. Bill Lynch
State Inspector General
Division of Administration, State of Louisiana
State Capitol Annex
P.O. Box 94095
Baton Rouge, Louisiana 70804-9095

BY HAND

RE File No. 1-99-0081
Louisiana State Racing Commission

Dear Mr. Lynch:

This letter constitutes the official preliminary response of the Louisiana State Racing Commission to your draft report of your review of the Commission dated June 4, 1999. By letter of June 11, 1999, you afforded a one week extension to the Commission within which to file a response, now due on Friday, June 18, 1999 by 3:00 P.M.

Introductory Statement

The Commission Chairman, Albert M. Stall, was first contacted by Mr. Gordon Devall of your office in early March 1999 who advised that allegations concerning the operations of the Commission had been brought to the Office of Inspector General. Mr. Devall expounded upon the general nature of the allegations and advised that the Chairman was in no way implicated or targeted by the investigation which would ensue. At that time, Chairman Stall without hesitation authorized direct and unfettered contact with Commission employees and staff assuring the full cooperation of the Commission in the Inspector General's investigation.

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The initial complaint which prompted the investigation included serious allegations of (1) payroll improprieties involving State Stewards employed by the Commission and (2) falsifying expense reports. Shortly thereafter, these allegations appeared in a lawsuit filed by a recently terminated employee of the Commission who claims to have complained of (1) \$10,000 payment to a state steward while on leave without pay; (2) and falsifying expense reports. As a result of the cooperation of the Commission, its staff and the production of substantiating documentation, the Commission is confident that those most serious allegations have been resolved to your satisfaction, especially since they were unmentioned in the draft report.

We point this matter out to highlight two aspects of the investigation: (1) the cooperation of the Commission and its staff in the ongoing investigation and (2) the impaired reliability and credibility of the individual(s) who prompted this investigation.

Upon receipt of the draft report, the Chairman referred the matter to the standing Legal Committee who met on Tuesday, June 15, 1999 and determined that any response should be after consideration by the full Commission. Chairman Stall issued a call for an emergency meeting held on June 17, 1999 in order to timely respond to your draft report.

Before turning to the draft report itself, it is important to make note that the Racing Commission is created by the Legislature, and commissioners are appointed by the Governor with legislative approval. The Racing Commission as a state agency falls within the purview of the Department of Economic Development which approves policies and procedures regarding employment, payroll and the like. The positions of Executive Director and Assistant Executive Director of the Racing Commission are similarly created by the Legislature but are selected and approved by the Racing Commission. Finally, the Racing Commission actions and practices are governed by the Administrative Procedure Act and by the Open Meetings Law.

Turning now to the draft report itself, the Commission's response, which is preliminary in nature and purpose, will be to address the proposed findings, conclusions and recommendations pertaining to the following: (1) hostile work

environment (2) discrimination against a former male employee, (3) poor managerial judgment by Mr. Paul Burgess, the Executive Director, during an investigation that he was conducting, and (4) misuse of a computer.

I

Hostile Work Environment

The Commission wholly endorses the draft report's concern that there be a hostile-free work environment for all of its employees and appreciates your office calling attention to the relationships which Mr. Burgess may have had with employees or former employees.

The Department of Economic Development policy of Sexual Harassment adopted by the Racing Commission provides that sexual harassment and/or conduct which creates a hostile work environment will not be tolerated. A copy of this policy is provided to each employee at the time of employment and sets forth the procedure for making a complaint of sexual harassment. The Racing Commission is committed to enforcing this policy of sexual harassment and ensuring a hostile free work environment.

In the instant matter however, the Racing Commission had no prior notice of any hostile work environment at the Racing Commission until the rendition of the draft report from the Inspector General. There has at no time been any employee, present or former, who has formally or informally complained of a hostile work environment existing at the Racing Commission as a consequence of conduct of the Executive Director, Mr. Burgess.

While the Commission accepts the descriptions of Mr. Burgess' relationships with the three subordinate female employees and does not intend to further investigate those relationships themselves, the Commission is requesting the Department of Economic Development to conduct or sponsor an in-house training seminar or session for all staff, including management, to sensitize employees not only to the requirements of law but also appropriate conduct in the work-place with co-workers. As a part of the training, the Commission is requesting that all employees again be reminded of their right to a hostile-free work environment and of the procedures and remedies available to them in the event that they feel they are being subjected to harassment.

Moreover, with benefit of your report as the impetus, the Commission is requesting Mr. Burgess submit to appropriate evaluation and counseling regarding the conduct described in the report and then make such evaluation available to the Commission for its further consideration. In order to facilitate and expedite this, Mr. Burgess is placed on administrative leave until the Racing Commission may hold a regular meeting which is expected to be held in approximately three (3) weeks.

At present, the Commission has determined that it would be unwise, if not unjust, to penalize Mr. Burgess for past conduct for which there was no complaint without first affording him the opportunity to understand the dangers of such behavior and its potential harm in the workplace environment. It is the position of the Racing Commission that the proposed course of action regarding Mr. Burgess is the wisest course available to the Racing Commission at an emergency meeting without violating the Open Meetings law.

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Discrimination

The Commission wholly endorses a policy of non-discrimination.

Regarding the allegations of discrimination made by Mr. James Gregoire, the Commission does not consider that it should take any additional action to independently investigate them for the following reasons:

- a. Mr. Gregoire has filed a civil suit against the Commission alleging the same matters of sexual discrimination. The Office of Risk Management has only recently assigned counsel to represent the Commission. Due to the pending litigation, the Commission considers it most appropriate to allow the matter to proceed to an independent judgment by the courts.
- b. Although Mr. Gregoire had personal and direct knowledge of the procedures available to him to file a complaint about sexual discrimination (having himself investigated such a complaint on behalf of the Commission in an earlier, unrelated matter), he elected not to pursue such remedy while in the employ of the Commission.

- c. While Mr. Gregoire made some complaint to Mr. Jon McKinnie, Racing Commissioner, during the term of his employment, Mr. Gregoire apparently neither requested nor authorized Mr. McKinnie to take any action in an official capacity. According to your report and upon information and belief of the Racing Commission, Mr. McKinnie took no action to disclose the substance of Mr. Gregoire's complaint to any officer of the Commission, to any other Commissioner, to any supervisory personnel of the Commission, to the Department of Economic Development, or to your office, until after Mr. Gregoire was terminated.
- d. At the request of Mr. Gregoire shortly after his termination, Chairman Stall agreed to meet with him and his attorney to review Mr. Gregoire's termination and consider any matter which Mr. Gregoire or his attorney brought forth. The meeting was scheduled for March 16, 1999 but was canceled by Mr. Gregoire. This decision by Mr. Gregoire unilaterally prevented the Commission from investigating any complaint of his.
- e. Some of Mr. Gregoire's allegations have proved to be unsubstantiated and merit less.

In summary, the Commission has determined that the appropriate action to take regarding these allegations is to defer to the civil court considering that Mr. Gregoire made no complaint of sexual discrimination to any responsible person during his employ; failed to avail himself of the opportunity to have his termination reconsidered and disclose his complaints at a meeting scheduled at his request, and given that the Commission did not wish to interfere with your investigation which began and was ongoing at the time the lawsuit was filed against it.

Nevertheless, the Commission accepts that the policy set forth by the Department of Economic Development regarding discrimination and/or sexual harassment should be followed as soon as the Commission understood Mr. Gregoire was urging such a complaint, however inadequately or incorrectly and notwithstanding that Mr. Gregoire himself knew of the proper procedure to file such complaint. Diligent compliance with the written and published policy is the goal and expectation of the Commission.

3

Poor Managerial Judgment

The Commission concurs with your conclusion that Mr. Burgess used poor management skills and judgment when he approached a subordinate during the course of an investigation to determine whether the subordinate was padding his expense account. The Commission is issuing a reprimand to Mr. Burgess for acting on his own without written authorization from the Chairman to undertake such a serious investigative technique which could easily be misunderstood or misrepresented. In the future the Executive Director and his subordinates will be required to obtain prior approval before undertaking such an investigative technique.

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Misuse of Computer

The Commission would have been unaware of this matter but for your investigation. Although the computer had been taken out of service and its existence reported on the state's inventory and audits, its use for other than state purposes is not authorized. Mr. Burgess' permitting a young woman suffering from muscular dystrophy to use the computer in her studies was not authorized by law or by the Commission. Mr. Burgess recovered the computer and acknowledged his role. The Commission is reprimanding Mr. Burgess for his role in this matter. Moreover, the Commission is taking the following actions: (1) a memorandum reminding all employees of the exclusive uses and purposes of state property and (2) the Department of Economic Development is being requested to determine the fair market value of the use of the computer and Mr. Burgess will be required to reimburse the State of Louisiana that sum before the next Commission meeting.

Conclusion

The actions described in this *preliminary* response will be taken during the period until the next meeting of the Commission. At that meeting the Commission will consider whether these actions or additional actions are adequate to address the

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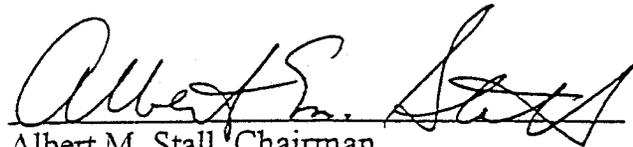
issues. Your office is invited to make any further suggestions or recommendations concerning appropriate disciplinary or other actions before or at the next meeting.

Additionally, the Commission is authorizing its counsel, Ms. Kim Raines Chatelain, Assistant Attorney General, to confer with your office on behalf of the Commission during the interim.

Again, the Commission appreciates the efforts of your office in conducting its investigation, both in those matters which were determined to be unfounded and in calling the Commission's attention to other matters. The Commission renews its pledge to work on behalf of the Governor and the people of Louisiana to promote the best interest of the state and of horse racing. This situation will be corrected.

THE LOUISIANA STATE RACING COMMISSION

By:


Albert M. Stall, Chairman



K - JON FARM
1196 Cattlemen's Trail
Benton, Louisiana 71006-4016
318-965-9474 FAX 318-965-9833

June 10, 1999

Mr. Bill Lynch
State Inspector General
Division of Administration
P O Box 94095
Baton Rouge, LA 70804

FAX: 225-342-6761
File No. 1-99-0081

Dear Mr. Lynch,

As per your written request dated June 3, and our telephone conversation today, the following is my response. Below you will find a time line for the contacts I had with Jimmy Gregoire, Paul Burgess, Albert Stall, and Kim Chatelain.

- January ~27, 1999 Jimmy Gregoire called me with information about LSRC too sensitive to discuss on the telephone. He wanted me to come to New Orleans to discuss this with him. I told Jimmy I was too involved in Mardi Gras (Former Captain) to come to New Orleans at that time, with our parade coming up on February 6. I asked Jimmy to come to Shreveport, which he agreed to, but later cancelled. When he cancelled, he asked me to come to New Orleans. I knew that the only chance I had was Monday, February 1.
- February 1, 1999 I took time off to make a special trip to New Orleans to hear what Jimmy had to discuss. I was stunned to hear the substance of his accusations. Jimmy said he had tapes to substantiate the meetings with Paul Burgess, but he did not bring them to the meeting. I told Jimmy that I wanted to hear the tapes that he said that he had. (Looking at the "Petition for Damages" from Jimmy Gregoire, Jimmy did not tell me certain items (1,2,14,15,16) that he said that he communicated to me.)
- February 4, 1999 Meeting at Louisiana Downs with Cheryl Foster, State Auditor.
- February 5-6, 1999 As Past Captain, I was involved with the Mardi Gras Float Loading Party & Mardi Gras Parade.
- February 8-14, 1999 I went out of town on a business trip.
- February ~15, 1999 Jimmy Gregoire called me and played a segment of tape to verify the meetings with Paul Burgess.
- February 15-19, 1999 Tried to contact Albert Stall. Albert Stall was in Mississippi-Alabama, out of town.

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February 16, 1999 Mardi Gras Day. Several functions to attend.
February 17, 1999 I traveled to Baton Rouge for DED Customer Service Meeting.
February 18, 1999 DED Customer Service Committee Meeting @ Baton Rouge. Travel To New Orleans.
February 19, 1999 Meet w/Paul Burgess at LSRC. Tell Paul of the accusations made against him. Drove to Fair Grounds to meet Albert Stall and tell him of the accusations against Paul Burgess.
February 20, 1999 Meet Jimmy Gregoire at Denny's on the West Bank and listened to additional tapes. Drove to Benton, LA after the meeting.
February 22-25, 1999 Called & played telephone tag with Kim Chatelain to tell her about the entire situation. Finally discussed the situation with Kim on the 25th.

I must state that I have never been confronted with such sensitive issues, nor do I condone such actions by anyone. I discussed this matter with my wife and my personal attorney before taking action. I felt my responsibility was to inform Albert Stall, Chairman of the Racing Commission, and Kim Chatelain, Asst. AG assigned to the Racing Commission, about what I heard. I believed that it was their responsibility to take the proper actions and notify DED or IG.

It is unfortunate that Mr. Gregoire was terminated before I informed Stall & Chatelain, but I did not know his termination was being planned by Paul Burgess; nor did I know Mr. Gregoire was terminated until after the fact, when I made my trip to New Orleans. Subsequent to this, I have contacted Albert Stall & Kim Chatelain several times, inquiring about what actions have been taken and expressing my concern over this matter. Our next Racing Commission meeting is to be held at the end of this month, and I plan to push the issue at that meeting.

Sir, I am very concerned about this matter being handled in the correct manner and I want you to know that I am not a "heavy" or collaborative party to this matter. I am concerned about your perception of me, without knowing my efforts on the state & national level. Please allow me to point out some of the highlights of my activities.

Outstanding Racing Commissioner Of North America (1998)

I was honored to be named Outstanding Racing Commissioner (U.S., Canada, Caribbean) for 1998. This award is given to only one person who has exhibited outstanding leadership, character & activities recognized by the racing industry across North America.

Small Businessman, State of Louisiana (1991)

I was one of six businessmen recognized by the Louisiana Dept. of Commerce for their outstanding work. Born & raised in Louisiana, I owned a company that operated in 14 countries on 4 continents. My home office was in Shreveport and brought millions in revenue back to my home state.

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Louisiana State Racing Commission

During my visit with the Governor prior to being appointed to the Racing Commission, I shared with him that I had the time and desire to be very active on the commission, and was willing to assume any responsibilities necessary to help my state. Boy, did they catch me with my hand raised.

Medication Committee (Chairman): We are the most active committee on the commission. We are in the process of updating all the medication rules of racing, working with laboratories at LSU, Kentucky, California and Canada. We will have the most modern standards in the nation, when I am through.

Audit Committee (Vice-Chairman): Since my involvement, we have greatly enhanced the system. We are monitoring the budgets closely (actually turned over more revenue to the state general fund than budgeted!), requiring more detail accountability from the racetracks than ever before, and working closer with other racing associations than ever before.

Security Committee (Vice-Chairman): This is a new committee that I insisted that should be created. We must maintain the integrity of the sport, while remaining within the boundaries of the law. We monitor the investigative work done previously by the La. State Police and most recently our own investigators.

I am proud to say we have been considered the most knowledgeable, fair, and consistent commission in many years.

La Department of Economic Development

Customer Service Committee (Per Governor's Directive)

DED is developing a program to improve their "Customer Service" and they asked me to set on this committee as a "Stakeholder". This will allow the committee to have an outsider's perception. We are well into the project, with our response to the Governor due in November.

La Racing Commission (Computer Services)

The DED has initiated a computer project to establish a new database at the Racing Commission. I have agreed to participate in an **advisory capacity**. I have convinced the DED to expand the project to connect DED, La. Racing Commission, all 4 racetracks, La. Thoroughbred Breeders, La. Quarter Horse Breeders, HBPA, and all 3 totalizators systems used in La.. The system will provide more accurate data in a more timely fashion throughout the entire racing industry.

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Association of Racing Commissioners, Int'l

ARCI is the national racing commission, covering all of United States, Canada, Caribbean, and portions of overseas.

Board of Directors (1997-1999): In 1997, I was asked to speak in Boston to the Board of Directors of ARCI.. The Board then asked me to repeat my speech at the Annual Membership Convention. Apparently, the membership was impressed, as they appointed me to the Board of Directors, without any campaigning. I have continued to serve an active role on the Board, being re-elected each year.

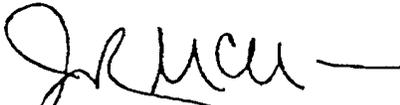
Information Services Committee (Chairman): I have totally restructured the committee and it's sub-committees. Technology had passed this organization by, but I have brought the group back into the computer age on a fast track.

Audit Committee: I have taken the same aggressive approach to audit practices that I used on the La. Racing Commission.

Judicial & Legislative Committee: The issues facing Louisiana are compounded when dealing with 40 states and multiple countries. Being actively involved in Louisiana racing issues is helping me on a grander scale.

When I was appointed to the racing commission, I assured the Governor that I would put my best foot forward and "do him proud" for placing me on the racing commission. I am very concerned that all my efforts will be overshadowed by this subject of inquiry. I have worked all my life through fairness, equality, and honesty. Please consider my record in your perception of my involvement.

Thank you,



Jon R. McKinnie, CDP