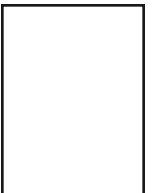


IBOP INDIANA BREEDER &
OWNER PROTECTION

P.O. Box 30516
Indianapolis, IN 46230



FIRST CLASS MAIL

Now is the Time for IBOP

By Eddie Martin, IBOP President & Executive Director

On behalf of our board of directors, I am proud to announce the establishment of Indiana Breeder and Owner Protection, Inc., (IBOP) a 501(c)3 charitable non-profit organization.* I, along with a number of other concerned Indiana horsemen, will be putting our collective experience together to make sure your interests as an owner and/or a breeder are being monitored and protected within the legislative, the judicial and the executive branches of Indiana's government. At a recent meeting of our board members, Jim Hartman, the former thoroughbred development advisory committee member, was voted to the Vice President position. Debra Hartman, the former President of the Indiana Chapter of the Thoroughbred Retirement Foundation, was voted as IBOP's Secretary/Treasurer.

IBOP's mission is to serve as an industry voice for breeders and owners participating in Indiana with respect to issues, trends, and potential threats that can affect Indiana's racing industry. Our goals are to protect and to improve overall conditions, including economic conditions for breeders and owners through education. Our goals are to not only educate breeders and owners regarding industry issues, but to also educate other industry groups, our legislators, the general public, and even provide education to our racing commissioners so they are better informed.

The concept of 'protection' is nothing new to me or others supporting IBOP as a new industry voice. In 2009, I was instrumental in pushing the Indiana Horse Racing Commission (IHRC) toward the 'protection' of the horsemen's purse funds being held at Indiana's two race tracks, both of which had indicated financial difficulties and ultimately filed for bankruptcy. The IHRC had created exten-

sive administrative rules to monitor the slot funds that went to horsemen's associations, yet had done nothing to protect the largest allocation from slots, the purse funding. On September 1, 2009, the IHRC approved administrative rules for my recommended 'protection' when they established the "horse industry trust account" which receives all slot revenues to purses as well as other handle related revenues dedicated to purses.

The 'protection' of the purse funds took another step forward in April of 2010. I, along with a group of concern horsemen, met with IHRC representatives and with Senator Luke Kenley. With the purse trust account having been established, there was still no transparency with what was going into or coming out of the purse trust. One of Senator Kenley's written recommendations out of that meeting was to provide that transparency by posting the horsemen's purse trust account transactions on the IHRC website. By mid-2010,

the horsemen's purse trust account transactions have been available for the public to review on the IHRC website.

The effort to create the trust accounts and to provide transparency is a great example of what can be accomplished through the education of our legislators as well as educating the IHRC. Yet, there are still some unanswered questions regarding purses that need to be answered. Even though the commissioners approved the horsemen's purse trust account on September 1, 2009, the trust account for the flat racing breeds didn't go into effect until over 15 months later. According to documents provided by Indiana's Legislative Services Agency, the administrative rules did not go into effect until December 10, 2010! The administrative rules for the standardbred purse trust account went into effect on October 29, 2009. Also, with the inconsistency of purse account values being reported by Indiana Downs, a resulting review of the purse accounts there for 2010 found that the standardbred and thoroughbred purse accounts were \$855,000 short!

The "agreed upon procedures" for review of the horsemen's purse trust accounts did not discover this shortage. Where are the protests and the outrage from the horsemen's associations that are charged with looking out for the horsemen's money? The answer actually lies within the slot legislation. The IHRC controls the funding of the slot revenues that go to horsemen's associations. This is also why IBOP will be different. IBOP will NEVER apply to the IHRC for slot funds as a horsemen's association. Our activities will be fully funded by donations and other fund raising activities. All of our donors and amounts donated will NEVER be made public. IBOP will not be beholden to the IHRC in any way for funding, nor will we be competing with any other horsemen's association for representation of industry participants.

In our opinions, the actions of Indiana Horse Racing Commission (IHRC) have sent a strong message to all horsemen's groups that receive funding from slot funds under IC 4-35-7-12. Their actions effectively say, "Do not challenge us or ask questions in public forums concerning IHRC policies, rules and or actions of the IHRC." The consequences of challenging the IHRC can severely affect a horsemen's association's ability to be approved for slot funding.

In the past 3 years, the IHRC has delayed funding to the Indiana Standardbred Association (ISA) and completely denied funding to the Indiana Thoroughbred Owners and Breeders Association (ITOBA). Leadership of both groups had openly criticized the IHRC and the IHRC Executive Director for their actions and initiatives. Both organizations were branded as "negative" for creating awareness within the industry of IHRC's actions both publicly and legislatively.

Board members from both the Indiana Horsemen's Protective and Benevolent Association (Indiana HPBA) and the Quarter Horse Racing Association of Indiana have privately told me that their respective boards will not openly oppose the IHRC's Executive Director on most issues due to the fear of losing funding. Among many horsemen and horsemen's association board members who are trainers, there is an overriding fear of the loss of stalls; therefore, they won't openly challenge issues or ask pertinent questions either.

With the control of slot funding to horsemen's associations, the IHRC has effectively neutralized Indiana's major horsemen's group's ability to protect their members as they should and oppose IHRC issues, policies and rulings that may have a negative affect them. We at IBOP feel the IHRC, by their control of slot funding, has effectively censored open dialogue and debate concerning their initiatives and actions. There is a culture of fear and intimidation that has been created by the IHRC that has granted the IHRC absolute power over other horsemen's associations. This culture can, and has, prevented horsemen's associations from effectively supporting their membership.

Therefore, another one of IBOP's missions is to provide equine-related legal services and representation, as needed, to distressed breeders, owners, horsemen and horsewomen in Indiana who are unable to pay standard legal fees for such services. (Please note that all legal services shall be performed by attorneys-at-law duly admitted to the practice of law in the State of Indiana. Also, board members and affiliated persons of IBOP are ineligible for any funding in this regard.) In this country, people should have the right to defend themselves. In a criminal proceeding a public defender is appointed if the accused person cannot af-

**“Power tends
to corrupt
and
absolute
power
corrupts
absolutely”.**

ford an attorney. Yet, where administrative rulings are concerned, where hearsay and unsworn testimony can affect a person's livelihood, there is no public defender appointed. Many cannot afford to pay an attorney to defend themselves from regulatory rulings filed against them by the IHRC, regardless of whether they have a case or not. This has led to acceptance of a punishment, whether justified or not, through the fear of loss of income associated with additional or more punitive suspensions and fines.

Defending yourself is a right defined in the U.S. Constitution, yet we understand how "the deck can be stacked" against anyone willing to defend themselves through an administrative process with the IHRC. This empowers the IHRC even further. We believe that by challenging the IHRC in appropriate circumstances, the IHRC would be less likely to exceed their statutory authority or abuse the administrative authority they have granted themselves. However, many cannot afford to take their appeals and challenges through the required administrative remedies and then on to actions in a "real" court. We believe that had certain cases been challenged in the past, the IHRC's currently unchecked power would be significantly diminished.

Most are probably not aware how to even appeal a decision of the stewards or judges or a decision made by the IHRC's Executive Director. Before anyone can "have their day" in a real court to review your case, you must first "exhaust all administrative remedies." The last step to exhausting your administrative remedies is a quasi-judicial review of your case by an Administrative Law Judge (ALJ). This ALJ, who does not have to be an attorney and in most cases is not judge, is hired by and paid by the IHRC.

The ALJ can conduct the process as if you were in a real court prior to issuing an opinion. That opinion then goes on to the IHRC with a vote taken to accept the ALJ's opinion or to overlook the ALJ's opinion. Here's the problem. The ALJ's opinion is binding on the defendant, yet it is NOT binding on the IHRC. The IHRC can simply choose to not accept an ALJ's decisions. Needless to say, this is an expensive process that can be stretched out for months. Depending on the scope of a ruling, the cost for the aver-

age person can be \$20,000 to \$25,000 in attorney fees to defend themselves properly while exhausting the administrative remedy process that can end with the IHRC voting against an ALJ's decision.

Once you are able to take your appeal for judicial review into a real courtroom, where the IHRC can be bound by a judge's decision, you will more than likely spend the same amounts again. This means that an average person may have to spend between \$40,000 and \$50,000 in legal fees just to defend themselves. For this reason, most appeals never see a real courtroom because people charged by the IHRC cannot financially afford the type of quality legal representation it takes to prevail and they were forced to accept one sided settlements with the IHRC. We will expand on this aspect of IBOP's mission in future editions of this newsletter.

As part of our legal support initiative, IBOP will help monitor the IHRC so they stay within their legal authority given them through statute with an eye toward infringements of constitutional and civil rights. If, in our opinions, the IHRC steps beyond the authorizing language in Indiana law, we will assist in making sure that those actions are communicated to and reviewed by the proper authorities within our State's government. While we intend to be respectful of industry regulators; however, we will not be afraid to let unacceptable and/or apparent unlawful actions go unchallenged. While we are expected to follow all IHRC administrative rules, there are times when the IHRC does not follow its own administrative rules. IBOP will not hesitate to point those times and issues out. Former blood-horse magazine editor recently commented to a local reporter that the Indiana racing commission seems to give Gorajec more latitude than commissions give executive directors in other states. A quote from 19th Century English historian Lord Acton describes the excessive power phenomenon best as he analyzed the English church during his era.

"Power tends to corrupt and absolute power corrupts absolutely".

There's a Lot to Protect for Participants in the Horse Racing Industry

Anyone who has invested money into horse racing ventures knows the risks involved with their investments. There are many things from which we can never protect ourselves. That is a given. However, there are many aspects of the environment in which we operate when breeding and racing that can be protected, and more importantly, need to be protected. The issues that IBOP will focus on, and develop in future editions of this newsletter, are as follows:

Protection of the Economic Environment – Perhaps the most important ‘protection’ that will be a big concern of IBOP is the economic environment for breeders and owners. This involves quite a few moving parts including, but not limited to, statutory revenues from slots, race days, the number of races per day, purse structures, breed development programs, and even the number of stalls available in this state. As expanded gaming in Illinois, Kentucky, and Ohio begin to provide revenues to horse racing in those states, the structuring of all of these variables need to be done in a way that protects the interests of those participating in Indiana as well as providing ways to expand economic opportunity. (Please see Protecting the Economic Environment in this edition regarding the thoroughbred breed development program.)

Protection of the Owner's Rights – While licensees can be fined for minor procedural or administrative infractions, we believe that owner's deserve the same consideration when mistakes by a racing official cost an owner money or cost an opportunity to race. Just like the way licensees are held accountable for their actions, the IHRC also needs to be held accountable for the mistakes made by racing officials. In a future edition of this newsletter, we'll share a story of an owner who paid \$1,000 in transportation and veterinary costs to ship to Indiana to race only to find that his horse was scratched in error. A request by the owner's attorney for reimbursement by the IHRC was denied. Imagine being in that owner's position.

Protection of the Breeder's Rights – While there is never a ‘right’ to receive a breeder award within the Indi-

ana breed development programs or even to sell an Indiana-bred for an above-market price, we believe certain economic protections are necessary. As you will see from Protecting the Economic Environment in this edition, we feel that aligning the owner's interests with the breeder's interests provides breeders with the greatest economic opportunity within the Indiana programs. However, protection of breeders and their farms goes beyond just economics.

Both the US Constitution and the Indiana Constitution have clauses that are designed to provide protection of our “persons, houses, papers, and effects, against unreasonable search or seizure” and from warrantless searches. Yet, the IHRC has created administrative rules and have interpreted existing statutes without any such consideration. The IHRC has demonstrated, by its actions and rules, that they believe that even the farms of unlicensed breeders, and the breeders themselves, fall under IHRC jurisdiction. We strongly oppose their stance. Personally, I've seen the IHRC attempt to justify an investigation based upon a “horse that had been registered and received a breeder's award paid by the State of Indiana” being on a farm which was actually outside the State of Indiana. We will address these issues in future editions of our newsletter.

Protection of the Indiana Sired Program – Many breeders and owners that we hear from believe that the thoroughbred sired program is going to be phased out. The only requirement of the Thoroughbred Breed Development Advisory Committee in Indiana law is to recommend a sired program to the IHRC. Every recommendation beyond a sired program is optional. A sired program being a re-

quirement should illustrate its importance. While a sired program is mandatory to the committee, the IHRC is not required to approve a sired program. IBOP will vigorously oppose any attempts to reduce or to eliminate the thoroughbred sired program.

Protection of the Breed Development Funds and of the Breed Development Decision-Making Process –

According to the IHRC, the thoroughbred meet at Indiana went over the IHRC approved breed development budget by \$541,195. The thoroughbred meet at Hoosier Park is on pace to be \$200,000 over the approved budget. The budget for 2011 had already planned to use \$500,000 of the thoroughbred breed development fund surplus. The total use of the reserve in 2011 will be over \$1.2 million! Why? Both tracks are writing more award-eligible Indiana restricted races to complete race cards. With the competition for horses, they have to. At the Indiana Downs thoroughbred meet, the racing secretary carded 27 unscheduled, award-eligible races that weren't a part of the IHRC-approved budget or a part of the IHRC-approved schedule of races.

We recognize that the breed development fund is an economic development fund, so getting more money into the hands of industry participants is a positive. Yet, our concerns are two-fold. First, using \$1.2 million of a reserve cannot continue without potentially harming the program. You can only spend more than you take in for so long. Secondly, who is making the decisions on these races? The 27 races mentioned above were neither discussed during a breed development committee meeting or evaluated at an IHRC meeting with the opportunity for public commentary. To maintain the integrity of the breed development fund and of the decision making involved, there needs to be a transparent process rather than a process behind closed doors.

Clearly, the two race tracks need a strong restricted rac-

ing program. The Indiana-bred horses have become valuable to them, and will become even more valuable in the future. Exceeding the budget, however, is indicating that the slot funding formula, which is basically 60% to purses and 40% to the breed development fund, is not working and not the right allocation. We believe that the funding formula needs to be adjusted to 50% to purses and 50% to the breed development fund. This change would help protect the integrity of the fund.

Protection of the Integrity Involved with Drug

Testing – Right now, there is very little, if any, transparency with drug and medication testing. To prevent drug testing from being used as a selective enforcement tool, transparency is a must. As we all know, the horse that wins a race is drug tested. However, who are the other owners having their horses tested pre-race or post-race? Transparencies of whose horses are being tested, and more importantly, whose aren't being tested is necessary to maintain the integrity of Indiana's drug testing programs. Educating our legislators has led to transparency with our purse accounts, and we are committed to educating our legislators on this issue as well.

To help IBOP protect you, we need your assistance. There's a lot for us to do. Please contact us about making a tax deductible contribution.

*If any prospective donor has questions regarding IBOP's tax-exempt status, please contact Michael Red, J.D. at Fleming Stage, LLC, at (317) 686-9155 or via email at Michael.Red@FlemingStage.com.

Eddie Martin is a past Indiana Horse Racing Commission member, a past chairman Thoroughbred Development advisory committee, past chairman/co-founder Indiana Horse Racing and Breeding Coalition, past President and co-founder of ITOBA, past 1st V.P. Florida Thoroughbred Breeders and Owners Association. He is also a multiple time member of the Jockey Club's yearly Top 250 breeders in North America based upon money earned.

Protecting the Economic Environment

Restoring the Vital Principles Lost in the Indiana Bred Program Will Protect Economic Benefits to the State of Indiana

By Eddie Martin, IBOP President & Executive Director

All of Indiana's breed development programs were designed to create a positive impact on Indiana's economy through job creation and expansion of equine-related services. According to the economic impact study completed by Purdue University – Calumet and the US Department of Agriculture, nearly 10,000 jobs are reliant upon the breeding, the rearing and the training of race horses in Indiana. Overall, the economic impact of breeding and racing in Indiana is estimated to be over \$1 billion. The objective, then, of any breed development program should be to create that economic activity through the demand for (and indirectly, the supply of) Indiana Bred or Sired horses. The structure of the programs should encourage ownership of Indiana-breds by tilting the potential return on investment toward owners beyond what other industry alternatives can.

If enough demand for Indiana-bred horses is created, the supply of these horses will be met by the Indiana breeders and out-of-state breeders seeing the opportunity and spending money while keeping stock on Indiana farms. At the farm level, there are substantial amounts of capital invested and money spent on acreage, fencing, barns, facilities equipment and jobs to create a foundation of infrastructure. The farm level is where agricultural goods and services for hay, straw, oats, and corn would positively impact Indiana farmers. Veterinarian health care providers and horse shoeing providers would be positively impacted as well.

As expanded alternative gaming in surrounding states begins to provide the horse racing industries in Illinois, Ohio, and Kentucky more revenues, maintaining the economic benefits to the State of Indiana from thoroughbred horse racing is paramount. At IBOP, we believe that Indiana's thoroughbred programs are most at risk given our proximity to Kentucky. We believe that restoring the vital principals to the thoroughbred breed development program will help protect economic activity that is currently generated through breeding and racing in the State. Competition from other state-bred programs, ones that have much

larger scale and infrastructure than in Indiana, needs to be taken seriously. Action will be required.

For 15 years, the design of the thoroughbred breed development program kept Indiana's thoroughbred industry from failing. All that the program lacked was a higher level of funding which the slot revenues have provided. IBOP believes that the demand for quality Indiana-bred thoroughbreds, and therefore, greater economic benefits to Indiana would be achieved through the maintenance and protection of these six key principles:

- Higher Indiana-bred Purses – A higher purse in restricted races than the equivalent open race purse creates demand.
- 20% Owner Awards – The higher return on investment potential provides more of an incentive in an industry where 50% of all race horses produced **NEVER** win a race according to The Jockey Club.
- 20% Breeder Awards – A significant award to breeders who make huge capital investments is a necessary incentive to supply quality stock.
- 10% Stallion Owner Awards – Any state-bred program

needs to reward stallion owners who invest in quality stallions as a way to attract higher quality.

- Timely Award Payments - Paying all awards as soon as possible after they are earned gets these funds back into circulation and positively stimulates the Indiana economy.
- Mandated Restricted Races – There should be a requirement to conduct two or more supplemented races per day restricted to Indiana-bred and or Indiana-sired thoroughbreds. Currently, the law only mentions that the IHRC “may” require one or more restricted races.

Our view is that all awards need to be **earned** through success on the race track through **winning**. With awards being earned only by winning races, the program creates competition on the track which in turn promotes the production of quality thoroughbreds and an expanded economic development potential for the State of Indiana. Rewarding an owner or breeder simply by entering a race should never take place.

Yet, in spite of a successful design, in July, 2010, the Indiana Horse Racing Commission (IHRC) made material changes to the thoroughbred breed development program. (If you would like a copy of these changes, please contact us.) These changes took place after the IHRC’s decision in March, 2010, to artificially keep purses for Indiana restricted races well below their open counterparts for the first time in the history of the thoroughbred breed development program. This was done so their program change recommendations would be seen as an improvement to the horsemen. The same can be said for the IHRC staff’s decision that the thoroughbred awards for breeders and stallions owners would only be paid at the conclusion of each race meet.

One of the key recommendations that were approved by the IHRC in July, 2010, was the elimination of the Owner Award. The Owner Award was paid directly to the owner, outside of the purse, and therefore, was free of any jockey or trainer commissions. The Owner Award provided a significant incentive to ownership of an Indiana-bred thoroughbred.

How Did the IHRC’s Material Changes Affect the Economic Model?

The IHRC’s adoption of the program changes have resulted in less potential income to owners of Indiana bred thoroughbreds compared to the 15 year precedent model. The comparison is as follows:

15 year historical precedent	versus	7-13-2010 rule changes	
Maiden purse	\$35,000	Maiden purse*	\$35,000
60% win share	\$21,000	60% win share	\$21,000
20% owners award	<u>\$7,000</u>	No Award	<u>\$0</u>
Total owner earnings	\$28,000	Total owner earnings	\$21,000
Net earnings	\$23,000*	Net earnings	\$16,800*

With the elimination of the owner award and current purse structure, the net earnings to the owner for a maiden

special weight win are actually less than a \$25,000 purse with a 20% owner award. Without an owner award, the earnings potential of an Indiana-bred thoroughbred going through its restricted allowance conditions is diminished by thousands per race versus the previous 15-year precedent model with an owner award! A reasonable person could easily conclude that the demand for Indiana-bred thoroughbreds would naturally increase with an owner award. If breeders believe, and experience, that demand for Indiana-bred thoroughbreds is not increasing the result will be a decline in production of thoroughbreds.

*Net earnings take into consideration the 10% commissions paid to the jockey and the trainer.

The Breeder’s and Owner’s Interest Also Need to Be Aligned

One of the consequences of the elimination of the owner award is that an owner’s interests and breeder’s interests, when the two are different, are no longer aligned. Here’s a great illustration that I can relate from personal experience. I am the breeder of a two-year old Indiana Bred colt named Senor Rain (by El Nino) who broke his maiden at this year’s Del Mar meet in Southern California. Instead of opting for the \$84,000 Hillsdale Stakes at

Hoosier Park on September 10th, Senor Rain followed up his impressive win at Del Mar with a second place finish in a stakes race on September 14th on the tough Southern California two-year old circuit. After that performance, I made Senor Rain’s owner and trainer aware that Senor Rain was eligible to compete in the \$84,000 Indiana Futurity on the undercard of the Indiana Derby on October 1st.

Senor Rain’s connections were not comfortable with

spending the guaranteed cost of \$9,100 for the travel costs to fly him to Hoosier Park for an \$84,000 stakes. After taking into consideration the \$9,100 travel costs, the return on investment was no different than staying in Southern California for a \$65,000 stakes. In an effort to convince his owner to ship Senor Rain to compete in the Indiana Futurity, I raised the potential return on investment to Senor Rain's owner by offering 50% of the \$16,800 Breeder Award should Senor Rain compete and win the race. That change to the potential return on investment was all Senor Rain's owner needed to send him to the \$84,000 Indiana Futurity where he finished second by a head.

Before the IHRC eliminated the 20% Owner Awards, the return on investment to an owner was significantly higher in the thoroughbred stakes program. With a \$70,000 purse and the \$14,000 Owner Award, the return on investment for an owner was designed to be the equivalent of a \$100,000 purse when considering the net after the jockey and the trainer commissions. Without the Owner Award, an \$84,000 purse doesn't match what was in place just a year and one-half ago. There is now less economic incentive in the thoroughbred stakes program.

With Senor Rain's maiden win being after the start of the Hoosier Park meet, by rule, there was no Breeder Award available. While this is a personal example, many of the top Indiana Bred thoroughbreds this year haven't set a hoof inside the State of Indiana to race. Silent Sue is a two-year old Indiana Bred filly that won a maiden special weight at Hollywood Park. She has subsequently place in a stakes race in Southern California. Flor de Amelia, another two-

year old filly, opted to break her maiden for a \$47,000 purse at Parx Racing. She has since gone on to place in a stakes race there. Perhaps the best example is Preamble a four-year old colt that is competing in Southern California. So far this year, he has broken his maiden at Santa Anita, won three allowance races including one at Del Mar, and has participated in two stakes races. Simply, economic opportunities drive decisions and sometimes that doesn't put the breeder and owner on the same 'economic page.'

Breeders, who have invested in quality mares and taken them to quality stallions with the idea of producing commercial quality Indiana-breds, will begin to re-evaluate their continued commitment to breeding to produce a higher quality horse. If the foals produced in the state-bred program don't provide the breeder the necessary return on investment when compared to expenses incurred in producing them, then that threatens their participation in Indiana's program. In effect, not having the owner's interests aligned with the breeder's interests can actually put downward pressure on the quality that breeders are willing to produce.

We believe that the elimination of the owner award is a failed policy decision by the IHRC and will be detrimental to economic activity in Indiana as alternative gaming simulates purses and breed development programs in other states. The IHRC bureaucrats lack the necessary expertise and knowledge of how this industry works to see this. Yet, knowledge is not necessary and that is where the politics take center stage.

There are Substantial Politics Involved with the Thoroughbred Program

On February 14, 2010, the Indiana House of Representatives passed a resolution urging the IHRC to keep all existing principles of the thoroughbred breed development program. They understood the value of the program structure. Also, the Indiana House had passed an amendment to a riverboat casino bill that included language that would have put all of the principles of the original thoroughbred breed development program into law rather than rather be changed each year by IHRC administrative rules. Unfortunately, the bill was pulled from consideration by its sponsor after an amendment to allow a Gary, Indiana, riverboat inland was rejected by the House.

The members of the Thoroughbred Breed Development Advisory Committee, who were appointed by our Gover-

nor, openly opposed the IHRC and the Executive Director's recommendation to materially change the thoroughbred breed development program by eliminating the owner award. The Indiana Thoroughbred Owners and Breeders Association (ITOBA), the then IHRC-approved group that represents owners and breeders who participate in Indiana program, openly published why they opposed any changes to the program. ITOBA paid for that dearly as the IHRC denied their funding from slots in 2011. The only group that supported the change, the Indiana HBPA, did so in a most dubious fashion.

The President of the Indiana HBPA wrote a letter of support for one of the IHRC's Executive Director's recommended change scenarios without having received a legal

vote of the Indiana HBPA Board of Directors. Five of the ten board members sent a letter of protest to the IHRC because their President's actions didn't fall within their by-laws or within state law for non-profit organizations. Effectively, the Indiana HBPA President created the appearance of a board action without a legal board vote. Three days before the scheduled IHRC meeting to consider the Executive Director's proposals, an HBPA Board of Directors meeting was held.

In attendance at the "closed" portion of the meeting was the IHRC's Executive Director, the IHRC's legal counsel, the Indiana Downs General Manager, and a VP from Hoosier Park. Horsemen were denied access to this portion of the meeting. With the IHRC's Executive Director and friends still in attendance, the Indiana HBPA President called for a vote of support. (The intimidation tactics demonstrated by the IHRC were very reminiscent of the old Soviet Union sitting in on important votes in occupied Eastern European countries.) Only five of the ten Indiana HBPA Directors voted for supporting the proposal with three no votes and two abstained from voting.

Unfortunately, those voting to support the IHRC occupied a substantial number of stalls at the meet at Indiana Downs. Some felt that they were intimidated and were in a no-win situation for their own interests. (Please read: *Now is the Time for IBOP* if you haven't already. Those 'regulated' and supported financially by being in the good graces of the IHRC cannot represent their constituents effectively which is a drive in the mission of IBOP.) Yet, the three Directors who voted against supporting the recommendations occupied no stalls at Indiana Downs. The IHRC Executive Director testified to the commission members three days later during the IHRC meeting that the HBPA had "stepped up" and supported his recommendation. Since when is capitulation considered to be "stepping up?"

With only the support of the Indiana HBPA, the IHRC approved several changes to the thoroughbred's breed development program with the most ill-advised change being the elimination of the 20% owner award. The IHRC voted to materially change an economic development program that had finally received the most important element that had been missing for over a decade; above average purse structure for Indiana-bred races versus regional competitive competing tracks. The IHRC did so directly against the advice of the Governor's appointed committee, ITOBA, and the 2010 Indiana House of representatives! They arrogantly

lifted up their collective noses to all owners and breeders and the legislature in a decision that placed more emphasis and funding on the open racing program with less support to the restricted racing program.

One of the key arguments the IHRC used as their justification was their interpretation of slot monies **owned** by the horsemen that are dedicated for purses. Below is the exact wording from IC 4-35-7-12 of how monies generated by slots are to be allocated to the thoroughbred industry:

- (A) Sixty percent (60%) for the following purposes:
 - (i) **Ninety-seven percent (97%) for thoroughbred purses.**
 - (ii) Two and four-tenths percent (2.4%) to the horsemen's association representing Thoroughbred Owners and trainers
 - (iii) Six-tenths percent (0.6%) to the horsemen's association representing thoroughbred Owners and breeders
- (B) **Forty percent (40%) to the breed development fund established for thoroughbreds under IC 4-31-11-10.**

Below is the word-for-word interpretation of how the IHRC's Executive Director views the thoroughbred slot funding formula:

"Slot funding: As provided in IC 4-35-7-12, 40% of thoroughbred monies are directed to be used **solely** for breed development purposes. Under this Recommendation, 60% of thoroughbred monies would be utilized by the tracks **solely** for open race purses."

Even though the word 'solely' does not appear anywhere in the statute's funding formula, 'solely' appears twice in the IHRC's purposeful interpretation of the law. The law specifically states that there is a certain allocation "...for thoroughbred purses" and does so without 'solely' allocating those funds to open race purses. Even the IHRC's suggestion by incorporating the phrase "As provided in IC 4-35-7-12 ..." in their interpretation of the law illustrates that their purpose was to manipulate. Prior to the IHRC's decision in mid-2010, the terms 'breed development' always meant purse supplements above an open purse, owner awards, breeder awards and stallion awards, not spending millions from the breed development fund to bring a restricted race purse up to equal a purse of an open race.

Legislative Options Need to Be Considered

We at IBOP believe that the legislative intent of the thoroughbred allocation from slot revenues is very direct in the plain language of the law. Clearly, the IHRC has chosen to ignore the language in the law having created their own version of the law. When the language in a law conflicts with a regulator's interpretation of the law and the intent of a law, there are generally two options available. The first option is through the court system. While legal action against the IHRC is well within the broad powers established in IBOP's charter, at this time, we believe that creating very specific language in the law to define the actions that our regulators must take is the better option. We feel that an educational approach through the legislative process will provide the greatest benefit to our industry. Legislators have taken a keen interest in our industry.

In September and October of 2010, a joint study committee comprised of State Representatives and Senators was convened to study and discuss the horse industry aspect of Indiana's horse racing. This committee came away from those hearings with a greater understanding about the economic impact of our industry has on the State. Both chairmen stated publically they would not support any effort to reduce the horse racing industry's allocation from slot revenues.

The committee also recognized the importance of the breed development funds being managed as economic development funds. Due to this understanding, key legislators instructed the IHRC to restart the payment of awards to horsemen when they are earned. The IHRC's staff had stopped the 15 year policy of paying awards when they are earned and only paid them after each meet in 2010. With legislators being involved, the IHRC staff reversed their course and has paid awards as earned in 2011. Many of our legislators understand that to maximize economic development the awards in the program have to get in the hands of those whose create the economic activity. The IHRC didn't seem to understand this by acting as if these funds were a "generous" gift that could be paid at any time. We believe that our legislators will surely be interested in maintaining the gains in economic activity that the state has enjoyed. They might even be able to sift through the misinformation that will surely come from the IHRC this time around.

In the second joint study committee meeting in October, 2010, a disturbing event took place. A letter of opposition to the efforts to establish the vital principals of the prior thoroughbred development program into law, signed by the presidents of the Indiana HBPA, the Indiana Standardbred Association (ISA) and the Quarter Horse Racing Association of Indiana (QHRAI), appeared before the meeting. I had a chance to have discussions with the ISA president and a representative of the QHRAI rep about their actions. Both told me they were not opposed to the thoroughbred industry attempting to establish the thoroughbred breed development program via statute and the letter was not written properly by the Indiana HBPA president. Both also verified this to the committee during my testimony to the committee.

Representatives of the ISA and QHRAI were led to believe the thoroughbred interests would introduce a separate bill that would open the slot law giving others an opportunity to reduce the overall slot revenue to the horse racing industry. We would expect the same false rhetoric to resurface after our IBOP introduction, before the 2012 legislative session, and during the 2012 legislative session. Given the players who covet the horsemen's slot funds; having bills introduced to decrease the horsemen's funding is more of a matter of when, not if, in the 2012 legislative session. Bills were introduced dealing with pari-mutuel or slot statute changes in 2010 and in 2011. We expect the same to occur in 2012. Any suggestion that attempts to establish the key tenets of the prior thoroughbred breed development program via statute will impact other aspects of the slot legislation is just fear mongering designed to divide the horsemen's groups.

Part of IBOP's mission will be to educate our legislators as to how the core principals of the prior thoroughbred breed development program outlined earlier in this article can help to protect and to increase the economic activity in the state. Your tax-deductible contribution will help us meet the challenges IBOP will face.

Call us today at 317-658-9021. ■

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