

1           CHAIRMAN McNAUGHT: Thank you, Mr. Lauck.

2           MR. SHOCKLEY: Can I make a point, please.

3           CHAIRMAN McNAUGHT: Yes, Mr. Shockley.

4           MR. SHOCKLEY: As I understand it, the  
5 Commission's about to take a vote on an amendment  
6 to a rule, and the Indiana Code has a set of  
7 procedures that's generally followed when rule  
8 making's undertaken, unless the Commission is  
9 acting on an emergency rule. I guess I would just  
10 say I don't see emergency here. This has been  
11 floating around since 2007.

12           CHAIRMAN McNAUGHT: We've got an answer for  
13 that. Mr. Gorajec?

14           MR. GORAJEC: Madam Chairman, Steve, what  
15 we've done in issues similar to this where there's  
16 been a proposal. I don't want to be presumptuous  
17 and draft a rule based upon all the comments that  
18 we received with the request from the Quarter Horse  
19 Association.

20           What we've done a handful of times in  
21 similar situations where the Commission's maybe  
22 determined that they want a rule change and that  
23 the rule was not drafted was that they simply would  
24 pass a motion endorsing the concept or the  
25 recommendation that was made, in this case by the

1 Quarter Horse Association, and then they would turn  
2 to me and ask me to draft a regulation consistent  
3 with your action and that regulation would be  
4 presented at the next meeting.

5 With regard to emergency rules, every rule  
6 that we've ever made since 1993 has been an  
7 emergency rule. We have a typical rule-making  
8 process and it is an emergency rule-making process.

9 So I think the question for the Commission,  
10 should they approve the recommendation of the  
11 Quarter Horse Association and if they direct me to  
12 draft the regulation consistent with that, okay,  
13 and bring it to the Commission at the next public  
14 meeting.

15 I guess, Madam Chairman, the question for  
16 you and the Commission is: Do you again entertain  
17 comments on that regulation just because you've  
18 aired that regulation out, that concept at this  
19 meeting?

20 CHAIRMAN McNAUGHT: No. We would ask that  
21 the rule be promulgated and we would act on that  
22 rule without public comment at the next Commission  
23 meeting.

24 MR. SHOCKLEY: I guess I'd like to raise an  
25 objection. I know that things have always been

1 done that way. Seems to me that the Indiana Code  
2 refers to emergency rule making, the word emergency  
3 must have some meaning. The other procedures  
4 require public hearings and so forth ought to be  
5 observed. So thank you.

6 CHAIRMAN McNAUGHT: Thank you.

7 COMMISSIONER BARCLAY: Question of Counsel  
8 then. If it's passed as an emergency rule,  
9 supposed to go through the final rule-making  
10 process, the emergency rule is only valid for  
11 90 days?

12 MR. BABBITT: No.

13 COMMISSIONER BARCLAY: Okay.

14 MR. BABBITT: Becomes final and it's  
15 readopted as appropriate under the Rule Making Act.

16 MR. GORAJEC: Different agencies fit into  
17 different categories as far as rule-making  
18 authority, the authority to make emergency rules.  
19 I believe that there are agencies that fit into  
20 that category that you've just mentioned. Horse  
21 racing's just not one of them.

22 COMMISSIONER GRIMES: What is the process of  
23 adopting?

24 MR. BABBITT: Well, the process for adopting  
25 an emergency rule is for it to be propounded by the

1 Commission. There are not the formal for public  
2 notice, despite the fact that the Commission always  
3 allows input on the rules that are made. So in  
4 fact, they've done so here, though not in the same  
5 formal way with the same notice of provisions that  
6 are set up for regular rules. Then there's not  
7 near the time passage that would need to be at  
8 issue with the regular rule. As soon as the rule  
9 is approved by the Commission and filed, it is  
10 effective.

11 COMMISSIONER BARCLAY: If you take the route  
12 that Mr. Shockley suggests, public hearing does not  
13 have to take place at the Commission hearing;  
14 right?

15 MR. GORAJEC: It can be done separately?

16 MR. BABBITT: Right.

17 COMMISSIONER BARCLAY: I guess that's what I  
18 would propose. In the spirit of wanting to move  
19 past this issue, amend my motion to suggest that  
20 the Commission Staff should draft a permanent rule  
21 codifying the request of the Quarter Horse  
22 Association and in so doing have public hearings  
23 and solicit other feedback from those that were  
24 unable to attend, feedback that we can then read,  
25 and if there's anything in that feedback that

1 changes anybody's minds or better informs us, then  
2 we'll have an opportunity at the end of that  
3 process to vote up or down without taking  
4 additional testimony is my understanding. Right?

5 MR. BABBITT: Right.

6 COMMISSIONER BARCLAY: In the pendency of  
7 that period, the parties certainly have the ability  
8 to come together and come to some mutual agreement  
9 that then could be submitted as a comment in the  
10 rule-making process. We could then consider in  
11 deciding an up or down vote on the rule itself.  
12 That's how I would amend my motion.

13 CHAIRMAN McNAUGHT: We have an amended  
14 motion and a second. More comments, Mr. Grimes?

15 COMMISSIONER GRIMES: Yes. I fully endorse  
16 that approach. At the end of the day, it's the  
17 right approach.

18 CHAIRMAN McNAUGHT: Thank you. All those in  
19 favor signify by saying aye.

20 THE COMMISSION: "Aye".

21 CHAIRMAN McNAUGHT: Opposed, same sign.

22 (No response)

23 CHAIRMAN McNAUGHT: Passes unanimously.

24 We'll take about a five-minute recess.

25 Thank you.