



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 26, 1993

Honorable Ken Armbrister
Chairman
Intergovernmental Relations Committee
Texas State Senate
P. O. Box 12068
Austin, Texas 78711

Letter Opinion No. 93-13

Re: Whether the Texas Racing Commission may require a class 2 racetrack licensee that has had its license reinstated pursuant to section 6.19 of the Texas Racing Act, V.T.C.S. article 179e, to pay an annual fee (RQ-450)

Dear Senator Armbrister:

You have asked us to determine whether the Texas Racing Commission (the "commission") may require a class 2 racetrack licensee that has had its license reinstated pursuant to section 6.19 of the Texas Racing Act (the "act"), V.T.C.S. article 179e, to pay an annual fee in accordance with section 6.18(b) of the act and title 16 Texas Administrative Code section 305.71. Sections 6.18 and 6.19 of the act state in pertinent part as follows:

Term of license; restrictions on racetracks

Sec. 6.18. (a) A racetrack license issued under this article is perpetual. The commission may suspend or revoke a license as provided by this Act.

(b) The commission may prescribe a reasonable annual fee to be paid by each racetrack licensee. The fee must be in an amount sufficient to provide that the total amount of fees imposed under this section, together with the license fees prescribed under Section 5.01(b) of this Act, is sufficient to pay the costs of administering and enforcing this Act.

Reinstatement of certain licenses

Sec. 6.19. (a) A class 2 racetrack license revoked by the commission before September 1, 1991, for the licensee's failure to demonstrate financial responsibility may be reinstated as provided by this section.

(b) A licensee to which this section applies must apply for reinstatement not later than January 1, 1992. The commission may not require the licensee to pay an application or renewal fee.

....

(d) The commission shall reinstate the license and may not revoke or suspend the license before the second anniversary of the date that it is reinstated unless it finds that:

(1) material grounds that cannot be cured, other than the licensee's inability to demonstrate financial responsibility, exist for denial, revocation, or suspension of the license;

(2) the licensee is or has been the subject of a voluntary or involuntary proceeding under the Bankruptcy Code (Title 11 U.S.C.); or

(3) another person has obtained a racetrack license for the racetrack facility for which the licensee obtained the license.

(e) A license reinstated under this section expires on the second anniversary of the date that it is reinstated.¹ [Footnote added].

Pursuant to section 6.18(b), the commission promulgated a rule setting the amounts of annual fees.² See 16 Tex. Reg. 7482 (1991) (to be codified as 16 T.A.C. § 305.71); 16 Tex. Reg. 6349 (1991). The rule establishes a two-tier structure for annual fees: a fixed base fee of \$10,000 and a variable daily fee based on the handle³ for each performance conducted by the association. See 16 Tex. Reg. 7482 (1991) (to be codified as 16 T.A.C. § 305.71(a), (b)); 16 Tex. Reg. 6349 (1991).

¹In Letter Opinion No. 92-001 (1992), this office determined that section 6.19 applied not only to licenses that the commission *actually* had revoked, but also to licenses that the commission *constructively* had revoked. Thus, section 6.19(a) applies to any licensee who, because he or she was unable to demonstrate financial responsibility, surrendered the racetrack license to the commission, or whose license expired because he or she withdrew the application for renewal, or whose license the commission had refused to renew.

²Although the commission promulgated the rule setting the amounts of annual fees and annual renewal fees in 1991, the 1992-93 supplement to title 16 of the Texas Administrative Code does not incorporate the revised language. This appears to be an error that occurred during the publication of the supplement to the Texas Administrative Code.

³The regulations define "handle" as "[t]he total amount of money wagered at a racetrack during a particular period." 16 T.A.C. § 301.1.

We understand that the commission reinstated the South Texas Race Association's (the "association") class 2 racetrack license pursuant to section 6.19 of the act. Subsequently, the commission sought to collect the \$10,000 annual fee provided by section 6.18 of the act and section 305.71 of title 16 of the Texas Administrative Code. The association protests paying the fee, arguing that section 6.19(b) exempts it from paying the fee because the annual fee the commission has established is substantively the same as the renewal fee that section exempts it from paying. We agree with the association's conclusion.

The Texas Legislature added sections 6.18 and 6.19 to the act in 1991. *See* Acts 1991, 72d Leg., ch. 386, § 38, at 1458. The committee bill analysis for the bill proposing these sections states that section 6.18 provides that a racetrack license is perpetual "upon payment of an annual fee." House Comm. on Urban Affairs, Bill Analysis, C.S.H.B. 2263, 72d Leg. (1992) at 3. The legislature intended that the commission would assess the annual fees in amounts which, together with other fees, would be sufficient to cover the costs of administering and enforcing the act. House Research Organization, Bill Analysis, C.S.H.B. 2263, 72d Leg. (1992) at 6.

Prior to the 1991 amendments, the act directed the commission to require each licensee to apply for a renewal license and pay a renewal fee. *See* V.T.C.S. art. 179e, § 6.03(b) (amended by Acts 1991, 72d Leg., ch. 386, § 24, at 1451-52). In accordance with the prior version of section 6.03, the commission enacted a rule requiring a racetrack licensee to pay an annual renewal fee that was substantially identical in amount and structure to the annual fee the commission now requires. *See* 16 T.A.C. § 305.71 (amended by 16 Tex. Reg. 7482 (1991) (to be codified as 16 T.A.C. § 305.71(a)); 16 Tex. Reg. 6349 (1991)); *supra* note 2. *See generally* House Comm. on Urban Affairs, Bill Analysis, C.S.H.B. 2263, 72d Leg. (1992) at 3 (stating that racetrack licenses--except those the commission has reinstated pursuant to section 6.19--are perpetual unless licensee refuses to pay annual fee).

In our opinion, the "annual renewal fee" and the "annual fee" are substantially identical. Additionally, we believe that, by enacting section 6.19 of the act, the legislature intended to exempt reinstated licensees from paying an annual kind of fee that other licensees are required to pay to keep their racetrack licenses. Accordingly, we read section 6.19(b) to preclude the commission from charging a reinstated licensee an annual fee. Of course, upon the expiration of the reinstated license pursuant to section 6.19(e), the commission may charge the licensee an annual fee.

S U M M A R Y

The Texas Racing Commission may not, pursuant to section 6.19(b) of the Texas Racing Act, V.T.C.S. article 179e, require a class 2 racetrack licensee whose license the commission has reinstated in accordance with section 6.19(a) to pay an annual fee.

Yours very truly,

A handwritten signature in cursive script, reading "Kimberly K. Oltrogge".

Kimberly K. Oltrogge
Assistant Attorney General
Opinion Committee