



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

March 29, 1996

The Honorable David Sibley  
Texas State Senate  
P.O. Box 12068  
Austin, Texas 78711

Letter Opinion No. 96-036

Re: Whether the Texas Racing Commission may promulgate a rule authorizing the simulcasting of horse races at greyhound racetracks and related questions (RQ-842)

Dear Senator Sibley:

You ask several questions regarding the authority of the Texas Racing Commission (the "commission") to promulgate rules pertaining to simulcasting<sup>1</sup> at horse and greyhound racetracks. Your questions require us to examine various provisions of the Texas Racing Act (the "act"), V.T.C.S. article 179e.

You first ask whether the commission may promulgate a rule allowing a given racetrack to simulcast races on days other than the live race dates the commission has granted to that track. The commission has informed us that this issue is presently before the court in *Texas Greyhound Association v. Texas Racing Commission*, cause number 94-09089 in the 345th District Court of Travis County, Texas. This office will not issue an opinion on a question that is the subject of litigation. See Attorney General Opinions MW-205 (1980) at 1, V-291 (1947) at 5-6.

Next, you ask whether the commission may promulgate a rule authorizing wagering on "cross-simulcasts," that is, a simulcast horse race shown at a greyhound racetrack and a simulcast greyhound race shown at a horse racetrack. Section 11.011(g) of the act prohibits "wagering on a simulcast horse race at a greyhound racetrack in this state," as well as "wagering on a simulcast greyhound race at a horse racetrack in this state." Section 11.011(g) thus expressly prohibits wagering on a cross-simulcast.

---

<sup>1</sup>A "simulcast" is "the telecast or other transmission of live audio and visual signals of a race, transmitted from a sending track to a receiving location, for the purpose of wagering conducted on the race at the receiving location." V.T.C.S. art. 179e, § 1.03(61). For purposes of the Texas Racing Act, a "sending track" is "any licensed track for racing in this state or out-of-state from which a race is transmitted." *Id.* § 1.03(66). A "receiving location" is "a licensed racetrack association in this state that has been allocated live and simulcast race dates or a facility not located in this state that is authorized to conduct wagering under the law of the jurisdiction in which it is located." *Id.* § 1.03(64).

An agency may not promulgate a rule that is inconsistent with legislative directives. See Attorney General Opinion DM-136 (1992) at 4. In our opinion, the commission may not promulgate a rule that permits wagering on cross-simulcasts.

You ask whether the commission may promulgate a rule authorizing a class 3 or class 4 racetrack<sup>2</sup> to simulcast on dates that have no direct connection to the livestock show, exhibition, or public fair with which the racetrack is affiliated. Section 6.02 of the act defines class 3 and 4 racetracks as follows:

(d) A class 3 racetrack is a racetrack operated by a county or a nonprofit fair under Article 12 of this Act. An association that holds a class 3 racetrack license and that conducted horse races in 1986 may conduct live races for a number of days not to exceed 16 days in a calendar year on the dates selected by the association.

....

(g) A class 4 racetrack is a racetrack operated by a county fair under Section 12.03 of this Act. An association that holds a class 4 racetrack license may conduct live races for a number of days not to exceed five days in a calendar year on dates selected by the association and approved by the commission.

Article 12 of the act pertains to fairs, stock shows, and expositions. Section 12.01 authorizes a county to conduct an annual race meeting,<sup>3</sup> not to exceed sixteen racing days,<sup>4</sup> in connection with a livestock show or exhibit that is held under Local Government Code chapter 319.<sup>5</sup> Section 12.02 permits a nonprofit corporation organized under the Texas Non-Profit Corporation Act, V.T.C.S. articles 1396-1.01 through 1396-11.01, for the purpose of encouraging agriculture through the operation of public fairs and livestock exhibitions to conduct a race meeting, not to exceed sixteen racing days. A racetrack operated under either section 12.01 or 12.02 is classified as a class 3 racetrack. See V.T.C.S. art. 179e, § 6.03(d); *cf. id.* § 6.02(g).

---

<sup>2</sup>Only a horse-racing track is classified as class 1, 2, 3, or 4. See V.T.C.S. art. 179e, § 6.02(a).

<sup>3</sup>A "horse race meeting" indicates "the conducting of horse races on a day or during a period of consecutive or nonconsecutive days." V.T.C.S. art. 179e, § 1.03(6).

<sup>4</sup>A "horse racing day" is one 24-hour period ending at midnight. V.T.C.S. art. 179e, § 1.03(26).

<sup>5</sup>Section 319.001 of the Local Government Code authorizes a county commissioners court to provide for an annual exhibit of "horticultural, agricultural, livestock, mineral, and other products that are of interest to the community." See also Attorney General Opinion JM-1199 (1990) at 3.

Section 12.03(a) authorizes a county to conduct an annual race meeting, not to exceed five racing days, in connection with a livestock show or exhibit held under chapter 319 of the Local Government Code. *See supra* note 4. A racetrack operated under section 12.03 is a class 4 racetrack. *See* V.T.C.S. art. 179e, §§ 6.02(g), 12.03(a).

Sections 6.02(d), 12.01, and 12.02 of the act consistently permit a licensee authorized to operate a class 3 racetrack to conduct an annual race meeting, the length of which may not exceed sixteen days in a calendar year. Section 6.02(d) makes clear that a class 3 licensee may conduct "live races" on those sixteen days. Similarly, sections 6.02(g) and 12.03 of the act consistently permit a licensee operating a class 4 racetrack to conduct an annual race meeting, the length of which may not exceed five days in a calendar year. Section 6.02(g) makes clear that an association with a class 4 racetrack license may conduct "live races" on those five days.

Significantly, section 6.02(f) states as follows:

The number of race dates allowed under this section relates only to live race dates. A racetrack may present simulcast races on other dates as approved by the commission.

*See also* House Research Organization, Bill Analysis, H.B. 2263, 72d Leg. (1991) (stating that, with commission approval, racetracks could show simulcast races on dates when they have no live racing). We find no provisions limiting the number of dates a licensee operating a class 3 or class 4 racetrack may simulcast races, nor do we find any provisions restricting a class 3 or class 4 license holder to presenting simulcast races only in connection with a livestock show or exhibit.

We must conclude, therefore, that the licensed operator of a class 3 or class 4 racetrack may present simulcast races on any dates the commission has approved. Of course, a class 3 racetrack may conduct live races on sixteen days only, and a class 4 racetrack may conduct live races on five days only. The commission need not limit the total number of days on which a class 3 racetrack may conduct simulcast races to sixteen, however, nor must the commission limit the total number of days on which a class 4 racetrack may conduct simulcast races to five. Additionally, the commission need not assign simulcast race dates that relate to a livestock show or exhibit. The commission may promulgate a rule authorizing a class 3 or class 4 racetrack to simulcast on dates that have no direct connection to the livestock show, exhibition, or public fair with which the racetrack is affiliated.

Your final question in part restates the previous question. You ask whether the commission may promulgate a rule authorizing a nonprofit organization that holds race meetings under section 12.02 to conduct year-round simulcasting. In other words, you ask whether a nonprofit organization holding a class 3 license under section 12.02 and 6.02(d) may conduct simulcasting on dates not affiliated with a public fair or livestock exhibition. As we concluded above, section 6.02(e) authorizes the commission to

approve, for a class 3 racetrack, simulcast race dates not affiliated with a public fair or livestock exhibition. The commission may promulgate a rule consistent with the statute.

You further ask whether granting such simulcasting privileges to a nonprofit corporation would cause the corporation to lose its nonprofit status or violate the purpose for which the corporation is organized, which section 12.02 of the act characterizes as "the purpose of encouraging agriculture through the operation of public fairs and livestock exhibitions." Section 1.03(54) of the act defines nonprofit corporation as a corporation that:

(A) does not distribute any of its income to its members, officers, or governing body, other than as reasonable compensation for services;

(B) has a governing body or officers elected by a vote of members or by a vote of delegates elected by the members; and

(C) has obtained an exemption under Section 501 of the Internal Revenue Code (26 U.S.C. Section 501).

The Texas Non-Profit Corporation Act similarly defines "non-profit corporation" as a corporation "no part of the income of which is distributable to its members, directors, or officers." V.T.C.S. art. 1396-1.02(3). A nonprofit corporation must articulate the purpose or purposes for which it is organized in its articles of incorporation. *Id.* arts. 1396-2.01(A), -3.02(A)(4). The secretary of state is authorized to issue a certificate of incorporation to a nonprofit corporation whose articles of incorporation comply with law and that has paid the requisite fee. *See id.* art. 1396-3.03(A).

The status of a nonprofit corporation is, according to the definitions in the act and the Texas Non-Profit Corporation Act, dependent upon the corporation's method of distributing income, how members of the governing board are chosen, and its tax-exempt status under the Internal Revenue Code. *See* V.T.C.S. art. 179e, § 1.03(54), art. 1396-1.02(3). Nonprofit status does not, for purposes of these state statutes, hinge upon the amount of revenues a corporation earns or whether the corporation makes money by simulcasting.

Whether a nonprofit corporation that simulcasts races on dates not affiliated with a public fair or livestock exhibition violates the purpose set out in the corporation's articles of incorporation is a question of fact that is inappropriate to the opinion process. *See, e.g.,* Attorney General Opinions DM-98 (1992) at 3, H-56 (1973) at 3, M-187 (1968) at 3, O-2911 (1940) at 2. Of course, if for any reason a nonprofit corporation loses its tax-exempt status under the Internal Revenue Code, it is not a nonprofit corporation for purposes of the act and is not authorized to operate a class 3 racetrack under section 12.02 of the act.

**S U M M A R Y**

Section 11.011(g) of the Texas Racing Act, V.T.C.S. article 179e, prohibits wagering on a simulcast horse race shown at a greyhound racetrack and a simulcast greyhound race shown at a horse racetrack. Consequently, the Texas Racing Commission may not promulgate a rule that permits wagering on cross-simulcasts.

The commission may promulgate a rule authorizing a class 3 or class 4 racetrack to simulcast on dates that have no direct connection to the livestock show, exhibition, or public fair with which the racetrack is affiliated.

Whether a nonprofit corporation that is licensed to operate a class 3 racetrack under V.T.C.S. article 179e, section 12.02 and that simulcasts races on dates not affiliated with a public fair or livestock exhibition violates the purpose set out in the corporation's articles of incorporation is a question of fact. If for any reason a nonprofit corporation loses its tax-exempt status under the Internal Revenue Code, it is not a nonprofit corporation for purposes of the act and is not authorized to operate a class 3 racetrack under article 179e, section 12.02, V.T.C.S.

Yours very truly,



Kimberly K. Oltrogge  
Assistant Attorney General  
Opinion Committee