



Office of the Attorney General
State of Texas

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ATTORNEY GENERAL

December 13, 1996

The Honorable David Sibley
Chair
Economic Development Committee
Texas State Senate
P.O. Box 12068
Austin, Texas 78711

Letter Opinion No. 96-137

Re: Whether the Texas Racing Commission may approve an application for wagering on simulcast races by a facility that is as yet incapable of hosting live racing events and related question (ID# 36913)

Dear Senator Sibley:

You request our opinion regarding a situation that apparently has arisen at the Lone Star Jockey Club (the "club") in Grand Prairie. You indicate that the club facilities are still under construction. The Texas Racing Commission (the "commission"), you state, has awarded the club eleven live racing days in December 1996. You further state that the club has announced a plan to apply to the commission for administrative approval to simulcast races from the club beginning in March 1996.

You ask whether the commission may approve an application for wagering on simulcast races from a licensed racing association whose facilities will be, at the time it begins simulcasting, under construction, incomplete, or otherwise incapable of accommodating a live race event. You also ask whether the Texas Racing Act (the "act"), V.T.C.S. article 179e, requires that a racetrack conduct a live race prior to being able to offer simulcast racing. Before we consider your questions, we will discuss the relevant provisions of the act.

Each entity that desires to operate a racetrack must apply to the commission for a license. See V.T.C.S. art. 179e, § 6.03. The applicant must inform the commission of the kind of racing to be conducted and the dates on which the applicant desires to conduct racing. *Id.* § 6.03(a)(9). The act refers to simulcasting¹ as a kind of racing. See *id.* § 6.02(e), (f) (referring to live races as well as "simulcast races").

¹To simulcast is to telecast or otherwise transmit "live audio and visual signals of a race, . . . 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). 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

Section 6.02(f) of the act authorizes a racetrack to present simulcast races on dates other than those on which the racetrack is approved to conduct live races. *See also* House Research Organization, Bill Analysis, H.B. 2263, 72d Leg., R.S. (1991) (stating that, with commission approval, racetracks may show simulcast races on dates when they have no live racing). Significantly, however, the act expressly does not “allow wagering . . . on simulcast races at any location other than a racetrack licensed under [the act] *that has been granted live race dates* by the commission.” V.T.C.S. art. 179e, § 11.011(f) (emphasis added).

Section 11.011(f) thus does not premise wagering on simulcast races at a particular racetrack on whether live races have been conducted at that location. Rather, the section premises wagering on simulcast races on whether the commission has granted the licensed racetrack live race dates. In answer to your first question, we conclude that the statute does not prohibit the commission from approving the application of a licensed racetrack for wagering on simulcast races so long as the commission has granted the racetrack live race dates. Thus, whether to permit wagering on simulcast races at an unfinished facility that has been granted live race dates lies within the commission’s discretion and broad rulemaking authority. *See* V.T.C.S. art. 179e, § 11.011(a).

In answer to your second question, we find no requirement in the act that a licensed racetrack must conduct a live race event at the facility before it may offer simulcast racing. To the contrary, the only statutory prerequisite is that the commission has granted live race dates to the licensed racetrack. *See id.*

(footnote continued)

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).

S U M M A R Y

Section 11.011(f) of the Texas Racing Act, V.T.C.S. article 179e, authorizes the Texas Racing Commission to approve the application of a licensed racetrack for wagering on simulcast races so long as the commission has granted the racetrack live race dates. Under the statute, the fact that the racetrack facilities are under construction, incomplete, or otherwise incapable of accommodating a live race event at the time the racetrack begins accepting wagers on simulcast races is inconsequential.

Similarly, nothing in the act requires a licensed racetrack to conduct a live race event at the facility before it may offer simulcast racing. To the contrary, the only statutory prerequisite is that the commission has granted live race dates to the licensed racetrack.

Yours very truly,



KyMBERLY K. Oltrogge
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Opinion Committee