

TEXAS HOUSE OF REPRESENTATIVES  
**COMMITTEE ON  
BUSINESS AND COMMERCE**



STEVEN WOLENS  
Chairman

June 18, 1992

IO # 16439  
MBJ

Honorable Dan Morales  
Texas Attorney General  
Opinions Committee  
Post Office Box 12548  
Austin, Texas 78711-2548

RD-405

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Attention: Madeleine B. Johnson  
Chair, Opinion Committee

Opinion Committee

Re: Request for an Attorney General's Opinion on Various  
Issues Concerning the Texas Racing Commission

Dear General Morales:

As Chairman of the Business and Commerce Committee and pursuant to Section 402.042 of the Texas Government Code, I request your opinion on the following issues:

1. Is it legal for members of the Texas Racing Commission to be entertained by individuals and/or entities that currently have pending before the Commission applications for horse racetrack licenses?
2. Is it legal for officers of the Department of Public Safety and others charged with investigating applicants for horse racetrack licenses to be entertained by the applicants while the investigation of the applicants is still pending before the Texas Racing Commission?
3. Can the Texas Racing Commission hire as independent contractors outside attorneys to act as examiners and legal counsel for the Commission in the consideration of racetrack applications thereby delegating significant governmental authority to non-state employees?
4. Does Texas Racing Commission Rule 305.91(b)-(e) prevent an applicant for a horse racetrack license from amending its application to reflect changes in ownership, financing and track operations after the application has been certified as complete by the executive secretary of the Commission? If Rule 305.91(b)-(e) does prevent such amendments, is the rule in conflict with Texas Racing Commission Rule 305.91(a) and Section 6.03 of the Texas Racing Act?

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Baron & Budd

MARIA TISSING  
Committee Clerk

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With respect to the first two questions, it has come to my attention that at least one of the applicants for the Class I horse racetrack license in Dallas/Tarrant County currently under consideration at the Texas Racing Commission may have entertained certain members of the Commission and officials of the Department of Public Safety. Such conduct would appear to be in violation of the provisions of the Texas Administrative Procedure and Texas Register Act prohibiting ex parte contacts in situations such as this, provisions of Chapter 305 of the Texas Government Code relating to lobbying activities, and provisions of Chapter 36 of the Texas Penal Code concerning gifts to public servants.

I raise the third question in response to the apparently regular practice by the Texas Racing Commission to hire outside legal counsel both as examiners and as legal counsel for the Commission for racetrack application proceedings. This is the current situation with respect to the proceedings for the Class I horse racetrack for Dallas/Tarrant County. While Section 2.12 of the Texas Racing Act authorizes the Texas Racing Commission to employ such employees as necessary to administer the Act, there is no express mention of hiring outside legal counsel to conduct the very important functions of examiner and staff legal counsel. I am especially concerned with regard to the current license proceedings for the Class I horse racetrack for Dallas/Tarrant County in which the Commission members apparently have given the examiner almost complete discretion to make all decisions on behalf of the Commission. Such practices by the Commission cause me great concern as to the degree that the discretionary powers and authority of the State of Texas are being delegated to non-state employees.

Finally, my fourth question arises from the recent actions and decisions of the Texas Racing Commission's examiner and outside staff legal counsel during the currently pending proceeding for the Class I horse racetrack for Dallas/Tarrant County in respectively opposing and denying several of the applicants' requests to amend their applications. While I understand that these requests for amendment were made after the executive secretary of the Commission certified the applications as complete, there appears to be a procedure set out in Section 305.91(a) of the Commission's Rules of Racing that allows such amendments without the necessity of meeting the rather onerous requirements of Sections 305.91(b)-(e). Furthermore, a number of provisions of the Texas Racing Act, including Section 6.03, appear to require acceptance of amendments and changes to racetrack applications regardless of when they are

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presented to the Commission. Rule 305.91(b)-(e) would appear to be invalid to the extent that it conflicts with these statutory provisions.

Please contact me if you have any questions regarding this request or need any additional information.

With kind regards,



Steven D. Wolens

SDW/cb