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### TEXAS RACING COMMISSION

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DAVID J. FREEMAN  
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File # RQ-499  
ID# 19072

July 7, 1992

The Honorable Dan Morales  
Attorney General of Texas  
8th Floor  
Price Daniel, Jr., Building  
Austin, Texas 78711

**RQ-499**  
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Opinion Committee

RE: Request for Opinion Construing Texas Racing Act

Dear General Morales:

The Texas Racing Commission has proposed §309.64 and §311.153 which require pari-mutuel racetracks and licensed horse trainers, respectively, to provide workers compensation insurance for all employees. The Commission has already adopted §311.171 which requires kennel owners for racing greyhounds to provide workers compensation for their employees. The question has been raised whether the Commission has the authority to require its licensees to provide workers compensation insurance. I therefore respectfully request an opinion from your office regarding the following:

Is the Texas Racing Commission authorized to adopt rules requiring its licensees to provide workers compensation insurance for the licensees' employees?

#### RELEVANT STATUTES AND RULES

Texas Racing Act, Tex. Rev. Civ. Stat. Art. 179e, §3.02 provides:

##### Sec. 3.02. Regulation and Supervision.

In accordance with Section 3.01 of this Act, the commission shall regulate and supervise every race meeting in this state involving wagering on the results of greyhound or horse racing. (All persons and things relating to the operation of those meetings are subject to regulation and supervision by the commission.) The commission shall adopt rules for conducting greyhound or horse racing in this state involving wagering and shall adopt other rules to administer this Act that are consistent with this Act.

Texas Racing Act, Tex. Rev. Civ. Stat. Art. 179e, §3.021 provides, in pertinent part:

##### Sec. 3.021. Regulation by Commission.

(a) Any provision in this Act to the contrary notwithstanding, (the commission may license and regulate all aspects of greyhound racing and horse racing in this state,) whether or not that racing involves pari-mutuel wagering.

Texas Racing Act, Tex. Rev. Civ. Stat. Art. 179e, §6.06 provides, in pertinent part:

Sec. 6.06. Racetrack Licenses; Grounds for Denial, Revocation, and Suspension.

(a) To preserve and protect the public health, welfare, and safety, the commission shall adopt rules relating to license applications, renewal applications, the financial responsibility, moral character, and ability of applicants, and (all matters relating to the planning, construction, and operation of racetracks.) The commission may refuse to issue an original or renewal racetrack license or may revoke or suspend a license if, after notice and hearing, it has reasonable grounds to believe and finds that: ... ✓

(3) the applicant has violated or has caused to be violated this Act or a rule of the commission in a manner that involves moral turpitude, as distinguished from a technical violation of this Act or of a rule;

(4) the applicant is unqualified, by experience or otherwise, to perform the duties required of a licensee under this Act; ...

(16) the applicant is engaged in activities or practices that the commission finds are detrimental to the best interests of the public and the sport of greyhound racing or horse racing. ...

(e) The appropriate section of the commission may condition the issuance of a license under this article on the observance of its rules. The commission may amend the rules at any time and may condition the continued holding of the license on compliance with the rules as amended.

Texas Racing Act, Tex. Rev. Civ. Stat. Art. 179e, §7.01 provides:

Sec. 7.01. License Required.

A person shall not participate in racing with pari-mutuel wagering as regulated by this Act without first obtaining a license from the commission. A person who violates this section commits an offense.

Texas Racing Act, Tex. Rev. Civ. Stat. Art. 179e, §7.02 provides:

Sec. 7.02. Licensed Activities.

(a) Each person involved in any capacity with racing with pari-mutuel wagering, other than as a spectator, as regulated by this Act, must obtain a license under this article. A person who violates this subsection commits an offense.

(b) The commission shall adopt categories of licenses for the various occupations licensed under this article and shall specify by rule the qualifications and experience required for licensing in each category that requires specific qualifications or experience.

Texas Racing Act, Tex. Rev. Civ. Stat. Art. 179e, §7.04 provides, in pertinent part:

Sec. 7.04. Licenses; Grounds for Denial, Revocation, and Suspension.

The commission, after notice and hearing, may refuse to issue any original or renewal license under this article or may revoke or suspend the license if it has reasonable grounds to believe and finds that: ...

(3) the applicant has violated or has caused to be violated this Act or a rule of the commission in a manner that involves moral turpitude, as distinguished from a technical violation of this Act or of a rule;

(4) the applicant is unqualified, by experience or otherwise, to perform the duties required of a licensee under this Act;

(14) the applicant is engaged in activities or practices that are detrimental to the best interests of the public and the sport of horse racing or greyhound racing. >

Texas Racing Commission Rule §311.171, 16 Tex. Admin. Code §311.171 provides, in pertinent part:

Sec. 311.171. Kennel Owners.

(a) A kennel owner shall provide workers' compensation insurance for each of the kennel owner's employees.

Proposed Texas Racing Commission Rule §309.64 provides:

Sec. 309.64. Insurance.

(a) An association shall provide adequate liability insurance for the racetrack.

(b) An association shall provide workers compensation insurance covering all employees of the racetrack.

Proposed Texas Racing Commission Rule §311.153 provides:

Sec. 311.153. Workers' Compensation.

(a) A trainer shall provide workers' compensation [or other equivalent] insurance for each of the trainer's employees.

(b) If a trainer contracts with an individual to provide services regarding the care, riding, or exercising of a horse at a racetrack, such as a groom, pony person, [be a] jockey, or exercise rider, [the contract must require] the trainer must [to] provide workers' compensation [or other equivalent insurance] for the individual.

Tex. Rev. Civ. Stat. Art. 8308-3.23 provides, in pertinent part:

(a) Except for public employers and as otherwise provided by law, an employer may elect to obtain workers' compensation insurance coverage. An employer may obtain coverage through a licensed insurance company or through self-insurance as provided by this Act. An employer who obtains coverage is subject to the provisions of this Act. ...

ANALYSIS

It is well settled that an administrative agency has only that authority that is specifically granted to it by the Legislature. *Board of Insurance Commissioners v. Guardian Life Insurance Company*, 142 Tex. 630, 180 S.W.2d 906 (1944); *Key Western Life Insurance Company v. State Board of Insurance*, 350 S.W.2d 839 (Tex. 1961). The question, then, is whether the Legislature has granted the Texas Racing Commission the authority to require its licensees to subscribe to workers' compensation insurance, when other state law makes subscription to such insurance optional with the employer. 15304

The Commission regulates two major categories of licensees: racetracks and occupational licensees. Article 6 of the Texas Racing Act applies to racetrack licensees and Article 7 of the Act applies to occupational licensees. The occupational licenses are issued to all individuals who are involved in the conduct of pari-mutuel racing in any capacity. The Commission issues licenses according to the various occupations involved, such as owners (of race animals), trainers, grooms, jockeys, concession employees, and office staff.

Under §6.06 of the Texas Racing Act, the Commission may adopt rules on all matters relating to the operation of pari-mutuel racetracks; the stated purpose for this authority is "to preserve and protect the public health, welfare, and safety." Preserving and protecting the public health, welfare, and safety would appear to encompass ensuring that workers

who assist in the operation of pari-mutuel racetracks are adequately provided for in case of injury. Further, §6.04(e) of the Act authorizes the Commission to condition the holding of a racetrack license on the licensee's compliance with the Act and the rules of the Commission. The Legislature obviously envisioned that the Commission would adopt rules relating to the conduct of its racetrack licensees and that the continued holding of such a license should be contingent on compliance with those rules.

Similarly, §7.02 of the Act requires the Commission to specify the qualifications and experience necessary for the particular categories of occupational licenses. The individuals licensed as trainers of race animals are completely responsible for the care and training of the animals who "put on the show". Trainers direct the activities of all individuals who assist in the care of the horses. In fact, trainers are held responsible by law for the condition of the animals under their care at the time the animals race, making the trainers the absolute insurers that the animals race without the use of illegal medication. See Texas Racing Act, §14.03. Some trainers train very few horses and are capable of handling this responsibility without any employees. Some trainers, however, have extensive stables and require the assistance of several grooms or helpers. The care, training, and maintenance of race animals, particularly horses, is a physical vocation involving a very real risk of injury. It is logical for the Commission to require an individual desiring a trainer's license to provide the necessary insurance to protect the safety of these employees.

Further, §6.06 and §7.04 of the Texas Racing Act authorize the Commission to revoke or suspend a license if the Commission determines the licensee is unqualified to perform the duties of a licensee or if the licensee is engaged in a practice detrimental to the best interest of racing. The Commission, it would seem, is thereby authorized determine the qualifications for licensure and to identify these detrimental practices.

Finally, the workers compensation statutes are the general law relating to all employers in the state. The Texas Racing Act authorizes the Texas Racing Commission to regulate certain employers involved in pari-mutuel racing. Further, racing is considered to be a field in which state regulation is pervasive. *Shoemaker v. Handel*, 795 F.2d 1136 (3d Cir. 1986), *cert. denied*, 107 S.Ct. 577 (1986). Because of the broad regulatory authority granted to the Texas Racing Commission, it is submitted that the pervasive and specific authority granted by the Texas Racing Act regarding the participants in this industry controls over the general statutes regulating workers compensation for all employers.

#### CONCLUSION

The Commission has received comments on its proposed rules from the racing industry that generally indicate the industry's lack of support for these rules. This is understandable. Pari-mutuel racing in Texas is still in its fledgling stages and workers compensation insurance is expensive. The enforceability of these rules has also been raised. It is true, however, that pari-mutuel racing can be dangerous for the participants and that the Commission owes a duty to these participants. Regardless, these arguments concern the policy of imposing these requirements which should properly be made to the Commission during the rulemaking process. If the Commission lacks the authority to require workers compensation insurance, the policy arguments are moot.

*The Honorable Dan Morales*

*July 7, 1992*

*Page 5*

I appreciate your assistance in resolving this question. If you need further information, please call Paula Cochran Carter, General Counsel Texas Racing Commission, at 794-8461.

Very Truly Yours,

David J. Freeman  
Executive Secretary

DJF/pcc:ng

c: Texas Racing Commission  
Paula Cochran Carter  
George Warner