



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 20, 2022

Ms. Amy F. Cook
Executive Director
Texas Racing Commission
Post Office Box 12080
Austin, Texas 78711-2080

Opinion No. KP-0412

Re: Permissible uses and distributions of escrowed purse funds by the Texas Greyhound Association under section 2028.202 of the Occupations Code (RQ-0442-KP)

Dear Ms. Cook:

The Texas Racing Act requires horse racetracks to distribute certain funds to the Texas Greyhound Association (“TGA”). TEX. OCC. CODE § 2028.202(c)(2). You ask two questions about the TGA’s handling and use of those funds.¹ Both questions raise the fundamental issue of to whom the TGA may pay these funds.

The Texas Racing Act requires a horse racetrack to distribute certain funds it receives from interstate cross-species simulcasting to the Texas Greyhound Association.

The Texas Racing Act (“Act”), Occupations Code chapters 2021–2035, regulates greyhound and horse racing. *See id.* §§ 2021.001–2035.106. The Texas Racing Commission (“Commission”) implements, administers, and enforces the Act. *See, e.g., id.* § 2023.001(a) (providing “the commission may license and regulate all aspects of horse racing and greyhound racing in this state, regardless of whether that racing involves pari-mutuel wagering”).

The funds about which you ask derive from interstate cross-species simulcasting. *See* Request Letter at 1–2. In 1997, the Texas Legislature amended the Act to “allow bettors at horse tracks to wager on televised simulcast greyhound races, and bettors at greyhound tracks to wager on televised simulcast horse races.” Tex. House Research Organization, Bill Analysis, Tex. H.B. 1445, 75th Leg., R.S. (1997) at 4; *see also* Act of May 20, 1997, 75th Leg., R.S., ch. 1275, § 27, 1997 Tex. Gen. Laws 4840, 4855. The Act refers to this as a “cross-species simulcast.” TEX. OCC. CODE § 2021.003(12); *see also id.* § 2021.003(46) (defining “simulcast” as “the telecast or other transmission of live audio and visual signals of a race, transmitted from a sending track to a

¹*See* Letter from Amy F. Cook, Exec. Dir., Tex. Racing Comm’n, to Honorable Ken Paxton, Tex. Att’y Gen. at 1 (Dec. 3, 2021), <https://www2.texasattorneygeneral.gov/opinions/opinions/51paxton/rq/2021/pdf/RQ0442KP.pdf> (“Request Letter”).

receiving location, for the purpose of wagering conducted on the race at the receiving location”). The Act identifies an out-of-state greyhound race (e.g., a race in Arkansas) simulcast at a horse track in Texas as an “interstate cross-species simulcast.” *Id.* §§ 2027.053–.056, 2028.202.

The Act requires a horse racetrack that receives an interstate cross-species simulcast to distribute to the TGA – as the official state greyhound breed registry – a percentage of the funds from each pool wagered on the simulcast race. *See id.* §§ 2028.202(c)(2), 2030.052 (providing the Texas Greyhound Association is the official state greyhound breed registry). Section 2028.202 provides, in relevant part, as follows:

(c) . . . a horse racetrack association that receives an interstate cross-species simulcast signal shall distribute the following amounts from each pool wagered on the signal at the racetrack: . . .

(2) a purse in the amount of 5.5 percent to be paid to the official state greyhound breed registry for use at racetracks in this state.

(d) The official state greyhound breed registry may use not more than 20 percent of the amount described by Subsection (c)(2) to administer that subsection.²

Id. § 2028.202(c)–(d).

The Texas Greyhound Association proposes to pay funds it receives from interstate cross-species simulcasting directly to kennel and greyhound owners.

You tell us the TGA holds interstate cross-species simulcast funds in escrow. *See* Request Letter at 2. You explain that, historically, the TGA allocated the funds “among the Texas racetracks with future meets scheduled, and amounts were paid out [by the racetracks] as added purses to race winners of those future meets.”³ *Id.* Prompted by the cancellation of races in 2021 and the closure of Gulf Greyhound Park racetrack, the TGA now proposes to distribute some of the escrowed funds as supplemental purses directly to certain kennel and greyhound owners⁴ that

²A “racetrack association” is “a person licensed under this subtitle to conduct a horse race meeting or a greyhound race meeting with pari-mutuel wagering” and a “simulcast pari-mutuel pool” is “the total amount of money wagered by patrons at a racetrack in this state on the result of a particular simulcast race or combination of simulcast races.” TEX. OCC. CODE § 2021.003(42), (47). The Commission defines “purse” to mean “the cash portion of the prize for a race.” 16 TEX. ADMIN. CODE § 301.1(58) (Tex. Racing Comm’n, “Definitions”).

³*See also* Brief from Mr. Jim Dunnam, Dunnam & Dunnam, L.L.P., on behalf of TGA at 13 (Jan. 3, 2022) (on file with the Op. Comm.) (“TGA Brief”).

⁴The TGA explains that kennel owners execute contracts (“booking agreements”) with racetrack associations to provide dogs for races, and kennel owners may own the dogs or lease the dogs from other owners. *See id.* at 3, 6. The TGA also explains that “[i]n typical times, when races that are scheduled by racetrack associations and the TRC are actually run, kennel and greyhound owners recoup their monetary outlays by obtaining purses from their participation in the races.” *Id.* at 6. “[P]urses are the cash portion of prizes and are the most important source of income for Texas kennel and greyhound owners.” *Id.*

participated in the February 2020 Gulf Greyhound Park race meet. *See id.* at 2, 4; TGA Brief at 8–10, 16. You ask whether this proposal is permissible. *See* Request Letter at 1, 4. You also ask if the TGA may make similar distributions in the future if greyhound race days are granted by the Commission and thereafter cancelled by the racetrack without any live racing.⁵ *Id.*

As required by chapter 2028 of the Occupations Code, the Commission has adopted rules regarding the distribution of funds under section 2028.202.

Occupations Code section 2028.202(c)(2) requires the distributions from horse racetrack associations be paid to the TGA “for use at racetracks in this state.” TEX. OCC. CODE § 2028.202(c)(2). The Legislature charged the Commission with “overseeing the amounts allocated under” section 2028.202(c) and adopting related rules. *Id.* § 2028.201 (“The commission shall adopt rules relating to this subchapter and the oversight of the amounts allocated under Sections 2028.202(b) and (c).”). To that end, the Commission’s rules provide as follows:

To enhance live racing opportunities at Texas greyhound racetracks, *TGA shall pay to each greyhound racetrack* the purse money it collects pursuant to the Act, §6.091(d)(2) [predecessor to Occupations Code section 2028.202(c)(2)] from interstate cross-species simulcasting at Texas horse racetracks in accordance with an allocation approved by the Commission. TGA shall prepare a proposed allocation for consideration by the Commission. In preparing a proposed allocation, TGA shall consider:

- (A) the average price-per-point paid for purses at each greyhound racetrack during the preceding year;
- (B) the purse payout at each greyhound racetrack during the preceding year; and
- (C) the impact cross-species simulcasting has made on greyhound purse revenues at each greyhound racetrack during the preceding year.

16 TEX. ADMIN. CODE § 303.102(d)(1) (Tex. Racing Comm’n, “Greyhound Rules”) (emphasis added).

Consistent with section 2028.202, Commission rules require the Texas Greyhound Association pay funds accrued from interstate cross-species simulcasting to greyhound racetracks.

Courts and this office construe agency administrative rules pursuant to the rules used for statutory construction. *See Patients Med. Ctr. v. Facility Ins. Corp.*, 623 S.W.3d 336, 341 (Tex. 2021); *see also* TEX. GOV’T CODE § 311.002(4) (applying the Code Construction Act to

⁵The TGA asserts that the 2022 and 2023 greyhound race days approved by the Commission will likely be cancelled. *Id.* at 7.

rules). Like a court, we must strive to give effect to the agency's intent as reflected in the rules' plain language. *See Patients Med. Ctr.*, 623 S.W.3d at 341.

The term "shall" generally denotes a mandatory action. *See* TEX. GOV'T CODE § 311.016(2) (providing that the term "shall" imposes a duty unless the context necessarily requires a different construction or unless a different construction is expressly provided); *Garza v. Harrison*, 574 S.W.3d 389, 402 (Tex. 2019) ("The term 'shall,' as the Legislature has explained in the Code Construction Act, 'imposes a duty.'"). The term "racetrack" means "a facility licensed under this subtitle for the conduct of pari-mutuel wagering on horse racing or greyhound racing."⁶ TEX. OCC. CODE § 2021.003(41); *see* 16 TEX. ADMIN. CODE § 301.1(a) (Tex. Racing Comm'n, "Definitions") (providing that terms defined in the Act shall have the same meaning when used in the rules, unless otherwise defined in the rules); *see also id.* § 301.1(b)(62) (defining a "racetrack facility" to mean the buildings, structures and fixtures located on association grounds used by an association to conduct racing). Based on its plain language, and consistent with section 2028.202(c)(2), the Commission rule requires the TGA to pay the purse funds to only a greyhound racetrack, i.e., a facility licensed to conduct pari-mutuel wagering on greyhound racing. *See* 16 TEX. ADMIN. CODE § 303.102(d)(1) (Tex. Racing Comm'n, "Greyhound Rules"). Nothing in the context of the rule indicates the term "shall" is directory rather than mandatory. To the extent the TGA proposes to pay funds accrued from interstate cross-species simulcasting to a person other than a greyhound racetrack,⁷ a court would likely conclude the proposal is contrary to the rule and impermissible.

⁶"Pari-mutuel wagering" means "the form of wagering on the outcome of horse racing or greyhound racing in which persons who wager purchase tickets of various denominations on an animal or animals." TEX. OCC. CODE § 2021.003(34). "[A]ll wagers for each race are pooled and held by the racetrack association for distribution of the total amount, less the deductions authorized by this subtitle, to holders of tickets on the winning animals." *Id.*

⁷Whether any particular person is a greyhound racetrack is a fact question we do not determine. *See, e.g.*, Tex. Att'y Gen. Op. No. KP-0398 (2022) at 3 (refraining from opining on fact questions).

S U M M A R Y

The Texas Racing Act requires horse racetracks to distribute to the Texas Greyhound Association certain funds derived from interstate cross-species simulcasting. Section 2028.202(c)(2) of the Occupations Code requires the funds distributed to the Texas Greyhound Association be “for use at racetracks in this state.” Consistent with this statute, a court would likely conclude that the Texas Racing Commission’s rules require the Texas Greyhound Association to pay escrowed interstate cross-species simulcasting funds to greyhound racetracks.

Very truly yours,

A handwritten signature in black ink that reads "Ken Paxton". The signature is written in a cursive, flowing style.

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