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OPINION COMMITTEE

TEXAS RACING COMMISSION
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FILE # ML-46640-10
I.D. # 46640

RQ-0936-GA

December 20, 2010

The Honorable Greg Abbott
Office of the Attorney General of Texas
P.O. Box 12548
Austin, TX 78711-2548

via US Mail
Fax:512.472.6538

Attention: Nancy S. Fuller, Chair, Opinion Committee

Re: Request for Attorney General Opinion

Dear General Abbott:

On behalf of the Texas Racing Commission, I am submitting this request for an opinion as to whether Section 6.06(d) of the Texas Racing Act (the "Act") (TEX. REV. CIV. STAT. ANN., Article 179e), is constitutional under the Interstate Commerce Clause of the United States Constitution.

Section 6.06(d) of the Act provides, in part:

(d) The majority ownership of a partnership, firm, or association applying for or holding a license must be held by citizens who meet the residency qualifications enumerated in this section for individual applicants. ...

The Act's residency requirements for individual applicants are enumerated in Section 6.06(a)(12) of the Act, which provides:

(a) To preserve and protect the public health, welfare, and safety, the commission shall adopt rules relating to license 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 a racetrack license or may revoke or

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suspend a license if, after notice and hearing, it has reasonable grounds to believe and finds that:

(12) the applicant has not been a United States citizen residing in this state for the period of 10 consecutive years immediately preceding the filing of the application.

State residency requirements for holding a racing license in South Dakota were held unconstitutional by the federal district court in *Gulch Gaming, Inc. v. State of South Dakota*, 781 F. Supp. 621 (D. S.D. 1991). Similarly, state residency requirements in the Texas Alcoholic Beverage Code were held to be unconstitutional by the federal district court in *Southern Wine and Spirits of Texas, Inc., v. Steen*, 486 F. Supp. 2d 626 (W.D. Texas, 2007). Although the United States Fifth Circuit Court of Appeals reversed *Southern Wine* in part, it left in place the district court's voiding of residency provisions. See *Wine Country Gift Baskets.Com v. Steen*, 612 F.3d 7809 (2010).

Your opinion and guidance are needed quickly as the Texas Racing Act's residency requirements are critical to the Commission's decision regarding the pending sale of Lone Star Park at Grand Prairie. Due to the time sensitive nature of the proposed sale, I ask that the Opinion Committee expedite its deliberations and provide the Commission with its answer before the Commission's next meeting on February 15, 2011.

Thank you for your expertise and your assistance. If you have any questions or need additional information, please call Mark Fenner, General Counsel, at (512) 833-6699.

Sincerely,



Rolando B. Pablos
Chair, Texas Racing Commission