



TEXAS RACING COMMISSION
P. O. Box 12080
Austin, TX 78711-2080
(512) 833-6699
Fax (512) 833-6907

Texas Racing Commission
Tuesday, April 1, 2008
10:30 a.m.
JH Reagan Building, Room 140
105 W. 15th Street
Austin TX 78701

AGENDA

I. CALL TO ORDER
Roll Call

II. PUBLIC COMMENT

III. GENERAL BUSINESS

Discussion, consideration and possible action on the following matters:

- A. Budget and Finance Update Tab 1
- B. Report on Racetrack Inspections Tab 2
- C. Report and Update by the Executive Director and Staff
Regarding Administrative Matters
- D. Agency Response to the Sunset Advisory
Commission Staff Report

IV. PROCEEDINGS ON OCCUPATIONAL LICENSEES

Discussion, consideration and possible action on the following matters:

- A. The Proposal for Decision in SOAH No. 476-08-1043; Tab 3
*In Re: The Appeal by Jack Young from Stewards' Ruling
Lone Star Park 2037*

V. PROCEEDINGS ON RACETRACKS

Discussion, consideration and possible action on the following matters:

- A. Request by Sam Houston Race Park to Modify its 2008 Live Racing Schedule Tab 4

VI. PROCEEDINGS ON RULEMAKING

Discussion, consideration and possible action on the following rules:

Rule Proposals

- A. Proposal to Amend § 311.3, Information for Background Investigation Tab 5
- B. Proposal to Repeal § 311.51, Interim License to Conduct Race Meetings Tab 6
- C. Proposal to Amend § 319.336, Payment of Testing Costs Tab 7-1
- D. Proposal to Amend § 321.31, Vouchers Tab 7-3
- E. Proposal to Amend § 321.33, Expiration Date Tab 7-4
- F. Proposal for New § 321.36, Remittance of Unclaimed Outs and Vouchers Tab 7-5
- G. Proposal to Amend § 321.37, Cashed Tickets and Vouchers Tab 7-7
- H. Proposal to Amend § 321.41, Cashing Outstanding Tickets Tab 7-8
- I. Proposal for New § 321.42, Cashing Outstanding Vouchers Tab 7-9

VII. EXECUTIVE SESSION

The following items may be discussed and considered in executive session or open meeting and have action taken in the open meeting:

- A. Under Government Code Sec. 551.071, the Commission may open an executive session to confer with its attorney regarding pending or contemplated litigation on any matter listed in this agenda.
- B. Under Government Code Sec. 551.071(2), the Commission may open an executive session to discuss all matters identified in this agenda where the commission seeks the advice of their attorney as privileged communications under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas and to discuss the Open Meetings Act and the Administrative Procedures Act.

- C. Under Government Code Sec. 551.071, the Commission may open an executive session to confer with its attorney regarding litigation by Trinity Meadows Raceway, Inc., against the Commission in Bankruptcy Case No. 97-41302, Adversary No. 06-04165.
- D. Under Government Code Sec. 551.071, the Commission may open an executive session to confer with its attorney regarding litigation against the Commission in Cause No. D-1-GN-08-000416, *In Re: Larry Lawley and James R. Dunnigan, d/b/a The Lawley Group*

VIII. OLD/NEW BUSINESS

Schedule next Commission Meeting

(Tuesday, June 3, 2008)

IX. ADJOURN

Texas Racing Commission

LBB-4

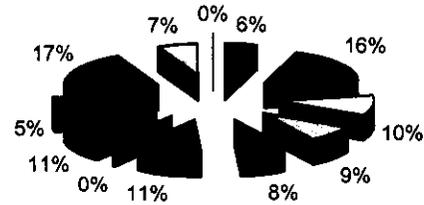
FYE 08/31/2008
 Cumulative Operating Budget Status
 by LBB Expenditure Object/Codes

Strategy	Description	FY 2008 Annual Budget	FY 2008 Expended Thru 2/29/2008	FY 2008 Unexpended Bal 2/29/2008	With 50.0% of Year Lapsed % of Budget Expended
\$ 0	FTE's = 77.10				
	<u>Sum Of All Strategies other than A.2.1</u>				
	1001 Salaries and Wages	3,793,297	1,714,970	2,078,326	45.21%
	1002 Other Personnel Cost	142,540	72,671	69,869	50.98%
	2001 Prof Fees and Services	186,242	27,729	158,513	14.89%
	2003 Consumables	27,750	7,817	19,933	28.17%
	2004 Utilities	22,500	10,209	12,291	45.37%
	2005 Travel	228,878	68,228	160,650	29.81%
	2006 Rent Building	105,314	63,610	41,704	60.40%
	2007 Rent Machine	14,500	7,339	7,161	50.61%
	2009 Other Operating Cost	300,128	102,859	197,269	34.27%
	CB Computer Equipment	35,340	7,666	27,674	21.69%
\$ 4,856,488	Total Operating Budget	4,856,488	2,083,097	2,773,391	42.89%
\$ 5,389,159	Strategy A.2.1. TX Bred Incentive	5,389,159	2,178,985	3,210,174	40.43%
\$ 10,245,647	Total All Strategies	10,245,647	4,262,083	5,983,565	41.60%

Expended Operational Budget By Strategy

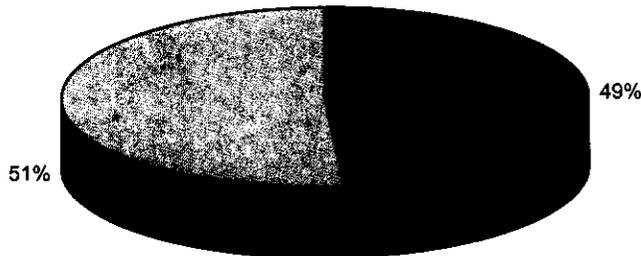
Regulate Racetrack Owners	\$ 117,281
Supervise Racing	\$ 349,950
Monitor Licensee Activities	\$ 207,632
Inspect & Provide Emergency Care	\$ 179,789
Administer Drug Test	\$ 164,821
Occupational Licensing Program	\$ 237,558
Texas On-Line Program	\$ 7,846
Monitor Pari-Mutuel Wagering	\$ 223,584
Wagering & Compliance Inspection	\$ 101,572
Central Administration	\$ 350,814
Information Resources	\$ 142,250
Other Support Services	\$ -

Expended Operational Budget



■ Regulate Racetrack Owners	■ Supervise Racing
□ Monitor Licensee Activities	□ Inspect & Provide Emergency Care
■ Administer Drug Test	■ Occupational Licensing Program
□ Texas On-Line Program	■ Monitor Pari-Mutuel Wagering
■ Wagering & Compliance Inspection	■ Central Administration
□ Information Resources	■ Other Support Services

Expended Appropriations



■ Operational Budget □ ATB Budget

Expended Appropriations

Operational Budget	\$ 2,083,097
ATB Budget	\$ 2,178,985

Texas Racing Commission

LBB-1

FYE 08/31/2008
 Cumulative Operating Budget Status
 by LBB Expenditure Object/Codes

Strategy	Description	FY 2008 Annual Budget	FY 2008 Expended Thru 2/29/2008	FY 2008 Unexpended Bal 2/29/2008	With 50.0% of Year Lapsed % of Budget Expended
	FTE's = 4.00				
A.1.1.	Regulate Racetrack Owners				
	1001 Salaries and Wages	234,022	111,892	122,130	47.81%
	1002 Other Personnel Cost	5,140	2,420	2,720	47.08%
	2001 Prof Fees and Services	5,000	844	4,156	16.87%
	2003 Consumables	250	-	250	0.00%
	2004 Utilities	-	-	-	
	2005 Travel	8,100	763	7,337	9.42%
3.33%	2006 Rent Building	-	-	-	
\$ 4,589	2007 Rent Machine	-	-	-	
\$ 251,055	2009 Other Operating Cost	16,075	1,362	14,713	8.47%
\$ 12,943	CB Computer Equipment	-	-	-	
\$ 268,587	Total Strategy A.1.1.	268,587	117,281	151,306	43.67%
	FTE's = 0				
A.2.1.	Texas Bred Incentive				
	ATB Money Expended	5,389,159	2,178,985	3,210,174	40.43%
\$ 5,389,159	Total Strategy A.2.1.	5,389,159	2,178,985	3,210,174	40.43%
	FTE's = 12.00				
A.3.1.	Supervise Racing and Licensees				
	1001 Salaries and Wages	706,650	307,890	398,760	43.57%
	1002 Other Personnel Cost	20,800	4,580	16,220	22.02%
	2001 Prof Fees and Services	12,742	9,831	2,911	77.16%
	2003 Consumables	-	-	-	
	2004 Utilities	-	-	-	
	2005 Travel	40,817	17,263	23,554	42.29%
-6.56%	2006 Rent Building	-	-	-	
\$ 13,855	2007 Rent Machine	-	-	-	
\$ 849,215	2009 Other Operating Cost	4,875	2,720	2,155	55.80%
\$ (41,847)	CB Computer Equipment	35,340	7,666	27,674	21.69%
\$ 821,224	Total Strategy A.3.1.	821,224	349,950	471,274	42.61%
	FTE's = 7.00				
A.3.2.	Monitor Occupational Licensee Act.				
	1001 Salaries and Wages	389,723	184,832	204,892	47.43%
	1002 Other Personnel Cost	24,300	13,782	10,518	56.72%
	2001 Prof Fees and Services	-	-	-	
	2003 Consumables	-	-	-	
	2004 Utilities	-	-	-	
	2005 Travel	28,719	6,110	22,609	21.28%
-0.77%	2006 Rent Building	-	-	-	
\$ 7,641	2007 Rent Machine	-	-	-	
\$ 434,687	2009 Other Operating Cost	3,875	2,908	967	75.06%
\$ 4,289	CB Computer Equipment	-	-	-	
\$ 446,617	Total Strategy A.3.2.	446,617	207,632	238,985	46.49%
	FTE's = 6.80				
A.4.1.	Inspect and Provide Emerg. Care				
	1001 Salaries and Wages	379,651	154,521	225,130	40.70%
	1002 Other Personnel Cost	10,260	9,690	570	94.45%
	2001 Prof Fees and Services	23,000	4,285	18,715	18.63%
	2003 Consumables	-	-	-	
	2004 Utilities	-	-	-	
	2005 Travel	13,500	5,105	8,395	37.81%
-3.82%	2006 Rent Building	-	-	-	
\$ 6,730	2007 Rent Machine	-	-	-	
\$ 436,742	2009 Other Operating Cost	7,125	6,188	937	86.85%
\$ (9,937)	CB Computer Equipment	-	-	-	
\$ 433,536	Total Strategy A.4.1.	433,536	179,789	253,747	41.47%

Texas Racing Commission

LBB-2

FYE 08/31/2008
 Cumulative Operating Budget Status
 by LBB Expenditure Object/Codes

Strategy	Description	FY 2008 Annual Budget	FY 2008 Expended Thru 2/29/2008	FY 2008 Unexpended Bal 2/29/2008	With 50.0% of Year Lapsed % of Budget Expended
A.4.2.	FTE's = 7.00 <u>Administer Drug Testing</u>				
	1001 Salaries and Wages	289,340	149,856	139,484	51.79%
	1002 Other Personnel Cost	12,280	2,880	9,400	23.45%
	2001 Prof Fees and Services	-	-	-	
	2003 Consumables	-	-	-	
	2004 Utilities	-	-	-	
	2005 Travel	32,140	8,283	23,857	25.77%
1.08%	2006 Rent Building	-	-	-	
\$ 5,449	2007 Rent Machine	-	-	-	
\$ 325,703	2009 Other Operating Cost	6,375	3,802	2,573	59.63%
\$ 8,983	CB Computer Equipment	-	-	-	
\$ 340,135	Total Strategy A.4.2.	340,135	164,821	175,314	48.46%
B.1.1.	FTE's = 13.30 <u>Occupational Licensing</u>				
	1001 Salaries and Wages	428,147	209,224	218,923	48.87%
	1002 Other Personnel Cost	29,540	8,861	20,679	30.00%
	2001 Prof Fees and Services	-	-	-	
	2003 Consumables	2,500	-	2,500	0.00%
	2004 Utilities	-	-	-	
	2005 Travel	33,250	7,301	25,949	21.96%
-4.18%	2006 Rent Building	-	-	-	
\$ 8,127	2007 Rent Machine	11,000	3,830	7,170	34.82%
\$ 547,692	2009 Other Operating Cost	36,625	8,343	28,282	22.78%
\$ (14,757)	CB Computer Equipment	-	-	-	
\$ 541,062	Total Strategy B.1.1.	541,062	237,558	303,504	43.91%
B.1.2.	FTE's = 0 <u>Texas OnLine</u>				
	1001 Salaries and Wages	-	-	-	
	1002 Other Personnel Cost	-	-	-	
	2001 Prof Fees and Services	-	-	-	
	2003 Consumables	-	-	-	
	2004 Utilities	-	-	-	
	2005 Travel	-	-	-	
0.00%	2006 Rent Building	-	-	-	
	2007 Rent Machine	-	-	-	
\$ 23,250	2009 Other Operating Cost	23,250	7,846	15,404	33.75%
\$ -	CB Computer Equipment	-	-	-	
\$ 23,250	Total Strategy B.1.2.	23,250	7,846	15,404	33.75%
C.1.1.	FTE's = 9.00 <u>Monitor Wagering and Audit</u>				
	1001 Salaries and Wages	412,344	203,020	209,324	49.24%
	1002 Other Personnel Cost	11,780	5,620	6,160	47.71%
	2001 Prof Fees and Services	-	-	-	
	2003 Consumables	-	213	(213)	
	2004 Utilities	-	-	-	
	2005 Travel	21,800	8,683	13,117	39.83%
-1.80%	2006 Rent Building	-	-	-	
\$ 8,085	2007 Rent Machine	-	-	-	
\$ 457,218	2009 Other Operating Cost	19,235	6,048	13,187	31.44%
\$ (144)	CB Computer Equipment	-	-	-	
\$ 465,159	Total Strategy C.1.1.	465,159	223,584	241,575	48.07%
C.1.2.	FTE's = 5.00 <u>Wagering & Compliance Inspections</u>				
	1001 Salaries and Wages	228,004	91,475	136,529	40.12%
	1002 Other Personnel Cost	6,060	3,000	3,060	49.50%
	2001 Prof Fees and Services	75,000	-	75,000	0.00%
	2003 Consumables	-	-	-	
	2004 Utilities	-	-	-	
	2005 Travel	18,952	4,343	14,609	22.92%
-0.60%	2006 Rent Building	-	-	-	
\$ 3,477	2007 Rent Machine	-	-	-	
\$ 327,143	2009 Other Operating Cost	4,125	2,754	1,371	66.77%
\$ 1,521	CB Computer Equipment	-	-	-	
\$ 332,141	Total Strategy C.1.2.	332,141	101,572	230,569	30.58%

Texas Racing Commission

LBB-3

FYE 08/31/2008

Cumulative Operating Budget Status
by LBB Expenditure Object/Codes

Strategy	Description	FY 2008 Annual Budget	FY 2008 Expended Thru 2/29/2008	FY 2008 Unexpended Bal 2/29/2008	With 50.0% of Year Lapsed % of Budget Expended
D.1.1.	FTE's = 8.00 Central Administration				
	1001 Salaries and Wages	439,059	187,073	251,986	42.61%
	1002 Other Personnel Cost	16,620	19,038	(2,418)	114.55%
	2001 Prof Fees and Services	25,500	12,769	12,731	50.07%
	2003 Consumables	25,000	7,604	17,396	30.42%
	2004 Utilities	22,500	7,766	14,734	34.52%
	2005 Travel	28,500	9,859	18,641	34.59%
0.80%	2006 Rent Building	105,314	60,910	44,404	57.84%
\$ 5,924	2007 Rent Machine	3,500	3,509	(9)	100.26%
\$ 753,938	2009 Other Operating Cost	105,857	42,286	63,571	39.95%
\$ 11,987	CB Computer Equipment	-	-	-	
\$ 771,850	Total Strategy D.1.1.	771,850	350,814	421,035	45.45%
D.2.1.	FTE's = 5.00 Information Resources				
	1001 Salaries and Wages	286,357	115,188	171,169	40.23%
	1002 Other Personnel Cost	5,760	2,800	2,960	48.61%
	2001 Prof Fees and Services	45,000	-	45,000	0.00%
	2003 Consumables	-	-	-	
	2004 Utilities	-	2,442	(2,442)	
	2005 Travel	3,100	517	2,583	16.69%
5.64%	2006 Rent Building	-	2,700	(2,700)	
\$ 5,498	2007 Rent Machine	-	-	-	
\$ 380,469	2009 Other Operating Cost	72,711	18,602	54,109	25.58%
\$ 26,961	CB Computer Equipment	-	-	-	
\$ 412,928	Total Strategy D.1.2.	412,928	142,250	270,678	34.45%
D.1.3.	FTE's = - Other Support Services				
	1001 Salaries and Wages	-	-	-	
	1002 Other Personnel Cost	-	-	-	
	2001 Prof Fees and Services	-	-	-	
	2003 Consumables	-	-	-	
	2004 Utilities	-	-	-	
	2005 Travel	-	-	-	
	2006 Rent Building	-	-	-	
	2007 Rent Machine	-	-	-	
\$ -	2009 Other Operating Cost	-	-	-	
\$ -	CB Computer Equipment	-	-	-	
\$ -	Total Strategy D.1.3.	-	-	-	
\$ 69,376	Estimated 2% appropriation rider FY-08				
\$ 4,787,112	Operating Budget regular appropriations	4,856,488	2,083,097	2,113,119	42.89%
\$ 5,389,159	Strategy A.2.1. TX Bred Incentive	5,389,159	2,178,985	3,210,174	40.43%
\$ 10,245,647	Total M.O.F.				
\$ 10,245,647	Total All Strategies	10,245,647	4,262,083	5,323,293	41.60%

Texas Racing Commission
Report on Racetrack Inspection Activities
April 1, 2008

Date of Inspection	Track	Type of Inspection	Number of Unsatisfactory Items	Track Remediation Complete	Inspection resolved	Unsatisfactory Items Remaining
4/12/07	Manor	Administrative	4	3 resolved 1/30/08 1 resolved 3/24/08	3/24/08	
7/3/07	Corpus Christi	Administrative	5	3 resolved 7/24/07 1 resolved 9/10/07 1 resolved 3/20/08	3/20/08	
11/10/07	Sam Houston	Pari-mutuel	2	1 resolved 11/30/07		1 remains *
11/19/07	Valley	Pari-mutuel	2	1 resolved 11/28/07		1 remains *
1/4/08	Manor	Pari-mutuel	1			1 remains *
1/11/08	Gillespie-Barn	Pari-mutuel	1			1 remains *
1/15/08	Gulf	Pari-mutuel	1			1 remains *
1/30/08	Gulf	Racing-Judges	2	2 resolved 3/5/08	3/5/08	
1/30/08	Gulf	Veterinary	4	4 resolved 3/5/08	3/5/08	
2/14/08	Manor	Racing-Stewards	8	8 resolved 2/24/08	2/24/08	
2/14/08	Manor	Veterinary	5	5 resolved 3/8/08	3/8/08	
2/19/08	Manor	Pari-mutuel	1			1 remains *
2/20/08	Gulf	Enforcement	0			
2/21/08	Manor	Enforcement	1			1 remains
2/27/08	Lone Star	Pari-mutuel	0			
2/29/08	Valley	Racing-Judges	0			
3/20/08	Valley	Veterinary	0			
3/22/08	Manor	Veterinary	0			

* - These unresolved items are in regards to the association requirement to submit a plan for approval on how they will use self-serve terminals to cancel wagers in accordance with §321.43. Staff has been working with the associations on this policy issue. April 18, 2008, has been established as a deadline for all associations to submit their plans for approval.

SOAH DOCKET NO. 476-08-1043
2008 MAR -4 PM 4:04

**IN RE: THE APPEAL
BY JACK YOUNG
FROM STEWARDS' RULING
LONE STAR PARK 2037**

§
§
§
§
§

**BEFORE THE STATE OFFICE
OF
ADMINISTRATIVE HEARINGS**

PROPOSAL FOR DECISION

Jack Young, Appellant, brought an appeal from a ruling of the Board of Stewards (Ruling) in Lone Star Park 2037. The Ruling found that Appellant had violated the Texas Racing Commission (Commission) rule prohibiting inhumane treatment of a horse¹ and the rule requiring that a trainer ensure the health and safety of each horse in his care and custody.² For these violations, the Board of Stewards: (1) suspended Appellant's Commission license number 71875 for a period of six months, of which four months were probated, (2) assessed a fine of \$250.00 against Appellant, and (3) denied Appellant access to all areas under the jurisdiction of the Texas Racing Commission (Commission) during the period of suspension of his license.

Despite Appellant's receipt of proper notice of the hearing on the merits, Appellant failed to appear at the hearing that Appellant requested. Based on Respondent's failure to appear, the allegations against Appellant in the Notice of Hearing prepared by Staff of the Commission (Staff) were accepted as true. The violations were established as a matter of law. Accordingly, the Administrative Law Judge (ALJ) agrees with Staff's recommendation that the Ruling be upheld.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

The hearing convened February 27, 2008, before the undersigned ALJ at the State Office of Administrative Hearings (SOAH), William P. Clements Building, 300 West 15th Street, Fourth

¹ 16 TEX. ADMIN. CODE (TAC) § 311.207.

² 16 TAC § 311.104.

Floor, Austin, Texas. Staff was represented by Rhonda Fritsche, legal counsel to the Commission. Staff moved for a default based on Appellant's failure to appear.

Staff offered competent evidence establishing jurisdiction under the provisions of the Texas Racing Act³ and that appropriate notice of the hearing was provided to Respondent. Those matters are set out in the findings of fact and conclusions of law.

II. RECOMMENDATION

Based upon the following findings of fact and conclusions of law, and in accordance with 1 TAC § 155.55, the ALJ granted Staff's motion for default and recommends that the Ruling be upheld.

III. FINDINGS OF FACT

1. Appellant is licensed as an owner/trainer by the Texas Racing Commission (Commission) and holds license number 71875.
2. In the fall of 2006, Appellant was the trainer of record for several horses stabled at Retama Race Park (Retama) in Selma, Texas.
3. On October 21, 2006, at 11:05 p.m., the Retama Security Office discovered a dead horse in a stall assigned to Appellant.
4. Appellant had not fed his horses or cleaned the stalls for days.
5. The dead animal was photographed and removed.
6. The remaining animals being stabled by Appellant were in need of food and water.
7. On November 24, 2006, after providing notice to Appellant, the Board of Stewards held a hearing on the allegations against Appellant.

³ TEX. REV. CIV. STAT. ANN. art. 179e, § 3.02(a).

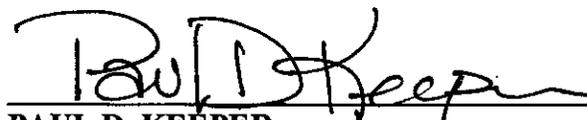
8. Appellant was present at the Board of Stewards hearing.
9. On November 24, 2006, the Board of Stewards unanimously entered Lone Star Park Ruling 2037 that: (1) suspended Appellant's Commission license number 71875 for six months, of which 4 months were probated, (2) assessed a fine against Appellant of \$250.00, and (3) denied Appellant access to all areas under the jurisdiction of the Commission during the period of suspension of his license.
10. On November 28, 2006, Staff received from Appellant's attorney a timely filed appeal of the Ruling.
11. On February 11, 2008, Staff sent a Notice of Hearing to Appellant.
12. The notice of hearing and complaint were mailed to Appellant at One Retama Parkway, Selma, Texas 78154 by United States certified mail, return receipt requested, and to Appellant at 17901 RR 12, Wimberly, Texas 78676. The notice of hearing was received by Respondent at the Selma address on or before February 13, 2008.
13. The notice of hearing contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short plain statement of the matters asserted.
14. The hearing notice contained the following language in capital letters in at least 12-point, boldface type: "Failure of the Appellant to appear at the hearing will result in the factual allegations in this notice to be deemed admitted as true and the relief sought by the Commission in this notice of hearing may be granted by default."
15. The hearing convened February 27, 2008, in the William P. Clements Building, 300 West 15th Street, Fourth Floor, Austin, Texas, before Administrative Law Judge Paul Keeper. Rhonda Fritsche, legal counsel for the Commission, made an appearance on behalf of the Commission. Appellant did not appear and was not represented at the hearing.
16. Staff moved for a default, and the motion was granted.

IV. CONCLUSIONS OF LAW

1. The Texas Racing Commission (Commission) has jurisdiction over this matter. TEX. REV. CIV. STAT. ANN., art. 179e, § 3.02(a).

2. The State Office of Administrative Hearings has jurisdiction over the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law. TEX. REV. CIV. STAT. ANN., art. 179e, § 3.15; TEX. GOV'T CODE ANN. ch. 2003.
3. Proper and timely notice of the hearing was effected upon Respondent. TEX. GOV'T CODE ANN. ch. 2001.
4. The allegations stated in Findings of Fact Nos. 3-6 are deemed admitted. 1 TEX. ADMIN. CODE (TAC) § 155.55.
5. The Commission prohibits inhumane treatment of a horse. 16 TAC § 311.207.
6. The Commission requires that a trainer ensure the health and safety of each horse that is in his care and custody. 16 TAC § 311.104.
7. Appellant's actions in failing to feed or water his horses or clean their stalls constituted the inhumane treatment of a horse and a violation of 16 TAC § 311.207.
8. Appellant's actions in failing to feed or water his horses or clean their stalls constituted Appellant's failure to ensure the health and safety of each horse in his care and custody and a violation of 16 TAC § 311.104.
9. Based on Findings of Fact Nos. 3-6 and Conclusions of Law Nos. 4-8, the Commission should uphold the ruling of the Board of Stewards by: (1) suspending Appellant's Commission license number 71875 for six months, of which 4 months were to be probated, (2) assessing a fine against Appellant of \$250.00, and (3) denying Appellant access to all areas under the jurisdiction of the Commission during the period of the suspension of his license.

SIGNED March 4, 2008.



**PAUL D. KEEPER
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**



March 18, 2008

Mrs. Charla Ann King
Executive Director
Texas Racing Commission
P.O. Box 12080
Austin, TX 78711-2080

Dear Mrs. King:

Sam Houston Race Park would like to request that the following item be added to the next Texas Racing Commission agenda:

Request by Sam Houston Race Park for a change in 2008 Quarter Horse Race Dates

Specifically, Sam Houston Race Park would like to add September 12 and September 13 and delete July 5.

Please let me know if you have any questions.

Yours truly,

Andrea Young
Chief Operating Officer

cc. Eric Johnston, SHRP
Tommy Azopardi, HBPA
Rob Werstler, TQHA
John Ferrara, TXRC

SAM HOUSTON RACE PARK LTD.

7575 North Sam Houston Parkway West, Houston, TX, 77064 • 281.807.8700 • shrp.com

1 **Sec. 311.3. Information for Background Investigation**

2 (a) Fingerprint Requirements and Procedure.

3 (1) Except as otherwise provided by this section, an
4 applicant for a license must submit with the application
5 documents a set of the applicant's fingerprints on a form
6 prescribed by the Department of Public Safety. If the applicant
7 is not an individual, the applicant must submit a set of
8 fingerprints on the above-referenced forms for each individual
9 who:

10 (A) serves as a director, officer, or partner of the
11 applicant;

12 (B) holds a beneficial ownership interest in the
13 applicant of 5.0% or more; or

14 (C) owns any interest in the applicant, if requested
15 by the Department of Public Safety.

16 (2) The fingerprints must be taken by a peace officer or a
17 person authorized by the Commission.

18 (3) Not later than 10 business days after the day the
19 Commission receives the sets of fingerprints under this section,
20 the Commission shall forward the fingerprints to the Department
21 of Public Safety.

22 (4) A person who desires to renew an occupational license
23 must have submitted a set of fingerprints pursuant to this
24 section within the three ~~five~~ years prior to renewal or provide
25 a new set of fingerprints for classification by the Federal
26 Bureau of Investigation.

27 (5) Waiver.

28 (A) Pursuant to Texas Civil Statutes, Art. 179e,
29 §7.10, the Commission will waive the fingerprint

1 requirements in this section for an applicant for an owner
2 or trainer license if:

3 (i) the individual presents proof of a valid
4 owner or trainer license issued in a racing
5 jurisdiction that requires the submission of
6 fingerprints to the Federal Bureau of Investigation
7 and the Commission verifies that fingerprints were
8 submitted by that jurisdiction for the applicant
9 within the three ~~five~~ years preceding the date of the
10 application in Texas; and

11 (ii) the applicant's permanent residence is
12 outside the State of Texas.

13 (B) This subsection does not apply to an applicant
14 who:

15 (i) has a criminal history in another state, as
16 revealed by a report by the Federal Bureau of
17 Investigation or other reliable criminal information
18 sources;

19 (ii) maintains a residence or is employed,
20 whether self-employed or otherwise, in Texas; or

21 (iii) obtains a license badge issued by the
22 Commission which gives the applicant access to a
23 restricted area on association grounds.

24 (C) Notwithstanding a waiver of the fingerprint
25 requirements under this subsection, the Commission reserves
26 the right, at its sole discretion, to require the
27 submission of fingerprints after a license has been issued.

28 (b) Criminal History Record.

1 (1) For each individual who submits fingerprints under
2 subsection (a) of this section, the Commission shall obtain a
3 criminal history record maintained by the Texas Department of
4 Public Safety and the Federal Bureau of Investigation.

5 (2) The Commission may obtain criminal history record
6 information from any law enforcement agency.

7 (3) Except as otherwise provided by this subsection, the
8 criminal history record information received under this section
9 from any law enforcement agency that requires the information to
10 be kept confidential as a condition of release of the
11 information is for the exclusive use of the Commission and its
12 agents and is privileged and confidential. The information may
13 not be released or otherwise disclosed to any person or agency
14 except in a criminal proceeding, in a hearing conducted by the
15 Commission, on court order, or with the consent of the
16 applicant. Information that is in a form available to the public
17 is not privileged or confidential under this subsection and is
18 subject to public disclosure.

1 ~~Sec. 311.51. Interim License to Conduct Race Meetings.~~

2 ~~(a) Qualifications. The Commission shall issue to a qualified~~
3 ~~person an interim license to conduct pari-mutuel race meetings~~
4 ~~at a racetrack for which a racetrack license has been previously~~
5 ~~issued. For purposes of this section, a "qualified person" is a~~
6 ~~person who:~~

7 ~~(1) was the holder of a lien or other debt instrument which~~
8 ~~secured the original financing of the premises and facilities~~
9 ~~(or any refinancing thereof); and~~

10 ~~(2) is otherwise eligible pursuant to the Act and the rules~~
11 ~~to hold a racetrack license.~~

12 ~~(b) Eligibility. To be eligible to receive an interim license~~
13 ~~under this section, a person must:~~

14 ~~(1) own or hold a leasehold interest in the racetrack~~
15 ~~premises and facilities pursuant to:~~

16 ~~(A) the foreclosure of the lien securing the original~~
17 ~~financing of the premises and facilities (or any~~
18 ~~refinancing thereof);~~

19 ~~(B) the enforcement of an agreement securing the~~
20 ~~original financing (or any refinancing thereof) of the~~
21 ~~premises and facilities, provided the agreement was~~
22 ~~approved by the Commission at the time the agreement was~~
23 ~~executed; or~~

24 ~~(C) other transfer in lieu of foreclosure or~~
25 ~~enforcement of the person's rights as a lien holder;~~

26 ~~(2) not previously have held a racetrack license for the~~
27 ~~racetrack;~~

28 ~~(3) complete an application form prescribed by the~~
29 ~~executive secretary; and~~

1 ~~(4) pay the base portion of the license fee prescribed in~~
2 ~~subsection (c) of this section.~~

3 ~~(c) Fees.~~

4 ~~(1) Application fee. The application fee is the amount~~
5 ~~needed by the Commission to cover the costs incurred by the~~
6 ~~Department of Public Safety and Commission staff for conducting~~
7 ~~the background investigation on the applicant. The Department of~~
8 ~~Public Safety shall calculate the costs it incurred in~~
9 ~~conducting the background investigation and notify the~~
10 ~~Commission. The applicant shall pay the application fee not~~
11 ~~later than 10 business days after receiving a bill for the fee~~
12 ~~from the Commission.~~

13 ~~(2) License fee. The holder of an interim license shall pay~~
14 ~~the same fees as other racetracks under §309.8 of this title~~
15 ~~(relating to Racetrack License Fees).~~

16 ~~(d) Privileges. An interim license issued under this section is~~
17 ~~valid only for the racetrack premises and facilities specified~~
18 ~~in the interim license application. An interim license issued~~
19 ~~under this section carries all the privileges and~~
20 ~~responsibilities of the class of racetrack license that had been~~
21 ~~previously issued for the racetrack premises and facilities when~~
22 ~~the person applying for the interim license was a debt holder.~~

23 ~~(e) Duration. An interim license issued under this section is~~
24 ~~valid for three years or until a new racetrack license for the~~
25 ~~racetrack premises and facilities which is of the same class as~~
26 ~~the original license is issued, whichever occurs first. An~~
27 ~~interim license issued under this section may be renewed once~~
28 ~~only and the term of the renewed interim license is three years.~~



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

2008 MAR -5 PM 1:15

February 29, 2008

Mr. Jesse R. Adams, Chair
Texas Racing Commission
Post Office Box 12080
Austin, Texas 78711-2080

Re: Authority of the Texas Racing Commission to issue an interim license to conduct a race meeting (Request No. 0676-GA)

Dear Mr. Adams:

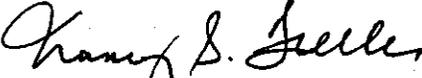
It has come to our attention that the issue in the above referenced opinion request is the subject of pending litigation recently filed in the 353rd Judicial District Court of Travis County, Texas, Cause No. D-1-GN-08-000416: Relator/Plaintiff, Larry Lawley and James R. Dunnagan d/b/a The Lawley Group against Respondent/Defendant, Charla Ann King, Executive Secretary of the Texas Racing Commission.

It is the policy of this office to refrain from issuing an attorney general opinion on a question that we know to be the subject of pending litigation. *See* Attorney General Opinions MW-205 (1980) at 1, V-291 (1947) at 5-6, Letter Advisory No. 142 (1977) at 1. This policy, which has been in effect for over sixty years, is based upon our belief that, once a matter is before the court, the court is the appropriate forum for the resolution of the issue. This is particularly true in light of the advisory nature of our opinions.

Therefore, we are closing our file on this request. If the issue in this opinion request remains unresolved at the conclusion of the lawsuit, you may submit a request to resolve that issue.

Please contact us if we can be of assistance in the future.

Very truly yours,


Nancy S. Fuller
Chair, Opinion Committee

NSF/lnl

Encl: Tex. Att'y Gen. Op. Nos. MW-205, V-291, and Tex. Att'y Gen. LA-77-142 (1977)
RQ-0676-GA



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OPINION COMMITTEE

TEXAS RACING COMMISSION
P. O. BOX 12080
AUSTIN, TEXAS 78711-2080
(512) 833-6699
FAX (512) 833-6907

FILE # ML-45553-08
I.D. # 45553

February 11, 2008

The Honorable Greg Abbott
Attorney General of the State of Texas
Opinion Committee
Office of the Attorney General
P.O. Box 12548
Austin, TX 78701-2548

Re: Request for Opinion

Dear General Abbott:

On behalf of the Texas Racing Commission, I am submitting this request for an opinion as to whether Texas Racing Commission Rule 311.51 (16 TAC 311.51) is a valid exercise of the Commission's authority under the Texas Racing Act, TEX. REV. CIV. STAT. ANN. ART 179e (TRA, or the "Act").

Rule 311.51, entitled "Interim License to Conduct Race Meetings," provides that the Commission shall issue a racetrack license to a person who is the holder of a lien or other debt instrument securing the original financing of the premises or facility, and who is otherwise eligible to hold a racetrack license. In essence, the rule provides an expedited process by which the lien holder of a licensed racetrack can quickly become licensed to operate the track, with few of the safeguards that surround the normal racetrack licensing process.

The rule was originally published in March 1993 (18 TexReg 1989) and adopted in July 1993 (18 TexReg 4183) as Rule 305.301, with the offered rationale in both cases being to ensure the continuity of pari-mutuel racing and to facilitate the financing of pari-mutuel racetracks. In 1999, the Commission reorganized its rules by repealing Chapter 305 and readopting the chapter's individual rules into other chapters. As part of the reorganization, Rule 305.301 was repealed and its language, with minor changes, was readopted in its current location at § 311.51. (See 24 TexReg 6176, 24 TexReg 6212, and 24 TexReg 8974).

As § 305.301, the rule was adopted in part under Article 7 of the Texas Racing Act, which is entitled "Other Licenses." TRA § 7.02 provides: "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." Licenses under Article 7 are addressed by the commission's rules in Chapter 311, Other Licenses (16 TAC 311.1 *et seq.*). Examples of licenses adopted under the authority of Article 7 include, but are not limited to, horse owners, greyhound owners, kennel owners, trainers, jockeys, and veterinarians.

However, when the original rule, § 305.301, was repealed and readopted as § 311.51, the Commission cited different statutory authority. In particular, the Commission cited TRA §§ 6.03, Application, and 6.031, Background Check, and omitted any reference to § 7.02.

Racetrack licenses are authorized under Article 6, which lays out the specific categories of licenses that can be authorized as well as specific requirements regarding the application that must be filed with the Commission. Article 6 establishes four distinct classes of horse racetracks (TRA § 6.02), and provides that the Commission may not issue licenses for more than three greyhound tracks (TRA § 6.04(c)). Racetrack licenses are addressed by the Commission's rules in Chapter 309, Subchapter A, Racetrack Licenses. (16 TAC 309.1-10).

The question presented to you is whether Rule 311.51 is consistent with the Commission's legislative grant of authority under the Texas Racing Act. While Article 7 gives the Commission broad authority to establish categories for occupational licenses, Article 6 establishes narrow and specific categories for racetrack licenses. The administrative history of the Interim License rule demonstrates confusion as to the authority for the rule, first citing Article 7 when adopting § 305.301, then citing different provisions, including two under Article 6, for its readoption as § 311.51.

The risk to the Commission is that existing racetracks, which may be adversely affected by the business competition posed by interim licensees, will challenge the Commission's authority to issue the license. Under § 311.51(d), an interim license to conduct race meetings will provide the holder with all the privileges and responsibilities of the class of racetrack license that had previously been issued for that racetrack. This includes the privilege of conducting greyhound or horse races and the pari-mutuel wagering associated with those races, as well as hosting wagering on greyhound and horse races simulcast from other racetracks. However, TRA § 6.01 provides that a person may not conduct wagering on a greyhound race or horse race meeting without first obtaining a racetrack license from the Commission, and an interim license under Rule 311.51 is not a type of racetrack license recognized by the Act.

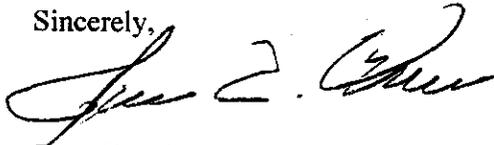
In addition, Rule 311.51 does not integrate the procedures or the safeguards of the regular racetrack licensing process. For example, it does not incorporate the criteria identified in TRA § 6.04(a) for reviewing an application, nor does it incorporate the grounds for denial, suspension or revocation of a racetrack license listed in § 6.06 of the Act. It does

not require the posting of a bond as required under § 6.04(b), nor does it address the acquisition or transfer of a pecuniary interest in the association as described in § 6.13(b). Because an Interim License is not a true racetrack license, Rule 311.51 does not adopt the Commission's own procedures for reviewing a license under Rule 309.3 (16 TAC 309.3).

Considering the substantial risk to the Commission of a legitimate challenge to the Commission's authority should it issue an Interim License under Rule 311.51, I respectfully request your opinion on behalf of the Commission.

If you have any questions about this request, please contact me or Executive Director Charla Ann King.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jesse R. Adams".

Jesse R. Adams
Chairman of the Commission

cc: Charla Ann King, Executive Director

1 **Sec. 319.336. Payment of Testing Costs.**

2 (a) Responsibility for Payment. Immediately on receipt of
3 approved charges for conducting tests under this
4 subchapter, an association shall pay the charges.

5 (b) Authority to Use Outstanding Tickets and Pari-mutuel
6 Vouchers. An association may use money held by the
7 association to pay outstanding tickets and outstanding
8 pari-mutuel vouchers to pay for charges under this section.
9 If the money held is insufficient to pay the charges, the
10 association shall pay the remainder of the charges.

11 (c) Accounting and Payment of Remainder.

12 (1) The accounting and payment of remainder of outs
13 and vouchers to the Commission shall be done in accordance
14 with §321.36. No later than 5:00 p.m. on September 30 of
15 each year, an association shall pay to the Commission the
16 cash value of outstanding tickets remaining after the
17 association offsets the drug testing costs incurred during
18 the prior mutuel year. No later than 5:00 p.m. on October
19 31 of each year, an association shall provide to the
20 Commission, on a form prescribed by the executive
21 secretary, an accounting of the outstanding tickets and
22 pari-mutuel vouchers held by the association on September
23 29 of that year and the drug testing charges paid by the
24 association.

25 (2) The executive secretary will review the accounting
26 submitted by the association. If the executive secretary
27 determines the accounting is in error, the executive
28 secretary may adjust the amount due to the Commission from

1 outstanding tickets and either demand payment of the
2 additional amount owed or reimburse the association for the
3 excess amount paid to the Commission.
4 (d) Pooling of Drug Testing Costs. The executive secretary
5 may establish a procedure to pay drug testing costs by
6 pooling the amounts held by all associations to pay
7 outstanding tickets. If the amount held by an association
8 does not cover the full costs of drug testing for that
9 association, the executive secretary may pay those costs
10 using funds paid to the Commission under subsection (c)(1)
11 of this section.

1 **Sec. 321.31. Vouchers.**

2 Each voucher issued must have printed on its face:

3 (1) the name of the racetrack facility where the
4 voucher was issued;

5 (2) the unique computer-generated voucher number;

6 (3) the date the voucher was issued;

7 (4) the number of the ticket-issuing machine; ~~and~~

8 (5) the dollar amount of the voucher; and

9 (6) the expiration date of the voucher.

10

1 **Sec. 321.33. Expiration Date.**

2 (a) Mutuel tickets and vouchers issued on or after
3 September 1, 2007, shall expire at the close of business
4 one year from date of issuance.

5 (b) Mutuel tickets issued during the month of August 2007
6 shall expire at the close of business on September 29,
7 2008.

8 (c) Mutuel tickets issued prior to August 1, 2007, have
9 expired in accordance with the Texas Racing Act.

10 (d) Vouchers issued prior to September 1, 2007, shall not
11 expire.

12 ~~(a) Due to the year-round nature of simulcasting and the~~
13 ~~state's fiscal year, the Commission finds a need to~~
14 ~~establish a "mutuel year" for purposes of expiration of~~
15 ~~mutuel tickets and the collection of revenue from~~
16 ~~outstanding tickets pursuant to the Act, §11.08. The mutuel~~
17 ~~year begins on August 1 and ends on July 31.~~

18 ~~(b) A mutuel ticket:~~

19 ~~(1) expires on the 60th day after the last day of the~~
20 ~~mutuel year in which the ticket was purchased; and~~

21 ~~(2) may not be cashed by an association after the~~
22 ~~expiration date for any reason.~~

23 ~~(c) A voucher has no expiration date.~~

24

1 **Sec. 321.36. Remittance of Unclaimed Outs and Vouchers.**

2 (a) Pursuant to the Act, §3.07, to pay the charges
3 associated with the medication or drug testing, an
4 association may use the money held by the association to
5 pay outstanding tickets and pari-mutuel vouchers. If
6 additional amounts are needed to pay the charges, the
7 association shall pay those additional amounts. If the
8 amount of outstanding tickets and pari-mutuel vouchers held
9 exceeds the amount needed to pay the charges, the
10 association shall pay the excess to the commission.

11 (b) The association shall file a quarterly report, on a
12 form prescribed by the executive director, that reports:

13 (1) the amount of outstanding tickets and pari-mutuel
14 vouchers that have expired during the quarter as outlined
15 under §321.33;

16 (2) the amount needed to reimburse the association
17 for payments made by the association to cover charges
18 associated with the medication or drug testing pursuant to
19 §3.07 of the Act; and

20 (3) the amount of excess expired tickets and pari-
21 mutuel vouchers, if any, due to the commission.

22 (c) The association shall file the quarterly reports and
23 make payments when applicable on the following schedule:

24 (1) September, October and November will constitute
25 the first quarter and shall be filed with the commission no
26 later than December 15;

Texas Racing Commission
Title 16, Part VIII
Chapter 321. Pari-Mutuel Wagering
Subchapter A. Mutuel Operations
Division 3. Mutuel Tickets And Vouchers

Page 6 of 9

1 (2) December, January and February will constitute
2 the second quarter and shall be filed with the commission
3 no later than March 15;

4 (3) March, April and May will constitute the third
5 quarter and shall be filed with the commission no later
6 than June 15; and

7 (4) June, July and August shall constitute the fourth
8 quarter and shall be filed with the commission no later
9 than September 15.

10 (d) The reports and payments submitted by the association
11 are subject to audit by the Commission.

12

1 **Sec. 321.37. Cashed Tickets and Vouchers.**

2 (a) An association shall maintain facilities and use
3 procedures that ensure the security of cashed tickets and
4 vouchers and the integrity of records of outstanding
5 tickets and outstanding vouchers.

6 (b) The association shall store cashed tickets and vouchers
7 in a secure area.

8 (c) The association shall prohibit individuals other than
9 the association's mutuel manager from having access to the
10 cashed tickets and vouchers or to storage areas for
11 outstanding ticket records and outstanding voucher records.

12

1 **Sec. 321.41. Cashing Outstanding Tickets.**

2 (a) For purposes of this section, an outstanding ticket is
3 one that was purchased for a race held at least ~~10~~ 21 days
4 before the date the ticket is presented for payment.

5 (b) An association shall designate one ticket window where
6 a patron must cash an outstanding ticket. If the
7 association needs more than one window, the association
8 must submit a written request for approval from the
9 executive secretary for additional windows.

10 (c) The association may not permit an outstanding ticket to
11 be cashed at a ticket window other than a designated
12 window.

13 (d) At the end of each race day, the mutuel manager shall
14 deliver to the pari-mutuel auditor:

15 (1) a list of the outstanding tickets that were cashed
16 on the previous race day; and

17 (2) a photostatic copy of each outstanding ticket
18 cashed on the previous race day.

19 (e) In the event a photostatic copy can not be provided,
20 the association will not be held liable for a reader cashed
21 ticket if the association can produce documentation to
22 support the ticket's existence.

23

1 **Sec. 321.42. Cashing Outstanding Vouchers.**

2 (a) For purposes of this section, an outstanding voucher
3 is one that was issued at least 21 days before the date the
4 voucher is presented for payment.

5 (b) An association shall designate one mutuel window where
6 a patron must cash an outstanding voucher. If the
7 association needs more than one window, the association
8 must submit a written request for approval from the
9 executive secretary for additional windows.

10 (c) The association may not permit an outstanding voucher
11 to be cashed at a mutuel window other than a designated
12 window.

13 (d) At the end of each race day, the mutuel manager shall
14 deliver to the pari-mutuel auditor:

15 (1) a list of the outstanding vouchers that were
16 cashed on the previous race day; and

17 (2) a photostatic copy of each outstanding voucher
18 cashed on the previous race day.

19 (e) In the event a photostatic copy can not be provided,
20 the association will not be held liable for a reader cashed
21 voucher if the association can produce documentation to
22 support the voucher's existence.