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**OPINION COMMITTEE**

**TEXAS RACING COMMISSION**  
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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 As part of the reorganization, Rule 305.301 was repealed and its language, with minor changes, was readopted in its current location at § 311.51.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.

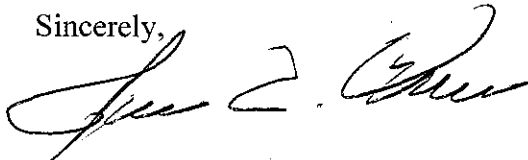
In addition, Rule 311.51 does not integrate the procedures or the safeguards of the regular racetrack licensing process. For example, it does not incorporate the criteria identified in TRA § 6.04(a) for reviewing an application, nor does it incorporate the grounds for denial, suspension or revocation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