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TEXAS RACING COMMISSION  
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**RQ-0450-KP**  
**FILE# ML-49094-22**  
**I.D.# 49094**

March 23, 2022

Office of the Texas Attorney General  
Attention Opinion Committee  
P.O. Box 12548  
Austin, Texas 78711-2548

*Via email: [opinion.committee@oag.texas.gov](mailto:opinion.committee@oag.texas.gov)*

Re: Opinion Request: Ex Officio Commissioner Designation.  
Texas Racing Act, TEX. OCC. CODE § 2022.001-.005,  
Texas Rules of Racing, 16 TEX. ADMIN. CODE Ch. 303.

Dear Ladies and Gentlemen:

This is a formal request for an Attorney General Opinion on:

1. Whether an individual, like a racehorse owner, licensed by the Commission can serve, participate, deliberate, and vote on Texas Racing Commission open meeting agenda items as the designated representative of Ex Officio Commissioner of Agriculture.

#### BACKGROUND

The ex officio Commissioner of Agriculture has designated a representative to appear as the designate, and the designate is a racehorse owner licensed by the Texas Racing Commission. The Texas Racing Commission consists of seven members appointed by the governor with the advice and consent of the senate; and (2) two ex officio members who have the right to vote. The ex officio members are the chair of the Public Safety Commission, or a member of the Public Safety Commission designated by the chair; and the Commissioner of Agriculture or the commissioner's designee.<sup>1</sup> Of the *appointed* Texas Racing Commission members, five members must be representatives of the general public with general knowledge of business or agribusiness. One member must have special knowledge or experience related to horse racing, and one member must have special knowledge or experience related to greyhound racing.<sup>2</sup>

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<sup>1</sup> See TEX. OCC. CODE § 2022.001(a) and (b).

<sup>2</sup> See TEX. OCC. CODE § 2022.001(c).

Although the designate participating, deliberating, and voting is not an appointed Commissioner, the Texas Racing Act, TEX. OCC. CODE § 2022.004, does outline specific statutory restrictions on Commission Appointment, Membership and Employment. In this section, "Texas trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

A person may not be a commission member and may not be a commission employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), if: (1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of horse or greyhound racing or breeding; or (2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of horse or greyhound racing or breeding.<sup>3</sup>

A person is *not eligible for appointment as a commission member* if: (1) the person or the person's spouse: (A) *is licensed by the commission, except as a commissioner*, (B) is employed by the commission or participates in the management of a business entity or other organization regulated by the commission or receiving funds from or through the commission; (C) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by the commission or receiving funds from or through the commission; or (D) uses or receives a substantial amount of tangible goods, services, or funds from or through the commission, other than compensation or reimbursement authorized by law for commission membership, attendance, or expenses; or (2) the person: (A) owns any financial interest in a racetrack or its operation or is related within the second degree by affinity or the third degree by consanguinity, as determined under Subchapter B, Chapter 573, Government Code, to a person who owns any financial interest in a racetrack or its operation; or (B) has been convicted of a felony or of any crime involving moral turpitude.<sup>4</sup>

The Texas Racing Act, TEX. OCC. CODE § 2022.005, addresses specific grounds for removal. It is a ground for removal from the commission if a member: (1) does not have at the time of appointment the qualifications required by Sections 2022.001, 2022.004, and 2022.057; (2) does not maintain during service on the commission the qualifications required by Sections

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<sup>3</sup> See TEX. OCC. CODE § 2022.004(b).

<sup>4</sup> See TEX. OCC. CODE § 2022.004(e).

2022.001, 2022.004, and 2022.057; (3) violates a prohibition established by Section 2022.004; (4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or (5) is absent from more than half of the regularly scheduled commission meetings that the member is eligible to attend during a calendar year. The validity of an action of the commission is not affected by the fact that it is taken when a ground for removal of a commission member exists.<sup>5</sup>

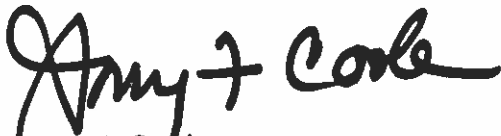
#### ANALYSIS

The Texas Racing Act and Rules are both silent as to designations to represent the Commissioner of Agriculture at Texas Racing Commission meetings. The Act does specify that one ex officio member is the chair of the Public Safety Commission. This ex officio member can also be a "member of the Public Safety Commission designated by the chair." The other ex officio member is the Commissioner of Agriculture or the commissioner's designee without further limitation.<sup>6</sup> Appointed members of the Texas Racing Commission cannot be individuals who are licensed by the Commission.<sup>7</sup> Although there are clear conflict of interest limitations on Commissioners appointed by the Governor, there are no such limitations for the designees of the Ex Officio members of the Texas Racing Commission.

#### CONCLUSION

Although appointed members of the Texas Racing Commission are not permitted to be individuals who are licensed by the Racing Commission, the Act is unclear whether Ex Officio members can be individuals who are also licensed to participate in racing. To ensure the integrity of racing and avoid any future appearance of impropriety should the issue arise at future Commission meetings, I submit this opinion request for further guidance. I thank you in advance for your time and attention in this matter.

Very truly yours,



Amy F. Cook  
Executive Director

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<sup>5</sup> See TEX. OCC. CODE § 2022.005(a) and (b).

<sup>6</sup> See TEX. OCC. CODE § 2022.001(b).

<sup>7</sup> See TEX. OCC. CODE § 2022.004(e)(1)(A).