

TEXAS RACING COMMISSION

REPORT BY COMMITTEE ON RACETRACK LICENSING

FEBRUARY 2009

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INTRODUCTION

As charged by the Chairman of the Texas Racing Commission, the (ad hoc) Committee on Racetrack Licensing provides the following report. The Committee has conducted an initial review of existing racetrack licensing policies in statute and administrative rule. The Committee reviewed information on the compliance status of current licenses, requests for changes in ownership/ location and received input from industry stakeholders at a public meeting held on December 19, 2008.

In addition to the Committee's efforts, there has been an ongoing review of existing policies related to racetrack licensing by the agency staff. Based on the experience of the Commission's licensing proceedings occurring since 2005, the agency has focused on identifying areas which will improve and clarify racetrack licensing policies in accordance with state statute. The Commission has also used the standard four-year statutorily-required administrative rule process to identify needed changes and make regulatory improvements.

The recent Sunset Review has provided important recommendations to change the Texas Racing Act in efforts to assist the Commission in addressing the current racetrack licensing challenges being faced by the agency. The Committee supports the recommendations of the Sunset Commission as described below.

The Committee on Racetrack Licensing offers the following report as an information resource to the Commission with the purpose of assisting Commissioners and staff in identifying key issues for further policymaking and regulatory improvements for the future. It is the hope of the Committee that the information provided here will help frame the policy issues for discussion and assist Commissioners and all interested stakeholders participating in the improvement process.

PART ONE - THE TEXAS RACING COMMISSION SUPPORTS THE SUNSET RECOMMENDATIONS ON RACETRACK LICENSING

- 1. Require the Commission to review each racetrack license on a periodic basis and develop renewal criteria along with associated sanctions for failure to comply.**
 - Active racetracks will be reviewed no less than every five years.
 - Inactive licenses will be reviewed no later than September 1, 2010, and if renewed, annually thereafter.
 - New licenses issued after January 1, 2007, will have until 2011 or until two years after license issuance, whichever is later, before the Commission considers each license holder for the renewal program.

- 2. Clarify the Commission's revocation and renewal authority including the agency's proposed modification to allow the Commission to require racetrack licensees to post security at any time.**
 - Clarify the Commission's authority to revoke a racetrack license.
 - Clarify the Commission's authority to refuse to renew a racetrack license.
 - Modify the Texas Racing Act to allow the Commission to require racetrack licensees to post security bonds at any time, instead of only when a new license is issued.

PART TWO - POLICY ISSUES IDENTIFIED BY THE COMMITTEE

RACETRACK LICENSE HOLDER NON-COMPLIANCE

Issue 1: Should the Texas Racing Commission's rules on racetrack license holder non-compliance be further clarified and improved?

- How and when should a racetrack license holder be penalized for failure to build a racetrack facility?
- How and when should a racetrack license holder be penalized for failure to have a Commission-approved site on which to build a racetrack facility?
- How and when should a racetrack license holder be penalized for failure to appropriately maintain its existing facility?

PUBLIC INPUT AND PARTICIPATION

Issue 2: Should regulations require public input on changes of location in addition to applications for original licenses?

- Should input from existing racetracks affected by an original application or a proposed location change be required? Should such input weigh more heavily in the Commission's review process?

MANAGING AGENCY PROCESSES

Issue 3: Should rules be established to guide the agency's requests for information for proposed changes of ownerships? Should the process be simplified?

Issue 4: Should application processing timelines be established in rule to govern the length of time it takes to approve changes to racetrack licenses including issuance of original licenses, changes in ownership, changes in location, and conducting background checks?

MARKET EXPANSION AND CONTROL

Issue 5: Should the Commission explore potential opportunities for non-licensed tracks to become licensed?

Issue 6: Should the number of Class 2, 3, and 4 racetrack licenses be guided by market principles of supply and demand for horse racing?

PART THREE - INVENTORY OF RACETRACK-SPECIFIC PROBLEMS

RACETRACK LICENSE HOLDER NON-COMPLIANCE

1. Some license holders have not built facilities.

Affected Tracks

Saddle Brook Park, Longhorn Downs, Laredo Downs, Valle de los Tesoros

Key Points

- Saddle Brook Park was originally licensed in 1989 and has never built a facility. The most recent Commission action was to approve a transfer of ownership interest and change in location in 2001 to Amarillo. Saddle Brook began construction in 2003, but stopped early in 2004 due to EPA problems relating to sewage treatment. Saddle Brook Park reports no current plans to build a facility.
- Longhorn Downs was originally licensed in 1989 and has never built a facility. Longhorn Downs currently does not own or lease any approved site. The Commission last approved a transfer of ownership interest to the Austin Jockey Club and a change in location to Austin during 1999. However, the approved site was not zoned for racing and the Austin City Council ultimately zoned the property for housing. As a result, the license holder let its option on the property lapse. In 2004, the Commission considered Longhorn Downs' request to change location to Pflugerville, but took no action on it because of traffic problems with the site. The Commission then set an August 2005 deadline for the track to either solve the traffic problems or present an alternative site.
- Missing the deadline, the Austin Jockey Club notified the Commission in late 2005 that it would propose changing ownership of Longhorn Downs to Dallas City Limits. Dallas City Limits provided an oral report to the Commission in 2006 before submitting its first formal proposal in 2007. After delays caused by litigation between its two general partners, Dallas City Limits submitted a revised proposal in 2008. Agency staff is now reviewing that proposal and the Department of Public Safety is conducting the required background investigations.
- In 2007, the Commission granted licenses to both Laredo Downs and Valle de los Tesoros. The license holders put up security on both licenses to ensure compliance with the Act and the rules. However, both tracks are now forfeiting their security because they failed to build their facilities and start simulcasting by the dates required in the Security Orders.

2. *An inactive facility that is seeking a transfer of ownership is not in compliance with Commission rules.*

Affected Track

Corpus Christi Greyhound Race Track (CCGRT)

Key Points

- The Corpus Christi greyhound racing facility has been out of compliance with Commission rules since mid-2007. In connection with CCGRT's requested race dates, the Commission has directed the track to present its plans for bringing the facility back into compliance and resuming racing. However, CCGRT has asked that this item be tabled pending the transfer of ownership interests.
3. *A prospective racetrack buyer has not fulfilled its commitment to the Commission and may not be in compliance with Commission rules and requirements.*

Affected Racetracks

Corpus Christi Greyhound Race Track, Laredo Downs, Valle de los Tesoros

Key Points

- The proposed buyers of CCGRT also hold the licenses for Laredo Downs and Valle de los Tesoros. Both of these tracks were granted licenses in 2007 after publicly assuring the Commission of their intent to build and open racetracks for racing in 2009. The buyers put up security to ensure compliance with the Act and the rules. However, both tracks are now forfeiting security because they did not build their facilities and start simulcasting by the dates required in their Security Orders. At this time, the Commission may need to amend the Security Orders to extend their timeframe and increase the amounts required.

PUBLIC INPUT AND PARTICIPATION

4. *Public hearings have not been held in advance, in the community where a racetrack is proposed to be built, but instead have been limited to the Commission meeting in Austin at the time the Commission takes up consideration of the proposal for its decision.*

Affected Racetracks

Saddle Brook Park, Longhorn Downs

Key Points

- Before approving a change in location, the Commission must find that the conduct of racing at the new location will be in the public interest. TRA § 6.14(d)(1). In making this determination, the Commission has used the public interest factors set out in TRA § 6.04(a), which includes the location of the proposed track and the anticipated effect of the race meeting on the breeding industry, the state and local economy from tourism, increased employment, and other sources.

- It appears that the Commission has not issued formal public notice to an affected community about proposed changes. The Commission does post the items in the Texas Register as part of its agenda and in accordance with *Open Meetings* law requirements. However, in the past, the agency has received letters providing input about a proposed transfer or license award after the Commission decision has been made.
- In the case of applications for original licenses, Commission rules and agency policy provide specifically for notice to the affected community. Commission rules require that a notice be published in the Texas Register of an application period for racetrack licenses. Agency policy requires notice in a newspaper of general circulation within the geographic region.
- Existing racetracks also seek to provide input when the Commission is considering granting an original license or changing a license's location. The existing tracks have indicated a need for an improved opportunity to more fully explore, with the Commission, their review and assessment of the impact of the proposed changes.

--For example, when the Commission considered the Valle de los Tesoros application for a Class 2 license in 2007, Valley Race Park provided an *Impact Study* on the affect of the proposed horse racetrack license on the greyhound track operations. This information was initially provided to the staff in a one-on-one meeting but not fully reviewed by the Commissioners until it was time for the decision to be made.

MANAGING AGENCY PROCESSES

5. ***The Commission has not consistently required security from racetrack licensees in order to ensure compliance with the Act and the Rules.***

Affected Racetracks

Saddle Brook Park, Longhorn Downs, Laredo Downs, Valle de los Tesoros, Corpus Christi Greyhound Race Track.

Key Points

- Although the statute requires that applicants must post security before the Commission issues them a license, the Commission has not historically enforced this requirement in a consistent manner. Until recently, the Commission had required an association to forfeit part of its security only once, when it negotiated a \$25,000 penalty from Lone Star Park for failing to open on time in 1997.
- The Sunset Commission identified this problem area and decided to adopt a modification that would allow the Texas Racing Commission to require licensees to post security at any time, instead of only when a new racing license is issued.

6. *The Commission has not enforced rule provisions that require a licensee to exercise reasonable diligence in preparing a racetrack to begin racing on the date approved by the Commission.*

Affected Racetracks

Corpus Christi Greyhound Race Track, Laredo Downs, Laredo Race Park, Valle de los Tesoros

Key Points

- Commission Rule 309.5(b) requires racetracks to exercise reasonable diligence in preparing their tracks to begin racing on the date approved by the Commission, otherwise the Commission may revoke the license and award the license to another applicant. However, the reasonable diligence requirement only applies if the Commission has specified a date to begin racing.
- In the past, the Commission viewed the withholding of live race dates as a method of penalizing associations. However, the failure to issue live race dates has allowed license holders to either not build or not improve their facilities.

7. *Racetrack license holders have entered into sales contracts that fail to set workable deadlines for performance by the buyer.*

Affected Racetracks

Longhorn Downs, Corpus Christi Greyhound Race Track

Key Points

- The Austin Jockey Club entered into its contract to sell its interests in Longhorn Downs to Dallas City Limits in August 2005. The contract has no escape clause or date by which the sale must be approved by the Commission and makes no provisions regarding the outcome if the Commission does not approve the transfer of interests.
 - Sales contracts that contain short-term expiration clauses and lack renewal options do not allow for sufficient processing time by the Commission or DPS.
8. *The process of approving original licenses and significant changes to existing racetrack licenses takes a substantial commitment of time and resources both by the licensees (and prospective purchasers) and by the Commission.*

Affected Racetracks

All racetracks, most recently Corpus Christi Greyhound Race Track and Longhorn Downs

Key Points

- It took the Commission over 2½ years to grant the Laredo Downs and Laredo Race Park licenses. This included an expensive evidentiary hearing before the State Office of Administrative Hearings (SOAH), along with the lengthy prehearing discovery that was required by the parties.

- Because of the commitment of time it took to process the Laredo Downs and Laredo Race Park licenses, it also took the Commission 2½ years to grant the Valle de los Tesoros license. Even though this was a lengthy process, Valley Race Park objected to the granting of the license and proposed that this application should go to SOAH as well.
 - Prospective purchasers of existing licenses have objected to the amount of information required by the Commission. Delays have been caused when purchasers submitted incomplete request forms and staff subsequently asked for additional information.
9. *Prospective buyers of racetrack interests have requested that the Department of Public Safety proceed with its background investigation and that the Commission approve the transfer while litigation over the ownership of the buyer is pending.*

Affected Racetrack

Longhorn Downs

Key Points

- Dallas City Limits is the proposed buyer of the complete ownership interest in Longhorn Downs. On two occasions the Department of Public Safety has halted its background investigation of Dallas City Limits' owners.
- The first occasion occurred after the corporation's two general partners instituted litigation between them over its ownership. In September 2007, TxRC's Executive Director notified DCL that neither DPS nor TxRC would conduct any further review until all internal litigation ceased. On June 13, 2008, the Commission received a copy of the signed settlement agreement and order ending the litigation within DCL. After receiving and reviewing a new application for approval, TxRC requested that DPS resume its investigation on October 2, 2008.
- The second occasion occurred on October 21, 2008, after the Commission received notification on October 13 of new litigation involving Dallas City Limits. In this litigation, Dallas City Limits sought a declaratory judgment that the former limited partners of DCL no longer retained any ownership interest. The limited partners filed a counterclaim asserting a number of claims and requesting that the court return ownership to Dallas City Limits' original corporate structure. Although this litigation remains ongoing, DPS and TxRC have resumed their background investigations and document review. No decision has been made regarding next steps should litigation remain when DPS and staff have completed their reviews.

MARKET EXPANSION AND CONTROL

- 10. *A greyhound racetrack or Class 1 horse racetrack that ceases to operate causes economic disadvantages to the industry.***

Affected Racetracks

Specifically: Corpus Christi Greyhound Race Track.

Generally: Gulf Greyhound Park, Valley Race Park, Lone Star Park, Retama Park, Sam Houston Race Park. Also Generally: All Class 2-4 Horse Racetracks.

Key Points

- With one greyhound track currently not operating, racing opportunities are diminished and this places trainers, owners, and breeders at an economic disadvantage.
- Corpus Christi Greyhound Race Track functioned as an alternative for less competitive greyhounds and served as a venue for young greyhounds just breaking into racing. According to the Texas Greyhound Association, since the track's closure, approximately 300-400 Texas-bred greyhounds are competing at out-of-state racetracks.

- 11. *The number of Class II, III, and IV racetrack licenses in the future may be limited by the economic racing environment in the State of Texas.***

Affected Racetracks

Generally: All Class 2-4 Horse Racetracks.

Key Points

- The Sunset Commission's July 2008 report estimates that the majority if not all of the Texas racetracks are losing money. Attendance since 2003 has fallen by almost 600,000 patrons and total handle in Texas has declined by approximately \$65,000,000. These numbers refer to 2007. The numbers for 2008 handle reflect a continuing decline – with the total down by \$100 million from 2003. Without a significant increase in patron attendance and pari-mutuel handle, the issuance of additional licenses and construction of new facilities (not previously approved or considered by the Commission) may undercut the economic viability of the current facilities and further compromise the racing environment.

APPENDIX

STAKEHOLDER WRITTEN COMMENTS

DRAFT