

RECEIVED

By Opinion Committee at 3:23 pm, Dec 02, 2021



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

RQ-0442-KP

FILE# ML-49059-KP

I.D.# 49059

December 3, 2021

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

Via email: opinion.committee@oag.texas.gov

Re: Opinion Request: Texas Racing Act, TEX. OCC. CODE § 2028.202(c)(2), and the Texas Rules of Racing, 16 TEX. ADMIN. CODE § 303.102(d)(1).

Dear Ladies and Gentlemen:

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

1. Whether the release and distribution of escrowed purse funds in retroactive pro rata proportions to the owners of kennels and Texas-bred greyhounds that participated in the last 2020 greyhound meet run in Texas is a permissible use of escrowed purse funds accrued from March 1, 2020, through August 31, 2021, or amounts should remain in escrow; and
2. Whether future distributions with the same retroactive pro rata proportions would be permissible when greyhound race days are granted and thereafter cancelled without any live racing or amounts should remain in escrow pursuant to TEX. OCC. CODE § 2028.202(c)(2) and 16 TEX. ADMIN. CODE § 303.102(d)(1).¹

BACKGROUND

Pursuant to the Texas Racing Act, the Commission conducts oversight of escrowed purse amounts allocated under TEX. OCC. CODE § 2028.202(c).² Horse racetracks are required to pay 5.5 percent of the interstate cross-species handle to the Texas Greyhound Association

¹ There is a discrepancy in the actual amount to be distributed. The TGA proffers the amount to be \$2,002,784. The bank record amount to be distributed is \$1,581,642.92. This discrepancy is likely due to amounts allowable to the TGA up to 20 percent to administer the allocation of the purse for use at racetracks in this state. See § 2028.202(d).

² See TEX. OCC. CODE § 2028.201. The Racing Act is located on the Texas Racing Commission website at <http://www.txrc.texas.gov/laws/10042021CodifiedTexasRacingAct.pdf>. The Rules of Racing are located on the Texas Racing Commission website at <http://www.txrc.texas.gov/laws/Jan2021Rules.pdf>.

(TGA) as escrowed purse amounts. The TGA holds those funds in escrow, with the recipients designated as participants in greyhound races run “at racetracks in this state”.³ The TGA is the official state greyhound breed registry paid the 5.5 percent of the total amount deducted from a wagering pool on an interstate cross-species simulcast race to be held in escrow.⁴ A large portion of the funds that are earned and accumulated via simulcast and live racing are from greyhounds and greyhound owners that are not based in the State of Texas.

Past practice has been that the TGA allocated escrowed purse amounts among the Texas racetracks with future meets scheduled, and amounts were paid out as added purses to race winners of those future meets. Although there are greyhound race dates in 2022 and 2023 currently approved and scheduled, the TGA now seeks to distribute escrowed purse funds as supplemental purses to past Texas-bred winners and kennel owners from 2020 because the August 2021 granted race dates for Valley Race Park were cancelled. TGA proposes a retroactive pro rata distribution to only Texas-bred winners and kennel owners that participated in the 2020 Gulf Greyhound Park race meet.

ANALYSIS

The granted 2021 Greyhound Race dates by the Texas Racing Commission as of October 29, 2019, were for Valley Race Park from August 20 to August 28, 2021.⁵ This race meet was cancelled. There are currently granted greyhound race dates by the Texas Racing Commission for 2022 and 2023.⁶ The Texas Rules of Racing provide that a greyhound racetrack association is entitled to 300 evening performances and 150 matinee performances per calendar year.⁷ “If, for a reason beyond a greyhound racetrack association’s control and not caused by the racetrack association’s fault or neglect, it is impossible for the racetrack association to conduct a race on a day authorized by the commission, the commission in its discretion and at the request of the racetrack association, as a substitute for the race, may: (1) specify another day for the racetrack association to conduct racing; or (2) add additional races to already programmed events.”⁸

The Act and Rules do not contemplate events where racing dates are granted by the Commission and are thereafter cancelled as specific grounds for distribution and allocation of escrowed purse amounts. Such ability to allocate and distribute funds prior to earning a purse at a scheduled meet is not expressed by any clear legislative intent. Hence the Texas Rules of Racing have no such rule adopted and implemented for application.

³ See TEX. OCC. CODE § 2028.202(c)(2), (d).

⁴ See TEX. OCC. CODE § 2040.052

⁵ The 2021 Commission granted Greyhound race dates are located on the Texas Racing Commission website at http://www.tsrc.texas.gov/racetracks/2021_GrantedGreyhoundRaceDates-103119.pdf.

⁶ The 2022 Commission granted Greyhound race dates are located on the Texas Racing Commission website at http://www.tsrc.texas.gov/racetracks/2022_Granted.Greyhound.Race.Dates..pdf. The 2023 Commission granted Greyhound race dates are located on the Texas Racing Commission website at <http://www.tsrc.texas.gov/racetracks/2023Granted.Greyhound.Race.Dates-as-of-7-27-2021.pdf>.

⁷ See TEX. OCC. CODE § 2029.051.

⁸ See TEX. OCC. CODE § 2029.053.

The statute differentiates between *interstate* cross-species simulcasts and *intrastate* cross-species simulcasts. The statute requires paying the 5.5 percent of *interstate* simulcasts into the escrow for purse funds.⁹ The statute requires paying the 5.5 percent of *intrastate* simulcasts purse amounts sent from the horse racetrack association directly “to the racetrack conducting the live race that is being simulcast.”¹⁰ The statute has only two clear directives regarding the use of the 5.5 percent escrowed purse amount. First, “a purse in the amount of 5.5 percent to be paid to the official state greyhound breed registry for use at racetracks in this state.”¹¹ Second, the TGA can use up to 20 percent of the escrowed purse amount to administer the allocation of the purse for use at racetracks in this state.¹²

The Texas Rules of Racing do provide for allocation and distribution of the escrowed purse funds in the event an association *ceases a live race meet before completion* of the live race dates granted by the commission.¹³ The Rule fails to address the same allowance for the statutorily escrowed purse funds distributed from wagers placed on interstate cross-species simulcasts. The statute only requires that escrowed purse funds from interstate cross-species simulcasts be “for use at racetracks in this state”. There is no corresponding rule requiring allocation of escrowed purse funds when race days are granted but never held as in 2021.

The Texas Rules of Racing provide the requirements for the TGA’s distribution of the escrowed purse funds “to enhance live racing opportunities at Texas greyhound racetracks” in 16 TEX. ADMIN. CODE § 303.102(d). Specifically:

(d) Distribution of purse money from cross-species simulcasting.

(1) To enhance live racing opportunities at Texas greyhound racetracks, TGA shall pay to each greyhound racetrack the purse money it collects pursuant to the Act, § 6.091(d)(2)¹⁴ from interstate cross-species simulcasting at Texas horse racetracks in accordance with an allocation approved by the Commission. TGA shall prepare a proposed allocation for consideration by the Commission. In preparing a proposed allocation, TGA shall consider:

⁹ See TEX. OCC. CODE § 2028.202(c)(2).

¹⁰ See TEX. OCC. CODE § 2028.202(e). “A racetrack association offering wagering on intrastate cross-species simulcast signal shall send the purse amount specified under Subsection (b)(4) or (c)(2), as appropriate, to the racetrack conducting the live race that is being simulcast.”

¹¹ See TEX. OCC. CODE § 2028.202(c).

¹² See TEX. OCC. CODE § 2028.202(d).

¹³ See 16 TEX. ADMIN. CODE § 309.361(e)(2). “If an association ceases a live race meet before completion of the live race dates granted by the commission, the funds in and due the greyhound purse account shall be distributed as follows:

- (1) first, payment of earned but unpaid purses;
- (2) second, retroactive pro rata payments to the kennel owners; and
- (3) third, subject to the approval of the TGA, transfer within 120 days after cessation of live racing of the balance in the greyhound purse account to the greyhound purse account for one or more other associations.”

¹⁴ Current version at TEX. OCC. CODE § 2028.202(c)(2).

(A) the average price-per-point paid for purses at each greyhound racetrack during the preceding year;

(B) the purse payout at each greyhound racetrack during the preceding year; and

(C) the impact cross-species simulcasting has made on greyhound purse revenues at each greyhound racetrack during the preceding year.

- (2) Annually, the executive secretary shall establish a deadline by which the proposed allocation must be submitted. The executive secretary shall ensure each of the greyhound racetracks has notice of the proposed allocation and the date, time and location of the Commission meeting at which the proposed allocation will be considered for approval.”

The Racing Act provides that the commission “shall adopt reporting, monitoring, and auditing requirements or other appropriate performance measures” for funds distributed to and used by an organization “that receives funds generated by live or simulcast pari-mutuel racing.”¹⁵ When adopting the requirements or other appropriate performance measures, the commission must “consult with the affected organization” and “consider the concerns of the affected organization.”¹⁶ It is unclear whether the requirements include any distribution allocations other than as allocated escrowed purse amounts among the Texas racetracks with future meets scheduled, and amounts were paid out as added purses to all greyhound race winners of those future meets whether Texas-bred greyhounds or not.

CONCLUSION

Therefore, I respectfully request the Attorney General’s opinion on: (1) Whether the release and distribution of escrowed purse funds in retroactive pro rata proportions to the owners of kennels and Texas-bred greyhounds that participated in the last 2020 greyhound meet run in Texas is a permissible use of escrowed purse funds accrued from March 1, 2020, through August 31, 2021, or amounts should remain in escrow; and (2) Whether future distributions with the same retroactive pro rata proportions would be permissible when greyhound race days are granted and thereafter cancelled without any live racing or amounts should remain in escrow. I thank you in advance for your time and attention in this matter.

Very truly yours,



Amy F. Cook
Executive Director

¹⁵ See TEX. OCC. CODE § 2028.001(a).

¹⁶ See TEX. OCC. CODE § 2028.001(b).

INDEX OF ATTACHMENTS

1. 2020 Granted Greyhound Race Dates – as of September 10, 2019.
2. 2021 Granted Greyhound Race Dates – as of October 29, 2019.
3. 2022 Granted Greyhound Race Dates – as of September 29, 2020.
4. 2023 Granted Greyhound Race Dates – as of July 27, 2021.

