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June 2, 1988

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ATTORNEY GENERAL OPINION NO. 88- 77

The Honorable Alfred G. Schroeder
Chairman
Kansas Racing Commission
128 North Kansas Avenue
Topeka, Kansas 66603-3621

Re: State Boards, Commissions and Authorities--
Parimutuel Racing; Kansas Parimutuel Racing Act--
Nonrefundable License Application Fees

Synopsis: It is our opinion that: 1) The Fairgrounds
Pari-Mutuel Racing Association (FPRA), an
organization applicant proposing to conduct horse
races at the state fairgrounds in Hutchinson, must
pay the \$5,000 organization application fee
pursuant to K.S.A. 1987 Supp. 74-8813(a)(1) and
that the commission does not have authority to
establish a lesser fee; 2) the Kansas state fair
board, a facility owner applicant associated with
FPRA, must pay a facility owner application fee
to the Kansas racing commission pursuant to K.S.A.
1987 Supp. 74-8815(a) and (c); and 3) the Kansas
state fair board must pay a facility owner
application fee of \$5,000 pursuant to K.S.A. 1987
Supp. 74-8815(c). Cited herein: K.S.A. 2-125;
K.S.A. 1987 Supp. 74-8813; 74-8814; 74-8815; K.S.A.
75-5516.

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Dear Chairman Schroeder:

On behalf of the Kansas racing commission (commission) and at your request, Assistant Attorney General Warran Wiebe has requested our opinion regarding the following:

"(1) Whether the Kansas racing commission has authority pursuant to K.S.A. 1987 Supp. 74-8813 and 74-8814 to establish an organization license fee less than \$5,000 for a nonprofit entity conducting races only on the state fair grounds in Hutchinson;

"(2) whether the Kansas State Fair, a state agency, should pay a facility owner application fee to the Kansas Racing Commission, a state commission; and, if so,

"(3) what is the amount of the facility owner application fee the Kansas State Fair should pay pursuant to K.S.A. 1987 Supp. 74-8815."

We are advised that Fairgrounds Pari-Mutuel Racing Association (FPRA), the organization applicant associated with the Kansas state fair board, the facility owner applicant, is applying for race dates dedicated to horses only. Therefore, our discussion in this opinion is limited to a non-dual racetrack facility application.

K.S.A. 1987 Supp. 74-8813(a) provides in part:

"A nonprofit organization may apply to the commission for an organization license to conduct horse races or an organization license to conduct greyhound races, or both such licenses. In addition, an organization license may authorize the licensee to construct or own a racetrack facility if so provided by the commission. . . . A nonrefundable application fee in the form of a certified check or bank draft shall accompany the application. Except as provided pursuant

to K.S.A. 1987 Supp. 74-8814, such fee shall be as follows:

"(1) For an application for an organization license to conduct horse or greyhound races with parimutuel wagering, a fee of \$5,000 for each application. . . ."

K.S.A. 1987 Supp. 74-8814 provides for the licensing of fair associations organized pursuant to K.S.A. 2-125 et seq., and amendments thereto, and the national greyhound association of Abilene. The commission is to establish application fees for such associations within the guidelines of K.S.A. 1987 Supp. 74-8814, but otherwise licensing considerations are the same as for nonprofit organizations under K.S.A. 1987 Supp. 74-8813. K.S.A. 1987 Supp. 74-8814(c).

FPRA is a nonprofit entity proposing to conduct horse races at the state fairgrounds in Hutchinson. Therefore, FPRA does appreciate special consideration under the Kansas parimutuel racing act. See K.S.A. 1987 Supp. 74-8813(b)(3) and (d). However, FPRA is not a fair association as defined in K.S.A. 2-125. Thus, we believe that FPRA must pay the \$5,000 organization application fee provided for in K.S.A. 1987 Supp. 74-8813 and that the commission does not have authority to establish a lesser fee.

K.S.A. 1987 Supp. 74-8815(a) provides in part:

"Any person, partnership, corporation or association, or the state of Kansas or any political subdivision thereof, may apply to the commission for a facility owner license to construct or own, or both, a racetrack facility which includes a racetrack and other areas designed for horse racing or greyhound racing, or both. . . ."

"The application for a facility owner license shall be accompanied by a nonrefundable fee of \$5,000. . . ."

The Kansas state fair board is the facility owner applicant associated with FPRA. Like FPRA, this applicant appreciates special consideration under the Kansas parimutuel racing act. See K.S.A. 1987 Supp. 74-8815(d)(3) which

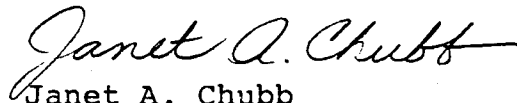
allows the commission to establish a lesser deposit payment if the facility owner applicant is the state or a political subdivision of the state. However, there is no language in this section which indicates the legislature intended to allow a state entity to pay a lesser facility owner application fee than the one identified in K.S.A. 1987 Supp. 74-8815(c). The commission's inquiry suggests that since "the state will be paying the state," the commission may require a lesser application fee from the Kansas state fair board. State agencies commonly transfer funds by use of interfund vouchers. See K.S.A. 75-5516(b). Thus, the suggestion is not persuasive in light of the plain language set out in K.S.A. 1987 Supp. 74-8815(a) and (c). We believe that language obligate the Kansas state fair board to pay a \$5,000 facility owner application fee to the Kansas racing commission.

In conclusion, it is our opinion that: 1) The Fairgrounds Pari-Mutuel Racing Association (FPRA), an organization applicant proposing to conduct horse races at the state fairgrounds in Hutchinson, must pay the \$5,000 organization application fee pursuant to K.S.A. 1987 Supp. 74-8813(a)(1) and that the commission does not have authority to establish a lesser fee; 2) the Kansas state fair board, a facility owner applicant associated with FPRA, must pay a facility owner application fee to the Kansas racing commission pursuant to K.S.A. 1987 Supp. 74-8815(a) and (c); and 3) the Kansas state fair board must pay a facility owner application fee of \$5,000 pursuant to K.S.A. 1987 Supp. 74-8815(c).

Very truly yours,



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