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ATTORNEY GENERAL OPINION NO. 91- 28

Janet A. Chubb
Assistant Attorney General
Kansas Racing Commission
3400 Van Buren
Topeka, Kansas 66611-2228

Re: State Boards, Commissions and
Authorities--Parimutuel Racing--Occupation
Licenses; Commission's Jurisdiction When License
Expires

Synopsis: The racing commission retains jurisdiction over an
administrative matter even if the occupation
license that is the subject of the hearing expires
by operation of law during the pendency of the
proceeding. Cited herein: K.S.A. 74-8816; 77-511;
77-530; K.A.R. 112-4-1.

* * *

Dear Ms. Chubb:

As assistant attorney general assigned to the Kansas racing
commission, you have requested our opinion regarding the
commission's jurisdiction over an administrative matter when
the license that is the subject of the hearing expires by
operation of law during the pendency of the proceeding.
Specifically, you inquire about licensing matters which have
been filed but cannot be scheduled for an administrative
hearing before the date of expiration, and licensing matters
which have been afforded full administrative hearing and for
which initial orders have been issued, but the initial orders

will not become final until after the date of the license's expiration.

Statutes and regulations relevant to the racing commission and its procedures do not address the issue of the commission's jurisdiction if the license which is the subject of the hearing expires before conclusion of the proceedings. Furthermore, there is no case law in the state of Kansas directly addressing this issue. There are, however, cases in Kansas and other jurisdictions which address agency jurisdiction in general, and in reading these cases together our office is of the opinion that the commission continues to have jurisdiction over administrative matters otherwise properly before it, even if the occupation license expires during the pendency of the proceeding.

By applying for a license, the applicant submits itself to the decision-making power of the licensing agency. By issuing the license, a Kansas administrative agency is establishing quasi-judicial reach over its licensee. This gives the licensing board the authority necessary to enforce the minimal statutory and regulatory standards it has set out. Racing occupation licenses may be applied for and issued pursuant to K.S.A. 1990 Supp. 74-8816. The occupation licenses issued by the racing commission are valid from January 1 through December 31 of the year they are issued. K.A.R. 112-4-1(i). These licenses may be extended under K.S.A. 77-511(d), which states:

"(d) If a timely and sufficient application has been made for renewal of a license with reference to any activity of a continuing nature, the existing license does not expire until the state agency has taken final action upon the application for renewal or, if the state agency's action is unfavorable, until the last day for seeking judicial review of the state agency's action or a later date fixed by the reviewing court."

Pursuant to K.S.A. 1990 Supp. 74-8816(e) and (f), the commission must abide by the Kansas administrative procedure act if it proposes to deny a license or to penalize a licensee for a violation of the racing act and regulations. This statute also lists the reasons for which a license may be denied, suspended or revoked.

In Schowengerdt v. Kansas Dept. of Revenue, 14 Kan.App. 147 (1989) the Kansas Court of Appeals addressed the jurisdiction of the department of revenue over the suspension of a driver's license of a driver whose license had expired. The court held:

"[I]f a license or privilege exists, it is subject to suspension, and it can be suspended for any period permitted by law. Once suspended, the suspension remains in effect for the full period ordered, regardless of whether the originally valid license might otherwise have expired at some point during the period of suspension. To hold otherwise would be counter to logic and would allow a driver to benefit from letting his driver's license expire. It is the privilege to drive that is suspended. The license itself merely represents that privilege."

Although this case dealt with expiration of a driver's license during the period of suspension, it indicates the court's willingness to recognize continuing jurisdiction after a license expires. The court also points out that it is the privilege to act that is important, not the tangible evidence of the privilege, i.e. the license.

In Chambers v. Herrick, 172 Kan. 510 (1952), the Kansas Supreme Court was confronted with a licensee's motion to dismiss on the ground that the question concerning the license had become moot because the license had expired. The court reasoned:

"It is true the renewal license in question was for the period of one year and would have expired by its own terms on August 30, 1951, some six months ago. On the other hand, in the event the judgment of the lower court is upheld the license would be subject to renewal under G.S. 1949, 41-327. Under such circumstances we do not think the question has become moot merely because the license expired during the period of time necessarily required for the Director to perfect and present

his appeal to this court, and the motion to dismiss the appeal is therefore denied."

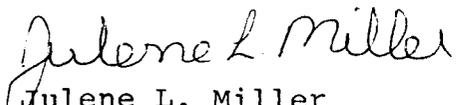
Although this holding concerns a judicial appeal from a hearing with the state alcoholic beverage control board, it is another example of the court's willingness to continue with a proceeding even though the license had expired during the pendency of the appeal. The court focused on the fact that the license could be the subject of renewal. Not only may the licenses in question be subject to renewal, if the commission takes no action the former licensee may be able to apply for a new license and the commission may have no grounds for denial. K.S.A. 74-8816(e).

In Wang v. Board of Reg. in Medicine, 537 N.E.2d 1216 (Mass. 1989), the supreme court of Massachusetts held that an administrative board retained jurisdiction over the licensee even though the individual's license had expired prior to the board's issuance of an order. This court's decision was based on the fact that the license could be the subject of automatic renewal. Contrast Stern v. Medical Examining Bd., 545 A.2d 108 (Conn. 1988). However, protection of the public interest was also a paramount concern. The court reasoned that, "[t]he board's purpose is protection of the public interest, and when the board exercises its statutory function of conducting disciplinary proceedings, it is pursuing that purpose." Supra at 1219. In Kansas, the state's concern is also with the public interest. See Schowengrdt v. Kansas Dept. of Revenue, 14 Kan.App. 147, 148 (1989) (the Court of Appeals liberally construed the Kansas implied consent law in order "to effectuate its obvious purpose of protecting the safety of the motoring public"). The court in Wang felt it was in the public's interest to pursue the matter while it was still fresh. We believe the same concerns are present in the situation you present.

For these reasons we believe that, absent a statutory scheme to the contrary, the racing commission retains jurisdiction over an administrative matter if the occupation license that is the subject of the hearing expires by operation of law during the pendency of the proceeding.

Very truly yours,


ROBERT T. STEPHAN
Attorney General of Kansas


Julene L. Miller
Deputy Attorney General