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November 30, 1979

The Honorable Doug Todd
Arizona State Representative
House Wing, State Capitol
Phoenix, AZ 85007

Re: I79-289 (R79-166)

Dear Representative Todd:

You have requested our opinion on the following two questions:

1. May the livestock agriculture and breeders' award fund be used to conduct a livestock show other than the annual livestock fair conducted by the Arizona Coliseum and Exposition Center Board? If yes, what are the limitations on such an expenditure?

2. May county fair associations be permitted by the Arizona Racing Commission to conduct a dog racing meeting on the same terms as it may be permitted to conduct a horse racing meeting? If yes, may both horse and dog racing be conducted at the same racing meeting?

With respect to question 1, subsections C and D of A.R.S. § 5-113 provide as follows:

C. The livestock agriculture and breeders' award fund shall be under the control of the governor, and, subject to the provisions of subsection D of this section, shall be used for the purpose of promoting the livestock and agricultural resources of the state, and for the purpose of conducting an annual livestock fair by the Arizona coliseum and exposition center board to further promote livestock resources. The direct expenses less receipts of the

livestock fair shall be paid from this fund, but such payment shall not exceed thirty per cent of the receipts of the fund for the preceding fiscal year. All expenditures from the livestock, agriculture and breeders' award fund shall be made upon claims approved by the governor.

D. To promote, improve and advance the quality of race horse and greyhound breeding within the state, a sum of money equal to fifteen per cent of the first money of every purse won at a commercial meet by a horse or dog foaled or whelped in this state as defined in § 5-114, shall, upon certification by the racing commission, be paid from the livestock, agriculture, and breeders' award fund by the governor to the owner of the dam of the animal at the time the animal was foaled or whelped, and a sum of money equal to fifteen per cent of the first money of every purse won at a county fair meet by a horse foaled in the state shall be paid from the county fairs and breeders' award fund by the Arizona racing commission to the owner of the dam of the animal at the time the animal was foaled. The monies paid to breeders under the provisions of this subsection shall be paid on or before the first day of August of each year for purses won during the immediately preceding fiscal year.

Prior to a 1969 amendment to subsection C, the only purpose besides purse awards for which the agriculture and breeders' award fund could be used was the promoting of the livestock and agricultural resources of the state. The 1969 amendment allowed the fund to be used for the additional purpose of "conducting an annual livestock fair by the Arizona coliseum and exposition center board to further promote livestock resources." Thus, from the legislative history of the applicable statutory provision it is clear that the livestock agriculture and breeders' award fund may be used to conduct a livestock show other than the annual livestock fair conducted by the Arizona Coliseum and Exposition Center Board, so long as the "livestock show" is for the purpose of promoting the

livestock resources of the state. The language of the 1969 amendment clearly indicates that the Legislature contemplated the annual livestock fair of the Arizona Coliseum and Exposition Center Board to be an additional function for which the monies could be used and not the exclusive function.

With respect to the expenditure of award fund monies, both the payments mandated by subsection D of A.R.S. § 5-113 and the Coliseum¹/ payments take precedence over any award of funds by the Governor for the general purpose of promoting the livestock and agricultural resources of the state. An award of funds for the purpose of promoting another livestock show may be made by the Governor if, in his discretion, he chooses to do so. Thus, expenditure of funds for a livestock show conducted for the purpose of promoting the livestock and agricultural resources of the state depends upon the availability of funds and the decision by the Governor to expend funds for that purpose.

You have also asked whether a county fair association may be permitted by the Arizona Racing Commission to conduct dog racing on the same terms as it may be permitted to conduct a horse racing meeting and, if so, may the fair conduct horse and dog racing at the same racing meeting. A.R.S. § 5-111.D reads as follows:

D. Any county fair association may apply to the commission for one racing meeting each year, and the commission shall set the number of days and the dates of such meetings. A racing meeting conducted under the provisions of this subsection shall be operated in such manner that all profits accrue to the county fair association, which profits shall not exceed eighteen per cent of the total amount of money handled in the pari-mutuel pool plus the odd cents by which the amount payable on each dollar wagered exceeds a multiple of ten cents. All racing meetings conducted by county fair associations under the provisions of this

1. The limitation contained in subsection C regarding the expenditure of funds for the "livestock fair" refers to the livestock fair conducted by the Arizona Coliseum and Exposition Center Board, since the provision was added concurrently with the provision allowing the fund to be used for the livestock fair conducted by the Coliseum.

subsection shall be exempt from the payment to the state of the percentage of the pari-mutuel pool prescribed by subsection C of this section and also exempt from the provisions of § 5-111.01.

Although the statute does not mention whether the fair association may apply for permission to conduct horse or dog races, the legislative history of the statute indicates that the Legislature intended to allow the Racing Commission to allow either horse racing or dog racing. See Arizona Code Annotated 1939, § 73-1608²/.

Section D only allows the fair associations to apply for one racing meeting each year. In determining whether the one racing meeting conducted by the fair can include the horse and dog racing, it is necessary to review Title V in its entirety. A.R.S. § 5-107.D indicates that the Legislature intended a racing meeting to be either for horses or dogs but not both, since the bond requirements are different for a horse racing meeting than they are for a dog racing meeting. In addition, there are separate provisions in A.R.S. § 5-111, subsections B and C for treatment of pari-mutuel pools for horse racing meetings and dog racing meetings. Thus, we conclude a racing meeting may be either a horse racing meeting or dog racing meeting, but cannot be both.

You have also asked whether a dog racing meeting may be conducted on the same terms as a horse racing meeting. The answer to that part of your question is no. A.R.S. § 5-111.D. exempts county fair racing meetings from payment to the state of the percentage of the pari-mutuel pool prescribed by subsection C of A.R.S. § 5-111. That subsection concerns only

2. That provision formerly provided:

73-1608. Exceptions. -- The provisions of this act relating to permits for horse-racing and dog-racing meets shall not apply to such meets not exceeding one [1] day in length, nor to a racing program conducted by any state, county, or district fair held for educational or publicity purposes only. [Laws 1935, ch. 79, § 8, p. 363.]

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horse racing meetings. If a dog racing meeting were conducted, the meeting would be subject to the payments to the state mandated by subsection B of A.R.S. § 5-111.

There are also separate Racing Commission rules for horse racing and dog racing. A county fair dog racing meeting would be expected, of course, to abide by the applicable rules of the Racing Commission.

Sincerely,

Bob Corbin
BOB CORBIN
Attorney General

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