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ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD

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FILE NO. 91-002

SPORTS AND GAMING:
Use of Race Track Improvement
Fund for Transportation Costs

Gary L. Starkman, Chairman
Illinois Racing Board
Suite 11-100, State of Illinois Center
100 West Randolph Street
Chicago, Illinois 60601

Dear Mr. Starkman:

I have your predecessor's letter wherein he inquired whether the Race Track Improvement Fund [RTIF] may be employed to reimburse organization licensees for the expenses incurred in transporting horses to and from a training facility established at a nonoperating race track for the purpose of handling the overflow of eligible horses at an operating track.

The RTIF was established in section 32 of the Illinois Horse Racing Act of 1975 (Ill. Rev. Stat. 1989, ch. 8, par.

37-32). Historically, the purpose of the RTIF was to encourage the proper maintenance and improvement of race track facilities to ensure that each race track facility provided safe and adequate accommodations for the benefit and protection of the public, horsemen, track personnel, and animals. Under the supervision and direction of the Illinois Racing Board, the RTIF provided financial assistance to race tracks to enable them to erect, improve, or acquire physical structures for the race tracks such as seating stands and buildings. Illinois Racing Board v. Arlington Park Thoroughbred Race Track Corp. (1979), 76 Ill. App. 3d 289, 293; see also Ogden-Fairmount, Inc. v. Illinois Racing Board (1987), 119 Ill. 2d 154; 1977 Ill. Att'y Gen. Op. 200; 1977 Ill. Att'y Gen. Op. 68, 69.

Public Act 84-999, effective January 1, 1986, expanded the application of the RTIF to permit reimbursement of certain costs incurred by reason of an overflow of eligible horses at an operating track. An overflow occurs when an operating track does not have sufficient facilities to accommodate and house all of the horses competing at the track. Subsection 32(d) of the Illinois Horse Racing Act of 1975 (Ill. Rev. Stat. 1989, ch. 8, par. 37-32(d)) now provides as follows:

"(d) Monies shall be distributed from the Fund to tracks for the cost of erection, improving or acquisition of seating stands, buildings or other structures, ground or track, for the necessary purchase or required restoration of depreciable property and equipment used in the operation of a race track, or for the payment of

the cost of amortization of debt contracted with the approval of the Board for any or all such purposes. The fund shall also be used to reimburse race tracks for the added expenses incurred when it is necessary to establish training facilities at nonoperating race tracks for horses eligible to compete at operating race tracks due to the existence of an overflow of eligible horses using the training facilities at the operating tracks." (Emphasis added.)

You ask whether the transportation expenses described above qualify for reimbursement, in light of the expanded uses of the RTIF.

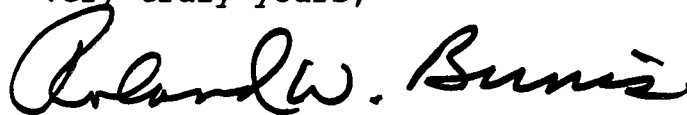
It is fundamental that, in the construction of a statute, the intention of the General Assembly must be ascertained and given effect. (Maloney v. Bower (1986), 113 Ill. 2d 473, 479; Patton v. Industrial Commission (1986), 147 Ill. App. 3d 738, 741.) The obvious intent of Public Act 84-999 was to authorize the use of the RTIF to finance those additional costs incurred by an organization licensee due to an overflow situation. Clearly, the costs or expenses of housing horses, eligible to compete at an operating track, at the training facilities of a nonoperating track are within the purview of amended subsection 32(d). There appears to be no reason, however, to limit subsection 32(d) to housing costs. Public Act 84-999 includes all additional costs incurred by the establishment of training facilities at nonoperating tracks due to the existence of an overflow at an operating track. If, in fact, transportation costs are an additional expense resulting

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from such circumstances, it is my opinion that the RTIF may be used to reimburse organizational licensees for the costs incurred in transporting horses to and from a training facility established at a nonoperating race track for the purpose of handling the overflow of eligible horses competing at an operating track.

As noted above, the RTIF is under the supervision and direction of the Illinois Racing Board. (Illinois Racing Board v. Arlington Park Thoroughbred Race Track Corp. (1979), 76 Ill. App. 3d 289, 293.) Whether specific transportation costs are expenses which result from the establishment of training facilities at a nonoperating track to handle the overflow of an operating track is a question of fact which the Illinois Racing Board must determine in the exercise of its administrative powers. Assuming, however, that the Illinois Racing Board finds that the cost of transporting horses to a training facility is an additional expense to the organizational license, it is within the purview of subsection 32(d) of the Illinois Horse Racing Act of 1975 and qualifies for reimbursement from the RTIF.

Very truly yours,

A handwritten signature in cursive script, reading "Roland W. Burris".

A T T O R N E Y G E N E R A L