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May 1, 1973

FILE NO. S-579

**HORSE RACING:**

**Illinois Racing Board -  
Authority to Issue Free Passes**

Honorable Anthony Scariano, Chairman  
Illinois Racing Board  
Room 1000, State of Illinois Building  
160 North LaSalle Street  
Chicago, Illinois 60601

Dear Mr. Scariano:

I have your letter of recent date wherein you state:

"On January 18, 1968, a Complaint on behalf of various racing associations was brought against the Illinois Racing Board before Judge Cornelius J. Harrington in Chancery Court regarding the Illinois Racing Board policy of giving out free, cardboard Season Passes (Atlass, et. al. versus the Illinois Racing Board, et. al. NO. 68 CH 268).

On February 6, 1968, Mr. Francis Crosby, Chairman of the Illinois Racing Board, wrote to Attorney General, William G. Clark, that the Illinois Racing Board would issue Official Business Passes not to exceed a total of 400. It is our understanding

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that the Illinois Racing Board agreed to this arrangement if the Plaintiff would move for dismissal of the case. The Plaintiff did so and on February 8, 1968, the case was dismissed. The action was dismissed with prejudice.

At the regular Illinois Racing Board meeting on January 29, 1973, the Board moved unanimously that we seek an opinion from your office regarding the legality of the Illinois Racing Board's power, express - implied - or by virtue of custom, to issue free passes especially in view of what transpired in 1968. We would appreciate such an opinion from your office at your earliest convenience."

Section 1 of the Illinois Horse Racing Act (Ill. Rev. Stat. 1971, ch. 8, par. 37a) created the Illinois Racing Board and vested the Board with certain powers and duties as follows:

"There is created an Illinois Racing Board, hereinafter referred to as the Board, which is vested with and possessed of the powers and duties in this Act specified, and also the powers necessary or proper to enable it to carry out fully and effectually all the purposes of this Act. \* \* \* "

Section 1a of the Illinois Harness Racing Act (Ill. Rev. Stat. 1971, ch. 8, par. 37sa) provides that the Illinois Harness Racing Act shall be administered by the Illinois Racing Board. Section 5 of the Illinois

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Harness Racing Act (Ill. Rev. Stat. 1971, ch. 8, par. 37s.4)

provides in pertinent part:

" \* \* \* None of the provisions of the Illinois Horse Racing Act except for those creating the Illinois Racing Board and defining its powers and duties, shall govern or have any application whatsoever to harness racing or harness racing meets conducted pursuant to the provisions of this Act. \* \* \* "

Neither the Illinois Horse Racing Act, supra, nor the Illinois Harness Racing Act, supra, contain explicit provisions vesting the Illinois Racing Board with the authority to issue free passes. However, section 11 of the Illinois Racing Act, (Ill. Rev. Stat. 1971, ch. 8, par. 37k) provides that the Illinois Racing Board may designate representatives to attend any horse racing meeting held under a license issued under the Act. Said section 11, supra, also states:

" \* \* \* These such representatives shall have full and free access to the space or enclosure where such racing meeting is held, including the space or enclosure where the pari-mutuel or certificate system of wagering is conducted or supervised \* \* \* ."

Section 23 of the Illinois Harness Racing Act also provides that the designated representatives of the Racing

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Board shall have full and free access to the space or enclosure where a harness racing meet is held. (Ill. Rev. Stat. 1971, ch. 8, par. 37s.22.) Section 23a of the Illinois Harness Racing Act (Ill. Rev. Stat. 1971, ch. 8, par. 37s.22-1/2) provides that the Racing Board shall designate one of its members or an authorized agent to attend each harness racing meet for the purpose of ascertaining whether or not the provisions of the Act or the rules and regulations of the board are being violated. Such board member or agent is also to have full and free access to any portion of the space or enclosure where the meet is held.

It is a well established principle that an administrative agency derives its powers and authority only from the statute creating it and it, therefore, has only the authority which is expressly conferred upon it. (People ex rel. Illinois Highway Transp. Co. v. Biggs, 402 Ill. 401, and People ex rel. Hurley v. Graber, 405 Ill. 331.) However, an express grant of power to do a particular thing includes the grant of power to do all that is reasonably necessary to execute the power or duty. Owens v. Green, 400 Ill. 380.

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Our Supreme Court in holding invalid an amendment to Rule 131 of the board's Rules and Regulations of Horse Racing, stated in Horsemen's Ass'n. v. Racing Bd., 53 Ill. 2d 16, at page 19:

"It is beyond question that the Board possesses extensive control over the manner in which races are conducted and over the qualifications and eligibility of the various participants, so as to assist the Board in insuring that the racing itself and the pari-mutuel betting permitted by the Act will be conducted honestly, and this, if only to protect the State's interest in the tax revenues accruing from admissions and from wagering. (See Ill. Rev. Stat. 1971, ch. 8, pars. 37e, 37j1.) However, without considering the effect of the absence of any finding by the Board that the quality of horse racing in Illinois has suffered from or was threatened by a lack of competent jockeys, we do not judge that the power to establish the compensation of jockeys or, for that matter, other persons not employed by the Board, can be found in the Act simply on the rationale that an increase in compensation may indirectly benefit horse racing. If jockeys are to be considered employees of licensees, as the trial court judged they were, the Board by the explicit terms of section 1.7 had no right to determine their compensation. If they are to be considered of a status other than employees, there is still no power to be found in the Board to set compensation. There is no authority conferred in the language of the Act, and the absence

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from the statute of any standards, criteria or procedure for determining compensation confirms that no power to make such determinations was intended by the legislature to be given the Board. \* \* \* "

Although the Illinois Racing Board possesses extensive control over the manner in which races are conducted, it lacks specific statutory authorization to issue free passes. While board members or their representatives are entitled to free access to race tracks to insure compliance with the aforementioned Acts and rules and regulations of the board, this cannot be construed as a grant of authority to issue free passes.

Since the Illinois Racing Board, as an administrative body, has only the authority expressly conferred upon it by the statute creating it, it is my opinion that the Illinois Racing Board is without authority to issue free passes to the various race tracks located in Illinois.

I note from your letter that on January 18, 1968, a complaint on behalf of various racing associations was brought against the Illinois Racing Board in regard to the authority of the board to issue free passes. I further note that this same suit was dismissed by agreement of the

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parties on February 8, 1968. Pursuant to that agreement, an order dismissing the case was issued by Judge Harrington. It is my opinion that this order has no affect upon the authority of the Illinois Racing Board to issue free passes. As stated above, this order was entered by consent of the parties. In Massell v. Daley, 412 Ill. 479 at 483, our Supreme Court stated:

"Normally, where a decree is entered by consent of the parties, no appeal can be effected therefrom because the decree is not a judicial determination of the rights of the parties but merely is a recital of the agreement of the parties."

Thus, the order entered in the 1968 litigation cannot be considered as a judicial determination of the respective rights of the parties involved therein.

Very truly yours,

A T T O R N E Y   G E N E R A L