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BEFORE THE  
TEXAS RACING COMMISSION  
AUSTIN, TEXAS

COMMISSION MEETING  
APRIL 1, 2008

Reported by: SHERRI SANTMAN FISHER  
Job #9-68352

1           BE IT REMEMBERED that the above entitled matter  
 2           came on for hearing on the 1st day of April, 2008,  
 3           beginning at 10:31 A.M. at 105 West 15th Street, Room  
 4           140, Austin, Travis County, Texas, and the following  
 5           proceedings were reported by SHERRI SANTMAN FISHER,  
 6           Certified Shorthand Reporter for the State of Texas.

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APPEARANCES

- Commissioners:       JESSE R. ADAMS  
                           G. KENT CARTER  
                           CHARLES L. "SONNY" SOWELL  
                           RONALD F. EDERER  
                           ROLANDO PABLOS  
                           ROBERT SCHMIDT  
                           GLORIA HICKS  
                           BETH ANDERSON  
                           JIMMY ARCHER

1                   CHAIRMAN ADAMS: Good morning, everyone.  
2       It's now 10:30 and time to begin the April 1st, 2008  
3       meeting of the Texas Racing Commission. I will now  
4       call the meeting to order.

5                   I'll remind the Commissioners that there  
6       is a button underneath your desktop here that will  
7       activate your mike. And you may want to keep it on and  
8       off as you please, but I don't know how much extra  
9       static it will pick up. So can everyone hear me?  
10      Thank you very much.

11                  Could I have Gloria please call the  
12      roll?

13                  MS. COOK: Well --

14                  CHAIRMAN ADAMS: There's no Gloria. Can  
15      someone find Gloria?

16                  MS. GIBERSON: Yes. Jimmy Archer?

17                  MR. ARCHER: Here.

18                  MS. GIBERSON: Ron Ederer?

19                  COMMISSIONER EDERER: Here.

20                  MS. GIBERSON: Gloria Hicks?

21                  COMMISSIONER HICKS: Here.

22                  MS. GIBERSON: Rolando Pablos?

23                  COMMISSIONER PABLOS: Here.

24                  MS. GIBERSON: Robert Schmidt?

25                  COMMISSIONER SCHMIDT: Here.

1 MS. GIBERSON: Sonny Sowell?

2 COMMISSIONER SOWELL: Here.

3 MS. GIBERSON: Beth Anderson?

4 MS. ANDERSON: Here.

5 MS. GIBERSON: Kent Carter?

6 VICE-CHAIRMAN CARTER: Here.

7 MS. GIBERSON: Jesse Adams?

8 CHAIRMAN ADAMS: Here.

9 We do have a quorum. And the first order  
10 of business will be to recognize our new Commissioner.  
11 And I'd like to introduce to my fellow Commissioners,  
12 staff, and all the guests here today Beth Anderson who  
13 is joining us as an ex officio member. She's recently  
14 been appointed to the Racing Commission by Chairman  
15 Polunsky of DPS. And, Beth, if you'd like to say  
16 something, you certainly have an opportunity here.

17 MS. ANDERSON: Well, good morning,  
18 everyone. I just look forward to working with you,  
19 Chairman Adams, and the other members of the Commission  
20 and working to advance the proper oversight of racing  
21 in the great State of Texas. And I'm also very  
22 grateful for the staff support from DPS, from the  
23 people in our Criminal Intelligence Service, Motor  
24 Vehicle Theft Service, who support my participation on  
25 this Commission and look forward to working with all

1 the Commission as well as participants in the  
2 industry. I appreciate it.

3 CHAIRMAN ADAMS: Thank you, ma'am.

4 At this time I'd just like to thank  
5 Ernest Angelo for his service to this Commission.  
6 Ernest served us tremendously, a great guy. He was  
7 unselfish in his commitment of time and effort to this  
8 Commission. And Ernest is not here today, but we will  
9 have to have him back for a presentation at some time.  
10 But thanks to him for all his help.

11 The next item on our agenda is public  
12 comment. And we do have, for the very first time ever,  
13 someone signed up for public comment. So on the  
14 subject of the RCI convention, Dave Hooper, please.  
15 And this portion of the agenda does have a time  
16 associated with it, so if I could have staff please  
17 keep time on Mr. Hooper.

18 MR. HOOPER: Mr. Chairman, members of the  
19 Commission, I'm David Hooper, the executive director of  
20 the Texas Thoroughbred Association; but I'm not here to  
21 speak on behalf of the association.

22 I wanted to extend a great commendation  
23 to you, as Commissioners, for your participation in the  
24 RCI convention last week. It was just eye-opening to  
25 see the number of Commissioners from Texas who were

1       there and who interacted with those who came from other  
2       states and out-of-state jurisdictions. And I think  
3       that's a big compliment to you.

4                       I know you all get paid just  
5       overwhelmingly high salaries and so on; and since  
6       that's not the truth, why, the fact that we can get up  
7       here and commend you for gaining greater insight into  
8       this very complex business -- and I know I heard the  
9       comments from several of you that, gee, you really  
10      learned an awful lot and didn't understand, you know,  
11      some of the things that are so critical to the industry  
12      and also to parts of the Texas industry.

13                      I also want to say thanks to the staff  
14      and commendation and congratulations to the staff on  
15      the planning, coordination, and the conduct of the  
16      convention in conjunction with the RCI home staff. I  
17      thought it came off extremely well. I've participated  
18      in a number of RCI conventions over the years, although  
19      not -- not very -- not most recently, but I thought the  
20      dialogue that went on and the subject matter and the  
21      discussion and the interchange was very, very excellent  
22      and maybe better than any of any RCI convention I have  
23      attended, although I don't know if I want to listen to  
24      Dr. Arthur and Dr. Tobin get into it too many more  
25      times.

1           And then I think the industry's hosting  
2   of the evening to make the participants feel so much  
3   more welcome -- I think that went off about as well as  
4   when the press was hosted at the Breeders' Cup in 2004  
5   and everyone went away very, very happy there, and I  
6   think that's probably true, and another plus for Texas  
7   as those out-of-staters go home and know about Texas  
8   hospitality. And I just thought I wanted to get up and  
9   mention that this morning.

10           CHAIRMAN ADAMS: Thank you, Mr. Hooper.  
11   I appreciate that very much.

12           And I'll close the public comment and  
13   open my own comment section. I love the fact that Dave  
14   stole my thunder this morning because I was very much  
15   looking forward to commending the staff and the fellow  
16   Commissioners and those of you in the audience that  
17   were here for a tremendous RCI convention, the first  
18   time that the RCI has ever come to Texas since their  
19   formation in 1934.

20           And it was really interesting. Staff did  
21   some research for me to find some details on the  
22   history of our involvement with RCI. And until Charla  
23   Ann came, there had been a long dry spell where we were  
24   not members of any of the outside organizations and  
25   Charla Ann was instrumental in getting us back involved

1 in that and I think it's going to pay off with  
2 tremendous dividends.

3 But staff found a copy of the annual  
4 report of the Texas Racing Commission to the Governor  
5 of Texas for 1934. And there are extra copies up here  
6 for anyone that would like to pick them up after the  
7 meeting. I'll just leave them up here on the podium.  
8 And each of you Commissioners received one of these in  
9 your packet for this week. Please read it and look at  
10 it. It's really, really interesting.

11 It was presented to Governor Ferguson.  
12 And the Racing Commission held their very first meeting  
13 in 1934 in the Littlefield -- Littlefield? Is that  
14 the -- the Littlefield Building, which is immediately  
15 adjacent to the Driskill Hotel where we held the first  
16 ever RCI convention in Texas and just last week. So I  
17 thought it was really apropos and very neat.

18 And what was funny about this report,  
19 when you read through it, you're going to see a lot of  
20 the same problems they were facing there that we have  
21 today. It's just amazing. Nothing seems to ever  
22 change, you know. They were concerned about the  
23 outside gambling. They didn't have the cell phone  
24 problem, but they had the telegraph problem where the  
25 telegraphers were telegraphing in bets, off-track bets,

1 and they had to pass a statute to prevent that. And  
2 then they hired one telegraph specialist that monitored  
3 the lines to try to catch these guys who were betting  
4 off-track. And it was just -- it's amazing. In any  
5 case, you're free to -- you're welcome to have a copy  
6 there.

7           The convention went well and I really  
8 think there was -- there were a lot of people from out  
9 of state who left here -- I met people at the reception  
10 on the rooftop that had never been to Texas. I mean, I  
11 didn't even know that was possible. I didn't know  
12 there was anybody that did business in the country that  
13 hadn't been to Texas. But it was very good.

14           I'll proceed now with general business,  
15 the discussion, consideration, and possible action on  
16 the following matters: Under budget and finance, we're  
17 going to have Sammy Jackson, deputy director, give us a  
18 report.

19           MR. JACKSON: Good morning,  
20 Commissioners. Under Tab 1 you'll find the update for  
21 the agency's budget. It's as of February 29th, 2008,  
22 which is 50 percent of the fiscal year elapsed. We  
23 have expended 41.6 percent of our budget, which puts us  
24 way under. Reflective of this to the previous fiscal  
25 year, we're about three percent under where we were

1 last time. We can attribute this directly to the  
2 closure of Corpus Christi Greyhound Park and the not  
3 needing for us to expend funds on staffing and ATB  
4 money that we would normally have collected from them  
5 after January 1st.

6 In addition to this report, we have been  
7 given notice by the Legislative Budget Board that we  
8 need to prepare our reconciliation report and submit  
9 that to them in a short time. That is the leadoff  
10 before we start our legislative appropriation process  
11 that we'll be dealing with later this year.

12 If I can answer any questions, I'd be  
13 more than happy to do so.

14 CHAIRMAN ADAMS: Any questions of Sammy?

15 Hearing none, I'll move on to the -- we  
16 do not need official action on that, correct?

17 I'll move on to the next item on the  
18 agenda, racetrack inspections. Carol Olewin?

19 MS. OLEWIN: Good morning,  
20 Commissioners. I'm Carol Olewin. Behind Tab 2 is your  
21 report on racetrack inspection activities. Our first  
22 item is Manor Downs. There was an administrative  
23 inspection. We had four unsatisfactory items. Those  
24 have all been resolved now.

25 And below that is also a Corpus Christi

1 administrative inspection. There were five unresolved  
2 items and those have all been resolved now.

3           If you'll look down through here, you'll  
4 see that on the pari-mutuel inspections, we have some  
5 notations. There's a note at the bottom of your report  
6 which says in regards to -- or the pari-mutuel  
7 inspections are in regards to the self-serve machines,  
8 the cancellation of wagers on self-serve machines, and  
9 the racetracks are required to provide a plan to the  
10 executive secretary for approval. All those plans are  
11 due on April 18th of 2008 and we should be able to  
12 resolve those pari-mutuel items that are remaining.

13           Are there any questions?

14           CHAIRMAN ADAMS: Any questions for  
15 Carol?

16           I think not. Thank you, ma'am.

17           MS. OLEWIN: Thank you.

18           CHAIRMAN ADAMS: We next have the report  
19 and update by the executive director and staff  
20 regarding administrative matters. Charla Ann?

21           MS. KING: Thank you, Mr. Chairman. I'll  
22 start with a Corpus Christi Greyhound Racetrack  
23 update. All of the greyhounds have now been removed  
24 from Corpus Christi Greyhound Racetrack. On March 1st  
25 the remaining greyhounds placed for adoption were moved

1 to a boarding kennel at Lorena, Texas, under the  
2 supervision and care of the Texas Greyhound  
3 Association, TGA.

4 TGA made the decision to move the  
5 remaining greyhounds to more effectively monitor their  
6 care and make sure that they were vacating the Corpus  
7 Christi kennel compound so that the racetrack could  
8 continue its repair work, which is very important.  
9 While this move incurred additional expense for TGA, it  
10 was in the best interest of all parties.

11 As of March 21st, the TGA reported that  
12 18 greyhounds are still housed at the Waco kennel  
13 awaiting adoption to permanent home through one of the  
14 greyhound adoption programs.

15 Corpus Christi Greyhound is currently  
16 making repairs to their facility. Staff has planned a  
17 comprehensive inspection of the facility for early  
18 May. The purpose of the inspection is to ascertain the  
19 progress of the repairs as well as compliance with  
20 Commission rules prior to race date discussions.

21 Next is an update on the agency  
22 inspection program. Some of you may recall that in May  
23 of 2006 the State auditor's office issued a report on  
24 our agency. It was in that report that the auditor  
25 addressed the need for us to become more consistent and

1 to improve the support documentation used in our  
2 inspection efforts.

3           The State auditor recommended that the  
4 Commission create a schedule showing when racetrack  
5 inspections should be completed and develop a process  
6 to ensure that the inspections are completed in  
7 accordance with that schedule and, number two, create  
8 more detailed racetrack inspection forms or develop  
9 more specific documented procedures for the inspections  
10 so that when the inspectors go out that they had a lot  
11 of detail in terms of what they were looking for.

12           Staff agreed with the need to make the  
13 improvements and, in fact, we went beyond those  
14 recommended by the State auditor.

15           At this time we'd like to highlight a  
16 couple of these changes so that everyone affected by  
17 the changes are fully aware that the Commission has  
18 significantly adjusted its approach. This should be of  
19 particular benefit to the racetrack associations and  
20 their staff members.

21           Number one, we found that several of the  
22 weaknesses in the program related to the lack of  
23 central management overseeing the process. Therefore,  
24 we have designated an inspection program  
25 administrator. This is Carol Olewin who just gave the

1 report. She will coordinate the overall inspection  
2 program. She'll be monitoring the staff members who  
3 are conducting the inspections and ensuring that  
4 they're following the inspection program policies and  
5 procedures, of which there are a number.

6           Number two, we are now planning and  
7 conducting unannounced inspections that are performed  
8 by members of the senior staff, which that's different  
9 from the way we were doing things before. This change  
10 should address the need to keep a fresh set of eyes on  
11 the condition of racetrack facilities and help the  
12 agency apply its maintenance standards more uniformly.

13           And number three, we've reorganized what  
14 we've previously referred to as the administrative  
15 inspection, which turned out to be a catchall  
16 category. These items belonged in other inspection  
17 areas and now they've been more logically placed to  
18 allow for more regular and effective review.

19           I'm pleased to report today that all the  
20 State auditor's recommendations have been fully  
21 implemented. These changes are already being noticed  
22 at the tracks. I believe that the headquarters staff  
23 is now better positioned to be involved in the  
24 identification and resolution of problems out at the  
25 tracks and it will produce the kind of enhanced support

1 to the field staff that's been overdue, frankly.

2 Any questions on the inspection program?

3 My next topic is the race date allocation  
4 for 2009. It is time for us to prepare for race date  
5 allocation for next year. Some of you will recall that  
6 last year we made some rule changes in the process.  
7 For many years our rules set out an annual July 1st  
8 deadline to submit requests for the dates in the  
9 following calendar year. However, the race date  
10 working group, in that process we found the Commission  
11 and the industry needed additional flexibility to  
12 respond to changes in the business and economic  
13 landscape.

14 The rule change allows the Commission to  
15 establish a time period for which it will consider  
16 granting race dates. At this time the period may be  
17 longer or shorter than a calendar year. The rule also  
18 no longer requires a specific date for submitting the  
19 racetrack association's request, but it does require  
20 that we provide the racetrack associations with 30  
21 days' notice for development and submission of their  
22 request.

23 Staff recommends opening the race date  
24 application period at the June 3rd meeting. That will  
25 be our next meeting. This should provide adequate time

1 for the industry to develop their requests and provide  
2 for our review. We recommend the application period  
3 close July 3rd and have the Commission make its  
4 decision at the August 5th meeting. This should also  
5 work with the current deadlines that are set for the  
6 three new licenses that have July 1st submission due  
7 dates in the Commission orders. So that was an  
8 important part of getting this process up and running.

9           Year before last we conducted extensive  
10 working group meetings which served as the foundation  
11 for the decision-making process for both '07 and '08.  
12 Right now it appears to us that the greyhound race  
13 dates have the potential for the most intensive work  
14 and discussion. When we left off with greyhounds, the  
15 discussion was still focused on the possibility of  
16 Corpus Christi returning to racing and the need for a  
17 circuit that includes all three tracks.

18           The horse race dates may require less  
19 intensive discussion because the breed split agreement  
20 is in place for three years. However, with the  
21 addition of three licenses, there will undoubtedly be a  
22 need to get the Commissioners together and participate  
23 some.

24           Mr. Chairman, it's been customary for the  
25 horse and greyhound representative to participate. We

1 would need one more Commissioner added to each group.

2 CHAIRMAN ADAMS: And currently the  
3 Commissioners on the greyhound group are Commissioner  
4 Pablos. Is that correct?

5 MS. KING: That's correct.

6 CHAIRMAN ADAMS: And Commissioner  
7 Schmidt? Is that correct? Or who is the other  
8 member?

9 MS. KING: I believe that this time  
10 around that Commissioner Hicks will be participating --

11 CHAIRMAN ADAMS: Commissioner Hicks.  
12 Okay. Very good.

13 MS. KING: -- on the greyhound.

14 CHAIRMAN ADAMS: Okay. And on the horse  
15 we have Commissioner Sowell? Is that correct? Or is  
16 there --

17 MS. KING: No. We have Commissioner  
18 Ederer who is the representative.

19 CHAIRMAN ADAMS: Chairing that?

20 MS. KING: Yes, sir.

21 CHAIRMAN ADAMS: Okay.

22 MS. KING: And then we were thinking,  
23 because of some other assignments that were happening,  
24 that Dr. Schmidt could serve.

25 CHAIRMAN ADAMS: Can serve on the horse?

1 COMMISSIONER SCHMIDT: Yes.

2 CHAIRMAN ADAMS: Okay. Very good.

3 Consider those appointments made.

4 Does that complete that portion of  
5 your --

6 MS. KING: It does of the race dates.

7 CHAIRMAN ADAMS: I also have -- while  
8 we're on this subject of working groups, I have two  
9 working groups that I would like to ask my fellow  
10 Commissioners to take part in. And I think I've  
11 discussed with some of you the need for those.

12 And the first of those will be our  
13 policies, procedures, and ethics working group. And  
14 this working group will take on the challenge and the  
15 task of updating and upgrading our current ethics  
16 procedures for staff and for Commissioners as well as  
17 just basic policies and procedures for operations. And  
18 I've asked Commissioner Ederer to chair that Commission  
19 and Commissioner Anderson, Beth Anderson, and Gloria  
20 Hicks will serve with him on that Commission.

21 The second working group that I would  
22 like to appoint is the working group on the future  
23 funding of the Texas Racing Commission and staff. And  
24 this is a long-term project that will probably go well  
25 into the legislative session in 2009. But I'd like to

1 ask Commissioner Pablos to chair that Commission for  
2 me, if he's willing to do that, and ask Commissioner  
3 Sowell and Commissioner Schmidt to serve with  
4 Commissioner Pablos on that long-term funding.

5           It's a very important subject that I  
6 think is going to be a major, major concern when -- if  
7 and when changes are made to the Commission status; and  
8 if, in fact, there's any additional gaming authorized  
9 for Texas, that will be a big, big part of how we're  
10 funded. So if you'll take that on, we'd very much  
11 appreciate it, Commissioner Pablos.

12           The next item on the agenda -- are you --

13           MS. KING: I have just two very short  
14 things. One thing I would like to do is to introduce a  
15 new staff member, Ms. Megan Goode, who joins us as a  
16 special projects coordinator -- this is Megan. Thank  
17 you -- a special projects coordinator, which really  
18 means the doer of State government required reports and  
19 projects.

20           Ms. Goode comes to us with extensive  
21 State government experience. She holds a Master's  
22 degree in public administration from Texas A&M and  
23 served on staff at the Legislative Budget Board. She  
24 mostly recently served as special projects coordinator  
25 for another regulatory Article 8 agency, the Texas

1 Medical Board. And so I'd like to officially welcome  
2 her to the Commission and encourage you to get to know  
3 her.

4 And the last thing I just wanted to do  
5 was to also mention RCI and not in so much detail  
6 because we've already covered it. But I wanted to  
7 thank the Commissioners very much for their attendance,  
8 support, and participation. It was great to have the  
9 chairman open the conference and then be followed by  
10 our other member, Comptroller Combs. She was a pretty  
11 big hit. They enjoyed her.

12 Dr. Carter also attended faithfully  
13 probably throughout the whole meeting. He attended the  
14 RMTC board meeting also and moderated an important  
15 forum on equine and greyhound research. And we got a  
16 lot of positive feedback, as Dave was mentioning, about  
17 the quality of the program; and I think that we made a  
18 difference there.

19 And thank you to the industry for  
20 participation. They came to a lot of the meetings and  
21 they presented information. We had folks from our  
22 industry who were on the program and I appreciated that  
23 very much. I think it was a good training opportunity  
24 and that we got a lot of good information that we can  
25 use.

1           I should mention that I was reelected for  
2 another term on the board which should assist  
3 particularly in one area, which that's regional  
4 cooperation. In fact, we had a very productive meeting  
5 that included representatives from Louisiana, Arkansas,  
6 Oklahoma, New Mexico, and Colorado. For the first time  
7 these states will be coordinating on a regular basis to  
8 improve the consistency of regulation in our region of  
9 the country. And I want to thank Chairman Adams,  
10 Vice-chair Carter, and Commissioner Ederer for  
11 attending that very early morning meeting. But I  
12 anticipate some good things coming from that regional  
13 cooperation.

14           Mr. Chairman, that concludes my remarks.

15           CHAIRMAN ADAMS: Thank you very much.

16           One other item that has not been touched  
17 on from the Commission -- from the RCI convention was  
18 the fact that our current testing that the Texas Racing  
19 Commission is doing, the ongoing 40-horse test that's  
20 taking place about -- regarding the detection and  
21 control of anabolic steroids, was a big hit nationally  
22 and internationally and I think they're looking at the  
23 result -- they're going to be looking at the results of  
24 our testing very, very intensely as those results come  
25 forward. So I applaud our veterinary staff for taking

1 the -- making an effort to do that and this Commission  
2 for approving and supporting it.

3 MS. KING: Very good. Thank you.

4 CHAIRMAN ADAMS: Thank you.

5 The next item is the agency's response to  
6 the Sunset Advisory Commission staff report. And again  
7 I'd like to recognize Executive Director King.

8 MS. KING: Mr. Chairman and members,  
9 you've received a draft of the agency's response to the  
10 sunset staff report. The response is due on Friday and  
11 I wanted to make sure that you had an opportunity to  
12 review the staff's intended material. You have a copy  
13 of it there. It comes in two pieces.

14 Overall we're in agreement with the  
15 report and its recommendations. We've provided  
16 additional input on a couple of items for the sunset  
17 staff and the Commission.

18 In regard to the first issue, we have  
19 specified the fiscal impact that will occur if the  
20 Commission is required to review and renew the  
21 racetrack licenses. Because we are a self-leveling  
22 general revenue dedicated agency, the sunset staff  
23 report does not detail the fiscal implications. You  
24 will see in our response that we've provided some of  
25 that detail to ensure that everyone is aware of the

1 associated costs.

2 Also in regard to the first issue, we  
3 have requested a modification to include updating of  
4 language related to security bond requirements. We  
5 have discussed this issue with the sunset staff and  
6 they are in support of our requested modification.

7 Issue 2 recommends that the Commission  
8 license only individuals who can affect pari-mutuel  
9 racing. In our response we've pointed out that it's  
10 important for the Commission to retain its authority to  
11 require the racetrack associations to conduct  
12 background checks and that we have the authority to  
13 audit those background checks to support the process.

14 We did some checking on individuals in  
15 '07 that would not have been licensed under the new  
16 approach and found some problems with their background  
17 checks; so to reduce risk in that area, our plan would  
18 be to adopt rules to ensure that the background checks  
19 are being conducted.

20 The only other feedback that we are  
21 providing is in regard to the equine research account  
22 advisory committee. The sunset staff report recommends  
23 abolishing the committee. As one can expect,  
24 abolishment recommendations get a fair amount of  
25 attention.

1                   In our response I have chosen to request  
2 a modification to the approach taken by sunset. Racing  
3 Commission staff has found the interaction with the  
4 committee beneficial; and since I joined the  
5 Commission, we've been working to increase our  
6 participation with the committee. In fact, Dr. Marsh,  
7 our chief veterinarian, has now been regularly involved  
8 with the meetings and interacting with the committee  
9 members.

10                   Sunset staff rightly points out that the  
11 funding situation is creating a significant problem;  
12 and from what the sunset staff describes in the report,  
13 Texas AgriLife Research provides the type of funding  
14 assessment process that the advisory committee is  
15 designed for. We're not in a position at this point to  
16 judge that, so what we're doing in the response is to  
17 emphasize the need for equine research to support the  
18 regulatory process and for equine research projects to  
19 benefit the racing industry.

20                   I felt that the sunset staff  
21 recommendation needed to address some additional  
22 implementation issues and so I've recommended some  
23 statutory additions, including the need to specifically  
24 maintain the Commission's and the industry's  
25 opportunity to provide meaningful input because that

1 wasn't directly addressed in the recommendation.

2           Our response also emphasizes the need to  
3 promote communication about the important role in  
4 equine research and in the health and safety of the  
5 horses in pari-mutuel racing. Perhaps this can help  
6 address the funding issue because it may be that the  
7 importance of the funding has not been effectively  
8 communicated through the legislative appropriations  
9 process and that's why there's a funding issue.

10           So you may want to take a look at that.  
11 That's probably the lengthiest piece of our response  
12 because we're in agreement with the others.

13           Now, the last piece that you have before  
14 you is a draft response of a new issue that's being  
15 presented by our Commissioner Sowell. And we have a  
16 draft of it that we've shared for you. You may want to  
17 take a look at it. The title of the issue is The  
18 Commission Should be Authorized to Support the Economic  
19 Growth of the Racing Industry. Commissioner Sowell has  
20 laid out some options for expanding the way the  
21 Commission discusses economic impact and economic  
22 well-being.

23           And Commissioner Sowell may want to  
24 address that at this time or you can take a look at  
25 it. And there may be some of you who would like to

1 sign on to the new issue as well. The Commissioners  
2 are -- that is certainly their prerogative to do so.  
3 So you have a draft of it.

4 And Commissioner Sowell?

5 COMMISSIONER SOWELL: A very short  
6 statement. And that simply is that it's always been a  
7 bur under my blanket that the statutory provisions  
8 prohibit this Commission and any of its staff from  
9 doing anything to support the racing industry. And  
10 that, to my way of thinking, was a reprehensible  
11 handicap for what activities we might be able to engage  
12 in that would help the industry. And that was the  
13 purpose for raising the issue.

14 And I want to commend the staff for  
15 putting the nuts and bolts where they needed to be.  
16 And I would suggest that everybody read this and you'll  
17 get a lot more from doing that than you will from me  
18 talking any more. Thank you.

19 CHAIRMAN ADAMS: Thank you, Commissioner  
20 Sowell. While we're talking about burs in blankets, I  
21 commend your cojones.

22 Commissioner -- I mean, Charla Ann, are  
23 you -- anything else you'd like to address under that  
24 item?

25 MS. KING: No, sir. That concludes my

1 remarks.

2 CHAIRMAN ADAMS: Okay. With that, we  
3 will proceed then to Item 4, proceedings on  
4 occupational licensing, a discussion, consideration,  
5 and possible action on the following matters: Number  
6 one, the proposal for decision in SOAH No. 476-08-1043,  
7 the appeal of Jack Young from the Stewards' Ruling Lone  
8 Star Park 2037. Rhonda Fritsche, please, attorney for  
9 the Texas Racing Commission?

10 MS. FRITSCHKE: Rhonda Fritsche, legal  
11 counsel for the Commission. Notice was sent to  
12 Mr. Young regarding the meeting today, and I don't  
13 believe he's here.

14 This case involved a licensee trainer  
15 that neglected his horses stabled at Retama Park. The  
16 stewards' ruling suspended the licensee for six months,  
17 four of which were probated, and imposed a fine of  
18 \$250. The administrative law judge found no clear  
19 error with the stewards' ruling.

20 At this point the Commission may adopt  
21 the proposal for decision in whole or part, decline to  
22 adopt the proposal for decision in whole or part, or  
23 remand the proceeding to SOAH and direct the ALJ to  
24 give further consideration to the proceeding with or  
25 without reopening the hearing.

1                   CHAIRMAN ADAMS: Thank you, ma'am.

2                   Is Mr. Jack Young available? Is a  
3 representative of his present?

4                   What are the wishes of the Commission?

5                   COMMISSIONER SCHMIDT: Mr. Chairman?

6                   CHAIRMAN ADAMS: Yes.

7                   COMMISSIONER SCHMIDT: As a new member of  
8 the Commission, I've really not been exposed to  
9 extensive precedent in this matter; but I must say that  
10 I find the suspension or the lack of suspension  
11 somewhat troubling. Unless there are mitigating  
12 circumstances here which may explain these actions, I  
13 think, in part, we certainly represent owners who have  
14 their horses trained by licensed trainers in the State  
15 of Texas. At the very least, at the very least, you  
16 expect humane treatment while they're on the track.  
17 You assume it's a given that they're going to certainly  
18 feed and water the horses. And I think essentially a  
19 two-month suspension is inadequate at the very least.

20                   CHAIRMAN ADAMS: Could counsel address  
21 any extenuating circumstances or why the six-month was  
22 adjusted or --

23                   MS. FRITSCHER: I don't believe the  
24 stewards ever justified that rationale for a reduction  
25 to two months.

1                   CHAIRMAN ADAMS: Explain to me again.  
2     Our basic policy would call for six months suspension,  
3     but --

4                   MS. FRITSCHKE: That is what the stewards  
5     originally proposed.

6                   CHAIRMAN ADAMS: But the recommendation  
7     now is for two months, plus \$250? Is that what you're  
8     saying? Is that what I heard?

9                   MS. FRITSCHKE: That's the basic penalty  
10    as it stands now because four of the months were  
11    probated. It was a six-month suspension.

12                  CHAIRMAN ADAMS: I see.

13                  Okay. Any other discussion?

14                  COMMISSIONER SOWELL: Mr. Chairman, I  
15    would join the fellow Commissioner in stating that this  
16    is woefully inadequate in my opinion and we're not  
17    going to teach anybody anything by this sort of  
18    something that doesn't rise to the level of a slap on  
19    the wrist.

20                  In addition to suspension, I think we  
21    ought to increase the -- if we can legally do so, we  
22    ought to increase the amount of the fine of \$250,  
23    which, again, is just not big enough to get anybody's  
24    attention. And I'm not sure what might be, but I think  
25    we need to take some steps and perhaps our counsel can

1 give us some light to be shed on that.

2 MS. FRITSCHKE: Well, the stewards, by  
3 rule, are allowed to go up to \$5,000 for a penalty and  
4 one-year suspension.

5 MS. ANDERSON: Have we had -- I hope the  
6 answer is no. But I mean, have we had another deceased  
7 horse situation like this that we have something to  
8 compare to?

9 MS. FRITSCHKE: I am not familiar with  
10 any --

11 CHAIRMAN ADAMS: In my five years on the  
12 Commission, we've never, Commissioner.

13 MS. ANDERSON: That's good news.

14 CHAIRMAN ADAMS: We've never had it  
15 before.

16 Yes, sir, Commissioner Schmidt?

17 COMMISSIONER SCHMIDT: Do you know,  
18 ma'am, were these his horse or were these horses that  
19 he was training and receiving a daily fee for?

20 MS. FRITSCHKE: I believe the majority of  
21 the horses were other -- owned by other individuals. I  
22 think he also was licensed as a trainer/owner, but I  
23 believe all of the horses in this case belonged to  
24 other people.

25 COMMISSIONER PABLOS: Mr. Chairman?

1                   CHAIRMAN ADAMS:  Yes, Commissioner  
2   Pablos.

3                   COMMISSIONER PABLOS:  We're looking here  
4   at a decision on an appeal.  Was this issue brought to  
5   us -- or I guess the question is:  Are the rulings  
6   brought to us when they happen, when they occur, or do  
7   you only bring appeals to us?  How does that work?

8                   MS. FRITSCHER:  You will only see the  
9   appeal at this point.  This process, the stewards heard  
10  the case.  They made a ruling.  And once it was  
11  appealed, it was brought to the attention of the  
12  staff.

13                  COMMISSIONER PABLOS:  So at no time are  
14  we advised of the rulings as they occur.

15                  MS. FRITSCHER:  Well, we could be, but  
16  that's --

17                  COMMISSIONER PABLOS:  I'm just asking  
18  have we been -- does this body here receive a summary  
19  of the rulings that are taking place as we're doing  
20  business?

21                  MS. FRITSCHER:  No, not that I'm aware  
22  of.

23                  COMMISSIONER PABLOS:  And the reason I  
24  ask is because, you know, had we known about this  
25  ruling, we could have made that determination back

1       then. Right here we're at the appellate level. And so  
2       I'm wondering, if we don't do it now, can we begin a  
3       process where you guys bring to us all of the rulings  
4       so that we can at least know what's going on?

5                 CHAIRMAN ADAMS: In a report form, you're  
6       saying, as opposed to approval.

7                 COMMISSIONER PABLOS: As part of an  
8       agenda item during our meeting.

9                 CHAIRMAN ADAMS: Other discussion?

10                Go ahead, Commissioner Carter.

11                VICE-CHAIRMAN CARTER: I'm one of the few  
12       non-attorneys here, so help me understand this. It's  
13       not our option to change the rule now and change the  
14       fine now. We can accept what we have or deny what we  
15       have. Is that correct?

16                MS. FRITSCHKE: I believe -- well, go  
17       ahead. Go ahead.

18                MR. FENNER: You do have the authority to  
19       change a conclusion of law as long as you justify it.  
20       And the penalty and fine in this PFD are listed in  
21       Conclusion of Law No. 9. So if you wished to modify  
22       Conclusion No. 9 and say "We find that the -- based on  
23       the findings of fact that the penalty assessed in  
24       Conclusion No. 9 is insufficient to address the  
25       violation and we therefore modify it in this form and

1 fashion," you have the authority to do that. So if you  
2 wish to increase it, you can.

3 CHAIRMAN ADAMS: And is there -- is this  
4 the final action on that issue then short of --

5 MR. FENNER: They can file a motion for  
6 rehearing. After that, it would go to court.

7 CHAIRMAN ADAMS: It would go to the civil  
8 courts.

9 MR. FENNER: (Nod affirmative).

10 CHAIRMAN ADAMS: Okay.

11 COMMISSIONER SCHMIDT: May I make a  
12 motion?

13 CHAIRMAN ADAMS: Certainly.

14 COMMISSIONER SCHMIDT: I find this -- I  
15 move that this penalty is insufficient for the inhumane  
16 treatment of a racehorse and I move that we suspend  
17 this gentleman six months without probation.

18 CHAIRMAN ADAMS: And would you  
19 consider -- was not the 250-dollar fine a part of the  
20 original?

21 COMMISSIONER SCHMIDT: Yes.

22 CHAIRMAN ADAMS: Will you make that a  
23 part of your motion as well?

24 COMMISSIONER SCHMIDT: Yes.

25 MR. FENNER: So six months and 250.

1                   CHAIRMAN ADAMS: We're going back to the  
2 original penalty is what Dr. Schmidt is saying.

3                   MR. FENNER: Without the probation.

4                   CHAIRMAN ADAMS: Without the probation.  
5 Is there a second for that motion?

6                   COMMISSIONER SOWELL: Second.

7                   CHAIRMAN ADAMS: It's been moved and  
8 seconded.

9                   All those in favor please say aye.

10                  COMMISSIONERS: Aye.

11                  CHAIRMAN ADAMS: Any opposed?

12                  The motion carries.

13                  Thank you very much.

14                  The next item is proceedings on  
15 racetracks, discussion, consideration, and possible  
16 action on the following matter: Request by Sam Houston  
17 Racetrack to modify its 2008 live racing schedule.  
18 Eric Johnston, Sam Houston Race Park?

19                  MR. JOHNSTON: Good morning,  
20 Commissioners. I'm Eric Johnston, vice-president of  
21 racing at Sam Houston Race Park. And I am here to  
22 request, on behalf of Sam Houston Race Park, permission  
23 to modify our racing dates for this summer for our  
24 Quarter Horse meeting.

25                  We would like to delete July 5th from our

1 calendar and add September 12th and 13th to our racing  
2 schedule this year. The deletion of July 5th will give  
3 us the ability to host a major music event in the  
4 Houston market; and doing so, there's also some good  
5 things for everyone involved.

6 It eliminates a race day at a point in  
7 the meet where we are -- it's a lot of pressure for  
8 horses as we overlap with Delta Downs and with  
9 Gillespie County Fair running at the same time. And by  
10 going to the 12th and 13th of September, it reduces the  
11 downtime for the horsemen by allowing them an extra  
12 week of racing and training at Sam Houston before they  
13 go off to Lone Star which starts on September 26th.

14 We respectfully request this change and  
15 hope that you can allow us to do this.

16 CHAIRMAN ADAMS: Any questions for  
17 Mr. Johnston?

18 Hearing none, thank you, sir.

19 MR. JOHNSTON: Thank you.

20 CHAIRMAN ADAMS: Next signed to speak,  
21 Rob Werstler.

22 MR. WERSTLER: Good morning,  
23 Commissioners. Rob Werstler, executive director of the  
24 Texas Quarter Horse Association.

25 It seems a bit disingenuous when you're

1 the 12th person to recognize the staff for the work  
2 they did at the RCI, but they did a superb job. They  
3 really did. I've been around Racing Commissions most  
4 of my life and working with staffs, and I can tell you  
5 that they really did a great job representing Texas and  
6 I don't think they were recognized enough at the --  
7 during most of the meetings.

8           The Texas Quarter Horse Association is in  
9 support of the race date changes that Sam Houston has  
10 proposed. We thought the HBPA did a fine job  
11 negotiating an equitable deal. Our decision wasn't  
12 without its gnashing of teeth. We were -- you know,  
13 you hate to give up a Saturday in July; but for the  
14 reasons that Mr. Johnston spoke of, it narrows the gap  
15 between the end of Houston and the beginning of Lone  
16 Star. They do have trouble finding horses over the 4th  
17 of July weekend. In the past it was usually a five-day  
18 week and it is tough because Delta Downs does put a  
19 draw on it.

20           We hope it doesn't set any type of  
21 precedence as far as setting race dates in the future.  
22 We also hope that Sam Houston doesn't become a concert  
23 venue primarily and a racetrack venue secondarily.

24           But to -- like our friend Tommy Azopardi  
25 likes to say, we're going to turn lemons into

1     lemonade. We're also racing live that day at  
2     Gillespie, so we're going to have a TQHA Day at  
3     Gillespie. We're going to have giveaways. We'll take  
4     our booth over there, have giveaways. AQHA and John  
5     Deere have added money for a stakes race. And so we're  
6     going to have a couple of extra stakes there.  
7     Gillespie has a dance that night. So hopefully we can  
8     turn this into a fun event.

9                     And if there are any questions, I'd be  
10    happy to answer them.

11                    CHAIRMAN ADAMS: Questions for  
12    Mr. Werstler?

13                    Thank you, sir.

14                    MR. WERSTLER: Thank you.

15                    CHAIRMAN ADAMS: Next signed, Mr. Jordan,  
16    Tooter Jordan.

17                    MR. JORDAN: Mr. Commissioner,  
18    Commissioners, my name is Tooter Jordan. I'm with the  
19    Texas Horsemen's Partnership. And we -- we gave this a  
20    lot of thought. There was a lot of things that went  
21    into consideration of changing this date.

22                    We felt like that the main thing that we  
23    were most interested in was getting that extra day.  
24    It's been hard-pressed to get racing dates throughout  
25    the past few years and we got to actually add a day to

1 Sam Houston's race card, live race card, which means a  
2 lot to the horsemen.

3 Like Rob mentioned, we were at 20 days  
4 between Sam Houston ending and Lone Star Park opening  
5 up with the other schedule. This takes a lot of time  
6 to -- wasted time, in other words, at that point in  
7 time when our horses are ready to run. We'll be able  
8 to move from Sam Houston with only 13 days between the  
9 Sam Houston race meet ending and Lone Star opening up,  
10 which will help the horsemen quite a bit.

11 We gave this a lot of consideration, two  
12 or three different teleconferences. All the directors  
13 were involved. And we just felt like for the horsemen  
14 it was the best thing to do and we're in support of Sam  
15 Houston's date change.

16 CHAIRMAN ADAMS: Thank you, Mr. Jordan.

17 MR. JORDAN: Any questions?

18 CHAIRMAN ADAMS: Any questions?

19 I think not, sir. Thank you.

20 I have no one else signed. Is there  
21 anyone else here to speak in favor or in opposition to  
22 the proposal?

23 Hearing none, the Chair will entertain a  
24 motion to approve Sam Houston Race Park's request to  
25 add -- to delete July 5th and add September 12th and

1 13th to its 2008 live race calendar.

2 VICE-CHAIRMAN CARTER: So move.

3 COMMISSIONER SOWELL: Second.

4 CHAIRMAN ADAMS: It's been moved by

5 Commissioner Carter and seconded by Sonny Sowell, by

6 Commissioner Sowell.

7 All those in favor?

8 COMMISSIONERS: Aye.

9 CHAIRMAN ADAMS: Any opposed?

10 The motion carries.

11 The next item, proceedings on rulemaking,

12 discussion and consideration and possible action on the

13 following rules: A proposal to amend 311.3,

14 information for background investigations.

15 Mr. Fenner?

16 MR. FENNER: Commissioners, when the

17 sunset staff report came out, they observed that our

18 current rules provide that we refingerprint each

19 licensee and obtain a new background check at the

20 five-year renewal mark. Sunset staff identified that

21 the RCI model rules called for refingerprinting at the

22 three-year mark and is making a recommendation that we

23 shorten our time frame from five years to three years.

24 The staff is in agreement with that

25 recommendation. This is in our rules and it is within

1 your authority to go ahead and address. So that's what  
2 this does. You'll see it on Tab 5-1, line 24. We're  
3 scratching out five and inserting three. The same  
4 happens on Tab 5-2. We're replacing five with three.

5 So we would recommend that the staff --  
6 or that the Commission vote to publish this in the  
7 Texas Register for public comment.

8 CHAIRMAN ADAMS: Thank you, Mr. Fenner.

9 Any questions of Mark? Yes, Rolando.

10 COMMISSIONER PABLOS: Mark, what is the  
11 purpose of requesting a background check?

12 MR. FENNER: The purpose of the  
13 background check is to ensure that the people who are  
14 working on the background do not have a criminal  
15 history and are appropriate to work in the industry.

16 COMMISSIONER PABLOS: And so during the  
17 time, those three years that we're asking for now, is  
18 there a self-reporting requirement of the licensee to  
19 advise us of any criminal activity?

20 MR. FENNER: I don't believe that there's  
21 a self-reporting requirement. However, the Department  
22 of Public Safety does have an ongoing reporting  
23 requirement where they, the Department of Public  
24 Safety, reports to the Commission every time somebody  
25 who has ever been licensed with the Commission has a

1 criminal conviction. And that database is maintained  
2 on a daily basis by our staff.

3 COMMISSIONER PABLOS: And so they would  
4 report to us if there had been new activity during that  
5 time?

6 MR. FENNER: Yes. And we catch a lot  
7 that way.

8 CHAIRMAN ADAMS: Any other questions?

9 COMMISSIONER SOWELL: Move the approval.

10 CHAIRMAN ADAMS: Hold on. Let me ask if  
11 there's anyone -- is there anyone here in the audience  
12 to speak on this subject?

13 Okay. Go ahead, Mr. Sowell.

14 COMMISSIONER SOWELL: So move.

15 COMMISSIONER EDERER: Second.

16 CHAIRMAN ADAMS: It's been moved and  
17 seconded to publish the proposed amendment, Rule 311.3,  
18 in the Texas Register for public comment.

19 All those in favor?

20 COMMISSIONERS: Aye.

21 CHAIRMAN ADAMS: Any opposed?

22 The motion carries.

23 We're going to take a break at this time  
24 in the agenda and we're going to go -- we will now  
25 enter executive session. It is 11:18. And the --

1 during the executive session, we're going to confer  
2 with our attorneys regarding the litigation by Trinity  
3 Meadows Raceway, Incorporated, against the Commission  
4 in Bankruptcy Case No. 97-41302, Adversary  
5 No. 06-04165.

6 We're also going to discuss the  
7 litigation against the Commission in Cause  
8 No. D-1-GN-08-000416, Larry Langley and James  
9 R. Dunnigan doing business as the Langley Group and to  
10 seek the advice of our attorneys as privileged  
11 communication under the Texas Disciplinary Rules of  
12 Professional Conduct.

13 We will return and reconvene this meeting  
14 as soon as that executive session is completed. Thank  
15 you.

16 (Recess from 11:19 a.m. to 11:46 a.m. for  
17 executive session)

18 CHAIRMAN ADAMS: It is now 11:46 and we  
19 are reconvening this meeting April 1st, 2008, of the  
20 Texas Racing Commission. We're out of our executive  
21 session. And we will note -- take no action on the  
22 lawsuits that we discussed at this time.

23 The next item on the agenda is a proposal  
24 to repeal 311.51, interim license to conduct racing  
25 meetings. Mr. Mark Fenner, attorney for the Texas

1 Racing Commission?

2 MR. FENNER: Commissioners, two meetings  
3 ago we had this item posted on the agenda for  
4 discussion by the Commission and we received direction  
5 from the Commission to look into two items before the  
6 Commission considered it again.

7 The first was to conduct a survey of the  
8 other racing jurisdictions to determine whether or not  
9 they had a license similar to the interim license, and  
10 the second was to request an opinion from the Attorney  
11 General's office as to whether the Commission had the  
12 statutory authority to even promulgate the interim  
13 license rule.

14 Since that time we have conducted the  
15 survey of the other states. None of the states who  
16 responded to our survey have a license similar in  
17 nature to the interim license.

18 As to the Attorney General's opinion, we  
19 did file such a request. Unfortunately, we are in  
20 litigation over this very issue; and since there is  
21 litigation, the Attorney General's office declined to  
22 issue an opinion on that, that issue.

23 So at this time we bring it back to you  
24 for the reasons we brought it to you two meetings ago,  
25 to discuss whether or not this rule should continue to

1 exist or whether it should be repealed.

2 CHAIRMAN ADAMS: Any questions of  
3 Mr. Fenner?

4 If not, the first signed to speak,  
5 Mr. Bryan Brown.

6 MR. BROWN: Good morning, Mr. Chairman,  
7 Commissioners. Yeah, it's still morning.

8 We are opposed to the repeal of this  
9 rule. We think this is an important rule for  
10 debtholders. It could have a situation in a  
11 foreclosure where the debtholder needs to have the  
12 ability to have a license once a foreclosure has taken  
13 place.

14 We think that's important to the industry  
15 as well because it could allow for some continuity of  
16 racing. It could allow the track to continue operation  
17 even though a foreclosure might take place. Sure,  
18 there could be some interim step or some time period  
19 where there is no racing and possibly no simulcasting;  
20 but this is an important rule, I think, that all  
21 debtholders are going to want to see.

22 While it certainly could need some  
23 I-dotting and some doctoring, we would suggest at this  
24 time that the Commission allow us some time to work  
25 with staff before this moves forward even as a

1 proposal, possibly look at where language could be  
2 bettered.

3 I think there's some clear areas that I  
4 think as an industry we'd like to see changed in the  
5 rule itself and we would certainly beg that at this  
6 time you not adopt it as a proposal, not adopt the  
7 repeal as a proposal, but do allow us to work with  
8 staff and maybe come back united with something that's  
9 acceptable.

10 CHAIRMAN ADAMS: Any questions for  
11 Mr. Brown?

12 Thank you, sir.

13 MR. BROWN: Thank you.

14 CHAIRMAN ADAMS: Next signed to speak is  
15 Mr. Tim Herman.

16 MR. HERMAN: Mr. Chairman, members, my  
17 name is Tim Herman. I'm an attorney here in Austin.  
18 And I represent the Lawley Group. I've just recently  
19 become involved in this matter and I forwarded a letter  
20 yesterday to Ms. King and I don't know if that's been  
21 made available to the members of the Commission or  
22 not. But it does set forth, at least in part, some of  
23 the problems we have with the proposed repeal.

24 In short, I would echo what Mr. Brown  
25 just suggested to the Commission and to the issues that

1 he has raised. For example, a lienholder or a proposed  
2 lender, when those -- when loans were made, secured  
3 loans, certainly the lenders are aware of the existence  
4 of the rule. The preservation of the lender's  
5 collateral in terms of an operating business or an  
6 operating racetrack certainly could have been very  
7 important to the consideration in making the loan in  
8 the first place.

9           So that using Mr. Brown's example, you  
10 have lenders who have the assurance that as long as  
11 they're a qualified person that the Commission shall  
12 issue an interim license in the event of a foreclosure  
13 or other event that's outlined in the rule.

14           Now, the Commission, if you repeal that  
15 rule now, what you're doing is taking from that lender  
16 vested rights that the lender had when they entered  
17 into the loan to begin with. You're taking away the  
18 reasonable expectations that the law, as it applied,  
19 the remedies that might be available to a lender when  
20 they made the loan to begin with -- you're going to  
21 deprive them or divest them of those rights.

22           Now, as I set forth in my letter, the  
23 Rule 311.51 mandates the issuance of a license. That  
24 is, the Commission shall issue to a qualified person an  
25 interim license. Now, that implies an absence of

1 discretion assuming that a person is a qualified  
2 person.

3 Now, the Texas constitution, the cite  
4 that I give you in the letter, that is, Article 1,  
5 Section 16, is a fundamental proposition. That is to  
6 say, neither the Legislature nor, with all due respect,  
7 this Commission, which is enacting rules that have the  
8 same dignity as statutes, can enact a statute that  
9 retroactively divests one of rights or remedies which  
10 were possessed.

11 Now, procedurally you can operate  
12 retroactively; but even then, pending cases are  
13 normally exempted. In this case, we have -- in  
14 September my client -- and again, I'm not familiar with  
15 all of the details of the background; but I understand  
16 that my client requested the appropriate form which was  
17 to be promulgated by the Commission for an interim  
18 license because they were a qualified person and these  
19 were licensed premises previously.

20 There was -- there was no form available;  
21 and in November, I think, the Commission was -- had on  
22 its agenda the proposed repeal of this rule. That  
23 was -- that proposal was tabled in favor of requesting  
24 an Attorney General's opinion.

25 That request was never made until my

1 client apparently had no other alternative but to file  
2 a mandamus proceeding here in Travis County to get the  
3 issue sorted out and to try to mandamus the Commission  
4 to give them a license form.

5           It was after that, a week after that,  
6 that the Commission requested an Attorney General's  
7 opinion, which was refused, ironically, because there  
8 was pending litigation, litigation that was  
9 necessitated by the absence of any form.

10           So what we're suggesting is that the  
11 Commission should not repeal this rule; and if you do  
12 repeal it, I respectfully suggest that it would have  
13 application prospectively. That is, neither the  
14 Commission nor the Legislature can divest persons who  
15 are in possession of rights and remedies of rights and  
16 remedies which they came about and came and matured  
17 under the existence of the prior rule.

18           So with all due respect, we think that  
19 the rule should not be repealed. We think it's beyond  
20 the -- the issue of whether the original rule was  
21 within the statutory authority of the Commission I  
22 think is beyond question. Given the enabling statute,  
23 you certainly have the authority to institute the  
24 rule. But if you -- ironically, if you repeal the  
25 rule, it's our opinion that you would be exceeding your

1 authority and violating the Texas constitution.

2 So we join with Mr. Brown's request and  
3 would look forward to the opportunity to working with  
4 staff to address the issues which the staff has and try  
5 to come back to the Commission with a workable  
6 solution.

7 I'd be happy to answer any questions.

8 CHAIRMAN ADAMS: Any questions for  
9 Mr. Herman?

10 COMMISSIONER EDERER: Mr. Herman, you  
11 just have come on board, so to speak?

12 MR. HERMAN: That's right, yes, sir.

13 COMMISSIONER EDERER: This issue has been  
14 around for some time, Mr. Brown. Why hasn't something  
15 been done before as far as coming together and trying  
16 to work something out with the staff? That's for you,  
17 Mr. Brown.

18 MR. BROWN: I think, like you, we were  
19 waiting on the AG's opinion. You know, the AG's  
20 opinion certainly could have had a monumental impact on  
21 the rule. And I believe the response came back from  
22 the AG on February 29th and we just saw it in the  
23 packet when we got our packets.

24 So there really hasn't been time for us,  
25 pending waiting on the AG's opinion, to get together.

1 And again, I don't think any of us would have suggested  
2 getting together prior to hearing from the AG. I don't  
3 think that would have made any sense because the rule  
4 could have been tossed out -- I shouldn't say that.  
5 The AG's opinion could have been that the rule was  
6 unconstitutional and against the provisions of the act  
7 and it wouldn't have made any sense to try to tinker  
8 with it.

9 CHAIRMAN ADAMS: Any -- any further  
10 questions for Mr. Herman?

11 COMMISSIONER EDERER: Mr. Herman, you  
12 don't represent any lenders, do you?

13 MR. HERMAN: No, sir, I do not.

14 CHAIRMAN ADAMS: Thank you, Mr. Herman.  
15 Appreciate your comments.

16 MR. HERMAN: Thank you, Mr. Chairman.  
17 Thank you.

18 CHAIRMAN ADAMS: Is there anyone else who  
19 would like to sign in to speak on this issue? Yes,  
20 Mr. Bork.

21 MR. BORK: Good morning, Commissioners.  
22 I think I did fill out a card.

23 CHAIRMAN ADAMS: Okay, sir.

24 MR. BORK: I think I'm just going to echo  
25 a lot of the same comments that Bryan Brown did and

1 Mr. Herman did that, you know, frequently we want to  
2 change a rule or add a rule or delete a rule and  
3 sometimes we don't look at the -- to accomplish a  
4 particular thing, and sometimes we don't look at some  
5 of the other circumstances that might be affected.

6 In this particular case, with a lot of  
7 legislation that hopefully will be happening in the  
8 next year and a lot of financing that tracks might be  
9 doing to accomplish some of these things, including  
10 building two or three new racetracks, it might make it  
11 difficult to go out and even get financing for some of  
12 these situations.

13 So while some of these things in here  
14 might be very reasonable and proper to do, like Bryan  
15 said, I think we have to do a little bit more thinking  
16 process with the staff to see if we can come up with a  
17 better solution so that any of the current tracks that  
18 might be wanting to do additional construction or build  
19 new tracks or add anything to the tracks are going to  
20 be able to go out and get financing without any  
21 restrictions from the lenders if it's needed.

22 So I think this rule -- just eliminating  
23 this rule just might be a little premature at this time  
24 without a little bit more input from the industry and  
25 the tracks that are going to be involved in this.

1                   CHAIRMAN ADAMS: Questions for Mr. Bork?

2                   Thank you, sir. Appreciate it.

3                   We will -- I'll now close the public  
4 input portion and open the discussion among  
5 Commissioners. Our agenda item today is to decide  
6 whether we're going to publish the proposed repeal in  
7 the Texas Register. Our agenda item is not whether  
8 we're going to repeal the rule. That will come  
9 sometime in the future.

10                   I'm personally in favor of going ahead  
11 and publishing this in the Texas Register and receiving  
12 that comment that hopefully we'll get so that we can  
13 proceed with it. And so I -- at this time the Chair  
14 would entertain a motion to publish the repeal --

15                   COMMISSIONER SOWELL: So move.

16                   CHAIRMAN ADAMS: -- in the Texas  
17 Register.

18                   COMMISSIONER EDERER: I have further  
19 comment.

20                   CHAIRMAN ADAMS: Yes.

21                   COMMISSIONER EDERER: I have some  
22 questions for you, Mark.

23                   MR. FENNER: Yes, sir.

24                   COMMISSIONER EDERER: Mark, if, in fact,  
25 this is published and we go forward with this, would

1       there still be an opportunity for the industry to come  
2       to you with some sort of a proposal or modification of  
3       what we're looking at here?

4                   MR. FENNER:  Yes, sir.  I'd be happy to  
5       work with Bob and Bryan and others in that situation to  
6       assess what the true needs are of the bondholders and  
7       lenders and to find out what kind of remedies we could  
8       implement by rule that would be authorized by statute.

9                   COMMISSIONER EDERER:  Because as I  
10      understand it, as it sits now, it's up in the air.  I  
11      mean, it's questionable.  The Attorney General, if they  
12      decided to rule, they could come out and rule one way  
13      or the other.

14                  MR. FENNER:  Yes.  I have my doubts that  
15      it is statutory --

16                  COMMISSIONER EDERER:  So the statute does  
17      need work.

18                  MR. FENNER:  The rule does need work.

19                  COMMISSIONER EDERER:  The rule.  Excuse  
20      me.

21                  MR. FENNER:  Yes, sir.

22                  COMMISSIONER EDERER:  The rule does need  
23      work.  And by posting it, that would more or less force  
24      the issue, wouldn't it?

25                  MR. FENNER:  Yes, sir.

1                   COMMISSIONER EDERER: And that would then  
2 bring the industry together to work with you and to try  
3 to come up with some alternative, if possible. Is that  
4 correct?

5                   MR. FENNER: That's correct. I'd be  
6 happy to work with them on that.

7                   COMMISSIONER EDERER: And how much time  
8 would they have? Until the next meeting, 60 days,  
9 or --

10                  MR. FENNER: At a minimum, until the next  
11 meeting.

12                  COMMISSIONER EDERER: But then it could  
13 also be tabled again if we so chose.

14                  MR. FENNER: Yes, sir. Once it's  
15 published in the Texas Register, it can stay out there  
16 for six months before we have to take some action,  
17 which could also be just to republish it again.

18                  COMMISSIONER EDERER: So by the action of  
19 going ahead and publishing it at this point in time,  
20 it's bringing it to a head more or less. It's forcing  
21 the issue. The industry is going to have to come  
22 forward to work with you and you're going to have to  
23 work with them if we're going to get it straightened  
24 out. Is that right?

25                  MR. FENNER: Yes, sir.

1                   COMMISSIONER EDERER: Okay.

2                   CHAIRMAN ADAMS: Okay. Any further

3 discussion?

4                   I have a motion by Commissioner Sowell.

5                   VICE-CHAIRMAN CARTER: Can I have one

6 question?

7                   CHAIRMAN ADAMS: Yes, sir.

8                   VICE-CHAIRMAN CARTER: Some of the tense

9 and the past tense that was used in these conversations

10 I wanted to clarify. There are no current lenders or

11 bondholders that this would affect right now today.

12                   MR. FENNER: The only possible one is the

13 Trinity Meadows issue, but that -- you know, that's not

14 before us. I don't know what the status of that is.

15 There's no application before you because there is no

16 application form to give to them.

17                   VICE-CHAIRMAN CARTER: Okay. Thank you.

18                   CHAIRMAN ADAMS: Commissioner Pablos?

19 Did you have a question?

20                   COMMISSIONER PABLOS: I was pointing to

21 Bryan.

22                   CHAIRMAN ADAMS: Mr. Brown? I've closed

23 this public hearing portion, and really I think if

24 there's a question of Mr. Brown --

25                   MR. BROWN: I'd be solely answering the

1 question that Dr. Carter --

2 CHAIRMAN ADAMS: Go ahead. Come forward,  
3 Mr. Brown.

4 MR. BROWN: My reading of this is that it  
5 would affect the bondholders at Retama Park who  
6 purchased the bonds that were originally used to  
7 finance Retama Park, in answer to --

8 CHAIRMAN ADAMS: So there is another  
9 party in question.

10 Yes, sir? Commissioner Pablos?

11 COMMISSIONER PABLOS: The only way I  
12 would agree to move forward on this is if the industry  
13 does have plenty of time to vet this as Commissioner  
14 Ederer mentioned.

15 CHAIRMAN ADAMS: Okay.

16 MR. HERMAN: Mr. Chairman, again,  
17 answering Dr. Carter's question, in my view, it would  
18 affect every secured lender in the state who would be  
19 left with the collateral not of a going business but of  
20 some wood and some property that would not represent  
21 the collateral which they originally were given.

22 And I just -- for the -- just a question  
23 of clarification, if the chairman pleases. You said  
24 input from the industry; and I assume that those who  
25 are interested would be included in the sort of working

1 group, if you will, with Mr. Fenner. That is, it would  
2 include my client.

3 CHAIRMAN ADAMS: Mr. Herman, if we  
4 publish this in the Texas Register, of course, you  
5 certainly have the right to insert your comments and so  
6 forth for consideration.

7 MR. HERMAN: I understand. My question  
8 was -- I understood that Mr. Ederer had indicated that  
9 it was his desire and I think Commissioner Pablos said  
10 that the staff work with the industry. And we would --  
11 I just wanted to clarify that that would certainly  
12 include our client who's interested in how this turns  
13 out, very interested in how it turns out. That's the  
14 only -- I just had that clarification. Is that  
15 correct?

16 MR. FENNER: Well, that's complicated by  
17 the fact that we are in litigation.

18 CHAIRMAN ADAMS: I don't know that that's  
19 the case, Mr. Herman.

20 MR. FENNER: I would have to consult with  
21 the Attorney General's office as to the extent of that  
22 that would be appropriate.

23 MR. HERMAN: And you're concerned that  
24 the pending litigation would impact how you deal with  
25 the rule?

1                   CHAIRMAN ADAMS: I'll tell you -- make  
2     you a deal, Mr. Herman. You withdraw your lawsuit on  
3     mandamus and we'll include you in the working group.  
4     It's real simple.

5                   MR. HERMAN: I hear what you're saying,  
6     Mr. Chairman. I just wanted to clarify what the  
7     Commission's position was. That's all. What the  
8     chairman --

9                   COMMISSIONER EDERER: That might be an  
10    alternative that you might want to explore. I don't  
11    know. I don't know all the ramifications of that. You  
12    may be able to withdraw it and then refile it if you  
13    don't get what you want or whatever. But I'm sure that  
14    you could probably submit anything you wanted to. If  
15    you are prohibited from doing it for some reason, I'm  
16    sure you could probably work with Mr. Brown or Bob or  
17    whatever.

18                  MR. HERMAN: Certainly. We'll do that.  
19    And I'm certainly not attempting to impose anything on  
20    the Commission. I just wanted to be sure that I  
21    understood, when we left, what the situation was and  
22    what we had -- what we should expect with Mr. Fenner.  
23    And I'll talk to him directly. I appreciate the  
24    Commission's time.

25                  CHAIRMAN ADAMS: Thank you, sir.

1                   Any further discussion? I have a  
2 motion.

3                   COMMISSIONER EDERER: There's a motion on  
4 the floor.

5                   CHAIRMAN ADAMS: There's a motion on the  
6 floor. Do I have a second to that motion --

7                   COMMISSIONER SCHMIDT: Second.

8                   CHAIRMAN ADAMS: -- posted by -- a motion  
9 by Dr. Schmidt.

10                  All those in favor please say aye.

11                  COMMISSIONERS: Aye.

12                  CHAIRMAN ADAMS: Any opposed?

13                  The motion carries.

14                  The next item on the agenda, a proposal  
15 to amend 319.336, payment of testing costs. Now, we're  
16 going to do all of these together, are we not, staff?  
17 Okay. A proposal to amend 321.31, vouchers; 321.33,  
18 expiration date; 321.36, remittance of unclaimed outs  
19 and vouchers; 321.37, cashed tickets and vouchers;  
20 321.41, cashing outstanding tickets; and 321.42,  
21 outstanding -- cashing of outstanding vouchers.

22                  These are all under Tab 7-1 through 9 in  
23 your agenda packet. And I'd like to recognize Sammy  
24 Jackson.

25                  MR. JACKSON: Good afternoon,

1 Commissioners. I provided to you a briefing memo on  
2 this issue. We considered this to be the outs and  
3 voucher policy review. As you may be aware, during the  
4 80th legislative session, House Bill 2701 was passed  
5 amending several sections of the Texas Racing Act.  
6 Specifically for this review and policy review, we are  
7 focusing on the effects of the amendment of Section  
8 11.07 of the Racing Act and the repeal of Section  
9 11.08.

10           11.07 addresses how long a pari-mutuel  
11 patron has to cash an outstanding ticket or pari-mutuel  
12 voucher. Prior to the amendment there was no  
13 expiration date on a pari-mutuel voucher; and on an  
14 outstanding ticket, the expiration date was 60 days  
15 from the end of the mutuel year, and the mutuel year  
16 ran from August 1st until July 31st.

17           Section 11.08 was repealed. This was the  
18 time line that was given by the association to remit  
19 the excess money collected from outstanding tickets  
20 after paying the drug testing costs to provide to the  
21 Commission's revenue.

22           The staff reviewed these rules over  
23 approximately a two-month period and came up with the  
24 adjustments it needed. We did a policy review  
25 statement on this and provided it to the industry for

1 their input and also included in that the tote  
2 providers and vendors that are the IT experts in the  
3 industry that you may have heard at the RCI convention  
4 about.

5 Based on their feedback, we felt like we  
6 did a pretty good job on this. We had one minor  
7 adjustment which caused us to amend cashing outstanding  
8 tickets to make it 21 days so that it would balance  
9 with that of the vouchers. We also discussed with the  
10 chief financial officer of each of the racetracks to  
11 cover the period of time that would be used for the  
12 reimbursement.

13 We think everybody is on board with that  
14 and there's no problems. And staff would recommend the  
15 proposal of these rules.

16 If you have any questions, we'd be more  
17 than happy to answer them.

18 CHAIRMAN ADAMS: Thank you, Mr. Jackson.

19 Any questions for Sammy?

20 If not, is there anyone here who would  
21 like to speak on this subject? I have no one signed up  
22 at this time.

23 Okay. The Chair will entertain a motion  
24 to publish the proposed amendments as listed in Agenda  
25 Items 6-C --

1 COMMISSIONER EDERER: So move.

2 CHAIRMAN ADAMS: -- in the Texas

3 Register.

4 Moved by Commissioner Ederer.

5 COMMISSIONER PABLOS: Second.

6 CHAIRMAN ADAMS: Seconded by Commissioner

7 Pablos.

8 All those in favor?

9 COMMISSIONERS: Aye.

10 CHAIRMAN ADAMS: Any opposed?

11 The motion carries.

12 The last item, old and new business,

13 correct? Do we have any -- anything posted for old or

14 new business?

15 Having none, I declare the meeting

16 adjourned. Thank you very much.

17 (Proceedings concluded at 12:11 p.m.)

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1 STATE OF TEXAS )

2 COUNTY OF TRAVIS )

3

4 I, SHERRI SANTMAN FISHER, a Certified Shorthand  
5 Reporter in and for the State of Texas, do hereby  
6 certify that the above-captioned matter came on for  
7 hearing before the TEXAS RACING COMMISSION as  
8 hereinbefore set out.

9 I FURTHER CERTIFY that the proceedings of said  
10 hearing were reported by me, accurately reduced to  
11 typewriting under my supervision and control and, after  
12 being so reduced, were filed with the TEXAS RACING  
13 COMMISSION.

14 GIVEN UNDER MY OFFICIAL HAND OF OFFICE at Austin,  
15 Texas, this 7th day of April, 2008.

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