

October 10, 1995

OPINION NO. 95-034

Clifford A. Nelson II, Executive Director
Ohio State Racing Commission
77 South High Street, 18th floor
Columbus, Ohio 43266-0416

Dear Executive Director Nelson:

You have requested my opinion concerning the scope of the State Racing Commission's authority to regulate horse races within the state. By way of background, your letter states in part:

By letter dated May 22, 1995, legal counsel for [a horse-racing meeting permit holder] informed the Executive Director of the Ohio State Racing Commission that [the permit holder] intended to conduct live broadcasting of its racing program over an open channel on [a cable television system].... [The permit holder] contends that it does not need the Commission's approval prior to implementing this proposal. The Commission believes that its prior approval is required.

The Commission poses three questions. First, the Commission believes that [the permit holder] must obtain Commission approval before their proposal may be implemented based upon [R.C. 3769.089], which requires a permit holder to request the Commission's permission prior to simulcasting. Additionally, when any "major change" in racing operations or wagering is proposed by any permit holder, the Commission believes that the best interest of all segments of the Ohio racing industry should be addressed by the Commission and that this proposal is a "major change." Is the Commission's position correct?

Second, while there is no specific statutory reference that authorizes the adoption of the Commission's telephone account wagering rules, [1994-1995 Monthly Record (December)] Ohio Admin. Code 3769-3-32 and 3769-13-32 at 1016-18], the Commission enacted these rules in accordance with the provisions of [R.C. 3769.03 and R.C. 3769.08]. These rules were adopted in accordance with the provisions of [R.C. Chapter 119]. The rules that were adopted were carefully crafted to ensure that no abuse or fraud would occur to the wagering public while a small segment of the wagering public was able to make wagers without being physically present at the tracks. The Commission believes that wagers have, prior to the rules being adopted,

been placed by absentee bettors by sending money with a friend or relative, etc. Accordingly, the convenience of telephone account wagering was implemented. For your information, other states have also adopted rules relating to telephone account betting. We believe the Ohio rules are crafted to ensure convenience and yet fully protect the wagering public. Is the Commission's position that these telephone account wagering rules are authorized by [R.C. 3769.03 and R.C. 3769.08] correct? Third, if you find that there is not a sufficient grant of authority to the Ohio Racing Commission for the Commission's adopting rules relating to telephone account wagering, please advise us as to the proper procedure for the rescission of these rules.

Statutory Powers of the State Racing Commission

The State Racing Commission (hereinafter the Commission) is established by R.C. 3769.02. As a creature of statute, the Commission has only those powers and duties conferred upon it by statute. 1982 Op. Att'y Gen. No. 82-044. Whether the Commission has authority to adopt the rules about which you ask, therefore, depends upon whether such authority has been conferred upon the Commission by express statutory terms or by necessary implication from the express statutory grant of powers.

Under R.C. 3769.03, the Commission is vested with broad regulatory authority over horse racing. The Commission "shall prescribe the rules and conditions under which horse racing may be conducted," and may regulate the forms of and procedures for wagering. R.C. 3769.03. In addition to the broad powers and duties described in R.C. 3769.03, the Commission has various other responsibilities. For example, R.C. 3769.10 imposes upon the Commission the duty of enforcing R.C. 3769.01-.28.¹ The Commission also has responsibilities with respect to the issuance of permits to conduct horse-racing meetings in the state, *see, e.g.*, R.C. 3769.06 (issuance of permit to conduct horse-racing meeting); R.C. 3769.071 (quarter horse racing permits); R.C. 3769.13 (permit to hold races elsewhere in case of damage to the track), the authorization of electronically televised simulcasts of horse races, R.C. 3769.089, and the approval of satellite facilities for existing race tracks, R.C. 3769.26.

In order to conduct a horse-racing meeting for any stake, purse, or award, one must first obtain a permit from the Commission in accordance with R.C. 3769.04-.06. R.C. 3769.01. This section allows "the use of any grounds, enclosure, or race track...for any county or state fair, agricultural or livestock exhibition, horse show, or any horse racing" so long as parimutuel wagering is not permitted. R.C. 3769.01. R.C. 3769.06 requires, among other things, that each permit specify, "[t]he location of the place, track, or enclosure where such horse-racing meeting is to be held or conducted." The permit is nontransferable and applies only to the location specified in the permit

¹ R.C. 3769.10 also imposes certain limited duties upon the Tax Commissioner with respect to the enforcement of R.C. 3769.01-.28.

application.² R.C. 3769.06.

R.C. 3769.08 addresses in greater detail wagering upon horse races that are conducted by permit holders, and expressly authorizes such wagering by patrons of legal age in the manner and upon the conditions stated therein. R.C. 3769.08 reads, in part, as follows:

(A) Any person holding a permit to conduct a horse-racing meeting *may provide a place in the race meeting grounds or enclosure at which the permit holder may conduct and supervise the pari-mutuel system of wagering by patrons of legal age on the horse races conducted by such permit holder.*

Such pari-mutuel method of wagering upon the horse races held at or within such race track, and at the time of such horse-racing meeting shall not be unlawful. *No other place, except that provided and designated by the permit holder and except as provided in [R.C. 3769.26], nor any other method or system of betting or wagering, except the pari-mutuel system, shall be used or permitted by the permit holder; nor, except as provided in [R.C. 3769.089 or R.C. 3769.26], shall the pari-mutuel system of wagering be conducted by the permit holder on any races except the races at the race track, grounds, or enclosure for which the person holds a permit. Each permit holder may retain as commission an amount not to exceed eighteen per cent of the total of all moneys wagered.*

The pari-mutuel wagering authorized by this section is subject to [R.C. 3769.25-.27]. (Emphasis added.)

Thus, R.C. 3769.08(A) establishes the general rule that a permit holder may conduct pari-mutuel wagering at a place within the race meeting grounds or enclosure by patrons of legal age on races conducted there by the permit holder. The strict location limitations established by R.C. 3769.08(A) are, however, subject to the exceptions set forth in R.C. 3769.089 and R.C. 3769.26. R.C. 3769.08(A).

The first exception is contained in R.C. 3769.089, which governs the simulcasting of horse races. Pursuant to R.C. 3769.089(A)(1) and subject to R.C. 3769.089(A)(2), the Commission "shall, upon request by any permit holder, permit electronically televised simulcasts of horse races *at the permit holder's enclosure* on racing days authorized by the permit holder's permit during the hours on a racing day when racing is being conducted pursuant to the permit holder's permit" (emphasis added). R.C. 3769.089(A) further specifies that, "[t]he televised simulcasts may be of horse races conducted at facilities either inside or outside this state."³ Pursuant to R.C. 3769.089(A)(2) and with

² R.C. 3769.13 provides exceptions to this general proposition that are not relevant to the questions presented.

³ R.C. 3769.089(A)(1) also states that "all televised simulcasts of horse races conducted at facilities outside this state shall comply with the Interstate Horse Racing Act of 1978, 92 Stat. 1811, 15 U.S.C.A. 3001 to 3007." 15 U.S.C. § 3003 states that, "[n]o person may accept an interstate off-track wager except as provided in this chapter." 15 U.S.C. § 3004 requires an "off-

certain exceptions, the Commission "shall only permit wagering on electronically televised simulcasts of horse races under division (A)(1) of this section on a live racing day." As explained in *Grandview Raceway/Northfield Park Assocs. v. Limbach*, 47 Ohio St. 3d 57, 57, 547 N.E.2d 971, 971 (1989), "[a] simulcasted race is a _live_ race of some stature run at another track and televised for the patrons present at the recipient track. It is listed on the recipient track's program and becomes a part of that track's program." Thus, R.C. 3769.089 establishes one exception to the general rule set forth in R.C. 3769.08(A) by allowing a permit holder to conduct pari-mutuel wagering at the permit holder's enclosure, not only on races conducted there by the permit holder, but also on races that are simulcast to the permit holder's enclosure in accordance with R.C. 3769.089.

track betting system" that wishes to accept an "interstate off-track wager" to obtain the consent of the "host racing association," which must, with certain exceptions, have a written agreement with a "horsemen's group" to give such consent, the "host racing commission," and the "off-track racing commission." See 15 U.S.C. § 3002 (defining terms used in 15 U.S.C. §§ 3001-3007). See generally *Kentucky Division, Horsemen's Benevolent & Protective Ass'n, Inc. v. Turfway Park Racing Ass'n, Inc.*, 20 F.3d 1406, 1412 (6th Cir. 1994) (the Interstate Horseracing Act of 1978 "regulates *interstate wagering*, not simulcasting. In fact, the Act does not even mention simulcasting" (emphasis added)). Because the Interstate Horseracing Act regulates interstate wagering, rather than simulcasting of horse racing, the meaning of the above-quoted portion of R.C. 3769.089(A)(1) is unclear.

The second exception to the general rule set forth in R.C. 3769.08(A) is contained in R.C. 3769.26,⁴ which provides for "satellite facilities." R.C. 3769.26 empowers the Commission, with the approval of the appropriate legislative authority, to authorize certain tracks, "regardless of the number of permit holders authorized to conduct race meetings at the track," to establish "not more than two satellite facilities at which it may conduct pari-mutuel wagering on horse races conducted either inside or outside this state and simulcast by a host track to the satellite facilities."⁵ As used in R.C. 3769.26, the term "satellite facility" means "any facility that is approved by the state racing commission *and* at which pari-mutuel wagering is conducted under [R.C. 3769.26]. *Satellite facility* does not include a track." R.C. 3769.25(E) (emphasis added). R.C. 3769.26(B) limits to fourteen the number of "satellite facilities" that may be established in this state. Thus, R.C. 3769.26 varies the provisions of R.C. 3769.08(A) by allowing wagering to be conducted on horse races other than those conducted by the permit holder and by allowing such wagering to be conducted other than at the place provided and designated by the permit holder under R.C. 3769.08(A).⁶

In summary, R.C. 3769.08(A) sets forth the general rule that a permit holder may conduct pari-mutuel wagering by patrons of legal age *at or within* the permit holder's race track, grounds, or enclosure upon horse races that are actually run at such race track, grounds, or enclosure. The first exception to this rule, R.C. 3769.089, allows a permit holder to conduct pari-mutuel wagering at the

⁴ R.C. 3769.26, enacted in Am. Sub. H.B. 361, 120th Gen. A. (1994) (eff. Sept. 27, 1994), applies to tracks in existence on the effective date of the legislation.

⁵ As used in R.C. 3769.25-.27, "simulcast" means "the telecast, *for wagering purposes*, of audio and video signals of live horse races conducted at facilities either inside or outside this state." R.C. 3769.25(A) (emphasis added). Further, as used in R.C. 3969.25-.27, a "host track" is "a track where a permit holder is conducting live horse races and offering these races for simulcasting." R.C. 3769.25(D).

⁶ Pursuant to R.C. 3769.26(A)(1), "[a]ll actions taken under this section shall comply with the *Interstate Horse Racing Act of 1978*, 92 Stat. 1811, 15 U.S.C. 3001 to 3007."

permit holder's enclosure, not only on races conducted there by the permit holder, but also on races that are simulcast to that enclosure in accordance with R.C. 3769.089. The other exception to the general rule, R.C. 3769.26, allows for wagering on races other than those conducted by the permit holder and allows such wagering to be conducted at a place other than the place provided and designated by the permit holder under R.C. 3769.08(A).

State Racing Commission's Approval of Broadcasting of Horse Races

With this background in mind, I turn to your first question concerning the necessity of a horse-racing meeting permit holder's obtaining the approval of the Commission prior to conducting live broadcasting of its racing program over an open channel on a cable television system. As characterized by the court in *O'Daniel v. Ohio State Racing Comm'n*, 37 Ohio St. 2d 87, 92, 307 N.E.2d 529, 532 (1974), horse racing is one of those fields of activity "subject to the exercise of broad powers for the determination and application of state policy judgments." In order to implement the state's policy, the General Assembly has imposed upon the Commission a duty to "prescribe the rules and conditions under which horse racing may be conducted," R.C. 3769.03. The breadth of the Racing Commission's regulatory authority was addressed by the court in *Standard "Tote," Inc. v. Ohio State Racing Comm'n*, 58 Ohio Op. 337, 341- 43, 121 N.E.2d 463, 469-70 (C.P. Franklin County 1954), as follows:

Horse racing, and legalized wagering thereon, are subjects with respect to which police regulations for the protection of the public safety, morals, and general welfare, are not only proper but are an absolute necessity. Since this is a field in which potential evils abound, the General Assembly should not be expected to anticipate the manifold practices and complex arrangements which involve opportunities for dishonest dealing that should be guarded against so as properly to protect the public. For the General Assembly to undertake to properly prescribe standards, might defeat its own purpose. The nature of the subject to be regulated is such as to suggest the reason for the broad regulatory powers conferred on the Commission.... The very essence of the rule-making power is found in the authority to impose by rules, restrictions or burdens in addition to those imposed by state, *provided the rules do not subvert the statutes imposing such power*. (Emphasis added; citation omitted.)

The court thus recognized the broad powers granted to the State Racing Commission to regulate horse racing, legalized wagering on such racing, and activities incidental thereto. The court also acknowledged the validity of the General Assembly's conferring such broad power upon the Commission as a means of protecting the public against the numerous methods by which the potential evils of dishonest dealing in the area of horse racing and wagering thereon may arise.

It has been suggested that by regulating telecasting of horse races the Commission will be imposing an impermissible prior restraint on free speech. *See generally FCC v. Pacifica Foundation*, 438 U.S. 726, 748 (1978) (characterizing broadcasting as the form of communication "that has received the most limited First Amendment protection"), *reh'g denied*, 439 U.S. 883 (1978). If the telecasting of the races does "no more than propose a commercial transaction,"

Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc., 425 U.S. 748, 762 (1976), it is commercial speech. As such, it is accorded less constitutional protection than other forms of expressive speech. *Central Hudson Gas & Electric Corp. v. Public Service Comm'n*, 447 U.S. 557 (1980). However, even commercial speech enjoys considerable protection from regulation. In *Central Hudson Gas & Electric Corp.*, the Supreme Court applied a four-part test to determine if regulation of commercial speech was constitutional. The Court stated:

At the outset, we must determine whether the expression is protected by the First Amendment. For commercial speech to come within that provision, it at least must concern lawful activity and not be misleading. Next, we ask whether the asserted governmental interest is substantial. If both inquiries yield positive answers, we must determine whether the regulation directly advances the governmental interest asserted, and whether it is not more extensive than is necessary to serve that interest.

447 U.S. at 566.

Regulation of the broadcasting of horse racing would be regulation of commercial speech, and would thus be permissible only in accordance with the limitations set forth in *Central Hudson*. I would, therefore, advise against a total ban on the telecasting of horse racing, but would suggest a more focused regulation of only the time, place, and manner of broadcasting, which would allow promotion of horse racing, but guard against the evils inherent in unregulated wagering on such races.

At this time, the Commission has no rule in place that regulates the televising of horse racing. In order to so regulate, rules must first be adopted, and I would so advise. The State Racing Commission has been found to be an "agency," subject to the rule-making provisions of R.C. Chapter 119. *Standard "Tote," Inc. v. Ohio State Racing Comm'n*, *supra*; see generally R.C. 119.01(A) (defining "agency," as used in R.C. 119.01-.13). A "rule," for purposes of R.C. Chapter 119, is defined in part as, "[a]ny rule, regulation, or standard, having a general and uniform operation, adopted, promulgated, and enforced by any agency under the authority of the laws governing such agency." R.C. 119.01(C) (emphasis added). Thus, as prescribed by R.C. 3769.03, in the adoption of its regulations governing permit holders, the Commission must comply with the rule-making procedures of R.C. Chapter 119. *Standard "Tote," Inc. v. Ohio State Racing Comm'n*, *supra*.

Telephone Account Wagering Rules

Your second question concerns the authority of the State Racing Commission to adopt rules 3769-3-32 and 3769-13-32, the telephone account wagering rules. Because the rules are substantially identical,⁷ I will quote only rule 3769-3-32, which states in pertinent part:

⁷ Chapter 3769-3 of the Ohio Administrative Code regulates wagering on thoroughbred and quarter horse racing, while Chapter 3769-13 addresses wagering on harness racing.

(A) *Holders of horse racing permits issued by the Ohio state racing commission may manage a telephone account wagering system for the purpose of keeping telephone deposit accounts and accepting telephone wagers.*

(1) *Individuals who have a deposit account with the telephone account wagering system shall be permitted to wager by telephone.* The telephone account wagering system shall accept wagers up to the amount posted to the credit of such account at the time the wager is placed. Any racing official whose appointment must be approved by the commission, or any licensee who is denied access to the grounds pursuant to rules 3769-2-08 and 3769-4-06 of the Administrative Code may not open or have in his/her name a telephone account.

(2) The permit holder shall accept telephone wagering accounts in the name of a natural person only....

....

(4) An applicant for a deposit account shall give his/her name, address, telephone number, and social security number.... Applicants for deposit accounts must present adequate proof that they have attained the age of eighteen....

....

(7) The permit holder reserves the right to refuse deposits to accounts for any reason whatsoever.

(8) The permit holder has the right to suspend any account or to close any account at any time provided that when an account is closed, the permit holder shall return to the account holder such moneys as are on deposit at the time of said action.

(9) All persons shall adhere to such other methods of identification as the commission may require.

(B) An account holder shall receive at the time the account is opened an identification card, a summary of the rules.... As part of its rules, the permit holder may, with the approval of the commission, impose a reasonable service fee.

....

(E) Telephone wagers shall be accepted on those days that the permit holder is conducting live racing at its track as designated by the commission.

....

(G) Payment on winning pari-mutuel telephone wagers shall be posted to the credit of the account holder automatically as soon as practicable after the race is declared official.

....

(K) *No televised racing signal, used in conjunction with telephone account wagering, shall be sent into any area within fifty miles of a commercial permit holder's race track during the hours that live racing is being conducted that day at such race track, and one hour prior thereto, unless the permit holder at such track gives its prior written consent to the transmission of the racing signal into the involved fifty mile area.*

(L) From each telephone wager, there shall be deducted the same percentage as is deducted on a wager made in person at the permit holder's race track. (Emphasis added.)

Thus, the telephone account wagering rules authorize a horse-racing permit holder to manage a telephone account wagering system through which a person who has established a deposit account with the permit holder may wager by telephone. Absent from the rules is an explanation of the type of wagering that is permitted -- wagering on live races conducted that day by the permit holder, wagering on races that are simulcast at the location of the permit holder's races that day, wagering on races conducted by the permit holder on a date later than the day on which the wager is accepted or at a place other than where the wager is accepted, or wagering on races held or conducted by other permit holders at that or another location. In the absence of such specificity, it is difficult to determine the nature of what is purportedly authorized by the telephone account wagering rules.

Although the Commission has broad regulatory authority, such authority is not without limit. As explained in Op. No. 82-044 at 2-125:

Clearly, the Commission's authority to adopt rules "*does not extend to the making of rules which are contrary to existing laws, or which repeal or abrogate statutes,*" 1953 Op. Att'y Gen. No. 3363, p. 707 (syllabus, paragraph 2), and "no rule may be enacted which would in effect increase [the Commission's] statutory powers," 1947 Op. Att'y Gen. No. 2348, p. 554, at 560. *See, e.g., Grandview Raceway, Inc. v. Ohio State Racing Comm'n*, 6 Ohio App. 2d 91, 216 N.E.2d 765 (Franklin County 1966) (rule concerning collection of money from permit holders exceeds Commission's statutory authority). (Emphasis added.)

Admittedly, the Commission has authority under R.C. 3769.03 to prescribe "the rules and conditions under which horse racing may be conducted" and to prescribe "what forms of wagering are permissible, the number of races, the procedures on wagering, and the wagering information to be provided to the public." In the adoption of these rules, however, the Commission may not authorize alternative wagering systems that *exceed or are inconsistent with* the wagering activities authorized by the statutory scheme governing wagering on horse racing. *See State ex rel. Kahler-Ellis Co. v. Cline*, 69 Ohio L. Abs. 305, 308, 125 N.E.2d 222, 224 (C.P. Lucas County 1954) ("an administrative body may not, by rules, add to its delegated powers no matter how wise such rules may be or how laudable are the ends so sought to be accomplished").

The General Assembly has expressly prescribed the activities in which a horse racing permit holder and its patrons may engage. R.C. 3769.08(A) states that a holder of a permit "to conduct a horse-racing meeting may provide a place in the race meeting grounds or enclosure at which the permit holder may conduct and supervise the pari-mutuel system of wagering by *patrons* of legal age on the horse races conducted by such permit holder." (Emphasis added.) Further, R.C. 3769.08(A) provides that, "[n]o *other place*, except that provided and designated by the permit holder and except as provided in [R.C. 3769.26 (governing satellite facilities)], nor any other method or system of betting or wagering, except the pari-mutuel system, shall be used or permitted by the permit holder; nor, except as provided in [R.C. 3769.089 (governing televised simulcasts of horse races) or R.C. 3769.26], shall the pari-mutuel system of wagering be conducted by the permit holder on any races except the races at the race track, grounds, or enclosure for which the person holds a

permit." Thus, only as authorized by R.C. 3769.089 and R.C. 3769.26 may the system of horse racing and wagering thereon prescribed by R.C. 3769.08 be altered. *See generally City of Cincinnati v. Roettinger*, 105 Ohio St. 145, 152, 137 N.E.2d 6, 8 (1922) (where a statute "in terms limits a thing to be done in a particular form, ... it necessarily implies that the thing shall not be done otherwise").

R.C. 3769.08 limits the wagering on horse racing only to "patrons" of the track, grounds, or enclosure of a permit holder holding or conducting such races. By using the term "patrons" in R.C. 3769.08, the General Assembly intended a meaning more limited than that of "persons." The term "patrons" connotes a paying client or customer who is physically present at the establishment. In fact, the New York courts have concluded that the use of the term "patrons" in that state's analogous licensing statutes has such a limited meaning. *See People v. Hebert*, 117 N.Y.S.2d 415 (Magis. Ct. 1952); *In re Stewart*, 22 N.Y.S.2d 164 (Sup. Ct. 1940), *aff'd sub nom. Stewart v. Dep't of State*, 23 N.Y.S.2d 226 (N.Y. App. Div. 1940). Under the scheme set forth in the telephone account wagering rules, however, a person, even though not a "patron" of the facility where horse racing is being conducted, is permitted to wager on horse races held, or possibly simulcast, at a permit holder's track, grounds, or enclosure. The placing of a wager by a person who is not present at the facility where the wagering is being conducted is clearly outside the scope of wagering authorized by R.C. 3769.08, R.C. 3769.089, and R.C. 3769.26.

Further support for this conclusion comes from the General Assembly's enactment of R.C. 3769.26, providing for satellite facilities. By permitting wagering venues other than the track at which the race is run or the simulcast is received, the General Assembly has crafted a narrow exception to the location restrictions found throughout R.C. Chapter 3769. Thus, the General Assembly has determined the degree to which wagering could be expanded beyond the physical confines of the track. To permit telephone wagering would expand by rule what the General Assembly refused to do by statute. The enactment of such rules exceeds the scope of the Commission's rule-making authority. In my opinion, the telephone wagering rules contained in rules 3769-3-32 and 3769-13-32 are beyond the rule-making authority of the Commission, and I would advise that they be rescinded.

Rescission of Rules

Your final concern is the procedure the State Racing Commission must follow in order to rescind the telephone account wagering rules in the event that the adoption of such rules is outside the authority of the Commission to adopt. Pursuant to R.C. 119.02, "[e]very agency authorized by law to adopt, amend, or rescind rules shall comply with the procedure prescribed in [R.C. 119.01-.13] for the adoption, amendment, or rescission of rules." As an "agency" for purposes of R.C. Chapter 119, the State Racing Commission must comply with the rule-making procedures of R.C. Chapter 119. *See Standard "Tote," Inc. v. Ohio State Racing Comm'n, supra*. As part of the rescission process, an agency must give reasonable public notice of its proposed action, including a synopsis of the rule to be rescinded, the reason for rescinding the rule, and the date, time, and place of the hearing on the proposed action. R.C. 119.03 also contains requirements concerning the filing of copies of such rule with the Secretary of State and the Director of the Legislative Service Commission, R.C. 119.03(B), public hearing, R.C. 119.03(C), attempted notice to those who may be

affected by the proposed action, R.C. 119.03(E), and filing of copies with the Joint Committee on Agency Rule Review, R.C. 119.03(H).

Conclusion

Based on the foregoing, it is my opinion, and you are hereby advised that:

1. Pursuant to the duty imposed upon the State Racing Commission by R.C. 3769.03 to prescribe the rules and conditions under which horse racing may be conducted, if the Commission reasonably finds the telecasting of horse racing to be directly related to the conduct of horse racing, it may regulate such telecasting, as long as such regulation otherwise comports with state and federal law, including the United States and Ohio Constitutions.
2. If the State Racing Commission undertakes regulation of the telecasting of horse racing, such regulation must be accomplished through the adoption of rules in accordance with the rule-making procedures prescribed by R.C. Chapter 119.
3. The power of the State Racing Commission under R.C. 3769.03 to adopt rules concerning the conduct of horse racing and wagering thereon does not authorize the Commission to adopt rules authorizing the telecasting of horse racing and wagering thereon in any manner other than those prescribed by R.C. 3769.089 and R.C. 3769.26.

Respectfully,

BETTY D. MONTGOMERY
Attorney General

October 10, 1995

Clifford A. Nelson II, Executive Director
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SYLLABUS:

95-034

1. Pursuant to the duty imposed upon the State Racing Commission by R.C. 3769.03 to prescribe the rules and conditions under which horse racing may be conducted, if the Commission reasonably finds the telecasting of horse racing to be directly related to the conduct of horse racing, it may regulate such telecasting, as long as such regulation otherwise comports with state and federal law, including the United States and Ohio Constitutions.
2. If the State Racing Commission undertakes regulation of the telecasting of horse racing, such regulation must be accomplished through the adoption of rules in accordance with the rule-making procedures prescribed by R.C. Chapter 119.
3. The power of the State Racing Commission under R.C. 3769.03 to adopt rules concerning the conduct of horse racing and wagering thereon does not authorize the Commission to adopt rules authorizing the telecasting of horse racing and wagering thereon in any manner other than those prescribed by R.C. 3769.089 and R.C. 3769.26.