

**OPINION NO. 82-044****Syllabus:**

While members and representatives of the Ohio Racing Commission are entitled, pursuant to 3 Ohio Admin. Code 3769-3-01(A), to "full and complete entry to any and all parts of the grounds and mutuel plants of permit holders," the Commission has no general authority to issue free passes to race tracks located in Ohio.

**To: Thomas E. Ferguson, Auditor of State, Columbus, Ohio**  
**By: William J. Brown, Attorney General, June 18, 1982**

I have before me your request for my opinion on the question whether the Ohio Racing Commission is authorized to issue free passes to race tracks located in Ohio.

Provisions governing the Ohio Racing Commission appear in R.C. Chapter 3769. The Commission's basic functions are set forth in R.C. 3769.03, which states in part:

The state racing commission shall prescribe the rules and conditions under which horse racing may be conducted, and may issue, deny, suspend, diminish, or revoke permits to conduct horse racing as authorized by sections 3769.01 to 3769.14 of the Revised Code. . . .

The state racing commission may issue, deny, suspend, or revoke licenses to such persons engaged in racing and to such employees of permit holders as is in the public interest for the purpose of maintaining a proper control over horse-racing meetings. License fees shall be set by the commission. . . .

The commission shall, biennially, make a full report to the governor of its proceedings. . . . The commission shall semi-annually. . . make a report and accounting to the governor. By the first day of December, preceding the convening of the general assembly, the commission shall file a budget estimate for the biennium. . . .

The Commission is, thus, responsible for issuing permits governing horse racing in Ohio and for prescribing the rules and conditions under which horse racing may be conducted. See also R.C. 3769.01 ("[n]o person. . . shall hold. . . any meetings, at which horse racing is permitted for any stake, purse, or award unless such person. . . secures a permit to conduct a horse-racing meeting and complies with sections 3769.01 to 3769.14 of the Revised Code"). In addition, the Commission is required by R.C. 3769.09 to "employ a racing inspector to attend each horse-racing meeting, held under a permit" issued under R.C. Chapter 3769, and is required by R.C. 3769.10 to enforce the provisions of R.C. Chapter 3769. The Commission also has responsibilities with respect to the Ohio thoroughbred race special account, R.C. 3769.083; the Ohio standardbred development fund, R.C. 3769.085; and the Ohio quarter horse development fund, R.C. 3769.086.

As a creature of statute, the Ohio Racing Commission has only those powers which are expressly granted by statute and those which may be implied from the express statutory grants. See Dayton Communications Corp. v. PUCO, 64 Ohio St. 2d 302, 307, 414 N.E.2d 1051, 1054 (1980) ("the Public Utilities Commission is a creature of the General Assembly and may exercise no jurisdiction beyond that conferred by statute"). I am aware of no statute which, either expressly or by implication, authorizes the Commission to issue free passes to race tracks in Ohio. See, e.g., 1973 Op. Ill. Att'y Gen. No. S-579 (reaching an analogous conclusion under similar statutes then in effect in Illinois).

I do note, however, that there are circumstances in which, by virtue of action by the Commission, certain individuals may obtain a right of free entry to Ohio race tracks. R.C. 3769.03, quoted above in relevant part, authorizes the Commission to prescribe rules and conditions under which horse racing may be conducted, and R.C. 3769.10 imposes upon the Commission the duty of enforcing its rules and statutory permit provisions. Pursuant to its rule-making authority, and in order to carry out its duties of regulating horse racing in the state, the Commission has adopted the following rule: "Members of the Commission and its representatives shall have the right of full and complete entry to any and all parts of the grounds and mutuel plants of permit holders." 3 Ohio Admin. Code. 3769-3-01(A).

The Commission's authority to adopt rules regulating horse racing in the state has been recognized by the courts, O'Daniel v. Ohio State Racing Commission, 37 Ohio St. 2d 87, 93, 307 N.E.2d 529, 533 (1974) ("horse racing is one of those fields subject to extraordinarily broad regulatory powers"), and various of its rules have been specifically upheld. See, e.g., O'Daniel v. Ohio State Racing Commission, *supra* (upholding rule imposing strict accountability upon a trainer for the condition of the horse he enters in a race); Standard "Tote" Inc. v. Ohio State Racing Commission, 58 Ohio Op. 337, 121 N.E.2d 463 (C.P. Franklin County 1954) (holding that Commission may regulate parimutuel betting as well as conditions under which horse racing is conducted). 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). However, the Commission has wide discretion in its adoption of rules, and the provisions of rule 3769-3-01(A) appear, on their face, to constitute a reasonable implementation of the Commission's powers and duties.

Since an administrative rule validly adopted is law in the State of Ohio, see Kroger Grocery & Baking Co. v. Glander, 149 Ohio St. 120, 77 N.E.2d 921 (1948), I find that the Commission members and its representatives are entitled under rule 3769-3-01(A) to "full and complete entry to any and all parts of the grounds and mutuel plants of permit holders." To implement this rule, the Commission may choose to provide its members and representatives with some sort of identification which will serve to admit them to the various facilities of permit holders for purposes of carrying out their duties under relevant statutes and rules. Such identification may have the effect of a pass. Such effect will, however, be limited, in that the identification will be applicable only to a Commission member or a representative of the Commission, and in that the right of entry established by rule 3769-3-01(A) is clearly intended to be used only to permit these individuals to carry out the duties prescribed by statute or rule. See Dayton Communications Corp., *supra*; 1953 Op. No. 3363; 1947 Op. No. 2348. Compare rule 3769-3-01(A) with 3 Ohio Admin. Code 3769-5-01 (concerning badges and admission passes issued by permit holders).

In conclusion, then, it is my opinion, and you are hereby advised, that, while members and representatives of the Ohio Racing Commission are entitled, pursuant to 3 Ohio Admin. Code 3769-3-01(A), to "full and complete entry to any and all

parts of the grounds and mutuel plants of permit holders," the Commission has no general authority to issue free passes to race tracks located in Ohio.