

OPINION NO. 82-090**Syllabus:**

The Ohio State Racing Commission may not deny dates to a permit applicant on the grounds that those dates overlap with dates granted to another permit applicant of the same county.

To: Henry Gurvis, Chairman, Ohio State Racing Commission, Columbus, Ohio
By: William J. Brown, Attorney General, October 26, 1982

I have before me your request for my opinion concerning the authority of the Racing Commission to issue and deny permits. You have asked the following question. Does the Racing Commission have the authority to deny dates to a permit applicant on the grounds that those dates overlap with dates granted to another permit applicant of the same county and, if so, must the Commission deny dates in a similar manner uniformly throughout the counties of the state?

R.C. 3769.03 sets forth generally the Racing Commission's authority with regard to horse racing permits and 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." This section clearly states that any action taken with regard to a permit must be authorized by R.C. sections 3769.01 through 3769.14. As you recognize in your letter of request, R.C. 3769.07 prohibits the issuance of a permit "so as to permit horse racing on the same hour at more than one track in one county. . . ." There is, however, no similar prohibition in R.C. 3769.01 to 3769.14 which would authorize the Racing Commission to deny a permit to race on the basis that the applicant desires to race on the same day, though not at the same hour, as another permittee in the same county. Cf. R.C. 3769.06 ("commission may refuse to award days or to issue a permit to any applicant if a permit previously issued to said applicant has been revoked. . .").

Therefore, it is my opinion, and you are advised, that the Ohio State Racing Commission may not deny dates to a permit applicant on the grounds that those dates overlap with dates granted to another permit applicant of the same county.