WILLIAM J. SCOTT
ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD

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FILE NO. S-1449

ADMINISTRATIVE LAW:
Power of Illinois Racing Board
to Assess Costs of Administrative
Review to the Appellant

Charles E. Schmidt, Jr.
Chairman, Illinois Racing Board
160 North LaSalle Street
Chicago, Illinois 60601

Dear Mr. Schmidt:

I have your letter wherein you request an opinion on whether the Illinois Racing Board, by its rule-making power, may adopt a rule requiring the appellant at a Board hearing to pay either half the court reporting costs or all the costs if he is unsuccessful in his appeal.

The Illinois Racing Board is vested with the power to supervise and regulate all meetings in Illinois where horse racing is conducted for a stake, purse or reward. (Ill. Rev. Stat. 1977, ch. 8, par. 37-2.) The Board is also responsible for issuing occupation licenses to jockeys, trainers and "others * * * whose work in whole or in part is conducted upon race track grounds within the State of Illinois

which are owned by race track organizations." (Ill. Rev. Stat. 1977, ch. 8, par. 37-15.) The Board, through its stewards and judges, has the power to suspend or revoke an an occupation license immediately. The suspended licensee may request a hearing to review the decision. The Board is required to grant such a hearing and is further required to keep a written record of the proceedings. Final decisions by the Board are reviewable under the Administrative Review Act. Ill. Rev. Stat. 1977, ch. 8, par. 37-46.

You state that recently the number of appeals has increased, with a corresponding increase in the costs incurred by the Board; that the Board wishes to adopt a rule which would shift all or part of the burden of costs to the appellant; and that the Board believes that such a rule would tend to discourage frivolous appeals and would have the further beneficial effect of limiting the expenditures necessarily incident to the required hearing.

In Fahey v. Cook County Police Dept. Merit Bd. (1974), 21 Ill. App. 3d 579, the court stated at page 583:

" * * *

> * * * Administrative agencies possess only such authority as is legally conferred by express provision of law or such as, by fair implication and intendment, is incident to and included in the authority expressly conferred for the purpose of carrying out and accomplishing the objectives for which those agencies were created. * * *

* * * "

The Board has no explicit authority to adopt a rule requiring licensees to bear the costs of a review hearing. The only authority upon which the Board could rely in adoption of the proposed rule is found in section 37-9(b) (Ill. Rev. Stat. 1977, ch. 8, par. 37-9(b)), which states as follows:

> "(b) The Board is vested with the full power to promulgate reasonable rules and regulations for the purpose of administering the provisions of this Act and to prescribe reasonable rules, regulations and conditions under which all horse race meetings in the State shall be held and conducted. Such reasonable rules and regulations are to provide for the prevention of practices detrimental to the public interest and for the best interests of horse racing and to impose penalties for violations thereof."

Thus it can be seen that the Board's power is limited to the promulgation of rules which are reasonable. It is clear that to be reasonable in this instance, the rule must tend to prevent detrimental practices or protect the best interests of horse racing.

It has been held that the provisions for licensing under the prior Illinois Horse Racing Act (Ill. Rev. Stat. 1973, ch. 8, par. 37c-2) were "* * * directed toward preventing undesirables from engaging in horse racing activities." (Cox v. National Jockey Club (1974), 25 Ill. App. 3d 160, 164.) There is no reason to assume that the purposes of licensing under the 1975 Horse Racing Act differ in any material respect. Thus, a rule requiring appellants to pay

the costs of a hearing may be reasonable if it tended to promote the goal of keeping undesirables out of horse racing. The proposed rule would be reasonable only if those who choose not to have a hearing because of the burden of costs are in fact undesirable. However, as the United States Supreme Court noted in Boddie v. Connecticut (1971), 401 U.S. 371, 381:

" * * *

> * * * there [is] no necessary connection between a litigant's assets and the seriousness of his motives in bringing suit * * *.

* * * "

The connection between the stated goal and the means chosen to achieve it is tenuous. Thus the proposed rule is unreasonable because, rather than screening the frivolous from the serious claims, it merely screens those of differing financial resources.

Although the rule may be unreasonable if intended as a screening mechanism, it might be acceptable if it could be found that relieving the Board of part of the burden of administrative costs is a reasonable means to effectuate the purposes of the Act. The Board is under a duty to hold a hearing and prepare a written record. In this respect, it is no different from other State agencies which administer licensing schemes. Examination of the duties imposed on those agencies reveals that, when mentioned at all, the

burden of the costs of a review hearing is always borne by the agency. Absent a clear legislative expression to the contrary, it is not reasonable to assume that the legislature intended those involved in horse racing to carry a heavier burden to retain their license than those in other licensed occupations.

While such a rule would save the Illinois Racing Board money, and thereby allow the Board greater flexibility in the allocation of their resources, such a result is inconsistent with the legislature's intent. Had the legislature wished to grant the Board the power to allocate their resources in this manner, they could have allowed the Board the option to refuse to conduct a hearing on frivolous complaints. A permissive rather than mandatory hearing procedure would have allowed the Board to operate in the manner in which they now propose to do through their rule-making power. A rule which is "inconsistent with the express provisions of the statute and inharmonious with general principles meant to govern the board's exercise of its rule-making power" (Fahey v. Cook County Police Dept. Merit Bd. (1974), 21 Ill. App. 3d 579, 584) is clearly unreasonable and not within the Board's power.

For the foregoing reasons, it is my opinion that the Illinois Racing Board may not adopt a rule

requiring appellants to bear any part of the administrative costs incurred by the Board in conducting a review hearing.

Very truly yours,

ATTORNEY GENERAL