

STATE OF MINNESOTA
BEFORE THE
MINNESOTA RACING COMMISSION

In the Matter of the Proposed Rules
Governing Possession of Electrical
Devices, Reciprocity of Rulings,
Distribution of Purse Money, Direct
Deposit Requirements and Reporting
of Payments, Steward, and Breeders'
Fund.

STATEMENT OF NEED
AND REASONABLENESS

GENERAL

The Minnesota Racing Commission began the monumental task of drafting the initial set of rules to govern pari-mutuel horse racing in October of 1983. On December 24, 1984, the majority of those rules were published in the State Register. In the six months since that time, the Commission has continued drafting additional rules that required more research, discussion and, at times, negotiation. On June 10, 1985, the additional rules and some amendments to now existing rules will have been published. The Commission believes the proposed rules are necessary to ensure the integrity of horse racing in Minnesota and to satisfy the legislative intent that the Commission establish rules for the hiring, duties and authority, and compensation of it's stewards. The proposed rules are also necessary to fulfill the legislative mandate that the Commission establish reporting and deposit requirements of pari-mutuel taxes, procedures for purse payments to horsemen and rules for the Minnesota Breeders' Fund.

The proposed rules are reasonable because they provide clarity with respect to the legislative intent and because they are generally customary in pari-mutuel horseracing. The burdens are not undue. Compliance has been obtained in other jurisdictions, racing has not been hampered, and the industry has flourished while meeting the standards set forth.

Statutory authority, necessity and reasonableness of specific rules is shown hereafter.

POSSESSION OF ELECTRICAL DEVICES

Minn. Rule 7897.0100, subpart 18 prohibits

any person, while on the grounds of an association, from possessing any electrical device that could be used for the purpose of stimulating a horse or affecting its speed during a race or workout. This rule was written to mirror Minn. Stat. 240. subdivision 4, (a) as amended. Originally, the statute had prohibited such possession "with intent to use". The Commission feels that it is necessary to prohibit even the possession as there is no practical or ethical use of such devices. The rule is necessary to safeguard against the use of such devices, as they are known to create danger among participants in a race because of a horse's unpredictable reaction to the stimulus, the use is not humane to the horse, and it allows for tampering with the outcome of the race. The rule is reasonable because of the protection it serves to horses, jockeys and patrons and because of the positive effect it creates on the integrity of racing. The rule is necessary and reasonable because it removes the element of having to prove intent to use such devices.

RECIPROCITY OF RULINGS

Minn. Rule 7897.0120, subpart 3 creates recognition of other states, disciplinary sanctions with respect to license suspensions and revocations for rules infractions committed by licensees in other jurisdictions. This rule is necessary for at least three reasons. First, as Minnesota will not issue drivers' licenses to persons who have had their licenses revoked or suspended in other states, racing licenses should be treated in the same manner. If a person has proven himself/herself to be dangerous or otherwise unfit for failure to obey traffic laws or, in this case, racing laws, Minnesota should not become a haven or sanctuary for those persons. Second, because information is not always instantly available at time of licensure, this rule provides protection to Minnesota to suspend a person upon subsequent discovery of the person's disciplinary sanctions elsewhere. Third, this rule provides Minnesota with protection to take suspensory or revocation action against a person should the person have action taken against them by another jurisdiction after being licensed in Minnesota. It is important for the Commission to be able to protect the integrity of racing in Minnesota by suspending the activities of offenders, whether the offense takes place in Minnesota or elsewhere.

The rule is reasonable for at least three reasons. First, the Commission has been given legal protection to guard itself from racing offenders from any jurisdiction. Second, because it is customary for all jurisdictions to honor each others' rulings, Minnesota achieves the credibility necessary to other states and all horsepersons. Third, the rule is reasonable because the burden upon the suspended party is not undue, as the rule allows for the

possible reinstatement of such licensee, when such licensee is reinstated in the original jurisdiction issuing the disciplinary sanction.

DISTRIBUTION OF PURSE MONEY

Minn. Rule 7873.050500 carries out the legislative mandate as set forth in Minn. Stat. chapter 240.13, subdivision 5, by promulgating rules for the distribution of purse money created by the law. The rule has five integral components. First, the rule requires an association to adjust purse levels to horsepersons on a regular basis to correspond with actual purses earned through the levels of pari-mutuel handles. Second; the rule directs that should overpayments of purses occur, an association may apply that negative balance to purse levels in the subsequent year to recover their loss. This is necessary, as it provides protection for an association from sustaining large losses of income through purses. The overpayments can sometimes occur when an association guarantees minimum purse levels to horse owners to provide monetary protection for such owners. At times, wagering levels may fall short of the purse money paid. This part of the rule does, however, require the association to recover its overpayment over an extended term so as not to create large purse discrepancies. Third; just as purses can be overpaid, purses can end up short of reflecting actual purses earned. This occurs for many reasons, such as a number of major money stakes events not being run due to insufficient entries, or wagering levels skyrocketing at the end of a race meeting, thus preventing the association from being able to keep up with purse payments. The rule directs that the positive purse balance be distributed in the subsequent racing year, but on an even basis to prevent serious purse inconsistencies. Fourth; the rule does provide the Commission disciplinary action against a race track operator should the Commission determine that the operator willfully underpaid purse money to use for it's own purposes during the interim period between race meetings. Fifth; the rule requires that when a racetrack operator charges nominating, sustaining, entry or starting fees for a race, those fees must be protected by requiring the fees to be put into interest bearing escrow accounts when the total fees for such a race exceed \$15,000 or are held for a term of over 180 days. This is necessary, as racetracks have gone bankrupt and have used such fees in their general accounts and those funds were subsequently lost. The fees are horse owners' money and should be protected from being lost for any reason.

The rule is necessary as it provides for compliance with procedures to keep the racetrack operator and the horse owners protected with respect to purses being distributed equitably. It also gives the Commission authority

to intervene should such procedures be breached. The rule is reasonable because it places no undue burden upon either the racetrack operator or the horse owners. Further, it provides the Commission with the necessary tools to enforce compliance with the statutory mandate.

DIRECT DEPOSIT REQUIREMENTS AND REPORTING OF PAYMENTS

Because the legislature intended the Commission to collect all applicable taxes and fees from a racetrack operator, Minn. Stat. 240.15, subdivisions 1,2 and 5 mandated that rules be promulgated to ensure the safest, quickest and most accountable means be used to inject those taxes and fees into the General Fund. Minn. Rules chapter 7874 is necessary to accomplish that intent.

The rule consists of three parts to provide for the payment of taxes and the accountability therefor. First; the rule states that within seven days of the date that the pari-mutuel tax, breakage and breeders' fund tax are collected, such funds must be remitted to the Commission. Those funds, except for purse supplements for Minnesota-bred races, must be directly deposited in a financial institution designated by the Commissioner of Finance. At the close of each month, a statement of all such deposits must be submitted to the Commission. Second; the proceeds from unredeemed winning pari-mutuel tickets must be remitted to the Commission within 100 days from the close of a race meeting in accordance with Minn. Stat. chapter 240.13. Third; a daily recapitulation must be filed with the Commission detailing the total take-out for the day, the total pari-mutuel tax earned by the state, state and local admissions taxes, total breakage, the Commission's share (50%) of the breakage, and the breeders' fund tax. The Director of Pari-Mutuels verifies these figures to ensure that the state is receiving all amounts due.

The rule is necessary as it provides procedures for a racetrack operator to comply with or face disciplinary action by the Commission. It also creates the most effective way of depositing funds due the state in a safe and expeditious manner. The rule is reasonable because it follows normal state accounting practices and is therefore not cumbersome to the state, the Commission or the racetrack operator.

STEWARDS

Minn. Rule chapter 7879 is a very critical rule as it deals with the stewards, the individuals that have the most influence, authority and impact upon the conduct of racing at a licensed racetrack. The Minnesota Legislature recognized the importance of the stewards in Minn. Stat. chapter 240.16, and directed the Commission to promulgate

rules with respect to the stewards' qualifications, their appointment to service, authority, duties, and compensation. The Commission has satisfied the direction of the legislature.

The qualifications for stewards were drafted following primarily the qualifications set forth by the Kentucky Racing Commission. Kentucky has long been known throughout racing for the high quality stewards that it employs. It is reasonable to emulate those qualifications to ensure that Minnesota has capable, experienced stewards. The rule states that the stewards must have prior experience as a steward or as a racing secretary, assistant racing secretary, starter or other racing official for at least sixty days per year for at least three of the preceding five years. This requirement accomplishes two things. First, it requires the Commission hire individuals with extensive racing experience rather than employing persons that may have used political friends or other influence to secure a position, as has been the case in other racing jurisdictions. Second, the requirement ensures that the stewards have experience in many areas of racing, thereby giving them the skills and knowledge necessary to perform their duties. The stewards must also demonstrate to the Commission that their income, other than as a steward, is unrelated to any licensee. This is necessary to eliminate any possibility of conflict of interest or preferential treatment to a licensee.

The rule gives the Commission direction in the appointment of the Commission stewards and the approval and subsequent appointment of the association steward. The rule sets forth the procedure the association must follow to get a nominee for steward approved, and makes it clear that no steward shall serve without first being approved. Finally, part 7879.0100 provides the procedure for the appointment of a temporary steward to replace a steward that is unable to perform his or her duties due to illness, resignation or other reason. The rule is necessary to provide coverage and continuity within the Board of Stewards.

Part 7879.0200 of the rules covers three very important areas with respect to stewards. Those areas are the stewards' general authority, specific duties and responsibilities, and the criteria to be used when making racing related judgments or determining the qualifications of applicants for certain Class "C" licenses.

Subpart 1 outlines the general authority of the stewards. That authority extends to exercising immediate supervision, control and regulation of racing on behalf of the Commission; the authority over all persons on the association grounds; the authority to determine all questions, disputes, protests, complaints or objections

concerning racing matters; the authority to suspend Class "C" licensees; the authority to eject or exclude from the grounds of the association licensed or unlicensed persons; the authority to enforce rules and issue decisions or rulings pertaining to racing matters; the authority to request assistance from law enforcement agencies to conduct investigations for possible violations of the Commission's rules or applicable laws; the authority to conduct hearings; and the authority to remove and subsequently replace any official or licensee should such licensee prove to be unable to perform his or her duties.

The authority in the aforementioned areas is imperative to maintain regulatory control of horse racing. The stewards are the Commission's representatives at each racetrack and are vested with the responsibility of ensuring the integrity of racing, control of all racing functions and of the participants therein. By defining the stewards' authority, there can be no challenge to the judgments made by them nor can the stewards exceed the limitations placed upon them by the rules. The rule is reasonable because it gives the stewards the powers necessary to govern the conduct of racing and, at the same time, does not express implied authority that could lead to possible abuse of such authority. The burden is not undue as the rule provides equal protection for both the stewards and licensees.

Subpart 2 of the rule details the specific duties and responsibilities of the stewards. The rule is necessary to define the stewards' roles on a day-to-day basis. The subpart is broken into 16 separate areas of responsibilities dealing with such matters as requiring the stewards to review all allegations of rules infractions and to initiate investigations and conduct necessary hearings therefor; to review applications for Class "C" licensees and administer or cause to be administered by technically qualified persons standard examinations required of certain first-time applicants; to supervise the activities of the racing office with respect to entries, scratches or declarations; to view all races conducted at an association and conduct inquiries into any race where doubt is held with respect to the fairness of the running of such a race; to declare races "official" for the purpose of pari-mutuel payouts; and to maintain daily race reports and detailed records of all disputes, complaints, objections, interviews, investigations and rulings. The rule is necessary to give the stewards guidelines as to the duties required of them by the Commission and to serve as support for any actions taken by them. The rule is reasonable for at least two reasons. First, it is reasonable to give any employee of the Commission a direct expectation of certain hours of work, tasks to be completed and reports to be kept. It is especially important to define the responsibilities of the stewards by rule because of the critical function

they serve as the Commission's representatives. Second, the rule is reasonable because it makes known to licensees that the stewards have specific responsibilities with respect to taking action against such licensees for violations of racing rules or applicable laws.

Subpart 3 was included in the rule at the suggestion of the Attorney General's office that reviewed the original rules. The rule is necessary to cause the stewards to use specific criteria in racing related judgments and in their assessment of an applicant's capabilities. The criteria has five specific areas with respect to stewards' judgments. The areas are the stewards' prior experience in horse racing; the applicability of similar prior decisions to the decision being made; all relevant circumstances surrounding the decision being made; what, if any, effect the decision being made will have upon the integrity of racing, and the safety, health and welfare of the participants and the general public; and any other relevant factors as long as the same factors are considered with regard to all similar decisions being made.

The criteria stewards are to use when determining the qualifications of an applicant are as follows; whether the applicant's ability is sufficient so as to not endanger the life or safety of the applicant, other participants, racetrack patrons, horses or property; whether the applicant's performance will enhance the quality of horse racing; whether the applicant's ability or qualifications are at least equal to those of current licensees; and any other relevant factors which affect the integrity of horse racing, or the health, safety or welfare of persons and animals so long as these same factors are applied uniformly to all applicants for Class "C" licenses.

The rule is reasonable because it does not place undue burden upon the stewards to use reasonable and necessary criteria in their judgments. It is not uncommon for stewards to use such criteria in their day-to-day activities, but to incorporate the criteria by rule is reasonable to serve as protection for all affected licensees.

Part 7879.0300 deals specifically with the legislative mandate that the Commission set the compensation for stewards, the compensation to be the same for all stewards, and the method of recovering the costs of the stewards from the track operators. The rule is necessary to satisfy the legislative intent. Criteria has been put into the rule for the Commission to consider when determining the level of compensation. The rule is reasonable because it is usual and because it sets criteria to be used in establishing compensation levels.

BREEDERS' FUND

7895.0100 to 7895.0110. Minn. Stat. §240.18 requires the Commission to establish a breeders' fund with money the Commission receives through the tax provisions of Minn. Stat. §240.15 subd. 1. That provision requires racetrack operators to pay $\frac{1}{2}$ to 1 percent of pari-mutuel pools.

Section 240.18 mandates the Commission to distribute the net proceeds of the breeders' fund:

(1) Twenty percent in grants for equine research and related education at public post-secondary institutions in Minnesota; and

(2) The balance to categories corresponding with various breeds of horses racing in Minnesota in proportion to each breed's contribution through taxes on its races.

The funds in each of the breed categories may be spent by the Commission to:

(1) Supplement purses for exclusive races for Minnesota-bred, Minnesota-foaled and Minnesota-owned horses;

(2) Pay breeders or owners awards to the breeders or owners of Minnesota-bred horses which win money at Minnesota racetracks; and

(3) Provide other financial incentives to encourage the horse-breeding industry in Minnesota.

Minn. Stat. §240.29 requires racetrack operators to conduct at least one race a day exclusively for Minnesota horses. If there are not enough Minnesota horses, the track may substitute another race.

Section 240.18 empowers the Commission to establish advisory committees to counsel the Commission on distribution of the breeders' fund.

The section mandates the Commission to adopt rules governing distribution of the fund.

Part 7895.0100 provides procedures regarding the fund. Subpart 2 provides for registration of Minnesota horses. Subpart 3 provides that the Commission must decide all questions regarding registration, eligibility or breeding. Subpart 4 provides for decisions on eligibility for nomination and entry into races for Minnesota horses. Subpart 5 provides for when awards and purse supplements must be paid. Subpart 6 puts a maximum award that any owner, breeder or owner/breeder may receive in 1985 and

1986. It was necessary to include maximum awards due to the small number of Minnesota-breds that will be racing in the formative years in Minnesota. Subpart 7 provides for distribution of award money not paid out of lack of a qualifying horse. This residual money will be awarded at the end of a race meeting to breeders and owners in proportion to award money won.

The rule is necessary to provide incentives for growth of the Minnesota thoroughbred industry. It is reasonable because it is recommended by affected horsemen.

SMALL BUSINESS CONSIDERATIONS

The Commission considered the impact of these rules on small business and considered less stringent requirements for small business, less stringent schedules or deadlines, consolidation or simplification, performance standards as an alternative to design or operational standards and exemptions for small business.

The rules do impact small business. The Commission would submit the rules do not affect small business disproportionately as a quantitative matter nor prevent participation of small business in Minnesota's new pari-mutuel horseracing industry as a qualitative matter.

A small business can cause a scandal, fix a race or otherwise harm the integrity of racing. The Commission cannot be less rigorous in its regulation of one type of business than another.

CONSEQUENCES

Short-term, these rules permit a new industry to get under way with integrity and impose some costs. The economic costs will be felt before the benefits.

Also, costs will be greater at first while compliance is new to affected persons. Over time, affected persons will be able to comply more easily, more quickly, more effectively and less expensively as they become accustomed to the rules.

Compliance will be as efficient as possible from the beginning, because the Commission sought to minimize the burden and propose rules consistent with other jurisdictions.

Long-term economic and other benefits will greatly exceed costs.

IMPACT ON AGRICULTURAL LAND

These rules will not require expenditure of public monies by local public bodies, nor do they have a direct and substantial adverse impact on agricultural land in the state. See Minn. Stat. section 14.11.