



STATE OF WEST VIRGINIA  
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May 23, 1989

CONSUMER HOT LINE  
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Honorable Robert J. Burke  
Chairman  
West Virginia Racing Commission  
240 Capital Street  
Charleston, West Virginia 25301

Dear Chairman Burke:

In your recent inquiry, you represent that the Racing Commission met on May 10, 1989, and granted tentative approval for Sunday racing activities at Wheeling Downs and Tri-State Dog Track to commence May 28, 1989; and, further, that the Racing Commission gave public notice of said action on May 16, 1989.

You request the opinion of this office whether such Sunday racing activities can be presented pending final approval by the Racing Commission? An implied question is whether Sunday racing activities can continue in such county, pending the results of any election, which may be ordered by the subject county commission?

Enrolled Committee Substitute for House Bill 2395 was enacted by the Legislature on April 5, 1989, and was in effect from passage. The Honorable Governor Caperton signed the bill into law on April 27, 1989. The subject amendment deleted in its entirety former Section 8a of Article 23, Chapter 19 of the Code, and replaced it with a new Section 8a.

An effect of the subject amendment, as set forth under Subsection (a), is to empower the Racing Commission, upon application by a racing association operating a horse or dog race track, to permit such applicant(s) to conduct horse or dog racing on Sunday, between the hours of 1:00 p.m. and 6:00 p.m. local time.

If the Racing Commission grants tentative approval to the application, it must then give notice to the public and solicit public comment upon such approval from the citizens of the county wherein the subject is situate, and, further, shall hold a public hearing in that county at an specified date.

Public comment shall be taken into consideration by the Racing Commission in deciding whether or not to grant final approval to the application, which shall be determined at the expiration of sixty days subsequent to the date of publication of the aforesaid public notice. In the event, however, that the subject County Commission, pursuant to the procedure set forth under Subsection(b) (c) (d) (e) and (f) of Section 8a, shall order an election on the matter, then the Racing Commission shall not proceed to grant final approval of the application. Otherwise, it may grant such final approval.

The amended statutory language authorizes the Racing Commission to grant approval, albeit tentative, of Sunday racing activity to be carried out and to continue pending its final approval; or, in the alternative, pending the results of an election which may be ordered by the County Commission. The aforesaid intent of the legislature is made very clear by its incorporation into the amendment in subsection (b) the following language:

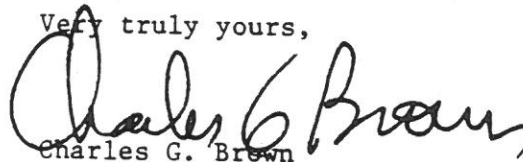
....."The racing commission shall permit such racing pending certification of the results of the election. (emphasis supplied).

There was no comparable requirement in the previous version of the statute.

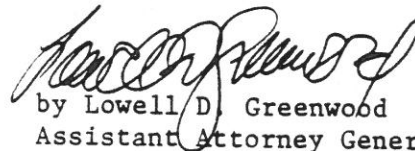
The West Virginia Supreme Court of Appeals has consistently held that where a statute is clear and unambiguous, it is the duty of the courts to apply the statute and not to construe it. See 17 M.J. Statutes §34, citing State ex rel. Simpkins v. Harvey, 305 SE 2d 268 (WV 1983); Stone v. Motorists Mut. Ins. Co., 654 F. Supp 205 (S.D. WV 1968). See also State ex rel Underwood v. Silverstein, 278 S.E. 2d 886, 167 WV 121; Carper v. Kanawha Banking & Trust Co., 207 S.E.2d 897, 157 WV 477.

Based on the foregoing, it is the opinion of this office that Sunday racing activities may be conducted by the respective applicants, pending final action of the Racing Commission or, in the alternative, pending the results of an election if the same shall be duly ordered by the County Commission of the subject county.

Very truly yours,



Charles G. Brown  
Attorney General



by Lowell D. Greenwood  
Assistant Attorney General