

4/22/91



MINNESOTA RACING COMMISSION

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April 3, 1991

Ms. Maryanne Hruby, Director
LCRAR
55 State Office Building
St Paul MN 55155

Dear Ms. Hruby:

Enclosed you will find a copy of the Statement of Need and Reasonableness for the Proposed Permanent Rules Relating to New Rules Regulating Licensing County Fairs by the Minnesota Racing Commission.

These rules will be published in the State Register on Monday, April 22, 1991.

Please contact me if you have any questions regarding this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Richard G. Krueger".

RICHARD G. KRUEGER
Executive Director

RGK:sb
encl.

The Legislative Commission to
Reform Administrative Rules

APR 10 1991



STATE OF MINNESOTA

MINNESOTA RACING COMMISSION

In the Matter of the Proposed Adoption
of Rules Relating to Class D License
Applications and Class D License Criteria,

STATEMENT OF NEED
AND REASONABLENESS

GENERAL

Minn. Stat. §240.03 empowers the Minnesota Racing Commission to regulate horse racing in the state to ensure it is conducted in the public interest, to take all necessary steps to ensure the integrity of racing, to issue licenses, to supervise pari-mutuel betting on horse racing and to conduct necessary investigations and inquiries and compel the submission of information, documents and records it deems necessary to carry out its duties.

Minn. Stat. §§240.01-240.29 mandate or authorize the Commission to promulgate a wide variety of rules. Section 240.23 specifically authorizes the Commission to adopt rules governing any aspect of horse racing or pari-mutuel betting which in the opinion of the Commission affects the integrity of racing or the public health, welfare or safety.

The repeated statutory references to "integrity" in pari-mutuel betting and horse racing, the "public interest" and "public health, welfare or safety" reflect a legislative intent and public sentiment that the Commission act to ensure the financial strength and good character of Class D license applicants who construct, own and operate horseracing facilities.

The Commission believes the proposed rule is necessary to the integrity of pari-mutuel betting and horse racing in Minnesota, to the public interest and to public safety, health and welfare. The Commission submits that the rule is necessary to ensure that Class D licensees are financially strong, possess good character and will operate, sponsor and manage facilities, equipment, personnel, and systems in a safe manner. The Commission further submits that the proposed rule must be promulgated in order that an applicant for a Class D license may know the nature of the business it seeks to enter, as well as the application procedure and criteria for issuance of licenses.

The Commission believes the proposed rules are reasonable, because they are customary in the horse racing industry. Indeed, the proposed rule is very similar to the rules promulgated for the licensing of persons to obtain Class A and B licensees to own and operate a racetrack. Although the rule requirements are stringent, successful entrance into and participation in the industry has not been deterred. A Notice of Intent to Solicit Outside Opinion regarding the proposed rule was published in the State Register on January 2, 1990.

CLASS D LICENSES

1. SUMMARY

Minn. Stat. §240.05 Subd. 1(d) and subd. 3 clearly indicates that the Commission is not required to issue any license. Minn. Stat. §§240.09 provides that the Commission may issue a Class D license to county agricultural societies and other non-profit organizations operating or sponsoring county fairs if it determines that the applicant will act in accordance with all applicable laws and rules and will not adversely affect public health, welfare and safety and that the license will not create a competitive situation which will adversely affect racing and the public interest.

The proposed rules require complete disclosure of the applicant and all its officers, directors and shareholders as well as those of any holding company. Moreover, the proposed rule permits the Commission to require disclosure of persons holding direct, indirect or beneficial interests of any kind in the applicant or a holding company, whether the interest is financial, administrative, policymaking or supervisory.

Further, the proposed rule requires applicants for Class D licenses to submit affidavits setting forth that no officer, director or other person with a present or future direct or indirect financial or management interest in the applicant is in financial default to the state, has been convicted of or is charged with a felony, is connected with an illegal business, has been found guilty of fraud or misrepresentation in connection with racing or breeding, has been found guilty of a serious violation of a horseracing, pari-mutuel betting or other gambling law or rule or has knowingly violated a Minnesota racing law or rule.

The proposed rules require Class D applicants to submit detailed plans and specifications of an applicant's track, buildings, fences, and other improvements to the racing facility.

Proposed rules also require a comprehensive background and financial investigation of an applicant for a Class D license including all sources of financing. The investigation must be conducted by the Commission in cooperation with the Minnesota Department of Public Safety Gambling Enforcement Division. Access is afforded the Commission to all criminal history information which the Gambling Enforcement Division compiles on applicants and licensees.

The proposed rule mandate disclosure of all changes in directors, officers or other persons with a direct or indirect financial or management interest and changes in ownership of more than 5 percent of shares. The proposed rules also require submission of affidavits from those persons regarding their finances and character.

Finally, the proposed rules provide that the Commission and its representatives may inspect a licensee's premises, books and records

at any time to ensure financial strength, integrity and high quality of facilities, equipment, management, personnel and systems.

4. RULE-BY-RULE ANALYSIS

7870.0600. This part requires identification of an applicant for a Class D license. It is necessary that the Commission know who is applying for a license. The name, address and telephone number of the applicant is basic and minimum identification data as is the name, position, address, telephone number and authorized signature of an individual to whom the Commission may make inquiry. This rule also requires an affidavit of the applicant.

Subsection A. identifies the license sought.

Subsection B. ensures that the affiant is authorized to represent the applicant.

Subsection C. is necessary to make clear that no individual or entity is entitled to a Class D license as of right, and that the burden of proving the qualification for a license is on the applicant. The subsection obtains the applicant's recognition of and agreement with those principles.

Subsections D. and E. are necessary to protect the state of Minnesota, its employees, Commission members, staff and agents from the attempts of the applicant to prevent a full investigation into the finances, character or other qualifications of the applicant. In addition subsection D protects the state from liability which may result from application for a license. Subsection E. requires applicants to accept the risk of harm and expressly waive any claim.

Subsection F. requires affiants to attest to the truth of the contents of applications.

Subsection G. is necessary to obtain applicants' recognition of and agreement with possible sanctions that may be imposed for providing false or misleading information. This section is necessary to simply notify the applicant of the possible sanctions.

Subsection H. is necessary to expressly obtain the applicant's agreement to comply with Minn. Stat. ch. 240 and all rules of the Commission.

Subsections I. and J. are necessary to identify the affiant and provide the date of the affidavit.

The requirement that the Chief Executive Officer or a major financial participant in an applicant for a Class D license serve as the affiant is necessary for at least four reasons. First, an individual significant in the ownership or operation of the applicant can most appropriately bind it. Second, such an individual is most knowledgeable regarding the applicant and the truth of the contents of the application. Third, he or she will be most harmed by denial, revocation or suspension of a license or imposition of a fine and, as a result, has the greatest incentive toward submission of a complete and accurate application and compliance with its representations. Fourth, the chief executive officer or a major financial participant possesses the ability to obtain completeness, accuracy and compliance.

The proposed rule places no undue burden on applicants. It is customary in pari-mutuel betting and horse racing and has been used successfully in other jurisdictions. Information required is reasonable to ensure the integrity of the sponsors of pari-mutuel horse racing.

7870.0620 requires disclosure of the ownership and control of Class D License applicants.

Subsection A. provides for identification of the type of organizational structure of an applicant. This information is necessary in order to determine what specific ownership and control data is required.

Subsections B., C. and D. set forth information required in applications by individuals, corporations and other organizations, respectively, with regard to ownership and control and other potential obligations. This information is necessary to identify hidden ownership or hidden control by undesirable individuals or companies.

Subsection E. provides that all individuals with ownership or voting interests in the applicant be disclosed.

Many of the provisions of Minn. Stat. ch. 240 identified and explained above necessitate complete disclosure of who owns or controls a Class D license applicant.

The Commission cannot assess the financial strength or character of applicants without knowledge of all persons who own or control the applicants. Financial strength and good character are essential to the integrity of horseracing and protection of the public interest. They are necessary to public safety, health and welfare and to ensure that applicants will comply with laws and rules.

Chapter 240 requires financial statements and affidavits setting forth that holders of financial and management interests are of good character and mandates an investigation to ensure financial strength and good character. The information required by the rule will enable the Commission to make a sound licensing decision based on the public interest.

Chapter 240 requires disclosure of persons with any interest in the applicant. Changes in interest also must be disclosed.

This proposed rule, therefore, provides for necessary disclosure of ownership and control.

Securities documents and tax returns are especially important to an understanding of the ownership and control of applicants.

The proposed rule is reasonable for at least two reasons. First, applicants already compile much of the required information for other purposes; indeed, a great deal of it is public. Second, the required ownership and control disclosures are customary and obtained in pari-mutuel betting, horse racing, cable television and other

industries in Minnesota and elsewhere. The disclosure requirements have not impeded entrance into and participation in the industry. No undue burden is imposed.

7870.0630 requires disclosure of character information relating to persons with ownership or control interests in applicants or with management responsibility.

Subsection A. requires disclosure of charges of crimes involving fraud, money, other property or interference with justice. Subsection B. requires disclosure of involvement in civil proceedings relating to business practices. Subsection C. requires disclosure of involvement in disputes over racing, gambling, or business licenses. Subsection D. requires disclosure of involvement in administrative or judicial proceedings over horse racing, gambling, alleged unfair labor practices or discrimination. Subsection E. requires disclosure of actions against a regulator of horse racing or gambling. Subsection F. requires disclosure of involvement in bankruptcy proceedings. Subsection G. requires disclosure of failure to satisfy a judgment, decree or order. Subsection H. requires disclosure of delinquency in filing a tax report or remitting a tax.

Good character of applicants is necessary to the integrity of horse racing and protection of the public interest. It is essential to public safety, health and welfare and to ensure that applicants will comply with laws and rules.

The statute specifically requires affidavits setting forth that holders of financial and management interests are of good character and mandates an investigation to ensure good character. Revocation or suspension is statutorily authorized for violations which affect the integrity of racing as well as suspension of persons with an interest in an applicant who are inimical to horse racing or are not of good character.

Minn. Stat. ch. 240 mandates that applicants submit affirmative action plans. These provisions evidence legislative concern over human rights in pari-mutuel betting and horse racing. The concern is reflected in the requirement of subsection D. for disclosure of accusations of discrimination.

The proposed rule is reasonable for at least three reasons. First, the rule is narrowly focused on character evidence relevant to pari-mutuel betting and horse racing. It requires disclosure of incidents involving fraud, dishonesty, financial actions, handling of money and other property, business and labor practices, discrimination, bankruptcy, horse racing, taxes, gambling and compliance with laws and rules. These are all relevant to operation of a racetrack.

Second, the proposed rule expressly requires only the best effort of an applicant to disclose. It recognizes that in the case of a large publicly held corporation, for example, an applicant may not be able to provide all the requested information.

Third, the rule is customary in horse racing, pari-mutuel

betting, cable television and other industries. The information is obtained successfully, and entrance into and participation in industries has not been impeded.

7870.0640 requires disclosure of improvements and equipment at horseracing facilities. The Commission must know what an applicant proposes in order to determine whether the integrity of horse racing, public interest and safety, health and welfare will be well served.

The requested information is necessary so that the Commission can determine whether pari-mutuel betting and horse racing at the facility will be safe, comfortable, enjoyable, honest and financially successful as a matter of sport and recreation.

The statute specifically requires submission of detailed plans and specifications for the track, buildings, fences and other improvements.

Subsection A. requires a description of the location of the facility; subsection B. a site map showing nearby roads; subsection C. identification of types of racing proposed; subsection D. description of the racetrack; subsection E. stabling; subsection F. grandstand; subsection G. detention barn and walking ring; subsection H. paddock; Subsection I. jockey and driver quarters; subsection J. pari-mutuel tote; subsection K. parking; subsection L. improvements and equipment needed for adequate security; subsection M. starting, timing and photo finish equipment; and subsection N. Commission work areas.

Minn. Stat. §240 requires a horseracing facility to include work areas for Commission members, officers, employees and agents. Subsection N. reflects that requirement.

The proposed rule is reasonable. It requests information concerning only racetrack improvements and equipment which an applicant will typically provide. The disclosures are customary in pari-mutuel betting and horse racing and have been obtained successfully in other jurisdictions without impediment to applicants. It imposes no undue burden.

The rule recognizes equipment providers may not be known at the time of application and requires their identification only "if known" in subsections J. and M.

7870.0650 requires an applicant to disclose the terms and conditions of the lease or other agreement authorizing the applicant to sponsor and manage pari-mutuel horse racing at a licensed facility, and requires the applicant to provide a copy of the agreement. This requirement is necessary to demonstrate that racing may be conducted if a license is granted.

7870.0660 requires disclosure of financial resources.

Subsection A. requires the past five annual reports of the secretary of the applicant to the Commissioner of Agriculture, Subsection B. financial statements reflecting the applicant's current assets and liabilities, subsection C. equity and debt sources of funds to sponsor

and manage horse racing, and subsection D. identification and description of sources of additional funds, if needed, due to cost overruns or other cause.

The statute expresses the clear legislative intent that the Commission act to protect the integrity of horse racing, public interest, safety, health and welfare. The statute specifically requires the Commission to determine that an applicant will comply with all applicable laws and rules. It mandates that the Commission determine whether an applicant is financially able to own and operate a racetrack and requires a statement of the applicant's assets and liabilities. It requires a comprehensive financial investigation of applicants and sources of funding. These statutory requirements render the proposed rule necessary.

Financial strength is important not only at the time of application, but beyond. The Commission is greatly concerned over the financial "staying power" of applicants. Will an applicant be able to survive adversity if it occurs? The disclosure of sources of possible additional funds as mandated by subsection D. is necessary to the Commission's conclusion with regard to "staying power".

The rule is reasonable. It places no undue burden on applicants, because they must prepare the information for prospective lenders and others in any event. The rule is customary and successful in pari-mutuel betting, horse racing, cable television and similar industries.

7870.0670 requires that if an applicant for a Class D license proposes to conduct pari-mutuel horseracing at a facility to be constructed, that the applicant make certain disclosures with regard to the development of its horse racing facility.

Subsection A. requires the furnishing of total costs of construction of the facility, distinguishing between fixed costs and projections; Subsection B. requires identification of costs involved for facility design, land acquisition, site preparation, improvements and equipment, interim and/or permanent financing, and costs involved for organization, administration, accounting and legal services. Subsection C. requires documentation of fixed costs; Subsection D. requires the schedule for construction of the facility, including estimated completion date; Subsection E. requires schematic drawings; Subsection F. requires copies of various contracts and performance bonds; and subsection G. requires a determination whether the site has been acquired or leased and provision of appropriate documentation.

7870.0680 requires disclosure of an applicant's financial plan.

This section requires disclosure of comprehensive financial projections for the first or next three years of racing. An applicant must base projections separately on the number of racing days and types of pari-mutuel betting the applicant requires to break even and an optimum number of days and betting. The Commission does not commit itself to assignment of racing days or designation of permissible types

of betting. The subsection requires disclosure of the assumptions on which projections are based and support for the assumptions, profit and loss projections, cash projections and projected balance sheets.

The proposed rule relating to financial strength is necessary for the same reason that part 7870.0660 is necessary. The development period and first or next three years of racing is the period over which the financial viability of the applicant will likely be determined.

The rule is reasonable. It imposes no undue burden, because a financial plan is required of applicants by prospective lenders and others. The elements of the plan are typical. The rule is customary in pari-mutuel, horse racing, cable television and other industries. It has been applied successfully.

7870.0690 requires disclosure of compliance with law and the status of governmental actions required or caused by applicants' proposed facilities.

Subsection A. requires a description of the required governmental approval, unit of government, date and documentation; whether public hearings were held; whether the unit of government attached any conditions to the approval, and disclosure and documentation of any said conditions.

Subsection B. requires disclosure of any governmental approvals remaining to be obtained, including conditions and documentation.

Subsection C. requires determination that the facility is in compliance with all statutes, charter provisions, ordinances and regulations pertaining to the development, sponsorship and management of horse racing.

Subsection D. requires a certified copy of the County's authorizing resolution to conduct pari-mutuel horse racing.

The integrity of racing, public interest, health, safety and welfare render the rule necessary. Laws which provide for road and utility improvements, require governmental approvals or otherwise apply to a racetrack serve to protect the integrity of horse racing, public interest, health, safety and welfare. Compliance with those laws, necessary approvals and other government actions ensure that protection.

The rule is necessary to provide the Commission with information it requires to conclude that an applicant will be able to develop and operate a facility successfully in the manner and when it proposes to do so.

Further, chapter 240 mandates that the Commission determine whether an applicant will comply with applicable laws. The rule is necessary to provide the Commission with information it needs to make that determination.

The proposed rule is reasonable. It imposes no undue burden.

It requires only disclosure of the status of compliance, approvals and actions otherwise required.

7870.0695 requires disclosure of the management of applicant's facilities.

Subsection A. requires a description of the applicant's management plan with budget and identification of management personnel by function, job descriptions and qualifications for each management position, and a copy of the organizational chart.

Subsection B. requires disclosure of management personnel or volunteers, including legal names, aliases and previous names; current residence address, business and telephone numbers; qualifications and experience; and a description of the terms and conditions of employment.

Subsection C. requires disclosure of consultants and other contractors to the applicant who will provide management-related services; Subsection D. requires disclosure of memberships of the applicant, its management personnel and consultants in horse racing organizations.

Subsections E. through N. require disclosure of the applicant's security plan, plans for human health and safety including emergencies, description of plans for animal health and safety including provisions for maintenance of the racing surface and removal of injured horses from the track, a description of marketing, promotion and advertising plans, a description of the plan to conduct horse racing including types of racing, number of days, weeks, specific dates, number of races per day, time of day and special events, a description of the plan for purses including total purses, formula, minimum, stakes races and purse-handling procedures, a description of the plan for pari-mutuel betting, concessions, training of the applicant's personnel and plans for compliance with laws pertaining to discrimination, equal employment, and affirmative action.

The integrity of horse racing, public interest, health, safety and welfare are dependent upon the financial, sports and recreational success of an applicant. The proposed rule will provide the Commission with information it needs to determine whether an applicant will be successful. Nothing is more important than competent and honest management to the success and safety of horseracing.

Chapter 240 specifically authorizes the Commission to exclude from racetracks persons who have been convicted of felonies, been disciplined or denied a license by a racing authority or are threats to the integrity of racing. The statute also authorizes a Class D licensee to eject or exclude from its premises any person who is a threat to the integrity of racing or public safety. The proposed rule requires disclosure pursuant to subsection E(3) of security measures which enable the Commission and the racetrack to detect such persons.

Several problems have arisen in pari-mutuel betting and horse racing with regard to concessions. The disclosure required by subsection L. is necessary to enable the Commission to determine the quality of

the concessions, financial arrangements and the character of the operators.

The Statute requires submission of affirmative action plans by applicants. Subsection N. implements the statutory provisions.

The proposed rule is reasonable. It requires disclosure only of management plans, personnel and systems relevant to pari-mutuel betting and horse racing. The rule imposes no undue burden, because the requested disclosures are of information applicants will obtain and prepare in any event to plan operation of its racetrack, determine and support economic feasibility, hire personnel and for other purposes. The disclosures are customary in pari-mutuel betting and horse racing and required successfully elsewhere.

The rule recognizes through use of the phrase "to the extent known" that an applicant may not have entered into agreements with management consultants or concessionaires at the time of application. Use of "any" in reference to management consultant contracts recognizes the same reality. The use of "to the extent known" and "any" is further evidence of the reasonableness of the rule.

7870.0720 requires disclosure of the effects of applicant's horseracing facilities on competitors in the horseracing industry. The proposed rule reflects the requirement of the statute that the Commission determine that the issuance of a Class D license will not create a competitive situation which will adversely affect racing and the public interest.

The rule is reasonable. It does not require any substantive action by the applicant, and simply requires reporting of actions taken for other reasons and the impacts of the actions. The rule requires disclosure of information which an applicant will compile in any event for its own planning, promotion, and defense of its horseracing proposal, responses to inquiries, compliance with environmental review laws and other purposes. The rule imposes no undue burden.

7870.0730 requires disclosure of persons who assist with preparation of applications. The rule is necessary so that the Commission can judge the reliability of the application and make inquiry. It is reasonable because it imposes no undue burden.

7870.0740 requires identification of and authorization and waiver of claims for release and use of data on applicants, partners, directors, officers or other policymakers of an applicant, holders of 5 percent ownership or control interests in the applicant, and management personnel or consultants.

The identification requested includes full name, business and residence addresses and telephone numbers, last five residences, birthdate, place of birth, Social Security number if individual is willing to provide it and two references.

The authorization and waiver asks an individual to approve release of information, recognize the potential use of the data and

releases suppliers and users of the data from liability.

The statute mandates that the Commission conduct, or request the Gambling Enforcement Division to conduct, a comprehensive background and financial investigation of the applicant and sources of financing. The Commission has access to criminal histories compiled by the Gambling Enforcement Division.

The Gambling Enforcement Division in its expertise and experience has informed the Commission that a full name, current addresses, telephone numbers, last five residence addresses, date and place of birth, Social Security number and two references are important to the success of a comprehensive personal and financial investigation. Federal law allows requests, but prohibits demands, for Social Security numbers.

Chapter 240 requires applications be on forms prescribed by the Commission. The rule's requirement to that effect reflects the statute.

The rule is reasonable because it embodies the customary content and procedure of various crime bureau authorizations and waivers. Those authorizations and waivers have been used successfully for many years in Minnesota investigations.

Minnesota law protects the non-public nature of certain proprietary and security data. The rule does not impose an undue burden.

7870.0750 sets forth factors the Commission must consider as it makes the statutorily mandated determinations regarding the issuance of a Class D license.

Consideration of the factors in the rule is necessary to the statutory determinations for the reasons specified above in this Statement.

Criteria also are necessary so that the Commission's decision whether to issue a Class D license will not deny the applicant any constitutional protections by failing to inform applicants of the bases of a decision, by allowing arbitrary decisions or by violating the mandate of Minn. Stat. ch. 14 that the Commission promulgate statements of statewide application and future effect as rules.

The proposed rule is reasonable because the criteria are relevant to determinations which the statute mandates the Commission to make. The rule imposes no new burden on applicants, it simply utilizes the information disclosed pursuant to rule. It ignores none of the data requested.

7870.0760-7891.0110 provides procedures for application and issuance of Class D licenses.

Proposed rule 7870.0760 requires Class D applicants to submit disclosures in printed or typewritten form on 8½ by 11 inch paper and photographs of three-dimensional exhibits. The requirement is necessary

so that Commission members and representatives as well as the public can review an application easily. It also aids comparison of applications and discourages submission of irrelevant information. It imposes no undue burden.

Subsection A. also requires identifying headings in disclosures and numbered or lettered attachments and exhibits. This is necessary so that Commissioners and representatives can understand the applications. The subsection imposes no undue burden.

Subsection B. requires an applicant to make its best effort to provide all information requested by applicable questions.

The Commission must protect the public interest, integrity of racing, public health, safety and welfare. Financial strength, good character and high quality of facilities, equipment, management, personnel and systems are especially important. Information with regard to applicants and proposals is essential to the Commission in carrying out its responsibility. In view of that, the Commission must set a high standard for efforts of applicants to provide requested information.

The requirement of best effort is reasonable, because it imposes no substantive requirement; it mandates no additional facility, equipment, management, personnel or system at a racetrack. Further, it recognizes an applicant may be unable realistically to gather and provide some information which is requested. The subsection does not demand the impossible.

Subsection C. requires an applicant to submit only relevant information. This is necessary to keep the workload of the Commission and its representatives to review applications manageable. It also encourages focus by the Commission and representatives on determinations the Commission must make and factors it must consider. The subsection aids comparison of applications.

Subsection D. imposes no burden.

Rule 7870.0770 requires that all application materials be assembled as a single package. This is necessary to prevent a Commission member or representative from overlooking an element of an application.

The rule also requires an original and 20 copies of applications. This is necessary so that the Commission, its representatives and the public, all of whom must or have a right to inspect and review applications, have access to the documents.

The rule does not impose an undue burden.

7870.0780 requires the Commission to designate an individual to Clarify Class D license application requirements upon request of potential applicants. The rule is necessary to provide for clarifications in a timely manner and to ensure consistent construction of requirements.

The rule imposes no burden outside the Commission.

7870.0785 requires a Class D license applicant to submit \$1,000 at the time of application to cover the costs of the investigation.

Chapter 240 requires a comprehensive personal and financial investigation by the Commission or Gambling Enforcement Division of applicants and sources of financing. Access to criminal histories is provided. The statute authorizes the Commission to charge applicants fees to cover investigation costs.

The Gambling Enforcement Division estimates a typical investigation will cost approximately \$1,000. Neither the Commission nor the Gambling Enforcement Division can absorb the costs of investigation through existing appropriations.

Pre-investigation submission of the fee is necessary to ensure payment.

The rule is reasonable. Provision is made for prompt refund of any portion of the \$1,000 which is not used to cover the cost of an investigation. Payment by certified check or bank draft, common forms of payment readily obtainable, is permitted.

An applicant unable to submit \$1,000 is not likely to possess the financial strength to operate a racetrack or conduct horse races successfully.

7870.0790 prohibits Commission consideration of substantive amendments to applications after submission. The application process needs finality at some point. Any provision for error correction could lead to attempts to place substantive amendments before the Commission under claim of error in the application. The uncertainty, expense and delay of litigation most certainly would follow. Thus, the rule is reasonable.

7870.0800 establishes application deadlines. The rule requires submission of applications for Class D licenses at least 90 days prior to the date on which the applicant proposes to commence horse racing.

A deadline is necessary to give the Commission time to conduct statutorily mandated personal and financial investigations. The Gambling Enforcement Division has informed the Commission that 90 days is sufficient. Most persons employed at a racetrack must obtain Class C occupational licenses pursuant to Minn. Stat. §240.08 before commencement of racing. Sufficient time must remain for that licensing to occur as well.

The rule is reasonable. States set deadlines in other jurisdictions. Further, Class D applicants must make preparations for racing several months in advance of commencement in any event in order to attract horses and for other purposes. The applicants must know some time in advance of racing whether a license will be issued and what racing days will be assigned.

No undue burden is imposed.

7870.0810 requires the Commission to provide an applicant for a Class D license an opportunity to make an oral presentation to the Commission before it decides whether to issue a license.

The rule is necessary as a matter of fairness to an applicant who may have spent many hours and a great deal of money to prepare an application. The rule also makes clear that if the statutory mandated public hearing provides an applicants to make the presentation required by the rule, a second opportunity to make a presentation is not necessary.

The rule imposes no undue burden outside the Commission.

7870.0820 provides that the Class D license fees mandated by Minn. Stat. §240.10 must be paid before a license is effective and that a license is void if the fee is not paid within 10 days.

The rule is necessary to ensure the license fees are received in a timely manner. Chapter 240 provides for revocation of Class D licenses for willful failure to make payments required by the statute

The rule is reasonable. It provides for a refund to a Class D licensee in the event the number of racing days requested exceeds the number of days on which races are actually conducted.

License fees are customarily paid in advance. A licensee who does not possess the financial strength to pay a license fee in advance will have difficulty operating a racetrack or conducting horse races successfully. The fee is a small element of total costs a licensee faces.

7870.0830 provides for denial, revocation or suspension of a Class D license or imposition of penalties for false or misleading information in an application, omission of required information or substantial deviation from representations in an application.

The public interest, integrity of horse racing, public health, safety and welfare require that the Commission make every effort to ensure the financial strength and good character of Class D licensees and the high quality of facilities, equipment, management, personnel and systems. Complete and accurate information in applications and compliance with representations in applications are essential to success in that endeavor.

Chapter 240 provides for the revocation of a Class D license for an intentional false statement in an application. Those subdivisions also authorize revocation or suspension for rules violations which the Commission believes adversely affects the integrity of racing. Minn. Stat. §240.22 authorizes the Commission to establish by rule a schedule of fines for violation of the Commission's rules. The statute also empowers the Commission to promulgate any rule it believes necessary to protect the integrity of horse racing or the public health, safety or welfare.

Regulators of pari-mutuel betting and horse racing in other states inform the Commission that civil fines are the most effective enforcement tool in the industry.

The rule is reasonable. It is in use successfully in other states.

7870.0840 requires Commission approval of modifications of a horseracing facility and provides sanctions against Class D licensees for failure to obtain approval.

The rule is necessary to prevent destruction of the effectiveness of the Commission's review and determinations with regard to facilities at the time of license issuance.

The rule is reasonable because approval of facility modification is required successfully in other states. Further, the rule establishes a threshold of \$10,000 to avoid approval of insignificant modifications.

7870.0850 requires Class D licensees to maintain adequate security.

The rule is necessary because security is vitally important to the ongoing success of a horseracing facility. It protects the financial strength of pari-mutuel betting and horse racing and ensures the good character, health, safety, and welfare of spectators, bettors, jockeys and drivers, horses and all other participants. It protects facilities and equipment.

The rule is reasonable because it is customary.

7870.0855 requires Class D licensees to make security modifications ordered by the Commission. The rule also provides sanctions.

Excellent security is essential for the reasons specified in support of rule 7870.0695, E. The state of the art of security also changes quickly, greatly and constantly. As a result, it is necessary that the Commission possess an ability to require modifications.

The rule is reasonable because it is applied successfully in other states and a similar rule has been used successfully in Minnesota for Class B racing.

7870.0860 requires medical services. The rule is necessary to health and safety. Hundreds of spectators will attend races, and scores of jockeys and drivers as well as others will ride or otherwise be near horses. Injuries to persons on or near horses are common. Furthermore, many county fair grounds are not in close proximity to a significant medical facility. Therefore, prompt attention and transportation is critical to the safety of the racing participants and the public.

The rule is reasonable because it only requires equipment and staff during times of probable need.

7870.0870 provides for the care of horses. Subsection A. requires individual stalls, B. a fence surrounding the stabling facilities, C. a mounted outrider whenever pari-mutuel racing is being conducted, and D., a conveyance for the safe and expedient removal of injured animals.

The rule is necessary to the health, safety, comfort and humane treatment of horses. It is important to attract horses to a horse racing facility. The better facilities may attract better horses. Thus, it is necessary to the integrity of horse racing and the public interest.

The rule is reasonable. It is applied in other states successfully and used here in Minnesota at Canterbury Downs.

7891.0110 provides that horses that are euthanized at licensed racetracks because of severe injury must undergo a postmortem examination.

The proposed amendment is necessary to insure the integrity of racing at Class D facilities. The rule is reasonable because it is applied successfully in other states as well as here in Minnesota at Canterbury Downs.

OTHER STATUTORY REQUIREMENTS

Minn. Stat. §14.115 requires agencies, when proposing a new rule or amending existing rules which may affect small businesses, to consider certain methods for reducing the impact of the rule on small business.

The proposed rules impact upon small businesses

Class D licenses may only be issued to county agricultural societies or associations incorporated under chapter 38 or nonprofit corporations organized under chapter 317A in existence and operating fairs on April 21, 1951. These organizations are at least comparable to small businesses. Therefore, the Commission considered the effect of the proposed rules on these potential applicants. In several instances the proposed rules were drafted to accommodate the status and limitations of these organizations. Representatives of the County Fair Association and the standardbred racing industry were consulted regarding the impact of the proposed rules on county agricultural associations and corporations.

In many instances however, the proposed rules require the same information required of applicants for Class A or Class B licenses. The Commission considered the impact of the rule on small business and determined that because of the nature of the industry, the Commission cannot be less rigorous in its regulation of one type of business than another.

Minn. Stat. §14.11 subd. 2 is inapplicable because the proposed amendments will not have any direct and substantial adverse impact on agricultural land. Sections 115.43, subd. 1, 116.07, subd. 6 and 144A.29, subd. 4 are not applicable. Section 16A.128, subd. 1 does not apply. Likewise, a fiscal note is not required pursuant to 3.892 as the rule will not force any local agency or school district to incur costs.

As these proposed rules require payment of an investigation reimbursement fee, a fiscal note has been transmitted to the Commissioner of Finance, the Chairman of the Senate Finance Committee, and the Chairman of the House Appropriations Committee.

CONCLUSION

Based on the foregoing, the Minnesota Racing Commission's proposed rules governing horse racing are both necessary and reasonable.



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