

September 10, 2002

Mr. Thomas J. Costakis  
Attorney  
Indianapolis Downs, LLC  
4200 North Michigan Road  
Shelbyville, IN 46176

Re: Advisory Opinion 02-FC-43; Alleged Violation of the Indiana Open Door Law by the Indiana Horse Racing Commission.

Dear Mr. Costakis:

This is in response to your formal complaint, which was received on September 5, 2002. You have alleged that the Indiana Horse Racing Commission ("Commission") violated the Indiana Open Door Law ("ODL") when, outside of a public meeting, a past chairman of the Commission delegated authority to the executive director to appoint administrative law judges. Mr. Gordon White, Deputy Attorney General and Attorney for the Commission responded in writing to your complaint and a copy of his response is enclosed for your reference. For the reasons set forth below, it is my opinion that a meeting held between one member of the Commission and the executive director does not violate the ODL because such a meeting did not constitute a meeting under Indiana Code section 5-14-1.5-2(c).

**BACKGROUND** According to your complaint, Mr. Joseph Gorajec, Executive Director of the Commission, issued Preliminary Reports against Indianapolis Downs, LLC assessing penalties for alleged violations by Indianapolis Downs for the purported nondisclosure of its relationship with an advisor who had been hired to assist the company with business and governmental affairs. The findings in this preliminary report are allegedly based in large part upon evidence obtained with a secret subpoena issued by an administrative law judge who was unilaterally appointed by Mr. Gorajec. You state that there is no statutory authority or administrative regulation that would support such an appointment by Mr. Gorajec, as executive director, and that this was apparently based upon verbal authority from former chairman of the Commission, Mr. Michael Schaefer. Indianapolis Downs learned of this delegation on August 13, 2002 when a court document prepared by the Commission staff was received. After receiving this information, Indianapolis Downs filed its formal complaint alleging that the meeting at which Mr. Schaefer delegated authority to Mr. Gorajec to appoint administrative law judges violated the ODL because it took place in secret and without public notice.

In response to your complaint, Mr. White stated that Mr. Schaefer was in fact the chairman of the Commission from 1989 to late 2000. Mr. Gorajec has served as executive director since 1990. At some time during the period in which Mr. Schaefer served as chairman, he delegated to Mr. Gorajec the authority to appoint administrative law judges. The legality of this delegation is apparently being challenged in other forums: before an administrative law judge hearing certain disciplinary matters

pending against Indianapolis Downs and before Judge Robyn Moberly of the Marion Superior Court in litigation filed against the Commission by Indianapolis Downs. Mr. White stated that since Mr. Schaefer was only (1) of five (5) Commission members, his meeting with Mr. Gorajec to delegate the authority to appoint administrative law judges was not a meeting under the ODL. For this reason, it is the Commission's position that there was no violation of the ODL with respect to the meeting at which Mr. Schaefer delegated authority to Mr. Gorajec to appoint administrative law judges.

## ANALYSIS

The intent and purpose of the ODL is that "the official action of public agencies be conducted and taken openly, unless otherwise expressly provided by statute, in order that the people may be fully informed." Ind. Code § 5-14-1.5-1. The provisions of the ODL are to be "liberally construed with the view of carrying out its policy." Ind. Code § 5-14-1.5-1. The Commission is a governing body of a public agency subject to the ODL. Ind. Code § 5-14-1.5-2(b)(2).

A meeting is defined as "a gathering of a majority of the governing body of a public agency for the purpose of taking official action upon public business." Ind. Code §5-14-1.5-2(c). Meetings of a governing body must be held openly, with the exception of executive sessions, and afford the public the right to attend, observe and record these meetings. Ind. Code §5-14-1.5-3(a). The ODL requires that notices be posted for public meetings and executive sessions. Ind. Code §5-14-1.5-5. If a governing body takes action at a meeting that is subject to the ODL, but the governing body does not follow the requirements of the ODL, any person may file an action in a court of competent jurisdiction to challenge the action. Ind. Code §5-14-1.5-7.

In your complaint, you state that the meeting held when Mr. Schaefer delegated authority to Mr. Gorajec to appoint administrative law judges for the Commission was held in violation of the ODL. You claim that this constituted a violation because the requirements of the ODL were not met, no notice was posted nor was the public invited to the meeting. The Commission does not dispute that a meeting took place, however, it is the Commission's position that the meeting was not a "meeting" for the purposes of the ODL . Only one (1) of the five (5) members of the Commission participated in the meeting, not a majority as is required to trigger the requirements of the ODL.

Based on the facts presented to me, I agree that any meeting between one (1) Commission member and the executive director is not a "meeting" as defined under Indiana Code section 5-14-3-2(c). It is my opinion, therefore, that the Commission did not violate the ODL with respect to a meeting held between Mr. Schaefer and Mr. Gorajec. The question of whether or not this delegation of authority was appropriate is a matter to be decided in the appropriate administrative or legal forum.

## CONCLUSION

In conclusion, it is my opinion that a meeting held between one (1) member of the Commission and the executive director does not violate the ODL because such a meeting did not constitute a meeting under

Indiana Code section 5-14-1.5-2(c).

Sincerely,

Anne Mullin O'Connor

Enclosure cc: Mr. Gordon White, Deputy Attorney General w/o enclosure