



January 29, 2024

Mr. Alex Foley
Via email: kentuckyhbpa@gmail.com
Executive Director
Kentucky Horsemen's Benevolent and Protective Association, Inc.
3729 South Fourth Street
Louisville, Kentucky 40214

RE: Withdrawal of consent to export its signal to New Mexico racetracks

Dear Mr. Foley:

The Kentucky Horsemen's Benevolent and Protective Association, Inc. ("KHBP") recently rescinded its consent for Turfway Park to export its signal (simulcast) to all New Mexico racetracks. The New Mexico Department of Justice, as legal counsel to the New Mexico Racing Commission (the "Commission") offers this response to the KHBP decision.

We understand that KHBP may have based its decision on the lack of a simulcasting contract between these New Mexico racetracks and the New Mexico Horsebreeders' Association ("NMHBPA"). The premise for such a decision would likely be that NMHBPA is the recognized "Horsemen's Group" under the International Horseracing Act at 15 U.S.C. Sections 3001 et seq. and thus, that the Act thus requires a contract between NMHBPA and those tracks to allow simulcasts from those tracks.

The KHBP rescission adversely impacts the New Mexico horseracing industry by denying a critical revenue stream to the people who rely upon simulcasting for their livelihood. We thus respectfully wish to correct the incorrect information upon which you apparently base your decision.

Simply, the NMHBPA is not the Horsemen's Group for any of these tracks. First, as decided in *New Mexico Horsemen's Association v. New Mexico Racing Commission, et al.*, Cause Number D-202-CV-2022-03779, the Commission does not decide which group, if anyone, meets the federal definition of the required "horsemen's group." (See attached copy of order.) Page 4 of that opinion observes that the Commission merely expressed its "opinion that the Association is not performing competently as the representative of horsemen." But neither the observation, nor the Commission's opinion, establishes that that the NMHBPA is the authorized New Mexico Horsemen's Group for purposes of a simulcasting contract.

To the contrary, the collective horsemen at each New Mexico track determine who the relevant horseman's group is at that track for purposes of simulcast contracting. In some cases, the track affiliated horsemen appoint the New Mexico Horsemen's Association ("NMHA") as their representative. In others, the owners and trainers select a diverse group of horsemen who run at their respective tracks to be the group to negotiate simulcast agreements. The Commission takes no part in the decision as to which group meets the Act's requirements at a host track. More importantly, there is no reason to believe that any of these tracks have made that decision incorrectly. Thus, these tracks are complying with the Act, and otherwise act in the best interests of the owners and trainers represented through their respective groups.

Your office's concern regarding NMHBPA may understandably conflate the NMHBPA and the NMHA. It appears the NMHA is portraying itself also as the NM HBPA. See and compare <https://www.nmharacing.com/> and <https://nationalhbpa.com/affiliate-directory/new-mexico-horsemens-association/>. A business search for both the NMHA and NMHBPA on the New Mexico Secretary of State's website <https://portal.sos.state.nm.us/BFS/online/corporationbusinesssearch> reveals the NMHA is active while there are no results whatsoever for the NMHBPA. This is especially disconcerting given the commonality of the two organizations' listed leadership. To the Commission's knowledge, New Mexico racetracks have not received any sort of correspondence from the NMHBPA advising them of its existence, membership, and how it derives its membership. But to the extent that your letter's reference to the NMHBPA is premised upon any synonymity with NMHA, we again note that the NMHA does have a contract at those tracks where appropriate under the Act.

The Commission brings these facts to the attention of KHBP so that it will revisit and reconsider its decision. Both this office and the Commission are justifiably concerned about who or what organization provided the AHBP with the incorrect information upon which the decision was made. Moreover, tracks in Arizona, Ohio, Oklahoma and Louisiana have apparently received similar information from these as-yet-unknown parties. All have almost simultaneously rescinded simulcast approvals to all New Mexico tracks, compounding adverse economic consequences. Thus, any information you can provide may assist our office in preventing further dissemination of incorrect information.

If you have questions or wish to speak further on this matter, please contact myself at (505) 537-4477 or Mr. Ismael "Izzy" Trejo, Executive Director of the Commission, at (505) 589-6384.

Sincerely,

Daniel R. Rubin

Daniel R. Rubin
Assistant Attorney General

Enclosure

cc: Ismael "Izzy" Trejo, Executive Director, NM Racing Commission
Ismael.Trejo@rc.nm.gov