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**SECRETARY OF STATE**

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August 10, 1987

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ELECTION LAW OPINION JMR-1

RE: LOCAL OPTION ELECTION TO  
LEGALIZE PARI-MUTUEL WAGERING

The Texas Racing Act (Senate Bill 15, Acts of the 69th Legislature, 2nd Called Session, 1986) at section 16.01 states that a local option election to legalize pari-mutuel wagering on horse races or greyhound races may not be held before January 1, 1987. The statewide referendum proposition authorizing such wagering was originally scheduled for a vote on November 4, 1986, but, foreseeing that it might not be possible to hold the statewide referendum in 1986, the Legislature amended the statute during the process of its enactment to provide that if the proposition could not appear on the ballot in 1986, the proposition would appear on the November 3, 1987, ballot. The Legislature could have made a parallel change in the provisions of the bill authorizing local option elections to state that they should be held after the statewide referendum, for example, after January 1, 1988, but did not do so.

The issue of whether local option elections may be held at the same election as the statewide referendum has been presented to the Office of the Secretary of State. The local option elections are authorized by the statute, and there is nothing within its provisions which expressly precludes presenting the statewide referendum and the local options elections to the voters at the same election. Whether the failure to postpone or restrict the local option elections was intentional or an oversight, the Legislature failed to supply within the statute a rule imposing such a restriction. Under the rules of statutory construction, when the language of a statute is clear and unambiguous, it must be held to mean what it plainly expresses unless: (1) another section of the act restricts its meaning; (2) the provision is repugnant to the general purview of the act; or (3) the result of such an interpretation is absurd. Therefore, it must be concluded that the local option issue may be presented at the same election as the statewide referendum.

It might be argued against this result that the general scheme set forth by the Act contemplated a statewide referendum before the holding of county local option elections. If that was the intent, and certainly it was a part of the legislative purpose if the election could have been held in November, 1986, the Legislature failed to supply a rule by which that intent could be accomplished. Where the Legislature has failed to include such a rule in a statute, one cannot be inserted into the act by others.

Moreover, we cannot be safe in assuming that it was the Legislature's intention to ensure that the statewide referendum should precede the local option election in every case. Certainly, if that were the intent, the Legislature could have easily so stated. The absence of any statement of such purpose suggests that there may have been no such legislative intent. It can equally be argued that the Legislature intended that the implementation of the Act should proceed with due and reasonable expeditiousness and did not want to restrict local option elections to the post-referendum period. It could also be argued that the Legislature did not want to impose unnecessarily the additional expenses of a second election on the counties that wish to hold local option elections.

Additionally, it must be noted that the Act became effective at the end of the 90-day constitutional period. The Act prohibited any local option election before January 1, 1987, but did not prohibit such elections thereafter. The Act did not make the holding of local option elections contingent on the passage of the statewide referendum, but instead provided that the Act, of which the local options were a part, should not be implemented further if the statewide referendum failed.

No other section of the Act restricts the meaning of the provision permitting local option elections to be held after January 1, 1987. The result that local option elections might be held prior to the date of the statewide referendum is not absurd or repugnant to the general purview of the Act. Section 17.05 of the Act specifically provides that if a majority of the votes cast in the referendum are against the proposition, pari-mutuel wagering may not be conducted under the Act. If the statewide referendum proposition fails, the results of any local option election on the subject will be a nullity.


Under these circumstances, we can neither supply a rule not infer an intent that would preclude the holding of the local option elections on the same day as the statewide referendum.

For these reasons, it is the opinion of this office that a county may hold a local option election on the question of legalizing pari-mutuel wagering on November 3, 1987, at the same time as the statewide referendum on the question of legalizing pari-mutuel wagering on a county-by-county local option basis.

SUMMARY

A county may hold a local option election to legalize pari-mutuel wagering under the Texas Racing Act simultaneously with the statewide referendum required by that Act.

Yours very truly,

  
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APPROVED:  
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