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**SPORTS AND GAMING:**  
Appointment of Illinois  
Racing Board Members

Honorable James R. Thompson  
Governor  
State of Illinois  
Springfield, Illinois 62706

Dear Governor Thompson:

I have your letter wherein you inquire whether the appointments of certain members of the Illinois Racing Board are valid. You point out that, although section 5 of the Illinois Horse Racing Act of 1975 (Ill. Rev. Stat. 1976 Supp., ch. 8, par. 37-5) provides that three members of the Board were to be appointed for terms expiring July 1, 1976, Governor Walker did not appoint members for terms expiring on that date but appointed three members for terms expiring July 1, 1982. You also point out that, although the Senate

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confirmed three members of the Board for terms ending July 1, 1982, the records of the Secretary of State show that one of those members was appointed for a term ending July 1, 1980. For the reasons hereinafter stated, it is my opinion that Governor Walker's appointment of three board members for terms ending July 1, 1982, was a valid action. It is also my opinion that, even though the records of the Secretary of State indicate that the term of one of the members appointed for a six year term is to expire on July 1, 1980, that member was validly appointed for a term expiring July 1, 1982.

Section 5 of the Illinois Horse Racing Act of 1975 provides in pertinent part as follows:

"§ 5. The terms of office of the Board members shall be 6 years, except that the terms of office of the initial Board members appointed pursuant to this Act will commence from the effective date of this Act and run as follows: 3 for a term ending July 1, 1976, 2 for a term ending July 1, 1978, and 2 for a term ending July 1, 1980. Upon the expiration of the foregoing 7 terms, the successors of such members shall serve a term for 6 years until July 1 of each even numbered year and until their successors are appointed and qualified for like terms.

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The Act went into effect on January 1, 1976, and, had the Governor immediately appointed the new racing board, he would

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have had to make appointments in accordance with the terms set forth in section 5. The Governor, however, did not appoint members for the new racing board until June 11, 1976, less than three weeks before the expiration of the July 1, 1976 terms. (The Senate confirmed the appointments on June 24, 1976.) No members were appointed or confirmed for terms expiring July 1, 1976, and during the interim period the old racing board continued to function under section 51 of the Act. (Ill. Rev. Stat. 1976 Supp., ch. 8, par. 37-51.) Furthermore, all of the members appointed to the new board were serving on the old board. On the basis of these facts it must be concluded that Governor Walker determined not to make the interim appointments but instead to appoint three members for the full six year terms beginning on July 1, 1976. Appointments for the six year terms would have been necessary even if interim appointments had been made.

There is no basis for concluding that interim appointments were necessary. As stated above, the old board continued to function until the new board was established. There is no evidence that the General Assembly intended to do anything but provide for a biennial turnover of approximately

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one-third of the board members when it set forth the terms indicated in section 5, and, therefore, the Governor's actions were in compliance with the legislative intent of the section. The Governor's appointment of persons to fill the terms expiring in 1982, even though prospective, was not invalid since those terms commenced within his own term of office. (Hansen v. The Town of Highland, (1958) 237 Ind. 516, 147 N.E. 2d 221, 226.) Furthermore, by the time the Governor decided to make the appointments there would have been less than three weeks remaining in the terms which would expire on July 1, 1976, if the appointments had been confirmed immediately.

The second issue which you have presented has arisen out of the following fact situation. Governor Walker appointed seven persons to the racing board on June 11, 1976. Two of those persons were appointed for terms ending July 1, 1978; two were appointed for terms ending July 1, 1980; and three were appointed for terms ending July 1, 1982. The letter sent by the Governor to the Secretary of State, however, indicated that one of the July 1, 1982 appointees, Mr. Cecil J. Troy, had been appointed for a term ending July 1, 1980. The Secretary of State entered the names of the nominees in

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his record of executive and administrative officers indicating their terms in accordance with the information contained in the Governor's letter. The Senate subsequently confirmed the Governor's appointment of Mr. Troy for a term ending July 1, 1982, and so notified the Secretary of State. The Secretary of State, however, did not change his original entry which indicated that Mr. Troy's term was to expire on July 1, 1980.

It must be pointed out that, at the time the Secretary of State made his entry, no completed appointment existed because the Senate had yet to confirm any of the nominees, and, when an appointment procedure requires the action of two parties or bodies, no appointment arises until both parties or bodies have acted. (McCall v. Cull (1938), 51 Ariz. 237, 75 P. 2d 696, 699; 67 C.J.S. sec. 32; 1974 Ill. Att'y. Gen. Op. 208, 210.) Furthermore, the most conclusive evidence indicating the terms for which the board members were appointed is the confirmation of those appointments by the Senate, as reported on pages 6103 and 6104 of Volume I of the Journal of the Illinois Senate of the 79th General Assembly, because it has been held that legislative journals, which are referred to

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for proof of confirmation, constitute conclusive proof of their contents and import absolute verity. (State ex rel. Griffith v. Matassarini (1923), 114 Kan. 244, 217 P. 930, 932-933; Bezio v. Neville (1973), 113 N.H. 278, 305 A. 2d 665, 667.) Therefore, the proper course to follow is to disregard the entry made in the records of the Secretary of State because that entry reflects incorrect information supplied to the Secretary by the Governor, and to follow the information set forth in the Senate confirmation of the racing board appointments.

Very truly yours,

A T T O R N E Y   G E N E R A L