

SENATE OF VIRGINIA

SCHUYLER T. VANVALKENBURG
16TH SENATORIAL DISTRICT
PART OF HENRICO COUNTY

P.O. Box 396
RICHMOND, VIRGINIA 23218



COMMITTEE ASSIGNMENTS:
EDUCATION AND HEALTH
GENERAL LAWS AND TECHNOLOGY
LOCAL GOVERNMENT
PRIVILEGES AND ELECTIONS
REHABILITATION AND SOCIAL SERVICES

December 9, 2024

The Honorable Jason Miyares
Attorney General, Commonwealth of Virginia
202 N 9th St
Richmond, VA 23219

TRANSMITTED VIA ELECTRONIC MAIL

Dear Attorney General Miyares,

I am requesting an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

In 1992, Henrico County held a referendum on pari-mutuel racing and off track pari-mutuel wagering, asking voters to permit both, at either a licensed racetrack or satellite facility, in accordance with Chapter 29 (Section 59.1-364 et seq.) of Title 59.1 of the *Code of Virginia*. Both ballot referenda passed.

In 2018, the General Assembly amended § 59.1-365 and § 59.1-392 to establish historical horse racing as a form of horse racing in the Commonwealth of Virginia. The bill (HB 1609) defined historical horse racing as a form of racing that creates pari-mutuel pools from wagers placed on previously conducted horse races and which is hosted at (i) a racetrack owned or operated by a significant infrastructure limited licensee or (ii) a satellite facility that is owned or operated by (a) a significant infrastructure limited licensee or (b) the nonprofit industry stakeholder organization recognized by the Virginia Racing Commission and licensed to own or operate such satellite facilities. The bill also established retainage fees similar to those already in existence for live horse racing and provided for the Commission to promulgate emergency regulations.

After the passage of HB 1609, Governor Ralph Northam issued Executive Directive I (2018) directing the Virginia Racing Commission to promulgate regulations related to the new definition of Historic Horse Racing pursuant to House Bill 1609. The Governor directed the Commission to consider local community options in determining whether to allow historic horse racing in a given locality. The Virginia Racing Commission then promulgated regulations that would grandfather localities that approved pari-mutuel racing and off track pari-mutuel wagering by referendum. These regulations did not provide voters in localities with an opportunity to consider whether or not to allow historic horse racing as newly defined in the 2018 legislation.

The legal question I seek your official advisory opinion on is whether it is in the letter, or the spirit of, the law to allow historic horse racing terminals to operate at a satellite facility in a locality where the referendum was held prior to the enactment of HB 1609. When Henrico voters held the 1992 referendum over 30 years ago, voters did not vote on historical horse racing. At the time of the referendum in 1992, Henrico voters did not approve pari-mutuel wagering on historical horse racing because historical horse racing was illegal. Henrico voters approved pari-mutuel wagering on live horse racing only. The spirit of

the law suggests that voters be allowed to vote on new forms of pari-mutuel wagering that did not exist at the time of an original referendum. Thus, I am seeking an opinion on whether the regulations promulgated by the Racing Commission are an incorrect reading of the law and that, therefore, a new referendum must take place in order for a significant infrastructure limited licensee to open a satellite facility in Henrico for historical horse racing.

I understand that the timeframe for receiving a response to an official opinion request can vary widely, to include several months in order to ensure issued opinions are accurate, requests are thoroughly researched. However, it is my hope that you will render your opinion expeditiously as a matter of urgency given a significant infrastructure limited licensee is seeking to imminently open a historic horse racing satellite location at Staples Mill Road and Glenside Road under the 1992 referendum.

Please let me or my office know if you need any further information.

Sincerely,

A handwritten signature in blue ink, reading "Schuyler VanValkenburg". The signature is fluid and cursive, with the first name "Schuyler" being more prominent and the last name "VanValkenburg" following in a similar style.

Schuyler VanValkenburg
Senator, 16th District