Voter approval is required for operation of licensed racetrack and satellite facilities. Voter approval of pari-mutuel wagering at licensed racetrack does not constitute voter approval of pari-mutuel wagering at satellite facilities. Only racetrack licensed by Virginia Racing Commission may operate daily simulcast facility at racetrack. Commission has sole authority, and therefore is appropriate state agency, to alter required number of racing days during first 5 years of operation of racetrack granted unlimited license.

The Honorable Robert G. Marshall
Member, House of Delegates
February 11, 2000

You inquire regarding applications submitted by Colonial Downs Holdings, Inc. ("Colonial Downs") and the Virginia Turf Club, Inc. ("Turf Club") to the Virginia Racing Commission ("Commission") for licenses to operate racetracks and simulcast racing facilities in the Town of Dumfries and in western Prince William County.

You relate that the Turf Club proposes establishment of a 2,000-seat grandstand and a 90,000-square-foot clubhouse in western Prince William County to conduct three days of live racing per week and seven days of simulcast racing. Parking for 1,393 automobiles will be available. Colonial Downs proposes a racetrack in Dumfries to conduct live racing 20 days a year and simulcast off-track betting 365 days a year.

You advise that, in 1994, the voters in Prince William County approved a referendum to permit pari-mutuel wagering in the county at a licensed racetrack in accordance with Chapter 29 of Title 59.1, §§ 59.1-364 through 59.1-405 of the Code of Virginia ("Chapter 29"). Finally, you advise that the Commission views voter approval for pari-mutuel wagering at a licensed racetrack also as voter approval of satellite wagering from other tracks.

You first ask whether voter approval of a racetrack referendum constitutes voter approval of off-track betting facilities.

The Commission has authority to grant an initial license "to construct, establish, operate or own a racetrack or satellite facility" only after voter approval of a referendum held in the county or city in which such track or satellite facility is to be located. Section 59.1-391 sets out the statutory requirements for the filing of a petition requesting a local referendum to be held to decide the question of pari-mutuel wagering in accordance with Chapter 29. The petition must be signed by five percent of the qualified voters and filed with the circuit court of the county or city where the racetrack is to be located.
approval, therefore, is required for operation of both a licensed racetrack and satellite facilities.

Because § 59.1-365 provides no definition of the term "off-track betting facility," I have referred to such facility in this opinion according to the definition provided for "satellite facility." Under the definition of the term "simulcast horse racing," I note that the audio and/or visual transmission of horse races may be received at either "another licensed horse racetrack or satellite facility."

It is my opinion that the language of § 59.1-391 is clear and unambiguous. A referendum on the question whether pari-mutuel wagering should be permitted at a licensed racetrack and/or satellite facilities must be presented to the qualified voters of a county or city. Clearly, voter approval of pari-mutuel wagering on live horse racing at a licensed racetrack constitutes voter approval of pari-mutuel wagering on simulcast horse racing at that licensed racetrack. I am, however, of the opinion that voter approval of pari-mutuel wagering at a licensed racetrack does not constitute voter approval of pari-mutuel wagering at satellite facilities.

You next ask whether § 59.1-369 precludes the Turf Club from being licensed to operate a daily broadcast wagering facility in western Prince William County. You believe that the Commission has issued a license solely to Colonial Downs to operate a track and satellite facility. No information regarding the issuance of such a license by the Commission to any facility has been provided. Therefore, for the purposes of this opinion, I shall assume that the Commission has awarded Colonial Downs a license to operate a racetrack and a simulcast facility.

The statutory provisions governing horse racing and pari-mutuel wagering in the Commonwealth are contained in Chapter 29. Section 59.1-365 defines terms that are used in Chapter 29. The term "simulcast horse racing" is defined as

[t]he simultaneous transmission of the audio or video portion, or both, of horse races from a licensed horse racetrack or satellite facility to another licensed horse racetrack or satellite facility, regardless of state of licensure, whether such races originate within the Commonwealth or any other jurisdiction, by satellite communication devices, television cables, telephone lines, or any other means for the purposes of conducting pari-mutuel wagering.

Section 59.1-369 sets forth the powers and duties of the Commission. The Commission has "all powers and duties necessary to carry out the provisions of [Chapter 29] and to exercise the control of horse racing as set forth in § 59.1-364." "If the language of a statute is plain and unambiguous, and its meaning perfectly clear and definite, effect must be given to it." It is unnecessary to resort to any rules of statutory construction when the language of a statute is unambiguous. In those situations, the statute’s plain meaning and intent govern.
The powers and duties of the Commission clearly are not limited to those set out in § 59.1-369. In addition, the definition of "simulcast horse racing" clearly permits the receipt by a "licensed horse racetrack or satellite facility" of the audio and/or video transmission of horse races.\(^{12}\)

No provision in Chapter 29 prevents the Commission from issuing more than one license for the ownership and operation of a racetrack in the Commonwealth. Section 59.1-369(4) provides the only limitation placed on the Commission relating to licensure:

The Commission shall promulgate regulations and conditions under which simulcast horse racing shall be conducted at a licensed horse racetrack or satellite facility in the Commonwealth and all such other regulations it deems necessary and appropriate to effect the purposes of [Chapter 29]. Such regulations shall include provisions that all simulcast horse racing must comply with the Interstate Horse Racing Act of 1978 (15 U.S.C. § 3001 et seq.) and shall require the holder of an unlimited license to schedule not less than 150 live racing days in the Commonwealth each calendar year; however, the Commission shall have the authority to alter the required number of live racing days during the first five years of operation based on what the Commission deems to be in the best interest of the Virginia horse industry. Such regulations shall authorize up to six satellite facilities and restrict majority ownership of satellite facilities to an entity licensed by the Commission which owns a horse racetrack in the Commonwealth. Nothing in this subdivision shall be deemed to preclude private local ownership or participation in any satellite facility. Wagering on simulcast horse racing shall take place only at a licensed horse racetrack or satellite facility. [Emphasis added.]

"[T]he plain, obvious, and rational meaning of a statute is always to be preferred to any curious, narrow, or strained construction."\(^{13}\) Statutes should not be construed to frustrate their purpose.\(^{14}\) In addition, the use of the word "shall" in a statute generally implies that its terms are intended to be mandatory, rather than permissive or directive.\(^{15}\) Finally, when a statute creates a specific grant of authority, the authority exists only to the extent specifically granted in the statute.\(^{16}\)

I can find no provision in Chapter 29 that limits the Commission to issuing only one license for the ownership and operation of a racetrack in the Commonwealth. In addition, the plain language of § 59.1-369(4) requires the Commission to adopt regulations authorizing a licensee\(^{17}\) to own or operate "up to six satellite facilities." Consequently, I must conclude that should the Commission not issue a license to the Turf Club for the operation of a racetrack in western Prince William County, the Turf Club would be precluded from operating a daily satellite facility at the racetrack. In the event the Commission does issue such a license to the Turf Club, however, the clear definition of the term "simulcast horse racing" would permit the Turf Club to operate a daily simulcast facility at the racetrack.
Your final inquiry is whether Colonial Downs may be allowed to schedule a 20-day racing program in view of the 150-day racing requirement contained in § 59.1-369.

Section 59.1-369(4) provides that regulations promulgated by the Commission shall require the holder of an unlimited license to schedule not less than 150 live racing days in the Commonwealth each calendar year; however, the Commission shall have the authority to alter the required number of live racing days during the first five years of operation based on what the Commission deems to be in the best interest of the Virginia horse industry.

A fundamental principle of statutory construction is that the clear and unambiguous words of a statute must be accorded their plain meaning. In determining legislative intent from the statutory language, words should be given their ordinary meaning. Indeed, words in a statute are to be given their common meaning unless a contrary legislative intent is manifest. The Commission, therefore, has clearly been given the sole authority to allow a 20-day live racing program during the first five years of operation of a racetrack, provided the licensee has been issued an unlimited license by the Commission.

For many years, in rendering official opinions pursuant to § 2.1-118, the Attorney General has declined to render such opinions when the request (1) does not involve a question of law, (2) requires the interpretation of a matter reserved to another entity, (3) involves a matter currently in litigation, or (4) involves a matter of purely local concern or procedure. The Commission is the agency in the Commonwealth authorized to determine whether a 20-day racing program at Dumfries is allowable under the 150-day racing requirement of § 59.1-369(4). Consequently, I must respectfully decline to render an opinion whether a 20-day racing program by Colonial Downs is permitted under the 150-day racing requirement contained in § 59.1-369. I am of the opinion that the Commission is the appropriate agency to determine whether Colonial Downs may schedule a 20-day racing program in accordance with the requirements of § 59.1-369(4).

1You report that the results were 32,333 votes for the question and 22,254 votes against the question.

2Section 59.1-391.

3Section 59.1-391(1).

4See infra note 7.

5Section 59.1-365.

6I assume by your use of the term "broadcast" that you mean "simulcast," which is the term used in Chapter 29.
"Satellite facility’ means all areas of the property at which simulcast horse racing is received for the purposes of pari-mutuel wagering, and any additional areas designated by the Commission." Section 59.1-365.

Section 59.1-365.

Section 59.1-369.


Section 59.1-365 (emphasis added).


"Licensee’ includes any person holding an owner’s, operator’s or limited license under §§ 59.1-375 through 59.1-386 of [Chapter 29.] The licensee under a limited license shall not be deemed an owner for the purposes of owning or operating a satellite facility." Section 59.1-365.


It is an elementary rule of statutory interpretation that the "construction given to a statute by public officials charged with its enforcement is entitled to great weight … and in doubtful cases will be regarded as decisive." Bed Company v. Corporation