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January 17, 1991

Robert L. Ford
Division of Financial Management
STATEHOUSE MAIL

RE: RACING COMMISSION AND CENTENNIAL FUTURITY ACCOUNT
EXPENSES

Dear Mr. Ford:

This is in response to your questions regarding procedures which might be followed to pay Racing Commission expenses and expenses of the Centennial Futurity Account. I understand that this last summer, the Racing Commission and the Centennial futurity account both faced expenses exceeding the revenues available. This fall, you worked with the Racing Commission to get the budget in balance for the fiscal year. This required various cuts in personnel and other expenses. Approximately, \$40,000 of outstanding bills were paid by means of a transfer of funds from a law enforcement account. I understand these funds will be repaid to the Department of Law Enforcement account within the fiscal year. However, I understand there are also additional bills outstanding of approximately \$37,000, most of which are attributable to the Centennial futurity account.

You have asked if the Centennial futurity account bills which exceed the amount of revenue of the account are legal obligations of the state. You have also asked how the state might pay creditors now from an advance of funds, with the advance being repaid from racing revenues of the next fiscal year.

On several occasions, the Idaho Supreme Court has considered situations in which the state incurred obligations beyond funds available or beyond the amount of the appropriation available.

Robert L. Ford
January 17, 1991
Page 2

For example, in the early case of Winters v. State, 5 Idaho 198, 47 P. 855 (1897), the Court considered the state's obligation to pay expenses beyond the appropriation. The state had appropriated funds for a state wagon road. During construction, two portions of the road which had been completed were washed out by high waters. The state road commissioner requested the contractors to rebuild the portions destroyed. However, this resulted in a project cost exceeding the funds available. The Court held that the legislature was authorized to make an appropriation sufficient to pay the contractors for the extra work and recommended that the legislature do so on the basis that the payment would be equitable and just.

In Daniels v. State, 15 Idaho 640, 98 P. 853 (1908), the Idaho Supreme Court considered a claim by the superintendent of the state capitol grounds. He was not paid a portion of his salary, presumably due to a lack of funds. The Court held that since he had performed services for the state, the state, as a matter of right, ought to pay for such services. The Court recommended that the legislature make an appropriation for the payment of his salary.

In Moscow Hardware Company, Ltd. v. Regents of the University of Idaho, 19 Idaho 420, 113 P. 731 (1911), the Idaho Supreme Court considered contract claims against the University of Idaho arising from construction of an agricultural building. The Court held that as to contract claims for which there were duly appropriated funds to pay the claims, the district court had authority to hear the claim. However, to the extent the contract obligations exceeded the funds available, it was only proper to recommend the payment to the legislature.

The approach taken by the Supreme Court in these early cases reflects a respect for the appropriation process and a recognition of the state's need to budget and expend its funds in an orderly manner. However, the cases also reflect the policy of the state to pay its bills, once funds can be made available. The cases make it clear that the state has at least a moral obligation to pay its bills, even if payment must be delayed due to a lack of funds or appropriation.

As I understand it, the problem we face at the moment is that the Racing Commission does not have sufficient funds to both continue its scaled down operations this year and to pay outstanding bills. I understand that by continuing its scaled

Robert L. Ford
January 17, 1991
Page 3

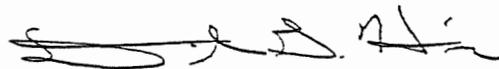
down operations next year, the Racing Commission could repay the bills next year. Idaho Code § 54-2514 should also be considered in relation to the question. That section is aimed at making the Racing Commission a self supporting agency and provides in pertinent part, "No salary, wages, expenses or compensation of any kind shall be paid by the State of Idaho for, or in connection with, the work of the Commission in carrying out the provisions of this act."

One possible solution would be an appropriation during this fiscal year to the Racing Commission and an appropriation from the Racing Commission next fiscal year. For example, the legislature could identify some fund which is anticipated to have a surplus at the end of this fiscal year. An appropriation could be made from that fund to the Racing Commission this fiscal year. Assuming the legislature desires to continue the policy of making the Racing Commission self supporting, the legislature could also make an appropriation from the Racing Commission next fiscal year, sufficient to repay the fund from which monies were received this year.

If this approach is used, the appropriation to the Racing Commission this fiscal year should provide that it is exempt from the provisions of Idaho Code § 54-2514 to avoid a conflict with that section. In my opinion, such an approach would accomplish the goals of paying state creditors as soon as possible, respecting the appropriation process, and requiring the Racing Commission to be self supporting.

If you have any questions regarding this letter, please feel free to contact me.

Sincerely,



DAVID G. HIGH
Deputy Attorney General
Chief, Business Regulation
and State Finance Division

DGH/mkf

cc: Co-Chairmen, Joint Finance Appropriation Committee