

LAWS OF 1973, CHAPTER 346, AS AMENDED (McKINNEY'S UNCONSOLIDATED LAWS, §8114); GENERAL MUNICIPAL LAW, §92-a: A regional off-track betting corporation which does not participate in the State health insurance plan may include its directors in a health insurance plan provided for its officers and employees.

This opinion represents the views of the Office of the State Comptroller at the time it was rendered. The opinion may no longer represent those views if, among other things, there have been subsequent court cases or statutory amendments that bear on the issues discussed in the opinion.

October 31, 1978

78-811

John J. Gannon, Esq.  
General Counsel  
113 East Main Street  
Batavia, New York 14020

Re: City of Batavia

Dear Mr. Gannon:

This is in response to your recent inquiry in which you asked whether a regional off-track betting corporation may include its directors in a health insurance plan provided for its officers and employees.

Before addressing your specific inquiry, it is necessary to first determine whether a regional off-track betting corporation may provide health insurance for its officers and employees. Under General Municipal Law, §92-a, various public corporations are authorized to contract for medical, surgical and hospital services or insurance covering its officers and employees, and to pay all or part of the premiums therefor. However, a regional off-track betting corporation is not a public corporation, as that term is defined in section 92-a(1).

Chapter 346 of the Laws of 1973, as amended (McKinney's Unconsolidated Laws, §8111 et seq.) contains the provisions of law governing regional off-track betting corporations. We have examined those provisions and we find no specific authorization for a regional off-track betting corporation to provide health insurance for its officers and employees.

However, in Op. State Compt. No. 69-845, 1969, unreported, we noted that the courts have held that public authorities carrying on businesses as opposed to governmental functions should be permitted to engage in recognized business practices if they are fairly to be found within the ambit of their express or implied powers and are not prohibited by any provision of law. In Op. State Compt.

No. 76-240, 1976, not yet reported, we applied the above rationale to regional off-track betting corporations, which are similar in structure and purpose to public authorities, and we concluded that an employee incentive plan which entailed the awarding of cash prizes in return for suggestions which are put into practice for the benefit of a corporation could be considered a recognized business practice which an off-track betting corporation would have implied authority to adopt. Similarly, it is our opinion that the adoption of a health insurance program for officers and employees is a common business practice which an off-track betting corporation also has implied authority to implement.

We think this conclusion is supported by the fact that the New York City Off-Track Betting Corporation is specifically authorized to provide a health insurance program for its officers and employees (McKinney's Unconsolidated Laws, §8087(3)). Moreover, section 163(2) of the Civil Service Law permits public benefit corporations to participate in the State health insurance plan. Regional off-track betting corporations are public benefit corporations (McKinney's Unconsolidated Laws, §8113 (1) and, therefore, are eligible to participate in the State plan (however, we are advised the off-track betting corporation in question does not participate in the State plan).

Although we have concluded that a regional off-track betting corporation may provide a health insurance plan for its officers and employees, the question remains whether the directors of the corporation may be included in such plan. Certainly, the inclusion of the directors of a private business corporation in the corporation's health insurance plan would be a common business practice. Accordingly, for the reasons hereinbefore stated, it is our opinion that the directors of a regional off-track betting corporation may be included in a health insurance plan provided by such corporation for its officers and employees.

In passing, we note that our response would not be the same if the regional off-track betting corporation was a member of the State health insurance plan. The directors are authorized, by section 8113(8) of McKinney's Unconsolidated Laws (as amended by chapter 596 of the Laws of 1978), to receive a sum of \$100 for each day or part thereof spent working for the corporation, not to exceed a total of \$1,200 during any one year.

Section 73.1 of the Rules and Regulations of the Civil Service Department provides that an individual working less than 20 hours per week and receiving less than \$2,000 annual salary may not be considered an employee for purposes of eligibility to participate in the State health insurance plan. However, this provision is not applicable in the situation at hand since the corporation contracts on its own for health insurance.

We trust that the above will be of assistance to you.

Very truly yours,

ARTHUR LEVITT  
State Comptroller

By

James C. Cooper  
Associate Counsel

Bandel/gj