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May 10, 2017

Board of Supervisors of Freedom Township
2184 Pumping Station Road
Fairfield, PA 17320

RE: REFERENDUM, SECTION 66549 OF THE SECOND CLASS TOWNSHIP CODE

Dear Supervisors,

By this letter I offer a formal legal opinion that, pursuant to Section 66549 of the Second Class Township Code, the Board of Supervisor is required to adopt a resolution for submission of the following referendum question to the Adams County Board of Elections for placement on the November 2017 election ballot:

Shall live horse race meets conducted by licensed corporations be prohibited within the area of fifty air miles from the center of an existing, currently licensed racetrack?

ENABLING AUTHORITY

Freedom Township is township of the second class and acts pursuant to the enabling authority of the Second Class Township Code, 53 P.S. §§ 65101 *et seq.* (Code).

Section 66549(b) of the Code provides as follows:

The township supervisors may, or upon the petition of a number of electors of the township equal to at least twenty-five percent of the highest number of votes for a public office of the township at the last preceding municipal election shall, adopt a resolution directing the county board of elections to place a referendum question on the ballot for the primary or general election, with respect to the conducting of live horse race meets by licensed corporations with the township. The question shall be in the following form: [stated above].

RELEVANT FACTS:

The following facts are relevant to action by the Board of Supervisors pursuant to the mandate of Section 66549(b).

Electors: The last preceding municipal election was held in 2015, at which the highest number of votes cast for a public office of the Township was 186 votes. Twenty-five percent of these votes is 46.5. Attached to this opinion letter are petitions signed by more than 47 electors (verified and notarized) of the Township.

Proposed Racetrack: The Township has been informed of an intent to obtain a license from the Pennsylvania Horse Racing Commission to operate a racetrack in Freedom Township, generally known as the proposed "Mason-Dixon Downs."

Currently Licensed Racetrack: The Penn National Race Course (Hollywood Casino) holds a current license issued by the Pennsylvania Horse Racing Commission pursuant to the Race Horse Industry Reform Act. The center of the racetrack is 49.5 air miles from the proposed "Mason-Dixon Downs." For reference, an air mile is 6,076.11 feet. *Tomayko v. Bethel Park Municipality*, 687 A.2d 432, n 2. (Pa. Cmwlth. 2007).

OPINION

A petition from the required number of electors of Freedom Township relating to a proposed racetrack within fewer than 50 air miles of the licensed Penn National Race Course has been submitted to the Board of Supervisors. Upon receipt of such petition, Section 66549(b) of the Code mandates that the Board of Supervisors "shall adopt" a resolution directing the Adams County Board of Elections to place a referendum question [in the form stated above] on the ballot for the November 2017 election. For the Board's reference and use, attached is a proposed resolution.

Regards,

Susan J. Smith /s/

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