

CITIZENS AGAINST HORSE RACING @ FRONTIER PARK
317 W 7th AVE, CHEYENNE, WY 82001

December 19, 2023

Via Email:

Mayor of Cheyenne

Cheyenne City Council

Laramie County Commissioners

Re: Accel Entertainment proposal to operate pari-mutual horse racing at Frontier Park

Dear Mayor Collins, Cheyenne City Council, Laramie County Commissioners:

This letter is sent on behalf of over 50 concerned residents of Cheyenne who have organized informally as Citizens Against Horse Racing @ Frontier Park. Sent with this letter is a PowerPoint presentation setting forth the Facts and Concerns of the community members opposing live horse racing at the Park.

The purpose of this letter is to provide the governmental entities (City, County, Joint Powers Board), Cheyenne Frontier Days (CFD) and Accel Entertainment (Accel) with a legal analysis of their respective duties under applicable laws and contracts. First, the City must review any proposed agreement between CFD and Accel, prior to its execution. To approve the agreement, the City must determine if it is in the public interest, supported by adequate consideration, is in compliance with the constitutional and statutory powers and limitations governing these entities, and in compliance with the lease between the City and the Joint Powers Board (JPB) and the Sublease between the County and the JPB. Second, while reasonable people may debate whether horse racing at Frontier Park is in the public interest, there is no debate that the City must view and approve the CFD/Accel Agreement. Third, if the City decides to proceed with approval of the agreement, which our group opposes, the City should be a party to any agreement for the use of Frontier Park to ensure the conditions that the Mayor has outlined in his press release are included in the agreement and enforced.

The Joint Powers Agreement is over 40 years old, woefully out of date, and it does not contemplate the horse racing that is proposed. In addition, the JPB itself is apparently not in compliance with numerous State transparency laws applicable to governmental entities. The growth of CFD and the Accel proposal should compel the City and County to examine their relationship with CFD through the JPB. The JPB formation agreement must be rewritten and readopted by the entities and a new, more diverse and transparent Board appointed, assuming the JPB continues to perform any legitimate function.

BACKGROUND

The City of Cheyenne owns Frontier Park. Through a series of agreements, the City leased Frontier Park to a private non-profit, CFD, Inc., to put on the Cheyenne Frontier Days annual celebration.

1. Creation of the City of Cheyenne, Wyoming – Laramie County Joint Powers Board.

In March of 1982, the City of Cheyenne and Laramie County formed the City of Cheyenne, Wyoming – Laramie County Joint Powers Board (JPB). The JPB was created for a single purpose, to renovate the B Grandstand facilities. Specifically, the Agreement directed the JPB to “provide an efficient, orderly, and economically feasible method of jointly financing the renovation and construction of structural improvements, with the possible resultant increase in seating capacity of the Grandstand B Facilities, located in Cheyenne Frontier Days Park and Arena.”¹ The Agreement provided the JPB with powers to carry out its purpose – including the power to enter into leases for the benefit of the participating agencies. However, the Agreement stated that, “[i]t is clearly understood that this Agreement expressly limits the City of Cheyenne, Wyoming – Laramie County, State of Wyoming Joint Powers Board to finance the renovation and structural improvement, with the possible resultant increase in seating capacity, of the Grandstand B Facilities, located in Cheyenne Frontier Days Park and Arena, [. . .] and to provide services relative to the financing and construction of said Improvements.”² This JPB Agreement has never been amended to change the original purpose.

2. Lease of Frontier Park by the City to the Joint Powers Board.

Ten years later, in 1992, for a sum of ten dollars, the City of Cheyenne entered into a 100-year Lease (Lease) with the JPB for the entirety of Frontier Park.³ The Lease provided the JPB with the right to occupy Frontier Park for the purpose of administering the property to promote any activity serving the public interest.⁴ Any remodeling or alterations require the JPB to notify the City prior to making any such improvements.⁵ The Lease further stated that the JPB may engage “only in those activities which are enumerated herein and no other, without the prior written permission of the [City of Cheyenne], and the [Joint Powers Board] shall use [Frontier Park] for no other or unlawful purposes whatsoever.”⁶ With respect to assignment of the Lease or subletting Frontier Park, the Lease stated that the JPB “shall not assign, transfer, mortgage, pledge or sublet its rights in this lease nor grant any concession hereunder, in whole or in part, without the prior written consent of the [City of Cheyenne] which shall not be unreasonably

¹ Sec. 1, Joint Powers Agreement.

² Sec. 9, Joint Powers Agreement.

³ Sec. 3 & 4, Lease Agreement between the City of Cheyenne and the Joint Powers Board (Lease Agreement).

⁴ Sec. 6, Lease Agreement.

⁵ Sec. 4, Lease Agreement.

⁶ Sec. 6, Lease Agreement.

withheld.”⁷ The Lease authorized the JPB to sublet Frontier Park to Cheyenne Frontier Days, Inc. so long as the sublease adequately protected the use of Frontier Park by other organizations such as the Laramie County Fair.⁸ The Lease requires the Lessee to pay all valid taxes.⁹

3. Sublease of Frontier Park by the JPB to Cheyenne Frontier Days, Inc.

In August of 1992, the JPB entered into a Sublease to sublet Frontier Park to CFD, Inc. for 100 years, for free.¹⁰ The Sublease required CFD to assume and agree to perform each and every obligation imposed by the Lease upon the JPB.¹¹ The City approved the Sublease as a signatory.¹²

ANALYSIS of CITY’S OBLIGATIONS

Applying the plain language of both the Lease and the Sublease, the City must review and approve any agreement between CFD and Accel, prior to execution, to ensure the City is following its constitutional and statutory obligations. The City cannot view the provisions of the Lease and Sublease as merely contractual provisions to be waived. Rather, the provisions of the Lease Agreement are intended to protect the City, and its citizens, from violating both the Wyoming Constitution and State statute.

1. The City must review the agreement between CFD and Accel by the plain language of the Agreement.

Pursuant to the terms of the 1992 Lease and 1992 Sublease CFD must obtain approval from the City to allow pari-mutuel events at Frontier Park. First, the Lease only allowed for use of Frontier Park for the activities specifically found in the Lease and no other, unless the lessee (the JPB) obtains written permission from the City. The Lease permits conducting Cheyenne Frontier Days and associated activities. Pari-mutuel events were not included in the Lease Agreement as an allowed activity. Second, the Lease Agreement says that the Lessee shall not sublet its rights in the lease “or” grant any concession, “in whole or in part,” without the permission of the City. CFD cannot enter into a sublease or concession agreement with Accel without first obtaining approval from the City of Cheyenne.

2. The City must review any agreement between CFD and Accel to ensure compliance with the Wyoming Constitution.

⁷ Sec. 8., Lease Agreement.

⁸ Id.

⁹ Sec. 14, Lease Agreement.

¹⁰ Sec. 2, Sublease Agreement between City of Cheyenne – Laramie County Joint Powers Board and Cheyenne Frontier Days, Inc., August 13, 1992. (Sublease Agreement)

¹¹ Sec. 3, Sublease Agreement.

¹² Sublease Agreement, page 2.

The contractual requirement for the City to approve uses of Frontier Park stems from the Wyoming Constitution. Article 16, Section 6 of the Wyoming Constitution states that no city shall, “loan or give its credit or make donations to or in aid of any individual, association or corporation, except for necessary support of the poor [. . .].” A Wyoming Attorney General’s opinion identified a 3-part test courts have used to determine whether an entity violates Article 16, Section 6 of the Wyoming Constitution. Courts have looked at whether 1) a public purpose exists, 2) adequate consideration has been provided, and 3) statutory authority exists.¹³ Without these three conditions being met, a City cannot gift money or property to a private entity.

The City granted the Joint Powers Board use of a large parcel of City parkland and facilities at very generous terms: 100-year lease for \$10, or ten cents a year. Clearly such terms are not the market rate. For the City to have ever entered into the Lease Agreement one must assume that such terms were justified by the public benefit the CFD celebration provides to the City of Cheyenne. The limitation in the Lease was for activities associated with CFD or other activities in the public interest to ensure continued compliance with Article 16, Section 6. Without adequate consideration, in the form of sufficient public benefit or payment to the City, the City cannot allow a private entity to have possession of its property.

The City of Cheyenne cannot shirk its duty to supply oversight and management of Frontier Park following the terms of the 1992 Lease and Article 16, Section 6. The City must first decide what, if any, public benefit Accel will provide to the City, and whether, generally, horse racing events are in the public interest. After determining public benefit, the City must then decide whether it is receiving adequate consideration for the use of its property. Finally, the City must decide that it has the statutory authority to lease public property for private pari-mutuel events. To allow CFD, a private entity, to sublease Frontier Park and its public facilities to another private entity, without a determination of public benefit, adequate consideration, and statutory authority is likely a violation of the Wyoming Constitution. The agreement between Accel and CFD will certainly provide compensation to CFD, but whether any compensation flows to the City must be considered by the City ahead of any approval.

3. The City must review any agreement between CFD and Accel to ensure public property is used for a governmental purpose.

Not only is this a constitutional issue, but it is also an issue in terms of the powers granted to cities by Wyoming Statutes. A 1986 attorney general opinion examined whether the City of Casper and Natrona County could buy and later lease public property to a private entity.¹⁴ The Attorney General reasoned that, per State statute, the governing bodies of all cities may only purchase and hold real property for “their use.” W.S. 15-1-103(a)(iii).¹⁵ The opinion went on to state that a, “municipality has only those powers which are expressed or may be necessarily

¹³ Attorney General Opinion No. 86-024 (accessed at wyoleg.gov/LSOResearch/2005/05rm083.pdf).

¹⁴ *Id.*

¹⁵ *Id.*

implied.”¹⁶ The Attorney General found no express or implied powers to purchase property which would not be used for a governmental purpose.¹⁷ Likewise, the City of Cheyenne cannot lease public property to a private entity, such as Accel, without a bonafide governmental purpose. Unlike Cheyenne Frontier Days, which is our City’s annual celebration of history and culture, private pari-mutuel events do not serve any governmental purpose. These races will use public property solely to profit a private entity and not for a governmental purpose.

Along this same vein of analyzing whether a governmental purpose exists, the City needs to also examine the implication of such a lease on its tax-exempt status for Frontier Park. Article 15, Section 12 of the Wyoming Constitution only exempts city and town property from taxation when used primarily for a governmental purpose. Without a governmental purpose, the City will need to ensure Accel and CFD are paying applicable taxes as required in the Lease Agreement.

4. The City and County must reevaluate the role of the JPB and provide proper oversight to ensure its compliance with State law.

Created over forty years ago, and for the singular purpose of financing Grandstand B renovations, the JPB no longer serves the intended purpose. Further, the JPB appears to be out of compliance with a number of State statutes requiring transparency of governmental entities. Due to the lack of transparency, it is difficult to assess the full extent of the lack of compliance, but our preliminary assessment is that the relationship between the two governments, the JPB and CFD, is fraught with legal issues. These legal issues include not following public meetings and records laws, not reporting revenues and expenditures per Wyoming Statute 9-1-507, lacking underlying authority to enter into the lease agreement and sublease agreement, and not complying with the provisions of the agreement that set up the JPB. The City and County, as the underlying entities of the JPB, have a duty to provide oversight to ensure the JPB is following State law and the agreement creating the JPB. We would encourage the City and County to reexamine the JPB’s relationship with CFD to include a new formation agreement and new board with the proper oversight mechanisms built into the agreement to ensure protection of public property and public funds.

CONCLUSION

The City must recognize its role in managing its property and its duties and obligations imposed by law and its own contracts. The provisions of the Lease and Sublease cannot be ignored. Your constituents request that you take your responsibilities seriously and confront the legal issues being put before you by CFD, Inc. and Accel. This is not simply a gambling or horse racing issue, but rather a question of whether the City is properly managing its property by

¹⁶ Id. (citing *Coulter v. City of Rawlins*, 662 P.2d 888, 895 (Wyo. 1983)).

¹⁷ Id.

allowing a private company to enter into agreements for City property without any oversight whatsoever.

Sincerely,

Lawrence J. Wolfeⁱ

Citizens Against Horse Racing @
Frontier Park

Cc:

City Attorney, Stephanie Boster

Laramie County Attorney, Mark Voss

CFD CEO, Tom Hirsig

Accel Entertainment, Kristin Lee

ⁱ I am a retired Wyoming lawyer who maintains an Emeritus license. I am a member of this informal group, along with more than 50 others, and live in the neighborhood within five blocks of Frontier Park. I do not represent, at this time, any individuals or organizations in this matter. Contact information: lawrencejwolfe@gmail.com Cell 307-220-8931, 317 W. 7th Ave, Cheyenne, WY 82001