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ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD

November 16, 1971

FILE NO. S-361

ILLINOIS RACING BOARD:
Requirements for race meeting license

Mr. Alexander MacArthur
Chairman, Illinois Racing Board
Room 1000
160 North LaSalle Street
Chicago, Illinois 60601

Dear Mr. MacArthur:

Your letter of November 10, 1971, referred to applications submitted by Chicago Thoroughbred Enterprises, Inc., requesting licenses to operate race meetings in 1972 at Arlington Park and Washington Park race tracks. You attached as exhibits copies of the two applications made in the names of the Arlington Park Jockey Club and Washington Park Jockey Club, each designated as a "division" of Chicago Thoroughbred Enterprises, Inc. You then referred to various sections of the Illinois Horse Racing Act and asked whether the application submitted had complied with the statute. You asked my opinion on the following specific questions:

1. Does the Illinois Horse Racing Act permit divisions of a corporation to apply for racing dates under the category of "associations"?

2. Can a corporate division applying for racing dates be considered as the "owner" of a race track under § 37(c)?

3. Under the Act, can the Illinois Racing Board allocate dates to two divisions of a corporation, each applying as an association, when the aggregate dates awarded exceed 60 days, the maximum which otherwise can be allocated to one applicant?

4. For the year 1971, did Arlington Park Jockey Club and Washington Park Jockey Club comply with the Act in separately, determining and remitting the tax on handle as it singularly related to the meetings conducted by each or should the handles have been aggregated to arrive at the tax due?

5. Assuming that aggregation were to be required, would a recomputation of additional taxes owing for 1971 be required; and, would additional taxes for preceding years also be due based on the same principle? If so, how many preceding years would be included in said recomputation?

My opinion on the questions submitted is as follows:

1. A "division" of a corporation, even though referred to as an "association" cannot apply for racing dates in Illinois for the following reasons:

   a) Chapter 8, Section 37b does not authorize a division of a corporation to apply for racing dates-that privilege is granted only to a "person, corporation, association or trust".

b) Such a "division" cannot qualify as an "association" under the statute since the statute requires that an application by an association must be signed by its president or vice president, attested by its secretary and verified by one of the officers signing the same. An unincorporated "division" of a corporation has no such officers. Each application on page 5 alleges the two jockey clubs, previously corporations, were merged into Chicago Thoroughbred Enterprises, Inc., in 1961.

c) The applications in this case do not even purport to be signed by any officer of the alleged "association". Each of the applications instead is signed by John F. Loome, President and Newton W. Mandel, Secretary of Chicago Thoroughbred Enterpreses, Inc., and bear the corporate seal of that corporation.

d) Even if the word "division" was synonymous with "association" the two applications submitted are insufficient to permit the granting of either racing dates or licenses. Section 37b authorizing dates and licenses forbids the Board to grant either "to any applicant who does not at the time own or hold under lease a finished race track ready for racing. . ." Each application on page 43 states the "Property is owned by applicant". However, each application on page 43 also states "Taxes paid by parent company" though that line was stricken. The C.P.A. report of Arthur Young and Company which appears following page 42 of each application shows land and building improvements costing $49,000,000.00 are owned by Chicago Thoroughbred Enterprises, Inc. Each application on page 5 shows preferred stock in the parent company was exchanged in 1961 for all common stock of the two jockey clubs, previously incorporated, when they were merged into the

parent company. It cannot be contended that title to the joint real estate is separately vested in two groups of preferred stockholders. Since neither so-called "division" is entitled to racing dates or a license without being either owner or lessee of one of the separate race tracks, you are entitled to require proof of ownership (as alleged) by submission of title papers, tax bills, etc. In the absence of proof of ownership the applications submitted do not comply with the statute.

2. As noted above, ownership cannot be assumed or imagined, but should be proved.

3. The answers given above to Questions No. 1 and 2 answer Question No. 3.

4. Chapter 8, Section 37j. 1 imposes "for the privilege of conducting horse racing meetings" a graduated tax on the total of all wagers. The statute provides specific rates "at <u>any race track or enclosure</u> located within a county of 500,000 or more population." These rates begin at 5 3/4% on the first $5,000,000.00 of annual pari-mutuel handle with varying increased rates until the maximum rate of 9 1/4% applies to all collections over $60,000,000.00. The terms "any race track or enclosure" define the place, and "annual handle" defines the period and amount. The use by the General Assembly of these words of definite meaning would indicate its intention to collect at the maximum rates on gross collections in any one year at any one race track or enclosure.

5. If additional taxes are found to be due under Question No. 4, there is no statute of limitations against the state.

To summarize, it is my opinion that the answer to

each of your Questions No. 1, 2 and 3 is "no". The answers to Questions No. 4 and 5 are as given above.

Very truly yours,

A T T O R N E Y G E N E R A L