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SPRINGFIELD

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FILE NO. 86-002

SPORTS AND GAMING:
Illinois Horse Racing Act of 1975 -
Special Purse and Reward Fund Accounts

Farrel J. Griffin, Acting Chairman
Illinois Racing Board
Room 1000, State of Illinois Building
160 North LaSalle Street
Chicago, Illinois 60601

Dear Mr. Griffin:

I have your letter wherein you request my opinion regarding section 29 of the Illinois Horse Racing Act of 1975 (Ill. Rev. Stat. 1983, ch. 8, par. 37-29). Specifically, you ask how funds generated by inter-track parimutuel simulcast wagering are to be allocated between the Special Purse and Reward Fund Accounts of an organization conducting a race meeting and an inter-track wagering licensee accepting wagers

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on that meeting, on days when the inter-track wagering licensee is also conducting its own race meeting.

I also have your subsequent letter wherein you request my opinion regarding the distribution of "breakage" on charity racing days. Specifically, you ask whether, on charity racing days, one-half of the "breakage" credited to each inter-track wagering facility is to be transmitted to the charity on whose behalf the racing day is conducted, or whether that one-half is to be deposited in the respective Race Track Improvement Fund Account.

In response to your first inquiry, it is my opinion, for the reasons hereinafter stated, that the provisions of subsection 29(b) of the Illinois Horse Racing Act of 1975, which require the establishment and distribution of Special Purse and Reward Fund Accounts, do not apply to funds generated by inter-track parimutuel simulcast wagering.

In the interpretation and construction of a statute, the intention of the General Assembly should be ascertained and given effect. To ascertain legislative intent, consideration must be given to the entire statutory scheme. Mallin v. Najarian (1979), 76 Ill. App. 3d 441, 443.

The Illinois Horse Racing Act of 1975 (Ill. Rev. Stat. 1983, ch. 8, par. 37-1 et seq.) creates two categories of licensees -- "organization licensees" and "inter-track wagering

licensees". An "organization licensee" is any person or association receiving a license to conduct a race meeting. (Ill. Rev. Stat. 1983, ch. 8, par. 37-3.11.) An "inter-track wagering licensee" is an organization licensee holding an additional license to conduct wagering at one Illinois race track with respect to the outcome of a simultaneously televised horse race taking place at another Illinois race track. (Ill. Rev. Stat. 1983, ch. 8, par. 37-26(h).) Though an inter-track wagering licensee must also be an organization licensee, the General Assembly has provided separate provisions governing the two categories of licensees. (See, e.g., Ill. Rev. Stat. 1981, ch. 8, par. 37-26.) Therefore, a determination of an organization licensee's particular powers or duties, when acting as an inter-track wagering licensee, is necessarily dependent upon an examination of those provisions governing inter-track wagering licensees.

Section 29 of the Illinois Horse Racing Act of 1975 provides for the creation of Special Purse and Reward Fund Accounts by organization licensees. Section 29 provides, in pertinent part:

"(a) After the graduated privilege tax established in Section 27 is paid to the State from the monies retained by the organization licensee pursuant to Section 26, the remainder of those retained monies, except as provided in paragraph (b) of this Section, shall be allocated evenly to the organization licensee and as purses.

(b) Each organization licensee, from the moneys which represent the total wagered on multiple wagers and which are retained by the organization licensee under Section 26, shall deposit that portion of such moneys which represents 1% of the total wagered on multiple wagers including trifecta wagers or any other wager which is a single betting interest on 3 or more horses, in a Special Purse and Reward Fund Account which the organization licensee is hereby required to establish. From such Special Purse and Reward Fund Account each organization licensee shall allocate funds as a purse for each race conducted by it, other than a stakes race, in addition to all other purses and rewards; such funds shall be allocated, to the maximum extent practicable, in equal amounts for each race, other than stakes races, conducted by the organization licensee, and in a manner which, to the maximum extent practicable, shall utilize all of the moneys in the Special Purse and Reward Fund Account during the race meeting in which the moneys are retained by the organization licensee. * * *

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(Emphasis added.)

As the emphasized text clearly shows, section 29 controls the allocation of monies retained by organization licensees to purses and to the Special Purse and Reward Fund.

Monies generated by inter-track wagering, however, are retained, or held, by an organization licensee in its capacity as an inter-track wagering licensee. (See Ill. Rev. Stat. 1983, ch. 8, par. 37-26(h)(10)-(11).) Accordingly, the allocation of these funds to purses is governed by subsection 26(h)(11) of the Illinois Horse Racing Act of 1975 and not by section 29 thereof.

Subsection 26(h)(11) provides, in pertinent part:

"(11) After payment of the privilege tax, any other applicable taxes, and the costs and expenses in connection with the gathering, transmission, and dissemination of all data necessary to the conduct of inter-track wagering, the remainder of the monies retained by the inter-track wagering licensee shall be allocated evenly between (1) the two participating licensees and (2) purses.

(A) With respect to the participating licensees' allocation, the monies so retained shall be divided as follows: 45% to the organization licensee at the track where the races are being conducted; 45% to the inter-track wagering licensee; 10% to a licensee contingency fund to be divided equally between the two participating licensees. However, in the event inter-track wagering has impacted negatively on one of the two licensees, said fund shall be employed to reimburse the licensee so affected. * * *

(B) With respect to purse allocation, the monies so retained shall be divided as follows:

(i) If the inter-track wagering licensee is not conducting its own race meeting during the same dates, then the entire purse allocation shall be to purses at the track where the races wagered on are being conducted.

(ii) If the inter-track wagering licensee is also conducting its own race meeting during the same dates, then the purse allocation shall be as follows: 45% to purses at the track where the races wagered on are being conducted; 45% to purses at the track where the inter-track wagering licensee is accepting such wagers; 10% to a purse contingency fund to be divided equally between the purses at the two tracks. However, in the event inter-track wagering has impacted negatively on purses at one of the tracks, said fund shall be employed to reimburse the purses so affected. * * *

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(Emphasis added.)

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As is apparent, subsection 26(h)(11) makes no express provision for the payment into a Special Purse and Reward Fund Account of the monies retained by inter-track wagering licensees.

It cannot be assumed that the General Assembly intended the requirements of section 29 to apply to funds generated by inter-track wagering. Subsection 26(h) was not a part of the 1975 Illinois Horse Racing Act of 1975 as originally enacted (Public Act 79-1185), but was made a part thereof by amendment (Public Act 83-689) in 1983. Section 29 of the Act was in effect when the Act was amended to add subsection 26(h). Had the General Assembly intended the Special Purse and Reward Fund requirements of section 29 to apply to funds generated by inter-track wagering, it could have included such requirements in the 1983 amendment creating subsection 26(h), or it could have expressly amended section 29 to apply to such funds. See Davis v. Retirement Board of Policemen's Annuity Fund of the City of Chicago (1975), 30 Ill. App. 3d 318, 323.

There is a presumption against the implied repeal or amendment of any existing statutory provision. An amendatory act will not be construed to change the original act or section further than expressly declared or necessarily implied. (1A Sutherland Statutory Construction § 22.30 (4th ed. 1972); see People ex rel. Coffman v. Illinois Central R.R. Co. (1924), 314 Ill. 339, 341.) Because subsection 26(h) is comprehensive in

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its allocation of monies retained by inter-track wagering licensees, it is not necessary to enlarge the scope of section 29 to include these monies.

Therefore, it is my opinion that funds generated by inter-track parimutuel wagering are not subject to the Special Purse and Reward Fund Account requirement of section 29 of the Act. Because monies generated by simulcast wagering are not required to be paid into a Special Purse and Reward Fund Account, on those days when an inter-track wagering licensee is conducting its own race meeting in addition to accepting wagers on simulcast races, only the appropriate part of the monies generated by the organization's own races must be paid into a Special Purse and Reward Fund Account.

In response to your second inquiry, it is my opinion that one-half of the "breakage" generated at inter-track wagering facilities on charity racing days is to be retained as proceeds for payment to the charity on whose behalf the racing day is conducted, and one-half is to be paid into the General Revenue Fund of the State.

"Breakage", as that term is used in the Act, means "* * * the odd cents by which the amount payable on each dollar wagered exceeds a multiple of 10¢". (Ill. Rev. Stat. 1983, ch. 8, par. 37-3.02.)

Section 27 of the Illinois Horse Racing Act of 1975 (Ill. Rev. Stat. 1983, ch. 8, par. 37-27) provides in pertinent part:

"(a) In addition to the organization license fee provided by this Act, a graduated privilege tax is hereby imposed for conducting the pari-mutuel or certificate system of wagering permitted under this Act. In addition, all of the breakage of each racing day held by any organization licensee in the State shall be paid to the State, with the exception that an organization licensee conducting a charity racing meeting in this State shall pay one-half of the breakage of each racing day to the State. Such daily graduated tax shall be paid by the organization licensee from the amount permitted to be retained by him under Section 26. * * *

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(Emphasis added.)

As the text of section 27 clearly shows, an organization licensee conducting a charity racing day must remit to the State only one-half of the breakage generated at that charity racing day. Although subsection 26(h)(4) (Ill. Rev. Stat. 1983, ch. 8, par. 37-26(h)(4)) makes section 27 applicable to inter-track wagering licensees, the latter section contains no express provision for the division of breakage generated at inter-track wagering facilities on charity racing days.

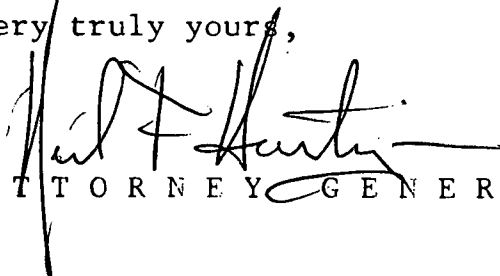
The net proceeds of charity racing days are to be contributed to the charity or charities on whose behalf the racing days are conducted. (Ill. Rev. Stat. 1983, ch. 8, par. 37-3.03.) Under section 27, all breakage is payable to the State, except when an organization licensee conducts a charity racing day. Since there is no statutory direction for payment of the one-half of the breakage not payable to the State on

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charity racing days, it follows that that portion of the breakage is to be retained by the organization licensee for inclusion in the net proceeds of the day. Similarly, the one-half of the breakage retained by an inter-track wagering licensee should be treated as proceeds of the charity racing day, and should be contributed to the charity or charities on whose behalf the racing day was conducted.

Therefore, it is my opinion that one-half of the breakage generated at an inter-track wagering facility on charity racing days should be forwarded to the State, and one-half should be retained by the inter-track wagering licensee as proceeds of the racing day, for contribution to the charity on whose behalf the charity racing day was conducted. Because it is expressly provided that no part of the State's share of the breakage generated at charity racing meetings is to be paid into the Illinois Race Track Improvement Fund (Ill. Rev. Stat. 1983, ch. 8, par. 37-28(g)), the monies forwarded to the State should be paid into the General Revenue Fund of the State. (See Ill. Rev. Stat. 1983, ch. 8, par. 37-28(h).)

Very truly yours,


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