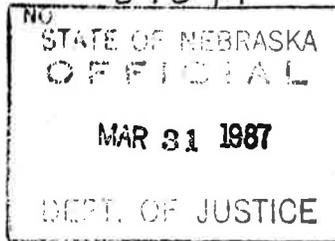


DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

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DATE: March 27, 1987

SUBJECT: Constitutionality of LB708 - Simulcasting of
Horseraces Conducted in Nebraska

REQUESTED BY: Senator Patricia S. Morehead
Nebraska State Legislature

WRITTEN BY: Robert M. Spire, Attorney General
L. Jay Bartel, Assistant Attorney General

You have requested our opinion regarding the constitutionality of LB708. Generally, LB708 would amend Neb.Rev.Stat. §2-1207 (Cum. Supp. 1986), to provide for the simulcasting of horseraces conducted within licensed horseracing facilities within the state, and authorize parimutuel wagering on such races. The bill would allow any racetrack licensed under Neb.Rev.Stat. §§2-1201 to 2-1223 (Reissue 1983 and Cum. Supp. 1986) to apply to the Nebraska State Racing Commission for a simulcast facility license. This license would permit the racetrack, referred to as the "receiving track", to accept wagers on racing events simulcast from another Nebraska licensed racetrack, called the "sending track". Wagers placed at the receiving track would be combined with wagers placed at the sending track to produce a common parimutuel pool for the calculation of odds and the determination of payouts. Your specific question concerns whether the simulcasting arrangement proposed under LB708 is authorized under the terms of Article III, Section 24 of the Nebraska Constitution.

The constitutionality of similar legislation was recently addressed in three decisions from the courts of New Jersey. In Atlantic City Racing Association v. Attorney General, 189 N.J. Super. 549, 461 A.2d 178 (N.J. Super. Ct. Law Div. 1983), the plaintiff Association brought an action seeking a judgment declaring that an arrangement under which horseraces conducted at one state-licensed racetrack would be simulcast live via television to plaintiff's licensed racetrack, for the purpose of allowing plaintiff's patrons to place parimutuel wagers upon such races and to incorporate such wagers into a central parimutuel

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pool at the originating track, would be permissible under New Jersey law. The pertinent New Jersey constitutional provision, authorizing parimutuel wagering on horseraces, provided, in part:

It shall be lawful to hold, carry on, and operate in this State race meetings whereat the trotting, running or steeplechase racing of horses only may be conducted . . . in duly legalized racetracks, at which the pari-mutuel system of betting shall be permitted.

Id. at ____, 461 A.2d at 181.

The court held that, although statutes promulgated by the Legislature to place into effect the parimutuel system of wagering on horseraces barred the proposals contemplated by the plaintiff, the proposals were not prohibited by the New Jersey constitutional provision authorizing the operation of horseraces at state-licensed racetracks, and wagering on the races held at those tracks. Id. at ____, 461 A.2d at 180, 183-84. This decision was affirmed by the Appellate Division of the Superior Court of New Jersey. Atlantic City Racing Association v. Attorney General, 198 N.J. Super. 247, 486 A.2d 1261 (N.J. Super. Ct. App. Div. 1983).

On appeal, however, the Supreme Court of New Jersey reversed the lower court ruling regarding the constitutionality of the simulcasting arrangement. Atlantic City Racing Association v. Attorney General, 98 N.J. 535, 489 A.2d 165 (1985). In construing the meaning of the New Jersey constitutional provision authorizing parimutuel wagering on horseraces, the Supreme Court of New Jersey stated:

The plain language of the 1939 amendment, in particular the juxtaposition of the phrases, 'the racing of horses . . . in duly legalized tracks, at which the pari-mutuel system of betting shall be permitted . . . ' is reasonably susceptible to only one interpretation, the authorization of pari-mutuel betting solely at the tracks where horse races are conducted.

Id. at ____, 489 A.2d at 172.

Following an analysis of the history behind the enactment of the constitutional directive authorizing parimutuel wagering on horse races, and the legislation enacted to implement this directive, the court ultimately concluded "that pari-mutuel wagering upon horse races as authorized by the Constitution may

be conducted only at the race-track at which the race is run." Id. at ____, 489 A.2d at 174.

While the Nebraska constitutional provision governing the licensing and regulation of parimutuel wagering on horseraces conducted in this state is somewhat similar in nature to that which existed in New Jersey at the time these cases were decided, we believe the language of our state Constitution is broader in scope and is sufficient to permit the Legislature to enact legislation to provide for wagering on horseraces conducted in Nebraska under the simulcasting arrangement proposed under LB708. Article III, Section 24, of the Nebraska Constitution provides, in pertinent part:

Nothing in this section shall be construed to prohibit the enactment of laws providing for the licensing and regulation of wagering on the results of horse races by the parimutuel or certificate method, when conducted by licensees within the race track enclosure at licensed horse race meetings,

As the Supreme Court of New Jersey stated in Atlantic City Racing Association v. Attorney General, 98 N.J. 535, ____, 489 A.2d 165, 172 (1985), the language of the New Jersey Constitution specifically authorized "the racing of horses . . . in duly legalized tracks, at which the pari-mutuel system of betting shall be permitted. . . ." As was noted, on the basis of this specific language, the court concluded that parimutuel wagering was authorized only at the particular track where horseraces were actually conducted. In contrast, Article III, Section 24, of the Nebraska Constitution, authorizes the Legislature to provide for the licensing and regulation of parimutuel wagering on horseraces, ". . . when conducted by licensees within the race track enclosure at licensed horse race meetings," Thus, under our Constitution, the Legislature possesses broad authority to enact laws relating to the licensing and regulation of parimutuel wagering on the results of horseraces conducted in Nebraska, provided such activity is conducted by licensees, within the racetrack enclosure, at licensed horserace meetings.

In our view, an analysis of the provisions of LB708 reveals the simulcasting arrangement proposed under the bill appears to satisfy these constitutional requirements. Section 3 of LB708 permits racetracks licensed by the State Racing Commission to apply to the Commission for a simulcast facility license. In addition, the word "track" is defined in §2(8) to mean ". . . the grounds or enclosures within which horseraces are conducted by licensees authorized to conduct such races. . . ." Thus, under the wagering procedure outlined in §4 of the bill, all parimutuel wagering under the simulcast arrangement would occur within a

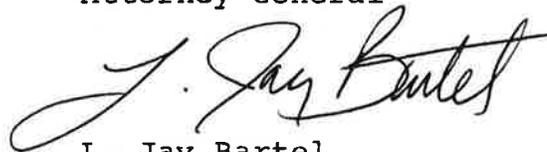
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racetrack enclosure, as such wagering occurs only within tracks licensed by the Commission under the simulcasting arrangement. Finally, pursuant to §§2(2) and 4(2), the term "licensed horserace meeting" is defined to include licensed simulcast racing events. Section 5 of the bill would amend Neb.Rev.Stat. §2-1207 (Cum. Supp. 1986) to reflect the inclusion of racetracks licensed to simulcast races for purposes of conducting parimutuel wagering on horseraces in Nebraska.

Based on the foregoing, it is our opinion that the simulcasting arrangement proposed under LB708 would not violate the requirements of Article III, Section 24, of the Nebraska Constitution. We feel constrained to point out, however, that our conclusion as to the permissibility of such an arrangement is limited solely to the allowance of wagering by patrons at Nebraska licensed racetracks on horseraces simulcast from another Nebraska licensed racetrack facility. Our opinion should not in any way be construed as sanctioning legislative authority to permit wagering on horseraces conducted outside the State of Nebraska and simulcast to Nebraska licensed racetracks.

Very truly yours,

ROBERT M. SPIRE
Attorney General

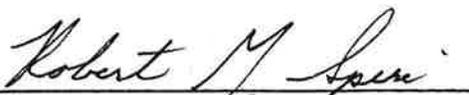


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cc: Patrick J. O'Donnell
Clerk of the Legislature

APPROVED BY:


Attorney General