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#95022

NO.
STATE OF NEBRASKA
OFFICIAL
MAR 20 1995
DEPT. OF JUSTICE

DATE: March 17, 1995

SUBJECT: Contributions to Breeders' Fund Based on Out-of-State Wagers on Interstate Simulcast Races and Authority of Commission to Consent to Interstate Simulcasts of Nebraska Race Meetings.

REQUESTED BY: Dennis Oelschlager, Executive Secretary
Nebraska State Racing Commission

WRITTEN BY: Don Stenberg, Attorney General
L. Jay Bartel, Assistant Attorney General

You have requested our opinion on two questions pertaining to the interstate simulcast of Nebraska horse race meetings. First, you ask whether contributions to the "breeders' fund" provided for under Neb. Rev. Stat. §§ 2-1207(2) and 2-1207.01 (Cum. Supp. 1994) must be made based on wagers made at locations outside Nebraska on races simulcast interstate from Nebraska racetracks. Second, you ask whether the Commission has authority to grant permission for Nebraska racetracks "to send their signal to racetracks outside of Nebraska".

As to your first question, we do not believe that any contribution to the "breeders' fund" is required to be made based on wagers made outside the state at racetracks receiving races simulcast from Nebraska. Neb. Rev. Stat. § 2-1207(1) provides, in part: "Within the enclosure of any racetrack where a race or race meeting licensed and conducted under sections 2-1201 to 2-1218 is held <u>or at a racetrack licensed to simulcast races or conduct interstate simulcasting</u>, the parimutuel method or system of

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wagering on the results of respective races may be used and conducted by the licensee." (emphasis added). Subsection (2) of § 2-1207 provides: "At all race meets held pursuant to this section, the licensee shall deduct from the total sum wagered one-third of the amount over fifteen percent deducted pursuant to subsection (1) of this section on wagers on horses to run first, second, or third and one percent of all exotic wagers to be used to promote agriculture and horse breeding in Nebraska and for the support and preservation of horseracing pursuant to section 2-1207.01." (emphasis added). Section 2-1207.01 provides: "The amount deducted from wagers pursuant to subsection (2) of section 2-1207 may be used to promote agriculture and horsebreeding in Nebraska and shall be distributed as purse supplements and breeder and stallion awards for Nebraska-bred horses, as defined and registered pursuant to section 2-1213, at the racetrack where the funds were generated." (emphasis added).

Based on the foregoing statutory provisions, we do not believe that the Legislature contemplated that any contribution to the breeders' fund established by §§ 2-1207(2) and 2-1207.01 is required to be made based on wagers made outside Nebraska at locations receiving interstate simulcasts of Nebraska races. Section 2-1207(1), which provides for parimutuel wagering in Nebraska, refers only to such wagering when conducted at "live" race meets conducted under §§ 2-1201 to 2-1218 or "at" Nebraska racetracks licensed to simulcast races or conduct "interstate simulcasting". "Interstate simulcast" is defined to mean "parimutuel wagering at any licensed racetrack within the state on the results of any horserace conducted outside the state." Neb. Rev. Stat. § 2-1225(2) (1991) (emphasis added). The deductions to the breeders' fund required by § 2-1207(2) are based on amounts wagered on certain horses or exotic wagers at "all race meets held pursuant to [§ 2-1207]." Clearly, contributions to the breeders' fund as they relate to interstate simulcasting require only that deductions be made based on wagers made at Nebraska racetracks acting as "receiving tracks" of interstate simulcast races; the statutes cannot reasonably be construed to require contributions based on wagers made at racetracks outside of Nebraska on races simulcast from Nebraska racetracks. Wagers made at racetracks outside Nebraska in this manner are not wagers made "at" a Nebraska racetrack, either at a live race meeting or by simulcast.

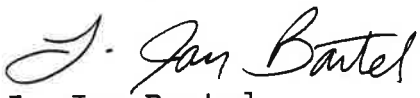
As to your second question, we conclude that the Commission does have authority to allow Nebraska racetracks to permit their "signal" to be transmitted to other states for the purpose of allowing wagering at out-of-state racetracks on Nebraska races. Interstate wagering on horseracing is governed by federal law, specifically, the Interstate Horseracing Act. 15 U.S.C. §§ 3001 to

3007 [the "IHA"].[1] The Act provides, in part, that "[a]n interstate off-track wager may be accepted by an off-track betting system only if consent is obtained from" the "host racing association" and the "host racing commission". 15 U.S.C. § 3004(a)(1) and (2). "`[I]nterstate off-track wager' means a legal wager placed or accepted in one State with respect to the outcome of a horserace taking place in another State;. . . ." § 3002(3). "`[H]ost racing association' means any person who, pursuant to a license or other permission granted by the host state, conducts the horserace subject to the interstate wager;. . . ." § 3002(9). "`[H]ost racing commission' means that person designated by State statute or, in the absence of statute, by regulation, with jurisdiction to regulate the conduct of racing within the host state;. . . ." § 3002(10).

Under the IHA, the Nebraska State Racing Commission clearly falls within the definition of a "host racing commission" for purposes of determining its authority to "consent" to interstate wagering on horseracing. Therefore, we conclude that the Commission has authority to act in this capacity to authorize Nebraska racetracks to simulcast the signal of their races to other states for wagering purposes.

Very truly yours,

DON STENBERG
Attorney General



L. Jay Bartel
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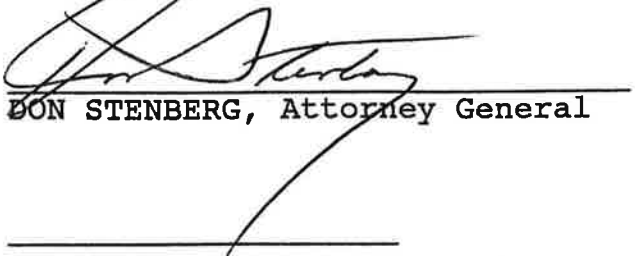

DON STENBERG, Attorney General

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[1] In passing, we note that the constitutionality of the IHA was recently upheld by the United States Court of Appeals for the Sixth Circuit. ***Kentucky Division, Horsemen's Benevolent & Protective Ass'n, Inc. v. Turfway Park Racing Ass'n, Inc.***, 20 F.3d 1406 (6th Cir. 1994).