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ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD

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FILE NO. 81-011

SPORTS AND GAMING:
Television Simulcasting of
Illinois Horse Races

Charles E. Schmidt, Jr.
Chairman, Illinois Racing Board
Room 1000
State of Illinois Building,
160 North LaSalle Street
Chicago, Illinois 60601

Dear Mr. Schmidt:

I have your letter wherein you inquire whether the television simulcast of races by an organization licensee to a licensed disseminator of racing information in Nevada, constitutes a violation of subsection 26(b) of the Illinois Horse Racing Act of 1975 (Ill. Rev. Stat. 1979, ch. 8, par. 37-26(b)).

You state in your letter:

* * *

Arlington Park has contracted with Sports Forms, Inc. to provide simulcasts of Illinois races. The contract * * * specifically provides that Arlington is not granting any entity in Nevada the right to accept wagers on Arlington's races. Nonetheless, the contract also recites that Sports Form will transmit the simulcasts to race book operators licensed by the state of

Charles E. Schmidt, Jr. - 2.

Nevada. For many years, Nevada's race book operators have accepted wagers on races conducted in Illinois and other states without the permission of the other states or race tracks.

* * *

For the reasons hereinafter stated, it is my opinion that the performance of the terms of the proposed contract by Arlington Park would constitute a violation of subsection 26(b) of the Illinois Horse Racing Act of 1975.

It is undisputed that gambling is an activity which may be subject to regulation or complete prohibition. (Finish Line Express, Inc. v. City of Chicago (1978), 72 Ill. 2d 131.) The legislature, in the exercise of its police power, has statutorily regulated the manner and extent to which an organization licensee, as defined in section 3.11 of the Illinois Horse Racing Act of 1975 (Ill. Rev. Stat. 1979, ch. 8, par. 37-3.11), may conduct or permit others to conduct wagering on the horse races it holds. Section 26 of the Horse Racing Act of 1975 (Ill. Rev. Stat. 1980 Supp., ch. 8, par. 37-26) provides in part:

"(a) Any organization licensee conducting a horse race meeting may provide places in the race meeting grounds or enclosure and may conduct and supervise therein the pari-mutuel or certificate system of wagering by patrons on the horse races conducted by such organization licensee at such meeting. * * *

(b) No other place or method of betting, pool making, wagering or gambling shall be used or permitted by the organization licensee, nor shall the pari-mutuel or certificate system of wagering be conducted on any races except horse races at the race track where such pari-mutuel or certificate system of wagering is conducted. * * *

* * *

(f) Notwithstanding the other provisions of this Act, an organization licensee may, with the consent of the Racing Board, contract with a duly authorized and legal wagering entity of another state to permit such entity to accept wagers solely within such other state on races conducted by the organization licensee in this State. * * * "
(Emphasis added.)

The above-cited language prohibits an organization licensee from "using" or "permitting" any manner or method of gambling other than on-site parimutuel wagering (subsection 26(a)) or sanctioned interstate off-track betting (subsection 26(f)). Pursuant to subsection 9(1) of the Act (Ill. Rev. Stat. 1979, ch. 8, par. 37-9(1)), the Illinois Racing Board is authorized to impose civil penalties against an organization licensee which violates any provision of the Act.

The terms of the proposed contract expressly state that Arlington Park is not granting any entity in Nevada the right to accept wagers on Arlington Park's races. Furthermore, Sports Forms, Inc., described as a licensed Nevada disseminator of racing information, is apparently not a legal wagering entity within the scope of subsection 26(f) of the Act. Therefore, the proposed contract is not excepted by subsection 26(f) from the prohibition of subsection 26(b). It remains to be determined whether performance of the terms of the proposed contract between Arlington Park and Sports Forms, Inc. constitute "using" or "permitting" a form of gambling by Arlington Park which is statutorily prohibited.

It is an established rule of statutory interpretation that the intent of the legislature in enacting a statute should be ascertained from the language employed therein, and that unambiguous words in a statute should be given their commonly accepted or ordinary meanings. (City of Decatur v. German (1924), 310 Ill. 591; Droste v. Kerner (1966), 34 Ill. 2d 495.) The term "permit" has been defined as " * * * to allow by tacit consent * * * " (70 C.J.S. Permit (1951)); " * * * to expressly assent or agree to the doing of an Act * * * " (Black's Law Dictionary 1298 (4th ed. 1968)).

The proposed contract states that Sports Forms, Inc. will transmit television simulcasts of Arlington Park's races to licensed Nevada race book operators. It is my understanding that the term "race book operator" is essentially synonymous with "bookmaker", " * * * one that determines odds and receives and pays off bets * * * ". (Webster's Third International Dictionary 253 (1966).) The television simulcasts will, therefore, ultimately be used by the Nevada race book operators, presumably in the course of their business of accepting wagers.

The necessary effect of the performance of the terms of the proposed contract by Arlington Park is to tacitly consent to the promotion of a scheme whereby Nevada race book operators and their customers engage in wagering in Nevada on the outcome of horse races run at Arlington Park. The participation of Arlington Park in this scheme clearly contravenes the prohibition

Charles E. Schmidt, Jr. - 5.

of subsection 26(b) forbidding an organization licensee from permitting wagering on its races at a place other than the licensee's track.

Nor can the insertion of a corporate entity as an intermediary party between the licensee and the wagering entity insulate Arlington Park from the provisions of subsection 26(b) of the Act. When the subject matter of a contract is such that its performance would consist of accomplishing a prohibited act, or be so connected with the prohibited act as to be in substance part of the same transaction, the contract is illegal. (Union National Bank of Chicago v. L.N.A.&C. Ry. Co. (1893), 145 Ill. 208, 227.) The dissemination of telecasts of Arlington Park's races is an essential element in the prohibited scheme of gambling. Therefore, even though the performance of the proposed contract may not directly contravene the provisions of subsection 26(b) of the Act, it is a collateral contract in promotion of a prohibited scheme of gambling, and thus must be considered invalid. McDaniel v. Tullis, Craig & Co. (Ct. Civ. App. Tex., 1928), 11 S.W.2d 203, 205-6.

Therefore, it is my opinion that the performance of the terms of the proposed contract between Arlington Park and Sports Forms, Inc. would constitute a violation of subsection 26(b) of the Illinois Horse Racing Act of 1975 on the part of Arlington Park, an organization licensee.

Very truly yours,


ATTORNEY GENERAL