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SPORTS AND GAMING:
Horse Racing -
Breeders' Awards

Mr. Anthony Scariano
Chairman, Illinois Racing Board
Room 1000 160 N. LaSalle St.
Chicago, Illinois 60601

Dear Mr. Scariano:

This responds to your letter requesting my opinion as to what is included as part of the "first prize money" or "first prize money of every purse" for the purpose of calculating breeders' awards under sections 30(i), 30(j), and 31(i) of the Illinois Horse Racing Act of 1975. Ill. Rev. Stat. 1976 Supp., ch. 8, pars. 37-30(i), 37-30(j) and 37-31(i).

Section 30(i) provides that:

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"A sum equal to 12 1/2% of the first prize money of every purse won by an Illinois foaled or an Illinois conceived and foaled horse in races not limited to Illinois foaled horses or Illinois conceived and foaled horses, or both, shall be paid by the organization licensee conducting the horse race meeting to the breeder of such winning horse from the organization licensee's share of the money wagered. Such payment shall not reduce any award to the owner of the horse or reduce the taxes payable under this Act. Such payment shall be delivered by the organization licensee at the end of each race meeting."

Similarly, section 30(j) states in pertinent part that:

"A sum equal to 12 1/2% of the first prize money won in each race limited to Illinois foaled horses or Illinois conceived and foaled horses, or both, shall be paid in the following manner by the organization licensee conducting the horse race meeting, from the organization licensee's share of the money wagered, to the breeders of the horses in each such race which finish in the first, second, third and fourth positions:
* * *"

Section 31(i) applies to those races involving standardbred rather than thoroughbred horses, and is in all material respects, identical to section 30(i).

You note in your letter that section 29(b) of the Illinois Horse Racing Act of 1975 (Ill. Rev. Stat. 1976 Supp., ch. 8, par. 37-29(b)) requires an organization licensee (racing association) to retain 1% of the total amount wagered

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on multiple wagers in a Special Purse and Reward Fund Account.

The statute then goes on to provide that:

"* * * 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; * * *" (emphasis added.)

You ask whether payments made from the Special Purse and Reward Fund are to be included when computing breeders' awards, and in my opinion, they are.

In the absence of specific language to the contrary, it is presumed that the legislature intended that the words of a statute be given their ordinary or commonly understood meanings. (Bowman v. Armour & Co., 17 Ill. 2d 43.) The phrases "first prize money" and "first prize money of every purse" used in the context of a horse race can have but one ordinary meaning. They refer to money awarded to the owner of a horse finishing first in a given race. It is therefore apparent that that portion of a purse awarded from the Special Purse and Reward Fund pursuant to section 29(b) which is given to the winning horse, constitutes "first prize money" for the purpose of computing breeders' awards.

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This conclusion is supported by viewing those provisions of the Illinois Horse Racing Act of 1975 dealing with breeders' awards in the context of the act taken as a whole. Section 26(b) of the Act (Ill. Rev. Stat. 1976 Supp., ch. 8, par. 37-26(b)) provides that each organization licensee:

"* * * [M]ay retain, subject to the payment of the privilege taxes and the purses, an amount not to exceed 16 per cent of all money wagered, plus an additional amount equal to 3 1/2% of the amount wagered each day on all multiple wagers * * *"

Section 29(a) of the Act (Ill. Rev. Stat. 1976 Supp., ch. 8, par. 37-29(a)), like section 29(b), deals with the disposition of the money wagered which is retained by the organization licensee and it states that:

"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."

When sections 29(a) and 29(b) are read together, the legislative plan for providing purses becomes apparent. Each racing association is allowed to retain a certain percentage of the total money wagered and total wagered on multiple

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wagers and from this amount part goes to the association itself and part goes to the contestants as purses.

You next ask whether the "purse supplements", "stakes and rewards" and "awards" provided for in sections 30(g)(1), 30(g)(2), 30(g)(3), 31(g)(3) and 31(g)(5) of the Act (Ill. Rev. Stat. 1976 Supp., ch. 8, pars. 37-30(g)(1), 37-30(g)(2), 37-30(g)(3), 37-31(g)(3) and 37-31(g)(5)), are to be included in computing breeders' awards. In my opinion they are not.

As part of its legislative program to encourage the breeding of high quality thoroughbred horses in Illinois, the General Assembly has provided that part of the money appropriated from the Illinois Thoroughbred Breeder's Fund shall be expended by the Department of Agriculture in the following ways:

"§ 30(g)(1) to provide purse supplements to owners of horses participating in races limited to Illinois conceived and foaled and Illinois foaled horses. * * *

(g)(2) to provide stakes and rewards to be paid to the owners of the winning horses in certain races limited to Illinois conceived and foaled and Illinois foaled horses designated as stakes races. * * *

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(g) (3) to provide stallion awards to the owner of the Illinois stallion which is the sire of an Illinois conceived and foaled horse in the event such a horse wins any race conducted at a thoroughbred racing meeting in which the total purse money offered for such race is \$7,500 or more.
* * *

Similar provision is made for expenditures from the Illinois Standard Bred Breeder's Fund by section 31(g) (3) which authorizes expenditures:

"To provide purse supplements for races limited to Illinois conceived and foaled horses conducted by associations conducting harness racing meetings.
* * *

and section 31(g) (5) which states:

"In the discretion of the Department of Agriculture to provide awards to harness breeders of Illinois conceived and foaled horses which win races conducted by associations conducting harness racing meetings. * * *

In response to your question, I note first, that sections 30(g) (3) and 31(g) (5) clearly are not to be included in the calculation of breeders' awards. Sections 30(i), 30(j) and 31(i) provided that these awards are to be computed as a percentage of the money won by the first prize finisher in certain races. Since neither section 30(g) (3) nor section

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31(g)(5) provides for an award to the owner of the winning horse, neither is to be considered in the computation of an award made under either section 30(i), 30(j) or 31(i).

Further, it is my opinion that even though sections 30(g)(1), 30(g)(2), and 31(g)(3) do provide in part for awards to the owners of winning horses, these awards are not part of the "first prize money" for the purpose of determining breeders' awards. As I noted above, sections 29(a) and 29(b) of the Horse Racing Act contain the legislative plan for providing purses for all races run by an organization licensee. The money in these purses is awarded solely on the basis of a horse's performance, without regard for breeding or other factors. In providing for a breeders' awards based on a percentage of the "first prize money won" in a race, it is my opinion that the legislature intended that this "first prize money" should include only such money as is awarded on the basis of performance alone. Thus, money awarded by the Department of Agriculture under sections 30(g)(1), 30(g)(2) and 31(g)(3) does not qualify since such awards are based not only on performance but also on breeding.

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Your final question is whether fees contributed by horse owners in stakes races are to be included as part of the "first prize money" for the purpose of making breeders' awards. In my opinion, they are not to be included.

It has long been acknowledged in Illinois that a reasonable construction of an ambiguous statute by a governmental department charged with its enforcement, if contemporaneous, consistent and long-continued, creates a presumption of correctness only slightly less persuasive than a judicial construction of the same act. (People ex rel. Watson v. House of Vision, 59 Ill. 2d 508.) Further, the legislature is presumed to be aware of the construction a statute has been given and, should it reenact substantially the same language in a new statute, it is assumed to have intended that the new statute be given the same affect. City of Champaign v. Champaign Township, 16 Ill. 2d 58.

Section 6 of the prior Illinois Horse Racing Act (Ill. Rev. Stat. 1973, ch. 8, par. 37f) provided in pertinent part that:

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"* * * A sum equal to 10% of the first prize money of every purse won by an Illinois Foaled horse or an Illinois Conceived and Foaled horse shall be paid by the licensee conducting the horse racing meeting to the breeder of such winning horse, from the licensee's share of the money wagered. * * *"

It is evident from the language quoted that except for the percentages involved, the purses of winning breeders' awards are the same under both the former and present Horse Racing Acts. It is my understanding, based on a conversation with your staff, that it had been the consistent and long standing position of the Illinois Racing Board, that fees paid by horsemen in stakes races were not included as "first prize money" for the purpose of computing breeders' awards and, that this continues to be the board's position under the new act. Since this construction of the statutes involved is reasonable on its face, it is entitled to the presumption of correctness spoken of in the House of Vision decision.

I therefore am of the opinion that fees contributed by horse owners in stakes races are not to be included when calculating breeders' awards under sections 30(i), 30(j) and 31(i) of the Illinois Horse Racing Act of 1975.

Very truly yours,

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