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**ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD**

June 30, 1982

FILE NO. 82-021

SPORTS AND GAMING:
Illinois Lottery Law

J. Thomas Johnson, Director
Illinois Department of Revenue
1500 South Ninth Street
Springfield, Illinois 62708

Dear Mr. Johnson:

I have your letter in which you inquire whether a corporation which is a horse racing organization licensee, and which conducts horse racing and sanctioned parimutuel wagering pursuant to the provisions of the Illinois Horse Racing Act of 1975 (Ill. Rev. Stat. 1981, ch. 8, par. 37-1 et seq.), is prohibited by section 10.1 of the Illinois Lottery Law (Ill. Rev. Stat. 1981, ch. 120, par. 1160.1) from holding a State

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Lottery sales agent's license. For the reasons hereinafter stated, it is my opinion that a horse racing organization licensee is not a "professional gambler or gambling promoter" for purposes of section 10.1 of the Illinois Lottery Law and thus, is not prohibited from holding a State Lottery sales agent's license.

Section 14 of the Illinois Lottery Law (Ill. Rev. Stat. 1981, ch. 120, par. 1164) provides that no person other than a licensed lottery sales agent or distributor shall sell or resell lottery tickets. Section 10 of the Illinois Lottery Law (Ill. Rev. Stat. 1981, ch. 120, par. 1160) provides, in pertinent part:

"The Department of Revenue shall, upon application therefor on forms prescribed by such Department, and upon a determination by the Department that the applicant meets all of the qualifications specified in this Act issue a license as an agent to sell lottery tickets or shares. No license as an agent to sell lottery tickets or shares shall be issued to any person to engage in business exclusively as a lottery sales agent.

* * *

For purposes of this Section the term 'person' shall be construed to mean and include an individual, association, corporation, club, trust, estate, society, company, joint stock company, receiver, trustee, referee, any other person acting in a fiduciary or representative capacity who is appointed by a court, or any combination of individuals. * * *"

Section 10.1 of the Illinois Lottery Law provides, in pertinent part:

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"The following are ineligible for any license under this Act:

* * *

(b) any person who is or has been a professional gambler or gambling promoter;

* * *

"

(Emphasis added.)

The phrase "professional gambler or gambling promoter" is not defined in the Illinois Lottery Law. The term "gambling", however, has an established statutory meaning which should be applied in the construction of statutes relating to that subject. Bergin v. Bd. of Trustees (1964), 31 Ill. 2d 566, 574; Baker v. Salomon (1975), 31 Ill. App. 3d 278, 281; .

In defining the criminal offense of "gambling" the General Assembly has specifically excluded participants in parimutuel betting as authorized by the laws of this State. (Ill. Rev. Stat. 1981, ch. 38, par. 28-1(b)(3).) Additionally, section 26 of the Illinois Horse Racing Act of 1975 (Ill. Rev. Stat. 1981, ch. 8, par. 37-26) provides:

"(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. Such pari-mutuel or certificate method of wagering upon horse races held at such a horse race meeting shall not, under any circumstances if conducted under the provisions of this Act, be held or construed to be unlawful, other statutes of this State to the contrary notwithstanding.

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(g) Notwithstanding the other provisions of this act an organization licensee may, with the consent of the Racing Board, conduct the pari-mutuel or certificate system of wagering on horse races of national or international interest held at racetracks in other states or countries where the conduct of such racing and wagering thereon is permitted by law. * * *"
(Emphasis added.)

Section 41 of the Illinois Horse Racing Act of 1975 (Ill. Rev. Stat. 1981, ch. 8, par. 37-41) similarly provides:

"Article 28 of the 'Criminal Code of 1961', as now or hereafter amended, and all other Acts or parts of Acts inconsistent with the provisions of this Act shall not apply to pari-mutuel or certificate wagering in manner and form as provided by this Act at any horse race meeting held by any person having an organization license for the holding of such horse race meeting as provided by this Act."

If a corporation which is a horse racing organization licensee conducts parimutuel wagering in accordance with the provisions of the Illinois Horse Racing Act of 1975, it is clear from the statutes hereinabove cited that its activities do not constitute "gambling" as that offense is defined in the Criminal Code of 1961. In the absence of a clear legislative intent to the contrary, the term "gambling" or similar terms should be given a consistent meaning in all related statutes, including the Illinois Lottery Law. (South Park Comrs v. First Nat. Bank (1898), 177 Ill. 234, 241; Swigart v. People (1895), 154 Ill. 284, 293.) Therefore, the phrase "professional gambler or gambling promoter" used therein must be construed to

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include only persons or entities engaged in "gambling" within the meaning of article 28 of the Criminal Code of 1961. This construction of the phrase is in accord with other jurisdictions in which the term "professional gambler" has been judicially defined to mean one who makes his living in pursuing the business or practice of unlawful gambling. Hallmark v. State (Ct. App. Ala. 1940) 198 So. 149, 150; Mitchell v. State (Ct. App. Okla. 1913), 130 P. 1175, 1176; see also 38 Am. Jur. 2d Gambling § 32 (1968); Houston v. Younghans (S.Ct. Colo. 1978), 580 P.2d 801.

Therefore, since a horse racing organization licensee operating in accordance with the provisions of the Illinois Horse Racing Act of 1975 is not engaged in "gambling" as prohibited by article 28 of the Criminal Code of 1961, it is my opinion that the corporation in question is not a "professional gambler or gambling promoter" for purposes of determining statutory eligibility to receive and hold a State lottery ticket agent's license. Horse racing organization licensees applying for a lottery ticket agent's license must, of course, comply with any rules or regulations of the Illinois Racing Board which pertain to lottery licenses.

Very truly yours,


ATTORNEY GENERAL