



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

November 20, 1998

Jim Ryan

ATTORNEY GENERAL

FILE NO. 98-023

SPORTS AND GAMING:
Use of Race Track Improvement Funds
for Non-Operating Race Track

Joseph J. Sinopoli
Executive Director
Illinois Racing Board
100 West Randolph, Suite 11-100
Springfield, Illinois 60601

Dear Mr. Sinopoli:

I have your letter wherein you inquire whether reimbursements may be made from the Race Track Improvement Fund (hereinafter referred to as "RTIF") to Arlington International Racecourse for improvements to its facilities, given the withdrawal of its application for an organization license for 1998, and its failure to apply for racing dates for 1999. Specifically, you have inquired whether RTIF funds credited to Arlington may be used to pay for: (1) capital improvements which were approved by the Racing Board and completed by the race track prior to the cessation of live racing; or (2) capital improvements previously authorized by the Board but not completed prior to the cessation of live racing. You have also inquired whether

a non-operating track may continue to receive race track improvement funds generated by its licensed off-track wagering facilities, and, if not, what authority the Board would have to allocate them otherwise. For the reasons hereinafter stated, it is my opinion that the Board may reimburse Arlington for improvements approved by the Board which were begun prior to the cessation of live racing at the race track using RTIF money accruing either before the cessation of live racing or thereafter from intertrack or off-track wagering operations. Reimbursements for improvements which were not begun prior to the cessation of live racing, however, may be made only pursuant to a current capital improvement plan approved by the Board. Further, a non-operating track that continues to generate RTIF funds from inter-track or off-track wagering may be reimbursed for improvements which are undertaken pursuant to a current capital improvement plan approved by the Board.

The RTIF was created and is governed by section 32 of the Illinois Horse Racing Act of 1975 (230 ILCS 5/32 (West 1996)), which provides:

"(a) There is hereby created in the State Treasury a fund to be known as the Illinois Race Track Improvement Fund, referred to in this Section as the Fund, to consist of monies paid into it pursuant to Section 28 [of the Act]. Except as provided in subsection (g) of Section 27 of this Act, moneys credited to the Fund shall be distributed by the Treasurer on order of the Board.

(b) Except as provided in subsection (g) of Section 28, 50% of the breakage of each meeting shall be collected by the Department of Revenue and deposited with the State Treasurer in an account established for each organization licensee who held such meeting at any track in a given racing year.

(c) The Racing Board shall use this Fund to aid tracks in improving their facilities. Expenditures from the Fund shall be equitably distributed between frontside and backside improvements for each organization licensee, taking into account the amount an organization licensee may spend or has spent on frontside and backside improvements over the course of a multi-year capital improvement plan, which plan shall be updated each year and subject to the review and approval of the Board. The Board shall have discretion to deny a request for reimbursement from the Fund if it determines that the proposed expenditures are not consistent with the approved capital improvement plan. An organization licensee shall be required to file an updated plan each year with any application to conduct racing.

(d) Monies shall be distributed from the Fund to tracks for the cost of erection, improving or acquisition of seating stands, buildings or other structures, ground or track, for the necessary purchase or required restoration of depreciable property and equipment used in the operation of a race track, or for the payment of the cost of amortization of debt contracted with the approval of the Board for any or all such purposes. The fund shall also be used to reimburse race tracks for the added expenses incurred when it is necessary to establish training facilities for horses eligible to compete at operating race tracks due to the existence of an overflow of eligible horses using the training facilities at the operating tracks, or if it is determined by the Board to be in the best interests of racing.

(e) The Board shall promulgate procedural rules and regulations governing information required, deadlines for filing, and types of application forms to be observed by the tracks seeking monies from the Fund.

(f) (Blank).

(g) The Board shall keep accurate records of monies deposited in each account for each licensee. If in any given year a track does not tender any application for monies from the Fund or tenders an application which is not in accordance with the provisions of this Section the Department of Revenue shall allow such unexpended monies to remain in the account for utilization at a later date in accordance with the provision of subsections (c) through (e).

(h) In addition to any other permitted use of moneys in the Fund, and notwithstanding any restriction on the use of the Fund, moneys in the Illinois Race Track Improvement Fund may be transferred to the General Revenue Fund as authorized by Public Act 87-14. The General Assembly finds that an excess of moneys existed in the Fund on July 30, 1991, and the Governor's order of July 30, 1991, requesting the Comptroller and Treasurer to transfer an amount from the Fund to the General Revenue Fund is hereby validated."
(Emphasis added.)

The RTIF was created by the General Assembly to encourage the proper maintenance of race track facilities for horse racing operations, and to ensure that each race track facility provides safe and adequate accommodations for the benefit and protection of the public, horsemen, track personnel and animals. Under the supervision of the Illinois Racing Board, the RTIF provides financial assistance to race tracks to enable them to erect, improve or acquire physical structures for the race

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tracks, such as seating stands and buildings, and to provide facilities to accommodate and house all of the horses competing at the track. Illinois Racing Board v. Arlington Park Thoroughbred Race Track Corp. (1979), 76 Ill. App. 3d 289, 293; see also 1977 Ill. Att'y Gen. Op. 200; 1977 Ill. Att'y Gen. Op. 68, 69; 1991 Ill. Att'y Gen. Op. 3.

With respect to improvements approved by the Board which were begun before the cessation of live racing, those expenditures were made in reliance upon reimbursement from the RTIF. Given the long term planning ordinarily necessary for capital improvements, they were presumably planned and begun prior to the events or decisions that resulted in the cessation of live racing. Consequently, reimbursement of expenses for improvements which were begun prior to the cessation of racing would be consistent with the purposes of section 32 of the Act, whether or not those improvements were completed prior thereto. Reimbursement may be made from RTIF funds generated either before or after the cessation of live racing, as discussed more fully below.

The same cannot be said of the use of RTIF funds for capital projects which had been approved by the Board but which were not begun prior to the cessation of live racing. The fact that the Board may have approved a plan containing the improvements at a time when the continuation of live racing at the track was anticipated does not change that result. Subsection 32(c) of

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the Act requires the filing of updated plans on a regular basis, which suggests that adjustments or changes are to be subject to the approval of the Board. By failing to apply for a license to conduct live racing in 1998 and 1999, and by announcing its intention to discontinue live racing permanently, the track has also withdrawn any proposed capital improvement plan and has demonstrated a change of plans that justifies the denial of RTIF funds for future improvements associated with the track which may have been approved in previously-filed capital improvement plans. Therefore, such improvements were not made in reliance upon reimbursement from the RTIF, and there is no equitable basis upon which to reimburse.

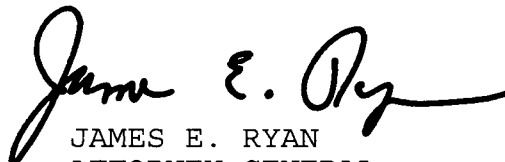
Your third question concerns the accrual and disbursement of funds for Arlington resulting from its licensed intertrack and off-track wagering operations. Based upon the formula contained in section 26 of the Act (230 ILCS 5/26 (West 1996)), as interpreted by the Board, Arlington may continue these wagering operations for a period of time even if it hosts no further live racing meetings. It has been the Racing Board's policy that each track that operates off-track and intertrack wagering facilities is credited with 50% of the breakage generated from those facilities in its RTIF account. Although not binding, the interpretation of a statute by the agency charged with administering and enforcing it is entitled to substantial weight and deference. (Bonaguro v. County Officers Electoral

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Board (1994), 158 Ill. 2d 391, 398.) Accordingly, I will assume that the Board's interpretation of the Act permitting the continued operation of off-track wagering facilities and the accrual of RTIF funds for Arlington based upon its off-track wagering revenues is correct.

Therefore, it is my opinion that the Board may consider any capital improvement plan which Arlington submits with respect to improvements to its facilities. To the extent that the Board approves some or all of the improvements proposed by Arlington, reimbursement for the costs of those improvements may properly be made from the RTIF.

Sincerely,

A handwritten signature in cursive script that reads "James E. Ryan". The signature is written in black ink and is positioned above the typed name and title.

JAMES E. RYAN
ATTORNEY GENERAL