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ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD

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FILE NO. S-1446

SPORTS AND GAMING:
Interstate Off-Track Betting

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

Dear Mr. Schmidt:

I have your letter of April 23, 1979, wherein you request my opinion on the following question:

> "Pursuant to Federal and Illinois law affecting horse racing, may an Illinois organization licensee, with prior approval of the Illinois Racing Board, contract with a legally constituted agency of another state to allow such other agency to accept wagers on Illinois races when such wagers are placed solely within such other state, and where any wagers placed within Illinois on such races are permitted only at the race track where such races are run?"

It is my opinion that it may not.

You state that the Arlington Park Thoroughbred Race

Track Corporation (Arlington) has sought the Board's permission to enter into a contract with New York City Off-Track Betting Corporation (OTBC) whereby New York OTBC would accept wagers in New York placed by persons actually present in New York on certain races run at Arlington Park. In consideration for providing New York OTBC with information as to track conditions, horses entered, jockeys and the like, Arlington would receive a percentage of the New York handle on its races. You also state that this revenue would be divided equally between Arlington and the horsemen (as purses).

As your letter points out, interstate wagering on horse races is regulated by Congress pursuant to its powers under the Commerce Clause of the Federal Constitution. Section 3004 of the Interstate Horse Racing Act of 1978 (15 U.S.C.A. § 3004) provides that an interstate off-track wager may be accepted by an off-track betting system only if consent is obtained from the host racing association, the host racing commission, and the off-track racing commission. The States' prerogatives in the regulation of gambling are in no way preempted by this or other Federal law. (Senate Report No. 95-1117, 1978 U.S. Cong. and Admin. News, p. 4146.) Therefore, the question of whether the Illinois Racing Commission has power to authorize Arlington to enter into the proposed contract with New York OTBC is governed by the Illinois statutes on horse racing and on gambling.

The legislature, in the exercise of its police power, may enact statutes regulating or prohibiting gambling. (Finish Line Express, Inc. v. City of Chicago (1978), 72 Ill. 2d 131, 138.) Section 26(a) of the Horse Racing Act of 1975 (Ill. Rev. Stat. 1977, ch. 8, par. 37-26) authorizes organization licensees to conduct and supervise pari-mutuel or certificate wagering in the race meeting grounds or enclosure, and further provides that such wagering, if conducted under the provisions of this Act, shall not be unlawful.

Section 26(b) (Ill. Rev. Stat. 1977, ch. 8, par. 37-26) states in pertinent part:

> "(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. * * * "

Under the terms of the proposed contract, Arlington, which is an organization licensee under section 3.11 of the Act (Ill. Rev. Stat. 1977, ch. 8, par. 37-3.11), is in effect seeking to permit off-track betting on Illinois races, a method of betting included within the plain language of the prohibition of section 26(b) above. The fact that the actual wagering would take place in New York, where off-track betting on out-of-State races is legal, does not exempt the proposed arrangement between Arlington and New York OTBC from the above prohibition. The

object of a license is to confer a right or power that does not exist without it. (Town of Cicero v. Weilander (1962), 35 Ill. App. 2d 436, 461. The legislature has granted the holders of an organization license the right to conduct or permit a single method of betting and to derive a specific amount of revenue therefrom. Such betting may be conducted only at the track.

You have brought to my attention Board Rule 79E (A), which states:

> "No race track operator shall, without the prior approval of the Board, enter into or implement an agreement with any legally constituted off-track betting agency of any other state providing for pari-mutuel wagering to be conducted in such state on races held at licensed meetings in Illinois."

Section 9 of the Horse Racing Act of 1975 (Ill. Rev. 1977, ch. 8, par. 37-9) vests the Board with wide jurisdictional and supervisory powers over the conduct of race meetings, including the full power to promulgate rules and regulations in furtherance of the provisions and purposes of the Act. Sections 19 through 21 (Ill. Rev. Stat. 1977, ch. 8, pars. 37-19 through 37-21) set forth the requirements for obtaining an organization license to conduct a race meeting. Sections 21(b) and (c) authorize the Board to exercise its discretion in the issuance of organization licenses and the allotment of racing dates. It is also beyond question that the Board has extensive powers to assure the integrity of wagering on Illinois races. (See, Horsemen's Benevolent and Protective Association v. Illinois

Racing Board (1972), 53 Ill. 2d 16, 19.) The Act confers no authority on the Board to athorize or allow an organization licensee to permit a method of betting other than that authorized under section 26. State agencies have only the powers authorized by law. Therefore, Rule 79E is invalid insofar as it conflicts with the plain language of section 26 of the Act.

Therefore, it is my opinion that under the clear language of section 26 of the Illinois Horse Racing Act of 1975, the Racing Commission may not authorize Arlington to enter into the proposed contract with New York OTBC.

Very truly yours,

ATTORNEY GENERAL