



STATE OF KANSAS

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June 9, 1988

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ATTORNEY GENERAL OPINION NO. 88- 81

The Honorable James L. Francisco
State Senator, Twenty-Sixth District
217 E. English
Mulvane, Kansas 67110-1462

Re: State Boards, Commissions and Authorities--
Parimutuel Racing; Kansas Parimutuel Racing
Act--Robotic Racing; Betting in Public Buildings

Synopsis Provisions of the Kansas parimutuel racing act clearly contemplate governmentally owned racetrack facilities. Thus, a county, if properly licensed to do so, may permit parimutuel wagering conducted by an organization licensee in a county-owned racetrack facility. Though racing of hackney ponies appears to be permissible under the act, use of mechanical, remote-controlled jockeys to control the movements of a horse and affect its speed other than with an ordinary whip is precluded by K.S.A. 1987 Supp. 74-8810(h)(5). Cited herein: K.S.A. 1987 Supp. 74-8801; 74-8810; 74-8813; 74-8814; 74-8815; Kan. Const., Art. 15, §§3, 3b.

* * *

Dear Senator Francisco:

You request our opinion regarding the application of the Kansas parimutuel racing act. Specifically, you question whether, pursuant to the act, counties may allow parimutuel wagering in public buildings and whether robotic racing is allowable under the act.

Article 15, section 3 of the Kansas Constitution prohibits lotteries and the sale of the lottery tickets. In 1955, the Kansas Supreme Court determined that parimutuel betting is a form of lottery prohibited by this constitutional provision. State, ex rel., v. Bissing, 178 Kan. 111, 119 (1955). However, in 1986 Kansas voters elected to adopt the following constitutional provision:

"Notwithstanding the provisions of section 3 of article 15 of the constitution of the state of Kansas, the legislature may permit, regulate, license and tax, at a rate not less than 3% nor more than 6% of all money wagered, the operation or conduct, by bona fide nonprofit organizations, of horse and dog racing and parimutuel wagering thereon in any county in which: (a) A majority of the qualified electors of the county voting thereon approve this proposed amendment; or (b) the qualified electors of the county approve a proposition, by a majority vote of those voting thereon at an election held within the county, to permit such racing and wagering within the boundaries of the county. No off-track betting shall be permitted in connection with horse and dog racing permitted pursuant to this section." Kan. Const., Art. 15, §3b.

Pursuant to this provision, the legislature enacted in 1987 the Kansas parimutuel racing act, K.S.A. 1987 Supp. 74-8801 et seq.

The act clearly contemplates governmental ownership of racetrack facilities. See K.S.A. 1987 Supp. 74-8802(g); 74-8815(a). Further, we find nothing in the act which would prevent the conduct of parimutuel wagering in a government owned facility providing all appropriate licenses have been obtained and the races and wagering are conducted by an organization licensee pursuant to the provisions of the act. Thus, we believe that a county, if properly licensed to do so, may permit parimutuel wagering conducted by an organization licensee in a county owned racetrack facility.

With regard to your question concerning robotic racing, we have been provided the following information:

"The horses are miniature horses, called Hackney Ponies, which stand about four feet high at the shoulder. These horses are mounted by mechanical, remote-controlled jockeys whose movements and commands are directed by individual jockeys physically located at the arena. By electronic transmitter, each such individual may control his or her horse by giving voice commands and by actuating a mechanical whip via the mechanical jockey's receiver."

Article 15, section 3b of the Kansas Constitution authorizes the legislature to permit, regulate, license and tax "horse and dog racing and parimutuel wagering thereon. . . ." While the parimutuel racing act restricts dog racing to the breed of greyhounds, horse racing is not similarly limited. K.S.A. 1987 Supp. 74-8801 states that the act "shall apply to all horse race meetings, whether or not parimutuel wagering is used or intended to be used at such meetings. . . ." (Emphasis added.) K.S.A. 1987 Supp. 74-8814(b) speaks to harness horse racing, thus evidencing that the act is not intended to limit horse racing to the type where jockeys must sit astride the horse. By definition, hackney ponies are a breed of horse. See "pony," American Heritage Dictionary 1019 (New College Edition 1976); "hackney," id. at 591. Pursuant to statutory construction rules, words in common usage are to be given their ordinary meanings unless the statute provides a substitute or more narrow definition. J.C. Tobin Construction Co., Inc. v. Kemp, 239 Kan. 430 (1986). It is our opinion, based on the above, that the racing of hackney ponies is a form of horse racing permissible under the act if the racing commission, in its discretion, chooses to license such racing. See K.S.A. 74-8813(e).

The use of mechanical, remote-controlled jockeys to control the movements of a horse thereby affecting its speed however, is not permissible under current provisions of the act. K.S.A. 1987 Supp. 74-8810(h)(5) provides as follows:

"It is a class E felony for any person to:

. . . .

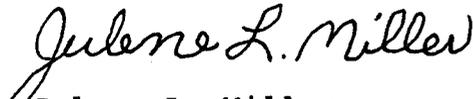
"[U]se or conspire to use any device, other than an ordinary whip for horses or a mechanical hare for greyhounds, for the

purpose of affecting the speed of any horse or greyhound at any time during a race conducted by an organization licensee. . . ." (Emphasis added.)

While it may be argued that the mechanical whip attached to a robotic jockey is nothing more than an "ordinary whip," the robot itself is clearly a "device" the purpose of which is to affect the speed of the horse it rides. It is our understanding that the arms of the robot move enabling the individual controlling the electronic transmitter to guide as well as slow and speed the horse. Also, a small loudspeaker in the robot may be used to affect the horse's speed through voice commands. In view of the statute's clear prohibition against use of any device to affect the speed of a horse (other than an ordinary whip), we must conclude that robotic racing, as explained herein, would not be permissible under current statutory restrictions.

Very truly yours,


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RTS:JLM:jm