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ATTORNEY GENERAL OPINION NO. 88-116

The Honorable Ben E. Vidricksen
State Senator, Twenty-Fourth District
State Capitol
Topeka, KS 66612-1565

Re: State Boards, Commissions and Authorities--
Parimutuel Racing; Kansas Parimutuel Racing Act--
Electronic Wagering or Simulcasting Between Licensed
Kansas Parimutuel Race Tracks.

Synopsis: It is our opinion that the Kansas parimutuel racing
act does not permit simulcasting between licensed
racetrack facilities. Cited herein: K.S.A. 1987
Supp. 74-8819(a) and (b); 77-201; Kan. Const., Art.
15, Sec. 3b.

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Dear Senator Vidricksen:

You request our opinion regarding the application of the Kansas
parimutuel racing act. Specifically, you inquire whether,
pursuant to the act, electronic wagering may be conducted between
licensed Kansas parimutuel race tracks.

Article 15, section 3b of the Kansas Constitution prohibits off-
track betting. However, the electronic wagering, or
simulcasting, to which you refer is not off-track betting. As in
Colorado, states which have specific authority granted in their
enabling parimutuel legislation permit the simulcasting of races
run at one licensed racetrack facility to another licensed
racetrack facility. Individuals present in the receiving
racetrack facility view the races on a screen (often a large
movie screen or large-screen television) and may wager on the
races viewed there. Simulcasting may be conducted interstate or
intrastate depending upon the provisions of the applicable race
act. Distinguished from simulcasting, off-track betting is

conducted between a licensed racetrack facility and a location which is not a racetrack facility. Individuals present at the receiving location view the televised races and may wager on them. Off-track betting is clearly prohibited in Kansas. It is less clear whether simulcasting is also prohibited.

K.S.A. 1987 Supp. 74-8819(a) provides as follows:

"Organizations licensed pursuant to K.S.A. 1987 Supp. 74-8813 or 74-8814 may conduct parimutuel wagering on the results of horse and greyhound races held on dates and at racetrack facilities approved by the commission. All persons participating in such wagering shall be present within the confines of the approved racetrack facility. (Emphasis added.)

K.S.A. 1987 Supp. 74-8819(b) provides in pertinent part as follows:

"... The (organization) licensee may receive wagers on horses or greyhounds to finish first, second, third or any combination thereof within the same race or among two or more races conducted on the same day at the same racetrack facility, as authorized by the commission. "(Emphasis added.)

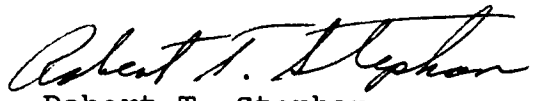
The context and approved usage of the language control construction of the statutes of this state unless the words or phrases have a peculiar or technical meaning and unless the resulting construction "would be inconsistent with the manifest intent of the legislature or repugnant to the context of the statute." K.S.A. 77-201. 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).

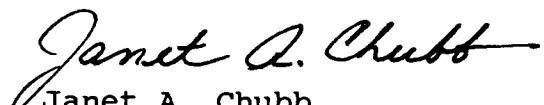
K.S.A. 1987 Supp. 74-8819(a) mandates that all persons wagering shall be present within the confines of the racetrack facility. " 'The' is a word of limitation as opposed to the indefinite or generalizing force of 'a' or 'an.' 'The' particularizes the subject it precedes." Brooks v. Zabka, 450 P.2d 653, 655 (Co. 1969). Simply put, the racetrack facility where an organization licensee may conduct wagering on races and dates approved by the commission must be the same racetrack facility where persons

participating in "such wagering" are present. "Such" is also a particularizing word, here meaning the wagering identified in the previous sentence. These restrictive words and the restrictive directive in K.S.A. 1987 Supp. 74-8819(b) that the "licensee may receive wagers on horses or greyhounds... within the same race or among two or more races conducted on the same day at the same racetrack facility...." reveal the act is intended to limit wagering to occasions where live races and the persons wagering on them are present both in time and place at the approved racetrack facility. It is our opinion, based on the above, that simulcasting is not a form of wagering permissible under the Kansas parimutuel racing act.

While it may be argued that a person in one approved racetrack facility may wager upon races simulcast from another approved racetrack facility, the ordinary meaning of the restrictive modifiers "the," "such" and "the same" clearly indicate a contrary legislative intent. In view of the consistent use of such limiting language and the authority cited, we must conclude that simulcasting would not be permissible under current statutory provisions.

Very truly yours,


Robert T. Stephan
Attorney General of Kansas


Janet A. Chubb
Assistant Attorney General