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ATTORNEY GENERAL OPINION NO. 90- 90

The Honorable Ben E. Vidricksen
State Senator, Twenty-Fourth District
713 N. 11th Street
Salina, Kansas 67401-1814

Re: State Boards, Commissions and Authorities--
Parimutuel Racing--Simulcasting Between States

Synopsis: The term "off-track betting" as used in article 15, section 3b of the Kansas constitution should be legislatively defined to clarify whether simulcasting live races to another state for purposes of wagering thereon is permissible under Kansas law. Cited herein: K.S.A. 1989 Supp. 74-8819; Kan. Const., art. 15, § 3b; 15 U.S.C.S. § 3002 (1982).

* * *

Dear Senator Vidricksen:

You request our opinion regarding the sale of live audio and visual electronic signals of Kansas parimutuel races to another racing facility in another state. Specifically, you question whether an entity licensed in Kansas pursuant to the parimutuel racing act is authorized under state law to televise its lawfully conducted parimutuel races and sell signals of those races to an out-of-state racing facility for purposes of allowing individuals in such other state to wager upon the outcome of the televised race.

In Attorney General Opinion No. 88-116, we opined that "the Kansas parimutuel racing act does not permit simulcasting

between licensed racetrack facilities" located within this state. Our opinion was based on the language of K.S.A. 198[9] Supp. 74-8819(a) and (b) requiring that all persons participating in wagering conducted by a Kansas licensed organization must be present within the confines of the racetrack facility where the race is being conducted. These provisions do not apply when considering simulcasting to another state because the wagering will not be conducted by a Kansas licensed organization.

We also stated in dicta in that opinion that simulcasting to another licensed racetrack facility is not off-track betting, but no authority is cited to support that statement. We therefore believe it appropriate to reanalyze whether such simulcasting is in fact off-track betting.

Article 15, section 3b of the Kansas constitution provides in part:

"No off-track betting shall be permitted in connection with horse and dog racing permitted pursuant to this section."

The term "off-track betting" is not defined in the constitution and to date has not been defined by Kansas statute, administrative regulation or caselaw. Absent such definitions, we are bound to construe the constitutional provision according to established rules of construction. In ascertaining the meaning of a constitutional provision, the court's primary duty is to look to the intention of the makers and adopters of that provision. Behrmann v. Public Emp. Relationship Bd., 225 Kan. 435, 439 (1979). Consideration should be given to what appears to have been the intent and understanding of the people at the time of its adoption. State ex rel. Frizzell v. Highwood Service, Inc., 205 Kan. 821, 825, 826 (1970). The presumption is in favor of the natural and popular meaning in which the words are usually understood by the people who adopted them. State ex rel. Anderson v. Fadely, 180 Kan. 652, 659 (1957).

At the time of adoption of article 15, section 3b, federal statutes dealing with interstate horserace wagering defined "interstate off-track wager" as a "wager placed or accepted in one State with respect to the outcome of a horserace taking place in another state." 15 U.S.C.S. § 3002(3). The term "off-track betting system" was defined as "any group which is in the business of accepting wagers on horseraces at locations other than the place where the horserace is run. .

. ." 15 U.S.C.S. § 3002(7). These definitions did not distinguish between racetrack facilities and other facilities which might broadcast the races and conduct the wagering. Conversely, the term "on track wager" was defined as "a wager with respect to the outcome of a horserace which is placed at the racetrack at which such horserace takes place." 15 U.S.C.S. § 3002(4). Thus, a wager was considered an off-track wager if made anywhere other than at the racetrack where the horserace to be wagered on took place. (These definitions were enacted in 1978, P.L. 95-515, § 3, 92 Stat. 1811, and have not since been amended.)

The state of New York in its simulcasting statutes appears to distinguish between betting at a racetrack other than the one at which the races are being conducted and betting at a non-racetrack facility. The first is deemed track to track, N.Y. Racing, Parimutuel Wagering and Breeding Law § 1007 (McKinney 1990), while the latter is termed off-track, § 1008 (McKinney 1990). However, in New York the term off-track betting is associated with the corporations and facilities established and authorized by N.Y. Racing, Parimutuel Wagering and Breeding Law §§ 501 et seq., 518 et seq. and 601 et seq. (McKinney 1990). We find nothing in those statutes to preclude a racetrack facility from being designated an off-track betting facility for purposes of taking wagers on races being held at another track. Rather, we believe "off-track betting" is a specialized term of art in that state. Prior to enactment of New York's simulcast statutes, that state's laws provided that parimutuel betting could only be conducted "within the grounds or enclosure of a racetrack on races at such track . . . provided, however, that nothing in this section shall be deemed to prohibit off-track parimutuel betting . . . pursuant to article five, five-a or article six of this chapter." N.Y. Racing, Parimutuel Wagering and Breeding Law § 222 (McKinney). See also §§ 313, 413. Articles 5, 5a and 6 speak to off-track betting corporations and facilities. These statutes were not amended when the simulcast statutes were enacted so it appears that racetrack facilities other than the one at which the wagered on race is being conducted may be considered off-track betting facilities.

Conversely, Minnesota defines off-track betting as accepting or delivering anything of value from "outside of the enclosure of a licensed racetrack holding a race meet . . . to be placed as wagers . . . within the enclosure," Minn. Stat. Ann. § 240.25 Subd. 2 (West). Minnesota statutes specifically

authorize telecasting live races from other states on licensed racetrack premises. Minn. Stat. Ann. § 240.13 Subd. 6 (West). These provisions were enacted in 1983, before our constitutional provision was enacted, and indicate that off-track betting in Minnesota does not include wagering on televised races if conducted at a licensed racetrack facility. Other states similarly authorize simulcasting and wagering on such simulcast races as long as the wagering is conducted at a licensed racetrack facility, but these provisions were either adopted after the Kansas constitutional provision or do not use the term "off-track betting." See Iowa Code Ann. § 990.11(6)(1) and (b) (West 1990); Okl. Stat. Ann. tit. §§ 205.6A, 205.7A and 205.7G (West); Mo. Ann. Stat. § 313.655. Mo. Const., art. 3, § 39(c)1 (West). Nebraska's constitution specifically authorizes "wagering on the results of horseraces, wherever run, either within or outside of the state . . . when such wagering is conducted by licensees within a licensed racetrack enclosure. . . ." Neb. Const., art. 3, § 24 (West).

The above-cited examples illustrate that there were conflicting definitions of the term "off-track betting" at the time our constitutional provision was enacted. We therefore believe it appropriate for the legislature to define the term and further clarify whether permitting of simulcasting to licensed racetrack facilities in other states is authorized. Any legislative definition of "off-track betting" must be reasonable in light of the foregoing discussion; i.e. "off-track betting" may not be defined to authorize betting outside of a licensed racetrack facility. Absent such legislative clarification and authorization, we are hesitant to say that simulcasting from a Kansas licensed racetrack facility to an out-of-state licensed racetrack facility is currently permissible.

Very truly yours,


ROBERT T. STEPHAN
Attorney General of Kansas


Julene L. Miller
Deputy Attorney General