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Robert R. Corbin
October 12, 1982

INTERAGENCY

Mr. Chet Johns, Chairman
Arizona Racing Commission
1645 West Jefferson, Room 437
Phoenix, Arizona 85007

ADDENDUM

Re: I82-101 (R82-099)

Dear Mr. Johns:

This addendum clarifies two statements made in
Ariz. Atty. Gen. Op. I82-101.

First of all, on page two of that opinion, we stated that the term, "financial interest," is not defined by statute. In Chapter 310, 1982 Ariz. Sess. Laws, 2d Reg. Sess., the Legislature added a new A.R.S. § 5-101.11, which defines "financial interest" as "any direct pecuniary interest". Our discussion of the concept is not changed by this addition.

Secondly, on pages three and four of the opinion, we discussed whether an officer, director or employee's ownership of an interest in a corporation that owns a horse or dog constitutes "his own" horse or dog within the scope of A.R.S. § 5-115.F. The determination of whether an officer, director or employee owns a horse or dog by virtue of an "ownership interest" in a corporation is a question of fact, to be decided by the body having primary jurisdiction over the matter. The phrase, "ownership interest," is used merely to indicate that the party's interest in the corporation must be sufficient enough so that he reasonably may be found to be racing "his own horse or dog".

Sincerely,

Bob Corbin

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September 23, 1982

INTERAGENCY

Mr. Chet Johns, Chairman
Arizona Racing Commission
1645 West Jefferson, Room 437
Phoenix, AZ 85007

Re: I82-101 (R82-099)

Dear Mr. Johns:

You have inquired whether, under recent legislation, a member of the Arizona Racing Commission may (a) engage in business dealings^{1/} with any person who holds a permit to conduct racing or is an owner or lessee of a race track, (b) be employed by a race track or permittee, or (c) participate as an owner, owner-trainer, trainer or jockey in any racing meeting in Arizona.

Chapter 310, 1982 Ariz. Sess. Laws, 2nd Reg. Sess., which becomes effective on September 30, 1982, amended A.R.S. § 5-103 to provide, in pertinent part:

C. No person who has a financial interest, EITHER DIRECTLY OR INDIRECTLY, in a race track, or the operation of licensed wagering on the results of races is qualified for membership on the commission, . . . but this provision shall not be construed to affect the entrance into a race OUTSIDE THIS STATE of a horse or dog belonging to a member. . . .

1. We assume that you are concerned about any activity that a Commissioner might undertake for financial gain with the persons or entities described.

Mr. Chet Johns
September 23, 1982
Page 2

D. NO COMMISSIONER OR MEMBER OR A RELATIVE OF THE COMMISSIONER OR MEMBER TO THE FIRST DEGREE OF CONSANGUITY MAY HAVE A FINANCIAL INTEREST IN A LICENSEE OR PERMITTEE REGULATED BY THIS DEPARTMENT. (Emphasis in original indicating new language.)

The essence of your question is whether the activities and relationships that you describe rise to the level of a "financial interest" in the person or entities listed in A.R.S. § 5-103.

The Legislature has not defined the term "financial interest." Under the authority of A.R.S. § 1-211,^{2/} we have construed the term liberally to effect the object of A.R.S. § 5-103 which appears to us to negate a Commissioner's having anything to gain or lose from the success or failure of persons regulated by the Racing Commission. In our view, therefore, a Commissioner's engaging in any activity for financial gain with, or being employed by, a race track or a permittee or a Commissioner's participating as an owner, trainer or jockey in a racing meeting in this State would result in the Commissioner's having a financial interest in a race track or a licensee or permittee or the operation of licensed wagering within the purview of A.R.S. § 5-103, and is, therefore, prohibited.

You also asked whether an individual wrongdoer's license to act as an officer or employee of a permittee or the permittee's permit to conduct a racing meeting should be revoked if an officer, director or employee of a permittee enters his own horse or dog in a race held at a meeting at that permittee's facility. The answer to this question is found in A.R.S. § 5-115.F, as amended by Chapter 310, which provides:

The department [of Racing] shall revoke a license of any officer, director or employee of a permittee who enters his own horse or dog in a race held at a meeting at

2. A.R.S. § 1-211.B provides:

Statutes shall be liberally construed to effect their objects and to promote justice.

Mr. Chet Johns
September 23, 1982
Page 3

the permittee's facility or at any facility with which the officer, director or employee has a financial interest. This subsection shall not apply to race meetings held in any county with a population of less than one hundred thousand persons or to county fair race meetings. (Emphasis added.)

No sanction is imposed directly on the permittee for the questioned misconduct of an officer or employee of the permittee.

Finally, you inquired whether the foregoing prohibition would apply to the entry of a horse or dog by the spouse of an officer, director or employee of a permittee or to the entry of a horse or dog by a corporation in which an officer, director or employee has an ownership interest.

A cardinal rule of statutory construction is to ascertain and give effect to the intention of the legislative body which enacted the law. State ex rel. Jones v. Lockhart, 76 Ariz. 390, 265 P.2d 447 (1954).

A.R.S. § 5-115.F appears to be designed to prevent persons who hold the influential positions of officer, director or employee of a permittee from entering their horses or dogs in races at the permittee's facility or at any facility in which the officer, director or employee has a financial interest. This prohibition removes the appearance of possible improper influence being exercised by an officer, director or employee who stands to gain if his animal wins a race.

The intention of the Legislature too easily would be subverted if an officer, director or employee were freed from the proscription of the statute by owning a horse or dog with his spouse or through a corporation. In order to give effect to the clear intention of the Legislature, the prohibition should be read as applying both to direct ownership of a horse or dog and to ownership with a spouse and to indirect ownership through a corporation in which the officer, director or employee of a permittee holds an ownership interest.

The answer to your question respecting entry of a horse or dog by a spouse of an officer, director or employee of a permittee depends upon whether the animal entered by the spouse is community property and, therefore, the officer, director or

Mr. Chet Johns
September 23, 1982
Page 4

employee's "own horse or dog." In making that determination, reference must be made to A.R.S. § 15-211, which provides that:

[a]ll property acquired by either husband or wife during the marriage, except that which is acquired by gift, devise or descent, is the community property of the husband and wife.

Arizona favors a presumption that property owned by either spouse is community property. Tyson v. Tyson, 61 Ariz. 329, 340, 149 P.2d 674, 679 (1944). In addition, the Court of Appeals has stated that property acquired by one spouse during marriage, even though taken in that spouse's name only, is presumed to be community property. Davis v. Davis, 9 Ariz. App. 49, 52, 449 P.2d 66, 69 (1969). Arizona recognizes, however, that a married person may own separate property distinct and apart from the community. A.R.S. § 25-213 defines separate property as follows:

All property, real and personal, of each spouse, owned by such spouse before marriage, and that acquired afterward by gift, devise or descent, and also the increase, rents, issues and profits thereof, is the separate property of such spouse.

Each spouse has sole management, control and disposition rights of separate property. Community property, however, vests in each spouse equal management, control and disposition rights in the property. See A.R.S. § 25-214.A and B.

In light of the presumption in favor of community property, you may impose the restrictions of A.R.S. § 5-115.F upon an officer, director or employee of a permittee whose spouse enters a horse or dog unless they demonstrate that the horse or dog is, and will remain, the separate property of the spouse of the officer, director or employee.

Sincerely,



BOB CORBIN
Attorney General

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