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Robert E. Corbin

August 21, 1984

Mr. John K. Goodman
Commissioner
Arizona Racing Commission
1645 West Jefferson, Room 437
Phoenix, Arizona 85007

Re: I84-115 (R83-157)

Dear Mr. Goodman:

You have requested an opinion as to whether capital improvement funds may be allocated to upgrade a wagering facility or to convert an existing dog racing facility to a wagering facility.^{1/} For the reasons set forth below, we conclude that the pertinent statutes do not allow the expenditure of capital improvement funds for the upgrading of a facility other than a racetrack facility.

The statutes pertaining to capital improvements at dog tracks authorize a permittee^{2/} to retain funds which would otherwise be state revenues for certain capital improvements. A.R.S. § 5-111.03. The term "capital improvement" is defined as follows:

1. These facilities which are also known as teletrack facilities will be referred to as teletrack facilities throughout this opinion.

2. A permittee is one who holds a permit to conduct dog racing in this State. A.R.S. § 5-111.03.A.

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[A]n addition, replacement or remodeling of a race track facility Capital improvement does not include the cost of ordinary repairs and maintenance required to keep a race track facility in ordinary operating condition and does not include operational expenses, but may include the direct acquisition of water trucks and tractors.

A.R.S. § 5-111.03.G. [Emphasis added]

The statutes which allow wagering at a teletrack facility in addition to a facility where racing actually takes place consistently distinguish between a facility "in which authorized racing takes place" and an "additional facility . . . which is used for handling wagering." A.R.S. § 5-111.A. By specifically differentiating between a facility in which authorized racing takes place and an additional facility which is used for handling wagering, the legislature manifested an intent to differentiate in the eligibility of those two facilities for capital improvement funds. In this case, the legislature distinguished between a facility where racing takes place from a facility where wagering takes place. A.R.S. § 5-111.A. Yet, the legislature only included race track facilities in authorizing the expenditure of otherwise public funds for capital improvements. A.R.S. § 5-111.03.G. We also note that the effect of allowing the expenditure of capital improvement funds for upgrading a private facility is a special privilege granted by statute which must be strictly construed against those who claim it. Cyr and Evans Contracting Company v. Graham, 2 Ariz.App. 196, 407 P.2d 385 (1965); Parrack v. Ford, 68 Ariz. 205, 203 P.2d 872 (1949).

For these reasons, we conclude that capital improvement funds may not be allocated to upgrade a wagering facility. It is also our understanding that, customarily, actual racing occurs at a race track facility only for a portion of the calendar year. A.R.S. § 5-111.03.A provides:

Such decrease in percentage retained from the racing meets conducted by the permittee at tracks located in this state for which the permittee holds a permit to conduct dog racing thereon may

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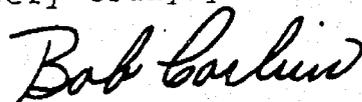
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be applied to a capital improvement at any of such tracks for which a capital improvement has been approved.

We believe that a reasonable interpretation of A.R.S. § 5-111.03.A allows capital improvement funds to be expended on a particular facility during that portion of the calendar year when no actual racing is occurring at that track or, in other words, off-season. A contrary conclusion would lead to absurd results. That is, funds could be expended for capital improvements which are, by definition, substantial for only a small portion of the calendar year. Thus, so long as a permittee holds a permit to conduct dog racing at a particular facility, the Racing Commission ("Commission") may approve expenditures from the capital improvement fund for improvements at that race track facility.

Finally, we note that the Commission has the discretion to approve or disapprove a particular project based upon its intended use. See A.R.S. § 5-111.03. Thus, the Commission may, in its discretion, disapprove expenditures from the capital improvement fund if, for instance, it determines such an expenditure is not cost justified or the improvement is not necessary to increase revenues realized from dog racing and pari-mutuel wagering.

Very truly yours,



BOB CORBIN
Attorney General

BC:SMS:pd