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December 7, 1988

The Honorable John Hays
Arizona State Senator
State Capitol - Senate Wing
Phoenix, Arizona 85007

Re: I88-125. (R86-119)

Dear Senator Hays:

You have asked whether A.R.S. § 5-111(D), regulating horse and dog racing within the state, guarantees an equal share of revenue to horsemen or whether the amount of funds dedicated to purses may depend on the contract negotiated between permittee and horsemen. We conclude that the statute does not preclude negotiation of contracts between racing permittees and horsemen to determine division of racing purses.

A.R.S. § 5-111(D) provides, in part, as follows:

During the period of a permit for horse or harness racing at a track where the average daily handle for the permittee's preceding racing meeting exceeded two hundred thousand dollars, the state shall receive, until July 1, 1987, three per cent, and thereafter two per cent, of the gross amount of the first one million dollars of the daily pari-mutuel pools. The permittee shall retain the balance of the total amounts deducted pursuant to subsection C of this section. Of the amount retained by the permittee less the amount payable to the permittee for capital

improvements pursuant to § 5-111.02, breakage distributed to the permittee pursuant to § 5-111.01 and other applicable state, county and city transaction privilege or other taxes, fifty per cent shall be used for purses.

Unless otherwise agreed by written contract, fifty per cent of the revenues received by the permittee from simulcasting races as provided in § 5-112, net of costs of advertising, shall be utilized as a supplement to the general purse structure. At tracks where the average daily pari-mutuel handle for the permittee's preceding meeting was less than two hundred thousand dollars, the state shall receive two per cent of the gross amount of the first two hundred thousand dollars and five per cent of the gross amount exceeding two hundred thousand dollars of the daily pari-mutuel pools. The permittee shall retain the balance of the total amounts deducted pursuant to subsection C of this section, except for an amount equal to one per cent of the gross amount of the daily pari-mutuel pools, which shall be utilized as a supplement to the general purse structure.

(Emphasis added.)

The fundamental rule of statutory construction is to ascertain and give effect to the intention of the legislature Automatic Registering Machine Company, Inc. v. Pima County, 36 Ariz. 367, 285 P. 1034 (1930). To determine legislative intent, the court looks to the words of the statute. Arizona State Board of Accountancy v. Keebler, 115 Ariz. 239, 564 P.2d 928 (App. 1977). When construing a statute, it is to be presumed that what the legislature means, it has in fact said. Padilla v. Industrial Commission, 113 Ariz. 104, 546 P.2d 1135 (1976).

The plain meaning of the statutory language in subsection (D) dictates the manner of allocating the percentage of funds retained by the permittee that shall be used for "purses." Of the amount retained by the permittee, pursuant to subsection (C), the legislature has mandated that fifty per cent be utilized for purses, "less the amount payable to the permittee for capital improvements pursuant to A.R.S. § 5-111.02, breakage distributed to the permittee pursuant to A.R.S. § 5-111.01" The statute also dictates that the

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other fifty per cent shall be retained by the permittee. The statute does not expressly state that all money allocable to purses must be expended entirely within each permittee's annual racing period. Presumably any part of the 50 per cent allocable to purses, which is not used during the permittee's annual racing period, should carry over to the next annual racing season authorized by the racing permit.

A.R.S. § 5-111(C) makes the amount to be deducted from the total amount handled in the pari-mutuel pool discretionary by the permittee and only establishes a maximum percentage which may be deducted. Therefore, we conclude that the statute does not preclude the use of contractual agreements between racing permittees and horsemen to arrive at mutually satisfactory amounts for purses, within the maximum percentage amount allocable from the pari-mutuel pool.

Sincerely,



BOB CORBIN
Attorney General

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