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OPINION	:	No. 82-510
of	:	SEPTEMBER 17, 1982
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THE HONORABLE OLLIE SPERAW, MEMBER OF THE CALIFORNIA STATE SENATE, has requested an opinion on the following questions:

1. Does chapter 186, Statutes of 1982, which authorizes California race tracks to handle wagers on certain out-of-state horse races, raise a substantial equal protection question as between bettors at different race tracks by providing for separate wagering pools and pay-offs at each track on the same race?

2. Does chapter 186, Statutes of 1982, conflict with the intent and purpose of the Horse Racing Law as set forth in section 19401 of the Business and Professions Code?

3. Does chapter 186, Statutes of 1982, conflict with the definition of "parimutuel wagering" as set forth in section 19411 of the Business and Professions Code?

4. Does the system of parimutuel betting contemplated by chapter 186, Statutes of 1982, for out-of-state races fall outside the jurisdiction of the Horse Racing Board since section 19420 of the Business and Professions Code states that the board's jurisdiction is "over meetings in this state where horse races with wagering on *their* results are held or conducted"? (Emphasis added.)

CONCLUSIONS

1. Chapter 186, Statutes of 1982, does not raise any substantial equal protection question as between bettors at different race tracks who wager on the same race but in different parimutuel pools.

2. Chapter 186, Statutes of 1982, does not conflict with the intent and purpose of the Horse Racing Law as set forth in section 19401 of the Business and Professions Code.

3. Chapter 186, Statutes of 1982, does not conflict with the definition of "parimutuel wagering" as set forth in section 19411 of the Business and Professions Code.

4. The system of parimutuel betting contemplated by chapter 186, Statutes of 1982 does not fall outside the jurisdiction of the Horse Racing Board.

ANALYSIS

Wagering upon, or placing, registering or recording bets upon, the results of horse races is prohibited by section 337a of the Penal Code. In 1933 the Legislature adopted an act to permit parimutuel betting on horse races (Stats. 1933, ch. 769) which took effect when the people adopted prior article IV, section 25a, of the California Constitution on June 27, 1933.[1] The 1933 legislative enactment, as amended from time to

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[1] Article IV, section 25, as originally adopted, provided:

"Sec. 25a. The Legislature may provide for the regulation of horse races and horse race meetings and wagering on the results thereof. The provisions of an act entitled 'An act to provide for the regulation and licensing of horse racing, horse race meetings, and the wagering on the results thereof; to create the California Horse Racing Board for the regulation, licensing and supervision of said horse racing and wagering thereon; to provide penalties for the violation of the provisions of this act, and to provide that this act shall take effect upon the adoption of a constitutional amendment ratifying its provisions,' are hereby confirmed, ratified, and declared to be fully and completely effective; provided, that said act may at any time be amended or repealed by the Legislature."

time, is found in section 19400 et seq. of the Business and Professions Code, the "Horse Racing Law."[2] The successor to article IV, section 25a, is now found in article IV, section 19(b), which states:

> "(b) The Legislature may provide for the regulation of horse races and horse race meetings and wagering on the results."[3]

For our purposes herein suffice it to say that the Horse Racing Law regulates in detail horse racing meetings, requires licensing of virtually all individuals and associations who have anything to do with such meetings, and provides for allocation of the "take-out" from parimutuel pools as between license fees, commissions to the racing associations conducting the meetings, and purses.[4] Until the enactment of chapter 186, Statutes of 1982, parimutuel betting was permitted only with respect to horse races which were run in California, and only within the "enclosure" or track where the race was conducted.[5]

Chapter 186, Statutes of 1982, was enacted as an urgency measure, effective April 30, 1982. By the addition of section 19595 and a new section 19616, the measure authorized for the first time betting in California on out-of-state races. Thus, section 19596 provides:

> "Notwithstanding any other provision of law, the board may authorize an association conducting a racing meeting to accept wagers on the results of out-of-state feature races having a gross purse of more than one hundred thousand dollars ($100,000) during the period it is conducting the racing meeting if both of the following conditions are met:

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[2] All section references will be to the Business and Professions Code unless otherwise indicated.

[3] At the November 6, 1962, general election, article IV, section 25a, was amended to delete all but the first sentence as superfluous language (see Ballot Pamphlet, General Election, Nov. 6, 1962, p. 22) and renumbered as part of the 1966 constitutional revision, Proposition 1-a, at the November 5, 1968, general election.

[4] The "take-out" is the amount which is deducted from the parimutuel pool before the pool is allocated to the successful wagerers. (See 54 Ops.Cal.Atty.Gen. 251, 253 (1971).)

[5] In its simplest form, parimutuel wagering merely means that wagers on a particular race are placed in a single pool. After deducting the "take-out," the remaining funds in the pool are distributed to the winning bettors in proportion to the amount of their bets, that is, in proportion to their share of the "pool." (See, e.g., discussion in 36 Ops.Cal.Atty.Gen. 150 (1960).) The law now specifically provides for variations of this form of wagering such as the "daily double," "quinella," "exacta" and "Super 6" (Pic-Six). (See Cal. Admin. Code, tit. 4, § 1950 et seq.)

(a) The authorization complies with federal laws, including, but not limited to, Chapter 57 (commencing with Section 3001) of Title 15 of the United States Code.

(b) Wagering is offered only within the racing enclosure and only within 36 hours of the running of the out-of-state feature race."[6]

Section 19616 then requires that wagers on out-of-state feature races be placed in separate parimutuel pools *by each racing association* and distributed as set forth in that section, that is, after deducting the prescribed license fee. This distribution is essentially *50 percent of the remaining "take-out" to commissions and 50 percent to purses*. Accordingly, there will be separate parimutuel pools at each race track on the same out-of-state feature race.[7]

It is our understanding that there are normally four racing meetings being conducted at the same time in California, two in Northern California and two in Southern California, which will include two thoroughbred meetings and additionally two others such as harness or quarterhorse meetings. It is evident that where separate parimutuel pools are maintained at separate locations on the same race, it is possible if not probable that individuals who bet the same amount of money on the winning horse will receive different pay-offs at the different locations. This conclusion is clear from the statutory definition of "parimutuel wagering" found in the Horse Racing Law itself, which states in section 19411:

"'Parimutuel wagering' is a form of wagering on the outcome of horseraces in which those who wager purchase tickets of various denominations on a horse or horses in one or more races. When the outcome of the race or races has been declared official, the association distributes the total wagers comprising each pool, less the amounts retained for license fees, purses, commissions, breakage, and breeder and stallion awards, to holders of winning tickets on the winning horse or horses."

It is this setting with respect to wagering in California on out-of-state feature races that the questions presented in this opinion request arise.

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[6] "Out-of-state" feature races include such races as the Kentucky Derby and the Preakness. Although there are some 190 races in the United States per year with purses exceeding $100,000 (many of which are run in California) we are advised that there are only about one dozen out-of-state feature races of sufficient magnitude to warrant board authorization for betting thereon in California.

[7] As a practical matter, there will also in all probability be separate "win," "place" and "show" pools at each track on that race. We need not take this into consideration herein, since such fact in no way affects our conclusions herein. (See § 19412.)

1. Does Chapter 186, Statutes of 1982 Raise Any Substantial Equal Protection Question As Between Bettors?

The first question presented is whether chapter 186, Statutes of 1982, raises any substantial equal protection question as between bettors. The question is presented since, as explained above, there will be separate wagering pools and hence in all probability different pay-offs at each track on the same out-of-state race. Stated otherwise, must the state legislation provide for a single, state-wide parimutuel pool to satisfy equal protection standards? We conclude that the state legislation need not so provide.

In the absence of a suspect classification such as one based upon race or wealth, state legislation will be upheld against a claim of denial of equal protection under the Fourteenth Amendment unless it can be said that the classification created by the Legislature is "irrational" and so unrelated to the accomplishment of a legitimate state purpose as to give rise to an "invidious discrimination." (*Parham* v. *Hughes* (1979) 441 U.S. 347, 351-352.) Where a statute neither places a burden upon a "suspect group" nor upon a "fundamental interest," ". . . courts are quite reluctant to overturn governmental action on the ground that it denies equal protection of the laws. The Constitution presumes that, absent some reason to infer antipathy, even improvident decisions will eventually be rectified by the democratic process and that judicial intervention is generally unwarranted no matter how unwisely we may think a political branch has acted." (*Vance* v. *Bradley* (1979) 440 U.S. 93, 96-97, fns. omitted.)

Although the United States Supreme Court some time ago established the principle that "all persons similarly circumstanced shall be treated alike" (*F. S. Royster Guano Co.* v. *Virginia* (1920) 253 U.S. 413, 415), it has also proclaimed that "[t]he Constitution does not require things which are different in fact or opinion to be treated in law as though they were the same." (*Tigner* v. *Texas* (1940) 310 U.S. 141, 147.) Furthermore, when "line drawing" is involved in the legislative process as a policy choice "it is of no constitutional significance that the degree of rationality [between the legislation and the legislative purpose] is not as great with respect to certain ill-defined subparts of the classification as it is with respect to the classification as a whole." (*New York Transit Authority* v. *Beazer* (1979) 440 U.S. 568, 592-593; see also *Barbier* v. *Connolly* (1885) 113 U.S. 27, cited with approval in the *New York Transit Authority* case at page 593, note 40, and *L'Hote* v. *New Orleans* (1900) 177 U.S. 587 with respect to the deference given to "line drawing" in police regulations.)

It is axiomatic that the state, under its police powers, may absolutely prohibit wagering upon horse races within its borders. The parimutuel system of wagering, authorized in California in 1933 under strict state regulation and control, and within the confines of the "enclosure," that is, the race track itself, was merely an exercise of the state's

prerogative to permit "under rules of conduct" and restricted "to certain defined limits" that which it could absolutely prohibit. (*L'Hote* v. *New Orleans*, *supra*, 177 U.S. 587, 597; see also *Barbier* v. *Connolly*, *supra*, 113 U.S. 27, 30-31; *People* v. *Milano* (1979) 89 Cal.App.3d 153, 163; *People* v. *Sullivan* (1943) 60 Cal.App.2d 539, 541.) Accordingly, although that law could be said to have "discriminated" against those who wished to conduct bookmaking operations and also against those who wished to bet upon the horse races *outside* the "enclosure," it is evident under the tests established by the United States Supreme Court that such a classification was and is "reasonable" and reasonably related to the furtherance of a legitimate state interest - the regulation of a certain form of wagering. As stated in *People* v. *Sullivan*, *supra*, 60 Cal.App.2d at page 545:

> "Many reasons suggest themselves which support the reasonableness of the classification made by the Legislature. Parimutuel machines are only permitted at licensed race tracks where supervision, regulation and police inspection and control is a very simple matter. These machines are mechanical devices in which the odds are determined with mathematical certainty and pay-offs to the lucky are assured. On the other hand bookmaking establishments were conducted in any place where the operators might believe patrons would collect. Odds were established by the bookmakers and any reasonable police supervision was difficult. Those desiring to pursue the subject further will find ample discussion in the following cases, setting forth many reasons for upholding the same or similar classifications as reasonable: [citations omitted, including *L'Hote* v. *New Orleans*, *supra*, 177 U.S. 597].
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> "Under the foregoing authorities we are required to conclude that the classification made by the Legislature is reasonable and was made on constitutional grounds and that it may not be disturbed here. [5] It is clear that a law adopted under the police powers is general in effect when it affects all those within a specified class but not all within the jurisdiction. [6] The question of its being general in its application does not depend on the number within the class it purports to regulate nor the number without that class. It is general and not unconstitutional when, as here, it applies uniform rules of conduct for all those coming within the scope of its application and may not be challenged because of any denial of equal protection of the law to those on whom it operates because others differently situated and within a different legal classification may not be affected by its terms."

Moving from the foregoing situation, that is, parimutuel betting at a single track on a single race to wagering upon out-of-state feature races authorized by chapter 186, Statutes of 1982, we believe we merely have a variation on the same theme as

discussed above. The state is under no obligation to permit anyone to wager on an out-of-state feature race. Accordingly, it can authorize such wagering under prescribed rules of conduct and within geographic limits. Under the rules set forth by the United States Supreme Court it may "classify" and "discriminate" so long as such classification is rationally related to the furtherance of a legitimate state objective and such discrimination is not "invidious," that is, not motivated by antipathy or animus or drawn with an unequal hand (see e.g., *New York Transit Authority* v. *Beazer*, *supra*, 440 U.S. at p. 593, fn. 40).

The general purpose of the regulation of wagering on out-of-state races is the same as set forth in *People* v. *Sullivan*, *supra*, 60 Cal.App.2d 539 as to in-state races, that is, to impose strict control upon what is essentially a limited exception to the proscriptions against bookmaking and wagering set forth in Penal Code section 337a. The *specific* purpose of chapter 186, Statutes of 1982, is set forth in the urgency clause in the statute itself. Section 6 of the statute states in part:

> "In order to permit immediate realization of added state license fee revenues that would be generated from out-of-state feature race wagering at California racetracks at the earliest opportunity, it is necessary that this act take effect immediately."

Under the Horse Racing Law (§ 19592), parimutuel betting is required to be conducted with the use of a "totalizator," that is a machine which will automatically "record, add, and display for public view, all bets made in each [parimutuel] pool, results, pay-off prices, together with the approximate odds to 'Win' on all horses." (Encyclopedia Americana, Vol. 21, p. 300a (1979).) Parimutuel betting in California *and the requisite technology* has developed in a certain way by virtue of the fact that betting has been restricted to in-state races *at the race tracks where such races are conducted*. In short, it has *not* developed in such a way to permit *state-wide* parimutuel betting. Although we are informed such technology does exist, it is not present at California race tracks at this time.

Accordingly, insofar as chapter 186, Statutes of 1982, may be said to have "classified" bettors, it has merely done so on a geographic basis with respect to out-of-state feature races. Such classification would appear to be both reasonable and rationally related to the furtherance of legitimate state objectives. Such classification is reasonable since the law permits wagering at all race tracks conducting meetings to the extent possible utilizing existing totalizator capabilities. To go any further would require the installation of *expensive new technology* at California race tracks. Such classification is rationally related to the furtherance of legitimate state objectives since it (1) controls commercial gambling in the same manner as does the Horse Racing Law with respect to California races and (2) it permits the realization of needed revenues from license fees immediately without the

need for the installation of new and expensive totalizator capability by the licensees who conduct the parimutuel pools.

Insofar as chapter 186, Statutes of 1982, may be said to "discriminate" against the bettors who happen to have made their wagers where the pay-off is ultimately determined to be lower than at another location or locations, such "discrimination" cannot be said to be "invidious." No "fundamental interest" nor "suspect classification" is present. No antipathy nor animus exists on the part of the state with respect to such bettors. Nor are such bettors treated with an uneven hand within their respective classification—that is, their respective geographical location. At each track, all bettors are treated equally. *It is at each track that bettors under this law are similarly situated*, predicated upon a legally permissible geographic classification.

As noted in our discussion at the outset with respect to state regulation, when no "suspect classification" is present, courts give great deference to legislative "line drawing." Here the Legislature has, with respect to out-of-state feature races, drawn the line, not between the general populous and those attending racing meetings on a statewide basis, but between those attending racing meetings on a statewide basis and those attending such meetings at each individual track. Such "line-drawing" has been accomplished through the designation of the parimutuel pools in which the bettors may participate, which are established at *each* track. "[I]t is of no constitutional significance that the degree of rationality is not as great with respect to certain ill-defined subparts of the classification [bettors at individual California racetracks] as it is with respect to the classification as a whole [bettors at all California racetracks]." (*New York Transit Authority* v. *Beazer*, *supra*, 440 U.S. 568, 592-593.)

Accordingly, we conclude that chapter 186, Statutes of 1982, does not raise any substantial equal protection question as between bettors at different tracks.[8]

2. Does Chapter 186, Statutes of 1982 Conflict With the Intent and Purpose of the Horse Racing Law?

The second question presented is whether chapter 186, Statutes of 1982, conflicts with the intent and purpose of the Horse Racing Law as set forth in section 19401. That section provides:

[8] The analysis above has proceeded upon the Equal Protection Clause of the Fourteenth Amendment. We would reach the same conclusions under subdivision (a) of article I, section 7, and article IV, section 16, of the California Constitution, which are the functional equivalents of the federal equal protection clause. See generally discussion in 64 Ops.Cal.Atty.Gen. 272, 275-276 (1981).

"The intent of this chapter is to allow parimutuel wagering on horseraces, while:

(a) Assuring protection of the public;

(b) Encouraging agriculture and the breeding of horses in this state; and

(c) Generating public revenues.

(d) Providing for maximum expansion of horseracing opportunities in the public interest.

(e) Providing uniformity of regulation for each type of horseracing."

Chapter 186, Statutes of 1982, would conflict with the above general section only if the intent of the Horse Racing Law is to allow parimutuel wagering only with respect to California horse races. Although the Horse Racing Law may have been enacted originally to permit parimutuel wagering on races conducted in California, no such limitation is to be found in the language of section 19401. Furthermore, each and every subdivision of section 19401 is satisfied by chapter 186, Statutes of 1982. As noted, its primary purpose was to generate additional license fees or revenue from the "take-out" (subdiv. (c)). The protection of the public is assured since betting upon out-of-state feature races has been incorporated into the existing system of regulation (subdiv. (a)). Agriculture and/or the breeding of horses is fostered, since a portion of the "take-out" goes to purses, which will go to California races and to the various California horse owners and breeders associations (subdiv. (b)). (See § 19616.) Subdivision (d) is satisfied through the increased revenues and purses the new law will provide, and subdivision (e) is satisfied since wagering upon out-of-state feature races is itself *sui generis*.

Finally, as stated by the California Supreme Court in *Atlantic Richfield Co*. v. *Workers' Comp. Appeals Bd.* (1982) 31 Cal.3d 715, 726:

"We have said that 'It is a settled principle in California law that "When statutory language is . . . clear and unambiguous there is no need for construction, and courts should not indulge in it." (*Solberg* v. *Superior Court* (1977) 19 Cal.3d 182, 198 . . . .)" (*In re Waters of Long Valley Creek Stream System* (1979) 25 Cal.3d 339, 348 [158 Cal.Rptr. 350, 599 P.2d 656].) Thus 'We have declined to follow the plain meaning of a statute only when it would inevitably have frustrated the manifest purposes of the legislation as a whole

> or led to absurd results. [Citations.]" (*People* v. *Belleci* (1979) 24 Cal.3d 879, 884 [157 Cal.Rptr. 503, 598 P.2d 473].)"

We see no reason to depart from the literal language of section 19401 to avoid absurd results.

Accordingly, we conclude that chapter 186, Statutes of 1982, does not conflict with the intent and purpose of the Horse Racing Law as expressed in section 19401.

3. Does Chapter 186, Statutes of 1982 Conflict With the Definition of "Parimutuel Wagering" Set Forth in Section 19411?

As noted in our discussion at the outset herein "parimutuel wagering" is defined in section 19411 as follows:

> "'Parimutuel wagering' is a form of wagering on the outcome of horseraces in which those who wager purchase tickets of various denominations on a horse or horses in one or more races. When the outcome of the race or races has been declared official, *the association* distributes the total wagers comprising each pool, less the amounts retained for license fees, purses, commissions, breakage, and breeder and stallion awards, to holders of winning tickets on the winning horse or horses." (Emphasis added.)

The third question presented is whether chapter 186, Statutes of 1982, conflicts with this definition. We discern no real conflict with the literal wording of this definition and the new law. Wagerers will purchase tickets on the out-of-state feature races. Separate wagering pools at each race track will be provided for the out-of-state races. The association at each location will deduct the "take-out" as provided in section 19616 (license fees, purses, commission, breakage and other fees) and distribute the appropriate pool to the holders of the winning tickets in that pool.

The only possible conflict we discern is the use of the singular "the association" as underscored by us in section 19411 with respect to the distributing association, giving perhaps the impression that there will be only *one* association involved with respect to any given horse race. However, section 16 provides that "[t]he singular includes the plural, and the plural the singular." Thus any "discrepancy" as to the "number" of associations in section 19411 is cured by section 16.

Additionally, even if we were to conclude that chapter 186, Statutes of 1982, conflicted with the definition set forth in section 19411, such conflict would be immaterial.

This is so since the definitions in the Horse Racing Law govern "[e]xcept where the context otherwise requires." (§ 19402.)

4. Does the System of Parimutuel Betting Contemplated By Chapter 186, Statutes of 1982 Fall Outside the Jurisdiction of the Horse Racing Board?

The fourth and last question presented herein is whether the system of parimutuel betting contemplated by chapter 186, Statutes of 1982, falls outside the jurisdiction of the Horse Racing Board. This question is asked because of the wording of section 19420, which provides:

> "*Jurisdiction and supervision over meetings in this State where horse races with wagering on their results are held or conducted*, and over all persons or things having to do with the operation of such meetings, is vested in the California Horse Racing Board." (Emphasis added.)

Although arguably the underscored portion of section 19420 would not apply to grant jurisdiction to the Horse Racing Board over parimutuel wagering on out-of-state feature races, since the language arguably contemplates only wagering upon races conducted at "meetings in this State," the non-underscored language would appear broad enough to grant the board jurisdiction. Parimutuel operators, who are conducting wagering upon out-of-state feature races, their equipment, and the wagerers themselves would clearly be "persons or things having to do with the operation of such meetings."

Furthermore, since the California Constitution is merely a limitation upon the power of the Legislature, the Legislature has complete power to permit parimutuel betting on out-of-state feature races on whatever terms it might prescribe no matter what section 19420 states. There is nothing in article IV, section 19(b) of the California Constitution, *supra*, which would limit such legislative power. (See generally *Pacific Legal Foundation* v. *Brown* (1981) 29 Cal.3d 168, 180.) Therefore, chapter 186, Statutes of 1982, insofar as it invests jurisdiction or power in the Horse Racing Board to supervise and control betting upon out-of-state feature races, would fill in any jurisdictional gap which might be said to exist in the language of section 19420.

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