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JOHN K. VAN DE KAMP
Attorney General

OPINION	:	No. 83-306
of	:	<u>JUNE 21, 1983</u>
JOHN K. VAN DE KAMP	:	
Attorney General	:	
RODNEY O. LILYQUIST	:	
Deputy Attorney General	:	
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THE CALIFORNIA HORSE RACING BOARD has requested an opinion on the following question:

Does the California Horse Racing Board have the authority to adopt a regulation establishing a form of wagering in which a portion or all of the distributable net amount in the special sweepstakes pool is carried forward from day to day until a ticket is issued on the correct combination of selected horses?

CONCLUSION

The California Horse Racing Board has the authority to adopt a regulation establishing a form of wagering in which a portion or all of the distributable net amount in the special sweepstakes pool is carried forward from day to day until a ticket is issued on the correct combination of selected horses.

ANALYSIS

The Constitution gives express authority to the Legislature to "provide for the regulation of horse races and horse race meetings and wagering on the results." (Cal. Const., art. IV, § 19, subd. (b).)

In the exercise of this express grant of authority, the Legislature has enacted a comprehensive statutory scheme (Bus. & Prof. Code, §§ 19400-19667)¹ known as the Horse Racing Law (§ 19400). The legislation is administered by the California Horse Racing Board ("Board") under the terms of sections 19420, 19440, and 19590.

Section 19420 states:

"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."

Section 19440 provides in part:

"The board shall have all powers necessary and proper to enable it to carry out fully and effectually the purposes of this chapter. Responsibilities of the board shall include, but not be limited to:

"(1) Adopting rules and regulations for the protection of the public and the control of horseracing and parimutuel wagering;

"(2) Administration and enforcement of all laws, rules and regulations affecting horseracing and parimutuel wagering;

"."

Section 19590 states:

"The board shall adopt rules governing, permitting, and regulating mutuel wagering on horse races under a system known as the parimutuel method of wagering. Such wagering shall be conducted only by a person licensed under this chapter to conduct a horse racing meeting, and only

¹ All section references hereafter are to the Business and Professions Code unless otherwise indicated.

within the enclosure and on the dates for which horse racing has been authorized by the board."

The Legislature's delegation of authority to the Board covering all aspects of horseracing has been upheld by the Supreme Court. (*Flores v. Los Angeles Turf Club* (1961) 55 Cal.2d 736, 746; *Sandstrom v. California Horse Racing Board* (1948) 31 Cal.2d 401, 413; see also *Jones v. Superior Court* (1981) 114 Cal.App.3d 725, 728-729; 36 Ops.Cal.Atty.Gen. 150, 151-152 (1960).)

The question presented for analysis is whether the Board may adopt a regulation establishing a form of wagering in which all or a portion of the "distributable net amount" in the "special sweepstakes" pool is carried forward from day to day until a ticket is issued on the correct combination of selected horses. We conclude that the Board does have such authority.

Preliminarily, we note that sections 19420, 19440, and 19590 provide broad authorization to the Board in the promulgation of administrative regulations.² Our task is to determine whether other statutes may be applicable that would preclude an affirmative response to the question posed. As found by the Supreme Court, "Administrative regulations that violate acts of the Legislature are void" (*Morris v. Williams* (1967) 67 Cal.2d 733, 737), even where the conflicting legislation is not "the statute which created the agency or which the agency is authorized to administer" (*Agricultural Labor Relations Bd. v. Superior Court* (1976) 16 Cal.3d 392, 420).

We now turn to the definitions of the terms used in the question presented as they relate to the language used by the Legislature in the relevant statutes. As quoted in section 19590, the Board is directed to establish a "parimutuel method of wagering" for horse races. Section 19593 restricts the possible types of wagering to the parimutuel method: "No method of betting, pool making, or wagering other than by the parimutuel method shall be permitted or used by any person licensed under this chapter to conduct a horse racing meeting."

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

² The Board's regulations may be found in the California Administrative Code, title 4, sections 1400-2048.

total wagers comprising each pool, less the amount retained for license fees, purses, commissions, breakage, and breeder and stallion awards, to holders of winning tickets on the winning horse or horses."

We discussed the system of parimutuel wagering in 36 Ops.Cal.Atty.Gen. 150, 152-153 (1960):

"The terms 'parimutuel' and 'parimutuel system' merely described a form of wager where the odds are determined not by the arbitrary choice of a bookmaker or handicapper, but by the number and amount of wagers on the respective competing interests which are pooled.

"The dictionary definition is: 'A form of betting on horses in which those who bet on the winning horse share the total stakes, less a small percent to the management.' Webster's New International Dictionary, 2nd Ed., Unab., 1955.

"Parimutuel has been defined as a system or pool in betting as in a horse race in which each bettor lays a fixed sum on the contestant he selects, and those who choose the winner divide the entire stake less a percentage to the person who furnishes the pool tickets; literally mutuel bets. The odds are determined by the quantum of bets placed on the several entries and in principle, the system is nothing more than a ratable division of the net pools among the successful contributors, in proportion to their respective contributions thereto [citations].

"The Horse Racing Act, by empowering the board to pass rules permitting and regulating only parimutuel wagering (§ 19590), guarantees to the public the protection inherent in that system, to wit: an exact count of all money wagered is maintained; the winning odds are determined by the amount wagered by the public; and all money wagered is returned to the public except for specific percentage deductions for taxes and operational costs." [Fn. omitted.]

The "distributable net amount" of the parimutuel pool specified in the question would be the total amount that is wagered less the sums for license fees, commissions, purses, and awards, all of which are commonly referred to as the "take-out." (See § 19411; 65 Ops.Cal.Atty.Gen. 549, 551, fn. 4 (1982); 54 Ops.Cal.Atty.Gen. 251, 253 (1971).)

The "special sweepstakes" form of parimutuel wagering (also known as the "Pick-Six") is where each ticket holder chooses the winning horse in each of six races run during a day's program as designated by the association track operator. (Cal. Admin. Code, tit. 4, § 1959.5.)

Consequently, the proposed regulation would authorize the withholding all or a portion of the "distributable net amount" in the pool if no ticket were issued that correctly designated the six winning horses. Rather, the withheld amount would be carried forward until a ticket was issued that had all six races correctly chosen for that day, with the ticket holder receiving the accumulated amount.³

Examining the possible statutes that might preclude adoption of the proposed regulation, we start with section 19411. As previously quoted, it provides in part:

"When the outcome of the race or races has been declared official, the association distributes the total wagers comprising each pool, less the amount 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.)

Accordingly, if a ticket holder were to designate all six choices correctly in a special sweepstakes pool, distribution would be required for the "winning ticket." Section 19411 does not mandate, however, distribution for anything less than a "winning ticket," which the Board could properly classify as one with all correct choices.

Neither section 19411 nor any other statute we have found delineates the consequences of a situation in which no winning tickets are issued. A refund system has not been specified by the Legislature.

Numerous statutory restrictions have been placed upon the wagering distribution formula (see §§ 19610-19619), but these relate to the "take-out" portion rather than the distributable net amount.

A superficial reading of section 29599 might suggest that a carry forward regulatory provision would be improper. It stated: "The board shall not approve any form of wagering on more than one race unless all such races are conducted on the same racing program."

³ Currently, the basic distribution for special sweepstakes pools is 75 percent to those with the most number of correct choices and 25 percent to those with the second most correct choices. (Cal. Admin. Code, tit. 4, § 1959.5.)

While section 19599 controls the Board's administrative powers with regard to the wagering abilities of the public, it does not affect the pool distribution system. Under the statute, each particular wager is limited to a race or races on a single day's program. A ticket cannot be issued covering choices for different days. The proposed regulation would comply with section 19599 since each ticket, whether winning or losing, would only cover those races on a single day's program.⁴

Upon examination of the possibly applicable statutes, as well as relevant judicial decisions and opinions of this office, we are unable to find any language prohibiting a carry forward distribution system where no winning tickets have been issued for a particular day. Although by no means controlling, but certainly of interest, the State of Florida has adopted a regulation quite similar to that proposed by the California Horse Racing Board.

The State of Florida permits "pari-mutuel" wagering on horse and dog races. Although Florida has not enacted a definition of "pari-mutuel" wagering, the Florida courts have interpreted it to mean much the same process as that defined in Business and Professions Code section 19411 (see *Greater Loretta Imp. Assn. v. State ex rel. Boon* (1970) 234 S.Rptr.664, 671, 684-685). Section 550.16(1) of the Florida Codes authorizes pari-mutuel wagering by the simple statement: "The sale of tickets or other evidences showing an interest in or a contribution to a pari-mutuel pool is permitted within the enclosure of any horse racetrack and dog racetrack licensed and conducted under this law, and not elsewhere"

Based on that authority that Division of Parimutuel Wagering of the Department of Business and Development adopted a regulation in 1981 authorizing a "Pick Six" form of pari-mutuel wagering similar to that under consideration in this opinion. Section 550.02 of the Florida Code accords the Division of Pari-Mutuel Wagering broad powers similar to those of the California Horse Racing Board.

Our opinion in 36 Ops.Cal.Atty.Gen. 150, 151-156 (1960), supports a determination that the Board may promulgate the regulation in question. We concluded therein that the Board had the authority to allow a special sweepstakes form of parimutuel wagering without express legislative authorization:

⁴ While the "same racing program" could conceivably mean something other than "the same day's racing program," we understand that common usage treats the phrases interchangeably for purposes of section 19599. Assuming they are, for the reasons already stated, we find that the proposed regulation would nonetheless avoid conflict with the statute.

"The Board in its discretion may, for a variety of valid reasons, grant or deny permission to conduct Pic-Six wagering. Whether Pic-Six is in the public interest and subserves the purpose of the Horse Racing Law is purely a policy, not a legal, determination, and the wisdom of permitting such wagering is in the sole and exclusive province of the Board." (*Id.*, at 156.)

Similarly, the Board need only determine that the proposed regulation serves the purpose of the Horse Racing Law⁵ before formally adopting it.

In answer to the question presented, therefore, we conclude that the board has the authority to adopt a regulation establishing a form of parimutuel wagering in which the distributable net amount in the special sweepstakes parimutuel pool is carried forward from day to day until a parimutuel ticket is issued on the correct combination of selected horses.

⁵ Section 19401 specifies the purpose of the Horse Racing Law as follows:

"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."