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CORRECTED COPY

Honorable Robert A. Jones, Jr.
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Birmingham Racing Commission - Racing – Jefferson County

A computerized machine that replays actual historical races and requires a player to exercise a significant degree of skill in making a pari-mutuel wager on the outcome of the race is permissible in the City of Birmingham in Jefferson County if it has been approved by the Birmingham Racing Commission and if the use is otherwise legally permitted under Alabama's lottery and gambling laws.

Dear Mr. Jones:

This opinion of the Attorney General is issued in response to your request on behalf of the Birmingham Racing Commission.

QUESTION

Is a computerized machine, which replays actual historical races and allows a player to make a pari-mutuel wager, permissible in Jefferson County?

FACTS AND ANALYSIS

In your letter of request, you provide the following facts:

The Birmingham Racing Commission has been requested by the operator of the racing facility to allow

> pari-mutuel wagering through a program designated as Instant Racing. The program, which was developed by RaceTech LLC, is a computerized machine that stores tens of thousands of digitized races, instantaneously available for on-demand transmission. The races are actual horse and dog races that have been run in the past. The machine is connected to pari-mutuel wagering and processed through a dedicated race tech totalizator system. Instant Racing utilizes the same basic handicapping information typically found at a racetrack. The information is built into the system and is immediately available to the player in a graphical, electronic format. It is carefully presented in a way to keep a player from being able to use the data to identify an upcoming race.

Pari-mutuel wagering is permitted in the City of Birmingham in Jefferson County pursuant to sections 11-65-1, *et seq.*, of the Code of Alabama. Section 11-65-32.1 provides as follows:

> (a) ***Televised Racing Events in Alabama and Pari-Mutuel Wagering Thereon.*** The provisions of Section 11-65-32 to the contrary notwithstanding, ***any person now or hereafter licensed by a racing commission in a Class 1 municipality*** (the "commission") to conduct live horse racing or live greyhound racing and pari-mutuel wagering on either thereof (the "racing operator") ***shall have the right, subject to the reasonable regulatory authority of the commission,*** (1) to cause live horse racing events and live greyhound racing events conducted at the racetrack in such Class 1 municipality (the "Class 1 racetrack") to be transmitted by television to racetracks located elsewhere in the State of Alabama (as well as to the locations in other states and foreign countries permitted by said Section 11-65-32) and there made available for public viewing and pari-mutuel wagering thereon and (2) ***to cause televised horse racing events and greyhound racing events held at racetracks located elsewhere*** in the State of Alabama (as well as at locations in other states and foreign countries permitted by said Section 11-65-32) ***to be received at the Class 1 racetrack and there made available for public viewing and pari-mutuel wagering thereon.***

ALA. CODE § 11-65-32.1 (Supp. 2007) (emphasis added). This statute plainly states that a licensee may, subject to any regulations of the Birmingham Racing Commission, cause televised horse racing events and greyhound racing events held

at racetracks located elsewhere inside or outside of the state to be received at the track for public viewing and pari-mutuel wagering.

This Office considered an identical issue in an opinion to Honorable Michael E. Box, Attorney, Mobile County Racing Commission, dated March 13, 2001, A.G. No. 2001-114. In answering the question in the affirmative, that opinion relied on similarly broad language in a local act authorizing a licensee of the Mobile County Racing Commission to "'receive broadcasts of horse races and dog races conducted outside of Mobile County, and allow all forms of pari-mutuel wagering on those races.'" *Id.* at 3.

The *Box* opinion opined further as follows:

> Under well-established provisions of Alabama law, pari-mutuel wagering is permissible in Alabama only because the Alabama Supreme Court has concluded that it is an activity that involves skill. In *Opinion of the Justices No. 205*, for example, the Alabama Supreme Court was asked by the Alabama House of Representatives whether bills authorizing "dog racing with a pari-mutuel wagering system of wagering" constitute a lottery under Alabama's Constitution. The Court reasoned that:
>
> > A significant degree of skill is involved in picking the winning dog, such factors as weight, paternity, trainer, position, past record, wet or dry track, etc. all must be considered. . . . The fact that the pari-mutuel system of betting is used is not determinative of the winner, but the amount of the purse.
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> 251 So. 2d 751, 753 (Ala. 1971). The Court then concluded that pari-mutuel wagering did not constitute a lottery. *Id.* at 754. Information supplied to this Office by RaceTech states that "[t]he handicapping information included in the RaceTech Instant Racing System is identical to the handicapping information that was available on the day of the race." If the information provided by RaceTech includes the information necessary for a bettor to make his wager based on the elements of skill discussed in *Opinion of the Justices No. 205*, then the system may not be a lottery under the law.

> If the information provided by RaceTech to bettors is sufficient to require a person to exercise "a significant degree of skill . . . in picking the winning dog," it is the opinion of this Office that the Mobile County Racing Commission may allow licensees to offer pari-mutuel betting on this type of machine, provided the use is otherwise legally permitted under Alabama's lottery and gambling laws.

Box at 3-4.

Consistent with the *Box* opinion, a computerized machine that replays actual historical races and requires a player to exercise a significant degree of skill in making a pari-mutuel wager on the outcome of the race is permissible in the City of Birmingham located in Jefferson County if it has been approved by the Birmingham Racing Commission and if the use is otherwise legally permitted under Alabama's lottery and gambling laws.

CONCLUSION

A computerized machine that replays actual historical races and requires a player to exercise a significant degree of skill in making a pari-mutuel wager on the outcome of the race is permissible in the City of Birmingham in Jefferson County if it has been approved by the Birmingham Racing Commission and if the use is otherwise legally permitted under Alabama's lottery and gambling laws.

I hope this opinion answers your question. If this Office can be of further assistance, please contact Cheairs Porter of my staff.

Sincerely,

TROY KING
Attorney General
By:

BRENDA F. SMITH
Chief, Opinions Division

TK/CP/WB

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