



WILLIAM J. SCOTT

ATTORNEY GENERAL
STATE OF ILLINOIS
500 SOUTH SECOND STREET
SPRINGFIELD

May 26, 1977

FILE NO. S-1244

SPORTS AND GAMING:
Use of Race Track Improvement
Fund Money

Lucy Reum
Acting Chairman
Illinois Racing Board
Room 1000
160 North LaSalle Street
Chicago, Illinois 60601

Dear Mrs. Reum:

I have your predecessor's letter wherein he asked
the following questions:

1. Absent any leasehold provision to the contrary, may monies from the Race Track Improvement Fund be spent at a race track other than the race track where the breakage was earned?
2. When a lease agreement so provides, may monies from the Fund be spent at a race track other than the track at which said breakage was earned?

Lucy Reum - 2.

For the reasons hereinafter stated, it is my opinion that money in the Race Track Improvement Fund may be spent at the track where the breakage was earned or at any other track which applies for the use of money from the Fund. It is also my opinion that a lease agreement does not control the use of money in the Race Track Improvement Fund.

Section 32 of the Illinois Horse Racing Act of 1975 (Ill. Rev. Stat. 1976 Supp., ch. 8, par. 37-32), which created the Race Track Improvement Fund, provides in pertinent part as follows:

"§ 32. (a) There is hereby created in the State Treasury a fund to be known as the Illinois Race Track Improvement Fund, referred to in this Section as the Fund, to consist of monies paid into it pursuant to Section 28. Monies credited to the Fund shall be distributed by the Treasurer on order of the Board.

(b) As provided in Section 28, 50% of the breakage of each meeting except for charity racing meetings shall be collected by the Department of Revenue and deposited with the State Treasurer in an account established for each organization licensee who held such meeting at any track in a given racing year.

(c) The Racing Board shall use this Fund to aid tracks in improving their facilities.

(d) Monies shall be distributed from the Fund to tracks for the cost of erection, improving or acquisition of seating stands, buildings

Lucy Reum - 3.

or other structures, ground or track, or for the payment of the cost of amortization of debt contracted with the approval of the Board for any or all such purposes.

(e) The Board shall promulgate procedural rules and regulations governing information required, deadlines for filing, and types of application forms to be observed by the tracks seeking monies from the Fund.

* * *

(Emphasis added.)

The General Assembly's purpose in creating the Race Track Improvement Fund was clearly to provide aid for the improvement of race track facilities. (Ill. Rev. Stat. 1976 Supp., ch. 8, par. 37-32(c).) The object is attained regardless of whether the money is spent at the track where the breakage is earned, or elsewhere. No language in section 32 or in any other section of the Act restricts the use of money from the Fund to the race track where the breakage was earned. Although the breakage collected is to be deposited in an account established for each organization licensee, the intent of section 32 appears to be that the Fund is a unitary one to be used for the benefit of all tracks. Ill. Rev. Stat. 1976 Supp., ch. 8, par. 37-32(b) and (g).

With regard to your second question, the control of the money in the Fund clearly rests in the Illinois Racing

Lucy Reum - 4.

Board, which has authority to use Fund money to aid tracks in the improvement of their facilities (Ill. Rev. Stat. 1976 Supp., ch. 8, par. 37-32(c)), and to control the application for such money. (Ill. Rev. Stat. 1976 Supp., ch. 8, par. 37-32(e).) Neither tracks nor organization licensees are given any proprietary interest in the money deposited in the Fund. Rather, tracks merely have the right, in accordance with the procedural rules and regulations promulgated by the Board, to apply for the use of money from the Fund. Therefore, a provision of a lease between a track and an organization licensee cannot govern the use of money in the Race Track Improvement Fund.

Very truly yours,

A T T O R N E Y G E N E R A L