

The State of South Carolina

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Opinion No 86-119
P 349

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Columbia 29211

December 1, 1986

The Honorable Ryan C. Shealy
Senate District # 24
502 Gressette Building
P. O. Box 142
Columbia, South Carolina 29202

Dear Senator Shealy:

In your letter of November 10, 1986, you have inquired whether South Carolina's Constitution contains an express prohibition against horse racing and parimutuel betting.

We are of the opinion that Article XVII, §7 of the Constitution expressly prohibits parimutuel betting or horse races. Article XVII, §7 provides in pertinent part, as follows:

No lottery shall ever be allowed or be advertised by the newspapers, or otherwise, or its tickets be sold in this State...

A lottery is any scheme or device which includes the following three elements:

- (1) the offering of a prize;
- (2) the payment of money or other consideration for an opportunity to win the prize; and
- (3) the awarding the prize by chance.

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It is our opinion that parimutuel betting 1/ or any other form of betting on the outcome of a horse race has all the elements of a lottery and is, therefore, expressly prohibited by Article XVII, §7 of the Constitution of this State. Our Supreme Court has not ruled upon the precise question you raised, but the issue has been presented and ruled upon in several other jurisdictions which have concluded that parimutuel betting or horse races (or dog races) constitutes a lottery. State v. Nixon, 384 N.E.2d 152 (Ind. 1979); State v. Bissing, 283 P.2d 418 (Ka. 1955); State v. Ak-Sar-Ben Exposition, 226 N.W. 705 (Neb. 1929); In 1982, the Attorney General for the State of Missouri issued an opinion in which he concluded that parimutuel betting on horse races constitutes a lottery. Attorney General Opinion, State of Missouri, Opinion 77, July 12, 1982. See also, Streeper v. Aud. Kennel Club, 180 A. 212 (N. J. 1935); Pompano Horse Club v. State, 111 So. 801 (Fla. 1927). [Parimutuel betting is a "game of chance"].

There does exist authority and case law in support of the proposition that parimutuel betting does not constitute a lottery. 2/ These cases consider the element of skill to outweigh the element of luck involved. We believe however, that this State's long-standing public policy against gambling and gaming militates strongly against and requires rejection of the view that parimutuel betting does not constitute a lottery. As stated by the Attorney General of Missouri, regardless of the

1/ Under the parimutuel system, odds are determined by the quantum of bets placed on the several entries and those wagers are placed on the winning entry share of the total stake less a fixed percentage to track management in proportion to their respective contributions or wagers. State v. Felton, 80 S.E.2d 625 (1954).

2/ A number of these cases recognize, however, that while skill may outweigh chance, there undoubtedly remains an element of chance in parimutuel betting. See, Ginsberg v. Centennial Turf Club, Inc., 251 P.2d 926 (Colo. 1952); People v. Monroe, 182 N.E. 439 (Ill. 1932); Longstreth v. Cook, 220 S.W.2d 433 (Ark. 1949).

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skill involved, "the final result of any horse race is determined by chance." And as the Supreme Court of Indiana has concluded,

In our judgment, and notwithstanding that a degree of skill is involved in selecting the horses most likely to perform well, the unpredictability of the odds to be paid and the limited predictability of the performance of the animals combine to provide the degree of "chance" required to meet the traditional textbook definitions of the term "lottery". State v. Nixon, 384 N.E.2d at 161.

We further note that Section 16-19-130, S. C. Code of Laws, (1986) expressly provides, in part, as follows:

§16-18-130, Betting, pool selling, bookmaking, and the like are prohibited.

Any person within this State who:

- (1) Engages in betting at any race track, pool selling or bookmaking, with or without writing, at any time or place;

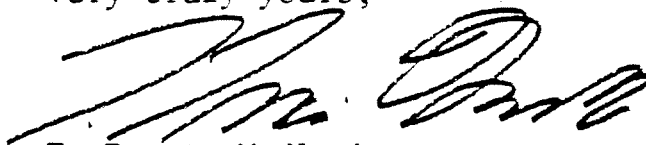
...

Shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine not exceeding one thousand dollars or imprisonment not exceeding six months, or both fine and imprisonment, in the discretion of the Court.

I trust this provides the answer to your letter of November 10, 1986.

With kind regards, I am,

Very truly yours,



T. Travis Medlock
Attorney General