

ATTORNEY GENERAL

October 21, 1980

JOHN J. REILLY, *Executive Director*
New Jersey Racing Commission
404 Abington Drive
East Windsor, New Jersey 08520

FORMAL OPINION NO. 19—1980

Dear Mr. Reilly:

The Racing Commission has asked for our opinion concerning a form of pari-mutuel wagering known as "pick six." In particular, the question is whether an ingredient of "pick six" which provides for a carry-over of an undistributed percentage of a pari-mutuel pool to the next racing day is permissible. For the following reasons, it is our opinion that the use of "pick six" pari-mutuel wagering at New Jersey racetracks would be inconsistent with the racing laws.

At the outset, it is necessary to describe in specific terms the nature of the form of pari-mutuel wagering known as the "pick six." Each bettor selects the first horse in each of six consecutive races designated as the pick six races. The pick six pool is held entirely separate from all other pools and is not part of a daily double, exacta, trifecta or other wagering pool. The net amount in the pari-mutuel pool is distributed among the holders of pari-mutuel tickets which correctly designate the official winner in each of the six consecutive races comprising the pick six. In the event there is no ticket which correctly designates the winner of all six races, 50% of that racing date's net amount available for distribution to winners would be distributed among the holders of tickets correctly designating the most consecutive winning selections. The remaining undistributed 50% of the pari-mutuel pool would be carried over and included as part of the pick six pool for the next racing date. In the event a holder correctly designates all six race winners on any date for which there has been a carry-over, all monies carried over, as well as 50% of the amount for that individual racing date, shall be distributed among such ticket holders. On any racing date where there is a carry-over and no distribution of prize money can be made to a holder correctly designating all six race winners, the undistributed pool shall be carried over and included in the pick six pool for the next racing date.

The governing statutory section of the racing laws which bears on whether or not this form of pari-mutuel wagering is permissible is N.J.S.A. 5:5-64 which provides in pertinent part:

In every pool where the patron is required to select three or more horses, every holder of a permit shall distribute all sums deposited in each pool to the winners thereof, less an amount which shall not exceed 25% of the total deposits, plus the breaks. [Emphasis added.]

The above quoted language clearly provides that every permit holder distribute all sums deposited in each pool to the winner thereof, less a specified percentage of the total deposits. At issue, therefore, is whether

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in an instance where there is no pari-mutuel ticket held which correctly designates the winner of all six consecutive races, an undistributed 50% of said pool may be carried over and included as part of the pick six pool of the next racing date. The question presented therefore, stated in other words, is whether the statute mandates the distribution of the total net amount wagered among the winning contributors to a pool or, on the other hand, whether a portion of the net total amount may be retained and added to the total amount wagered by a separate group of contributors on a horse race conducted on a subsequent racing date. Since the statutory language requires the permit holder to distribute all sums in each pool to the winners thereof, it is necessary to ascertain the meaning of a "pool."

The racing laws do not provide any definition of the word "pool" nor is there any available legislative history to assist in its interpretation. It is therefore a well established rule of statutory construction that in the interpretation of the words of a statute resort should be made to the common sense or commonly understood meaning of the term. *Service Armament Co. v. Hyland*, 70 N.J. 550, 556 (1976). In horse racing a "pool" has been defined to mean the combination of a number of persons, each staking a sum of money on the success of a horse in a race, the money to be divided among the successful bettors according to the amount put in by each. *United States v. Berent*, 523 F. 2d 1360, 1361 (C.A. 9th Cir. 1975); *Lacey v. Palmer*, 24 S.E. 930, 931 (Va. 1896). The term "pool" has also been defined by the courts to mean a system of betting which provides for the distribution of the total amount wagered among the successful contributors in proportion to their respective contributions thereto. *Delaware Steeplechase and Racing Association v. Wise*, 27 A. 2d 357, 362 (Del. 1942); *Feeney v. Eastern Racing Association*, 22 N.E. 2d 259, 260 (Mass. 1939); 38 C.J.S. *Gaming* §1 (1943). In *Pompano Horse Club v. State*, 111 So. 801, 812 (Fla. 1927), the Florida Supreme Court referred to the commonly understood means for the distribution of monies by result of a horse race as an instance when:

... a group of persons, each of whom has contributed money to a common fund and received a ticket or certificate representing such contribution, adopt a horse race, the result of which is uncertain, as a means of determining, by chance, which members of the group have won and which have lost upon a redivision of that fund, each contributor having selected a stated horse to win such race. . . .

This citation of judicial authority establishes that a "pool" is created by the combination of the total wagers made on a specific horse race or races which total wagers are contemplated to be distributed under a formula to successful bettors on those races. In the case of pick six, it is provided that where there is no bettor successfully selecting winners in six consecutive races, 50% of the undistributed pool shall be carried over and added to a combination of wagers contributed by a separate class of patrons with regard to races held on the next succeeding racing day. The remaining 50% of that racing date's net amount available for distribution would be distributed among the holders of tickets correctly designating

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the next most consecutive winning selections. It is clear, therefore, that pick six wagering is inconsistent with the responsibility of the holder of a permit under the statute to provide for the distribution of all net sums deposited in each pool to the winners thereof. Rather, in the case of pick six, only a portion of the total net accumulated fund would be distributed to the winning patrons who have successfully selected winning horses in a race or races for which the common fund of wagers has been created. For this reason, it is our opinion that a form of pari-mutuel wagering on horse races known as pick six, which contains a provision for a carry-over of an undistributed percentage of a pari-mutuel pool to horse races conducted on the next racing day, is inconsistent with N.J.S.A. 5:5-64. Therefore, it would be necessary for enabling legislation to be enacted to authorize this form of pari-mutuel wagering.

Very truly yours
JOHN J. DEGNAN
Attorney General

By: THEODORE A. WINARD
Assistant Attorney General

October 24, 1980

JOHN J. HORN, *Commissioner*
Department of Labor and Industry
John Fitch Plaza
Trenton, New Jersey 08625

FORMAL OPINION NO. 20—1980

Dear Commissioner Horn:

You have asked whether sick leave payments to employees constitute "wages" within the meaning of the Unemployment Compensation Law and the Temporary Disability Benefits Law. If they do, the worker may include them as part of his base year earnings when he files a claim for benefits.¹ The total amount of a worker's base year earnings is a crucial part of his claim, because they are used to determine both his eligibility for benefits and the amount of benefits he will receive.² The remuneration earned by employees is also crucial in one other respect. It is used in computing the unemployment and disability insurance taxes paid each year by the worker and his employer. For the following reasons, it is our

1. Your inquiry does not encompass sick payments made to employees in accordance with an employer's state-approved private plan under the Temporary Disability Benefits Law. It is clear that those sick payments in which an employer is paying the equivalent of statutory disability benefits are compensation for wage loss during illness or disability and would not be deemed wages or remuneration. *Bartholf v. Board of Review*, 36 N.J. Super. 349 (App. Div. 1955).