

FORMAL OPINION

August 14, 1981

GEORGE MINISH, *Chairman*  
New Jersey Racing Commission  
404 Abbington Drive  
Twin Rivers Town Center  
East Windsor, New Jersey 08520

FORMAL OPINION NO. 6—1981

Dear Chairman Minish:

You have asked for an opinion as to the administrative authority of the New Jersey Racing Commission under existing statutory law to approve a system of "telephone wagering" (more commonly known as dial-a-bet) at licensed racetracks. It is our opinion for the following reasons that the Commission does not have the authority to permit telephone wagering under existing racing laws and that specific amendatory legislation must be enacted to provide necessary enabling authority.<sup>1</sup>

"Telephone wagering" is an arrangement wherein an individual may place on deposit with a given racetrack a certain sum of money so that he may place a bet by telephone on the outcome of a race being conducted at the track. The amount of the bet would be limited by the money on deposit in the account. The racetrack employee receiving the message would enter the wager into the pari-mutuel system and any winnings would be credited to the individual account. All wagers received in this manner would be maintained under the control and supervision of the racetrack permittee.

At the outset, it is clear that a proposal wherein a permittee maintains an account on behalf of an individual bettor in which monies are deposited and winnings are credited and withdrawn from time to time at the option of a bettor may not be implemented by the Racing Commission absent amendatory legislation. The existing statutes make explicit a requirement that each holder of a permit distribute *all* sums deposited in a pari-mutuel pool less specifically enumerated exceptions. N.J.S.A. 5:5-64 and 66. For example, there is an express provision to withhold a specific percentage of the total deposit, plus the breaks, and in other instances to hold and set aside in special trust accounts to be used to increase purses and grant awards, to establish a sire stakes program and for other related purposes.

1. In 1939 the 1844 Constitution was amended to authorize conduct of pari-mutuel wagering on horse races in this state. Art. 4, §7, ¶2 of the 1947 New Jersey Constitution specifically approves those forms of gambling which had heretofore been submitted and popularly approved. The text of the amendment approved in 1939 provides in pertinent part that it shall be lawful to hold, carry on and operate race meetings in duly legalized racetracks at which the pari-mutuel system of betting shall be permitted. The use of the words "at which" indicates a purpose to confine the pari-mutuel system of betting to the confines of the legalized racetrack. We have been informed that in the case of telephone wagering, the pari-mutuel system of betting will continue to be maintained and operated by the permittee and within the racetrack enclosure. Consequently, it is our opinion that "telephone wagering" would not be inconsistent with the Constitution and there would be no need for a constitutional amendment or popular referendum to approve of its use.

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N.J.S.A. 5:5-66. In addition, "all sums held by any permit holder for payment of outstanding pari-mutuel tickets not claimed by the person or persons entitled thereto within six months from the time such tickets are issued shall be paid to the Commission upon the expiration of such six month holding period." N.J.S.A. 5:5-64. There is consequently a specific exception created by the legislature to the general rule requiring distribution of all sums deposited in any pool, for the holding by a permittee of outstanding unclaimed pari-mutuel winnings for a period of not more than six months. On the other hand, there is not even implicit authorization for the creation of a special individual "telephone wagering" account wherein monies may be deposited and claimed and accumulated winnings withdrawn or maintained under the supervision and control of a permittee on an ongoing and indefinite basis. If the legislature intended to authorize the setting up of these special accounts as part of the overall system of pari-mutuel wagering, it should state its intent to do so in unmistakably clear terms.

The proposal for "telephone wagering" also implicates the provisions of N.J.S.A. 5:5-62 of the racing laws. That statutory subsection provides as follows:

Any permit holder conducting a horse race meeting under the act may provide a place or places in the race meeting grounds or enclosure at which such holder of a permit may conduct and supervise the pari-mutuel system of wagering by patrons on the result of the horse races conducted by such permit holder at such meeting, and such pari-mutuel system of wagering upon the result of such horse races held at such horse race meeting and within such race track and at such horse race meeting shall not under any circumstances, if conducted under the provisions of this act and in conformity thereto, be held or construed to be unlawful, other statutes of the State of New Jersey to the contrary notwithstanding.

There is no available legislative history or case law to help in the interpretation of this section. It is therefore necessary to interpret the plain meaning of the language of the statute consistent with its presumed overall legislative objective. In this vein, it is important to note that the legislature as an exception to the general prohibition against gaming in this state has authorized a permit holder to provide a place in the race meeting grounds or enclosure at which the permittee may conduct the pari-mutuel system of wagering by patrons on the result of horse races conducted by the permit holder. The language used by the legislature is not without purpose. It would seem apparent that it was the intent to exempt pari-mutuel betting from the general statewide prohibition on gaming only when such betting is carried out by patrons who are physically present at the racetrack. It follows that one who is not personally present at the racetrack to place a bet is not a patron thereof and would not come within the pari-mutuel exemption. In the present situation, it is apparent that in the case of telephone wagering a pari-mutuel system of wagering by patrons is not in fact being conducted at the racetrack consistent with the statutory

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language. The wager is not being made or entered into the pari-mutuel system "at the race meeting grounds or enclosure" by the patron but rather made or entered into the system by an employee of the permittee at the specific direction of another. Further, the giving of authorization to an employee of a permittee to place a bet on behalf of an individual bettor is inseparable from the act of "placing" a bet itself while outside of the racetrack enclosure. To sanction such a procedure would sanction a system of wagering clearly beyond the legislative contemplation in its enactment of N.J.S.A. 5:5-62.

Moreover, until 1939 a pari-mutuel system of betting at racetracks in New Jersey was outlawed. Such gaming was prohibited by the State Constitution at that time. In 1939 at a popular referendum the public gave its approval to a system of pari-mutuel betting at New Jersey racetracks. Pursuant to this authorization, the Racing Commission was created by the legislature in 1940 to establish the regulatory framework for the racing industry. The statutory and administrative controls and the regulatory scheme is both comprehensive and minutely elaborate. In fact, horse racing with attendant legalized gambling is "strongly affected by a public interest" and has been held to be a "highly appropriate" subject for close regulatory supervision. *Jersey Down, Inc. v. Division of New Jersey Racing Commission*, 102 N.J. Super. 451, 457 (App. Div. 1968). Consequently, it is our opinion that in this area of sensitive governmental regulation a new proposal of this character should receive careful and explicit legislative approval prior to its being administratively implemented.

For all of these reasons, you are advised that specific amendatory legislation is necessary to clarify the responsibilities of a permittee in the establishment and maintenance of special accounts to carry out telephone wagering and to specifically authorize this innovative form of wagering by bettors on the result of horse races conducted by permit holders under the racing laws.

Very truly yours,  
JAMES R. ZAZZALI  
*Attorney General*

October 7, 1981

HONORABLE CLIFFORD GOLDMAN  
*State Treasurer*  
Department of Treasury  
State House  
Trenton, New Jersey 08625

FORMAL OPINION NO. 7—1981

Dear Treasurer Goldman:

You have asked for an opinion as to the tax consequences of checks received by a casino licensee to obtain an extension of credit to gamble, which are not deposited in accordance with the check cashing provisions