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

of the Casino Control Act and are later dishonored. You are advised that uncollected checks (commonly referred to in the industry as markers or counterchecks) received by a casino licensee and not deposited in accordance with the provisions of the act do not constitute taxable gross revenue.

The act imposes upon casino licensees a tax calculated at 8% of the gross revenue. Gross revenue is defined as:

> The total of all sums, including checks received by a casino licensee pursuant to section 101 of this act, whether collected or not, actually received by a casino licensee from gaming operations, less only the total of all sums paid out as winnings to patrons and a deduction for uncollectible gaming receivables not to exceed the lesser of a reasonable provision for uncollectible patron checks received from gaming operations or 4% of the total of all sums including checks, whether collected or not, less the amount paid out as winnings to patrons. [N.J.S.A. 5:12-24.]

At the outset it is clear from a straightforward reading of the statutory language that all sums actually received by a licensee from gaming operations should be included within gross revenue. Thus, a check collected by a licensee is money actually received and would constitute gross revenue whether or not the check has been received in accordance with section 101 of the Act. Also, the Legislature has clearly mandated that those checks received by a casino licensee pursuant to the requirements of section 101 of the act, whether collected or not, are includable in gross revenue. The issue posed in the present situation is whether checks not received pursuant to section 101 and not actually collected constitute gross revenue.

In order to fully address this question, it is necessary to briefly touch on the statutory conditions to be satisfied by a licensee when accepting checks, from gambling patrons. N.J.S.A. 5:12-101(b) and (c) provide for specific conditions concerning the receipt and deposit of checks by a casino licensee.[1] It is further provided in subsection (f) that "any check cashed, transferred, conveyed or given in violation of this act shall be invalid and unenforceable."

In *Resorts International Hotel v. Salomone,* 178 N.J. Super. 598 (App. Div. 1981), a casino licensee brought an action to recover credit extended to the defendant on the issuance of checks which were not deposited in accordance with the specific requirements of the statute. The court noted, in response to an argument that the underlying obligation survived the invalidation of the negotiable instrument, that "the legislature sufficiently

1. Subsection (b) requires that all checks must be dated but not postdated, made payable to the licensee, presented to a cashier in exchange only for credit slips equal to the amount of the check, and deposited by the licensee in accordance with the check cashing provisions of N.J.S.A. 5:12-101(c). The check cashing provisions require that checks in an amount less than $100 are to be deposited within seven banking days of the transaction; checks in an amount between $1000 but less than $2500 are to be deposited within fourteen banking days of the transaction, and checks in an amount of $2500 or more are to be deposited within ninety banking days of the transaction.

signified its intention to void the gambling obligation represented by these checks when it provided that only 'checks cashed in conformity with the requirements of this act' shall be valid and enforceable." *Resorts International, supra* at 605, 606. It is apparent therefore to have been the underlying legislative intent that there be no obligation created on a check unless the requirements of the act are satisfied and, correspondingly, no accrued right in the licensee to receive payment on such a check.

Therefore, a sensible reading of the definition of gross revenue found in N.J.S.A. 5:12-24 in light of the legislative policy underlying the act leads to the following conclusions. A check processed by a casino licensee in conformity with the act's provisions regarding the receipt of checks and later dishonored by a patron is a valid and enforceable obligation and should be included within gross revenue.[2] On the other hand, a check received by a licensee which has not been processed in conformity with the requirements of the act and is later dishonored, creates no valid accrued right to payment and would not logically be included within a casino's taxable gross revenues. These conclusions not only carry out the policy underlying the act but are specifically mandated by the language of the statute which encompasses within gross revenue only those "checks received by a casino licensee *pursuant to section 101 of this act* whether collected or not . . . ."

For these reasons, you are advised that checks received by a casino licensee which are not deposited in accordance with the provisions of the act and are later dishonored do not constitute taxable gross revenue.

Very truly yours,
JAMES R. ZAZZALI
Attorney General

By: THEODORE A. WINARD
Assistant Attorney General

2. It should be noted that with regard to those checks deposited in conformity with section 101 of the act and deemed by a licensee to be uncollectible, the statute provides for a deduction from gross revenue for uncollectible gaming receivables not to exceed the lesser of a reasonable provision for uncollectible patron checks received from gaming operations or 4% of the total of all sums including checks. A check which is not deposited in conformity with section 101 and is uncollectible cannot be considered a bad debt.