

RUDMAN • WINCHELL

Michael A. Hockenbury
(207) 992-4449
mhockenbury@rudmanwinchell.com

September 7, 2023

Shane Bacon, Executive Director – Maine State Harness Racing MHRC
c/o Nicole Sawyer, AAG
6 State House Station
Augusta, Maine 04330

Via email at: Nicole.Sawyer@maine.gov

RE: Favorites OTB, Winners Circle OTB and Sanford OTB

Dear Ms. Sawyer:

I am writing on behalf of my clients, Pioneer Gaming, LLC (d/b/a Favorites OTB, located in Waterville and Sanford OTB, located in Sanford) and LRI, Inc. (d/b/a Winner's Circle OTB, located in Lewiston). I hope to address some concerns stemming from what appear to be relatively new interpretations by the Maine State Harness Racing MHRC ("MHRC"), more specifically, those of Executive Director, Shane Bacon.

With this letter, I am attaching Director Bacon's comments and interpretation regarding my client's rights to relocate the physical location of an OTB in the future, and particularly, how this interpretation would impact my clients rights to the Fund to Stabilize OTB Facilities established under 8 M.R.S. § 300. While I understand Director Bacon and the MHRC play a critical role in enforcing and implementing the laws and regulations, it is essential that these responsibilities are carried out in strict accordance with the rules to ensure the foundations of fairness, justice, not just for my clients benefit, but for the benefit of the very industry the MHRC aims to protect.

As such, I am hopeful that you can address these concerns as soon as possible, without the need for any formal legal action. On behalf of my clients, I appreciate your attention to this matter.

The MHRC is Equitably Estopped from Enforcing This New Interpretation Against a Licensee's Right of Relocation

Director Bacon's communication dated July 7, 2023, is contrary to the longstanding, commonsensical and legally correct understanding and application of 8 M.R.S. § 300 for which the MHRC has maintained and applied from the very beginning of its administration of the fund created in 2003. A fund that was intended to stabilize the operation of OTB facilities in Maine.

I observe, first, that the title of that statute itself is "Fund to Stabilize Off-track Betting Facilities." The funds disbursed in accordance with that statute are commonly referred to as "racino funds." These funds are absolutely vital to the sustainability of off-track betting facilities

“Off-track betting facility” means a facility other than racetrack at which a *person is licensed* to conduct pari-mutuel wagering on simulcast racing. 8 M.R.S. § 275-A(8) (Emphasis Added). If the *person* is not licensed (i.e., “off-track betting licensee”), then you cannot have an off-track betting facility. Nor can a *person* have a license, without a *facility*. Consider, for example, how Chapter 11 references terms like “...the *licensee’s* off-track betting *facility*...” (8 M.R.S. § 275-C) and (8 M.R.S. § 275-O). Moreover, nowhere under 8 M.R.S. § 275-D, does the law provide for the application of a “licensee”. Instead, 8 M.R.S. § 275-D(2) through (6) only discuss the requirements of a OTB facility and the issuance of such license to the OTB facility. By its very nature, issuance of the license to the facility, is no different than an issuance of the license to the licensee. Where the licensee goes, so too does the facility.

Frankly, I doubt the legislature intended to draw a distinction between stabilizing the off-track betting *facility*, but not the person holding the license to operate it. By following Director Bacon’s analysis, the MHRC could have payments due to a *facility* that existed as of December 31, 2003 under 8 M.R.S. § 300, but a reduction in payments to the *licensee* of the very same facility in accordance with 8 M.R.S. § 275-O. Such interpretation would be unreasonable.

This new interpretation is also contrary to the MHRC’s own regulation, Chapter 15, which defines OTB facility to include not just this or that physical premises, but also any premises “utilized by . . . off-track betting locations licensee for the conduct of off-track betting.” That is, rather than defining “facility” in terms of an exclusive address, the MHRC’s own regulation defines it to include any premises utilized by the licensee.

Thus MHRC’s new interpretation is invalid even according to its own regulation.

Moreover, as explained above, there is no reason whatsoever to conclude that the Legislature, when it used the word “facilities” in Section 300, meant to define or restrict the meaning of “facility” for purposes of that statute, Section 300, to only one, exclusive address.

The MHRC itself has long recognized that, and has thus interpreted that statute to the contrary, as set forth above.

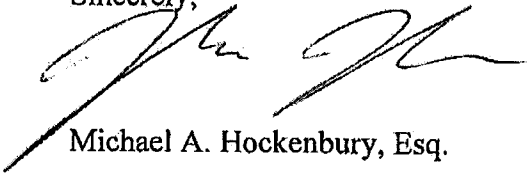
Yes, 3 M.R.S. § 275-A defines the term “off-track betting facility” for purposes of Title 8, chapter 11, but only “unless the context otherwise indicates.”

The context of Section 300 (which was not enacted at the same time as the definition in § 275-A of “off-track betting facility”) requires that the term “facilities” in Section 300 not mean each of numerous separate facilities, each of which is an exclusive address. Otherwise, the purpose of Section 300 is defeated by causing all existing facilities to wither and die, unable to move or to be sold, or to otherwise adapt to the changes in the industry over time.

Even Section 275-A, itself, does not define OTB facility in terms of exclusive addresses.

Section 275-A merely provides that an OTB facility is “a facility other than a racetrack at which a person is licensed to conduct pari-mutual wagering or simulcast racing.” This logically

Sincerely,

A handwritten signature in black ink, appearing to read 'Michael A. Hockenbury', written in a cursive style.

Michael A. Hockenbury, Esq.

MAH/lab

Cc: Client