



WILLIAM J. SCOTT
ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD

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FILE NO. S-1038

**HORSE RACING:
Gift or Contribution to
a Political Party Violates
Section 13 of the Harness
Racing Act**

Anthony Scariano, Chairman
Illinois Racing Board
Room 1000
160 North LaSalle Street
Chicago, Illinois 60601

Dear Mr. Scariano:

I have your letter in which you ask whether a certain situation constituted a violation of section 13 of the Harness Racing Act. (Ill. Rev. Stat. 1973, ch. 8, par. 37a12.) Section 13 provides in relevant part:

" * * *

The making of any sort of gift or contribution of any kind to any person considering campaigning

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for, campaigning for or holding public office by any person, association, partnership, corporation, trust or any other entity owning a legal or beneficial interest represented by any of the names required by Section 10 of this Act shall be a violation of this Act." (emphasis added.)

You state that at the September 19, 1975, meeting of the Illinois Racing Board the Board was informed that the facilities of the East Moline Downs were used by a local political party for a "Salute to Labor". You further state that the "Salute to Labor" was in fact, however, a fund raising activity and that no rental fee was paid for the use of the race track facilities. The transcript of the September 19 meeting of the Board enclosed with your letter indicates that although no rental fee was paid, the political party did pay directly a commercial cleanup company and possibly some security personnel. Transcript pp. 12, 18, statements of Mr. Alesia.

Preliminarily, I note from the transcript that there is apparently no question which association or associations permitted the use of the track or that that association or associations are an entity or entities prohibited from making

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gifts or contributions by the second paragraph of section 13. Therefore, for the purposes of this opinion, I will assume that you have determined which association or associations permitted the use of the facilities and that the association or associations are among those prohibited from making gifts or contributions by section 13. In addition, there appears to be little doubt that the free use of the race track was a "gift or contribution" under section 13. Although the political party paid for cleaning up and security directly to the people who provided those services, the party did receive at no other cost the use of the facilities for which it would have otherwise had to pay rent. This clearly falls within the broad category, "any sort of gift or contribution of any kind".

The question you have raised is whether this statute, which proscribes gifts or contributions "to any person considering campaigning for, campaigning for or holding public office", applies to a gift or contribution to a political party, or phrased differently, whether a political party is a

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"person" within the meaning of the statute.

It might be argued that since only an individual can consider campaigning for, campaign for, or hold public office, a political party is not within the purview of the prohibition nor within any applicable definition of "person". See the definitions provided in the Harness Racing Act (Ill. Rev. Stat. 1973, ch. 8, par. 37s(c)) and in "AN ACT to revise the law in relation to the construction of statutes" (Ill. Rev. Stat. 1973, ch. 131, par. 1.05.) Nevertheless, "the cardinal rule of statutory construction to which all other canons and rules are subordinate, is to ascertain and give effect to the true intent and meaning of the legislature in enacting the law". (Electrical Contractors Ass'n. of City of Chicago, Inc. v. Illinois Building Authority, 33 Ill. 2d 587, 591-92.) The court also said in Harding v. Albert, 373 Ill. 94, at pages 96-97:

"* * * Where the spirit and intention of the legislature in adopting the acts are clearly expressed and their objects and purposes are clearly set forth, the courts are not confined to the literal meaning of the words used, when to do so will defeat the obvious intention of the legislature and result in absurd consequences not contemplated by it. * * *"

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(See, also, Continental Illinois National Bank & Trust Co. of Chicago v. Illinois State Toll Highway Commission, 42 Ill. 2d 385, 395.) Thus whether a political party comes within the literal meaning of the statute is not controlling. The question is whether the legislature intended to prohibit gifts to political parties.

The General Assembly clearly intended by enacting the second paragraph of section 13 to prohibit contributions by racing interests which might eventually influence the public officials regulating those interests. Political parties exist to promote the election of their candidates to public offices. Contributions to a political party accrue to the benefit of its candidates either directly as funds passed on to the candidates or indirectly as funds supporting the existence of the party, which supports its candidates in various other ways besides direct financial contributions. Political parties can be influenced by those that contribute to them and in turn can influence the candidates they support. Thus, contributions to a political party are indirectly contributions to its

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candidates and any influence of such contributions may be felt by the party's candidates. Therefore, to construe section 13 to restrict it to a prohibition against contributions only to individuals would defeat the obvious intention of the legislature to prohibit racing interests from influencing by political contributions the public officials regulating them and result in the absurd consequence not contemplated by the General Assembly of allowing racing interests to do indirectly what they are not allowed to do directly. To allow racing interests to make contributions to political parties would seriously undermine the value of the prohibition against contributions to individuals. Hence, it is essential that contributions to political parties be proscribed in order to carry out the intent and purpose of section 13.

Based on the analysis above, I conclude that even though a contribution to a political party may not be proscribed by the literal language of section 13, the legislature did intend to prohibit such contributions. Any other interpretation would defeat the obvious intention of the legislature and result in absurd consequences. Therefore, it is my opinion

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that a gift or contribution to a political party by one of the entities designated in the statute is a violation of the second paragraph of section 13.

In writing this opinion I am aware of the existence of "AN ACT creating the 'Illinois Horse Racing Act of 1975' and repealing and amending certain Acts in connection therewith" (P.A. 79-1185), which repealed the Harness Racing Act. That Act by its own provision, however, does not apply to acts done before its effective date. (P.A. 79-1185, sec. 51(b).) Since the acts about which you have inquired took place prior to the effective date of Public Act 79-1185, it has no application to those acts.

Very truly yours,

A T T O R N E Y G E N E R A L