



STEVE CLARK
ATTORNEY GENERAL

STATE OF ARKANSAS
OFFICE OF THE ATTORNEY GENERAL
JUSTICE BUILDING, LITTLE ROCK 72201

October 31, 1985

(501) 371-2007

OPINION NO. 85-209

Joe M. Smreker
Chairman
Arkansas State Racing Commission
Room GOS
P. O. Box 3076
7th and Wolfe Streets
Little Rock, Arkansas 72201

Dear Mr. Smreker:

You have requested an opinion from this office concerning the consequences to the State and the Racing Commission of an incident which occurred on November 5, 1984, at Southland Greyhound Park. You have indicated that on that date the tellers' machines failed to lock, allowing bets to be placed on the second race after the race had actually begun. The total winnings on these tickets amounted to \$23,063.00 and all but \$3,928.00 has been recovered from the clerks involved. The track is currently holding approximately \$19,085.00 and has requested that the Commission approve a donation of the money to local West Memphis charities. The Commission has no objection to the money being donated to charity, but raises the following questions:

1. Does the State have any claim to the money paid back by the tellers to the track?
2. Can the Racing Commission approve the track's donation of the money to charity, or is it even necessary that the Commission approve the donation?

We agree with your opinion that the State has no claim to the money, provided that the privilege tax of seven percent (7%), together with one-third of the odd cents or breaks of the money so wagered has been paid pursuant to Ark. Stat. Ann. §84-2834(e) (Supp. 1985).

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In response to your second question, once the franchise has complied with the pertinent Arkansas Statutes and regulations by the Commission, the money they take in from Greyhound Racing will usually cease to be a concern of the State. Based on the equities involved in a particular case, a situation could arise in which the Commission sought to take action as it deemed "necessary or desirable to supervise and regulate, and to effectively control in the public interest, Greyhound Racing in the State of Arkansas." Ark. Stat. Ann. §84-2819(f) (1980). However, based on the facts you have provided us, we conclude that the Commission's approval is not necessary for this donation.

The foregoing opinion, which I hereby approve, was prepared by Chief Deputy Attorney General Rodney Parham.

Sincerely,


STEVE CLARK
Attorney General

SC:RP:dd