

N.D.A.G. Letter to Reule (Aug. 13, 1992)

August 13, 1992

Mr. Roger Reule
Executive Director
North Dakota Racing Commission
Office of Attorney General
600 East Boulevard Avenue
Bismarck, ND 58505

Dear Mr. Reule:

You have inquired as to whether the North Dakota Racing Commission may expend moneys and earnings upon moneys deposited in the racing promotion fund as created by the 1991 Legislative Assembly in House Bill No. 1260.

N.D.C.C. § 53-06.2-11 was amended by the 1991 Legislative Assembly in Senate Bill No. 2193 and House Bill No. 1260.

Senate Bill No. 2193, as enacted by the Legislative Assembly on April 5, 1991, provided:

The racing commission shall deposit the moneys received pursuant to subsections 1 and 2 in two special funds in the state treasury. These funds must be known as the breeders' fund and the purse fund. Moneys, and any earnings on the moneys, in the special breeders' and purse funds are appropriated to the commission on a continuing basis to carry out the purposes of those funds under this chapter and must be administered and disbursed in accordance with rules adopted by the commission.

This enactment created two special funds, the purse fund and the breeders' fund, and authorized a continuing appropriation to the North Dakota Racing Commission for expenditure of all moneys and earnings within each of the funds.

House Bill No. 1260 as enacted by the 1991 Legislative Assembly on April 6, 1991, and which took effect as an emergency measure on April 8, 1991, included several amendments to N.D.C.C. § 53-06.2-11. For purposes of this opinion, the relevant portions of House Bill No. 1260 authorized the retention by the North Dakota Racing Commission of all unclaimed tickets and breakage from each live race meet and from simulcast programs for deposit in special funds for the improving and upgrading of race tracks in this state, for the promotion of horse racing within the state, and in developing new racetracks in the state as necessary and approved by the commission. N.D.C.C. § 53-06.2-11(3).

House Bill No. 1260 also required the deposit of moneys in three special funds with a continuous appropriation to the North Dakota Racing Commission of all moneys and

earnings on the moneys to carry out the purposes of those special funds. In a new section to N.D.C.C. § 53-06.2-11, House Bill No. 1260 provided:

6. The racing commission shall deposit the moneys received pursuant to subsections 1, 2, and 3 in three special funds in the state treasury. These funds must be known as the breeders' fund, the purse fund, and the racing promotion fund. Moneys, and any earnings on the moneys, in the breeders' fund, purse fund, and racing promotion fund are appropriated to the commission on a continuing basis to carry out the purposes of those funds under this chapter and must be administered and disbursed in accordance with rules adopted by the commission.

The new subsection 6 of N.D.C.C. § 53-06.2-11 as set forth in House Bill No. 1260 is virtually identical to the amendment to N.D.C.C. § 53-06.2-11 adopted in Senate Bill No. 2193 except that House Bill No. 1260 adds a third special fund, the racing promotion fund, in amendments to section 3 of N.D.C.C. § 53-06.2-11 and a continuing appropriation of moneys and earnings of that fund to the North Dakota Racing Commission.

As currently printed in the 1991 supplement to the North Dakota Century Code. N.D.C.C. § 53-06.2-11(6) provides:

6. The racing commission shall deposit the moneys received pursuant to subsections 1 and 2 in two special funds in the state treasury. These funds must be known as the breeders' fund and the purse fund. Moneys, and any earnings on the moneys, in the special breeders' and purse funds are appropriated to the commission on a continuing basis to carry out the purposes of those funds under this chapter and must be administered and disbursed in accordance with rules adopted by the commission.

This section has adopted the language of Senate Bill No. 2193 but has made no reference to the racing promotion fund of subsection 3 of N.D.C.C. § 53-06.2-11. However, the portion of House Bill No. 1260 amending N.D.C.C. § 53-06.2-11(3), the subsection which created the promotion fund, has been codified in N.D.C.C. § 53-06.2-11(3).

This office has been in contact with the North Dakota Legislative Council Code Revisor, Katherine Chester Ver Weyst. Upon review of Senate Bill No. 2193, House Bill No. 1260, and N.D.C.C. § 53-06.2-11(6) as printed in the North Dakota Century Code Supplement to Volume 10A, Ms. Ver Weyst agrees that the provisions of House Bill No. 1260 should have been printed in the supplement and not those provisions of Senate Bill No. 2193. She did not see a conflict between the two legislative enactments since the language of Senate Bill No. 2193, which was enacted first, was contained within House Bill No. 1260. Ms. Ver Weyst further stated that the provisions of N.D.C.C. § 53-06.2-11(6) will be corrected.

I agree with Ms. Ver Weyst in her conclusion that the provisions of House Bill No. 1260 pertaining to the establishment of the three special funds and a continuing appropriation to the North Dakota Racing Commission of all moneys and earnings upon moneys in those funds are in full force and effect and prevail over the more limited language of Senate Bill No. 2193. This conclusion is consistent with rules of general statutory interpretation to fulfill the objective and intent of the Legislature and to avoid absurd and ludicrous results.

I find no manifest legislative intent that Senate Bill No. 2193 would prevail over the corresponding and more specific provisions of House Bill No. 1260.

N.D.C.C. § 1-02-09.1 provides:

If amendments to the same statute are enacted at the same or different sessions of the legislative assembly, one amendment without reference to another, the amendments are to be harmonized, if possible, so that effect may be given to each. If the amendments are irreconcilable, the latest in date of enactment prevails.

The provisions of House Bill No. 1260 which created the racing promotion fund and which authorized a continuing appropriation of all moneys and earnings within that special fund to the North Dakota Racing Commission were enacted after Senate Bill No. 2193. Although the effective date of House Bill No. 1260 preceded the effective date of Senate Bill No. 2193 because of its passage as an emergency measure, the adoption and enactment of House Bill No. 1260 subsequent to Senate Bill No. 2193 requires that the provisions of House Bill No. 1260 prevail.

It is my opinion that the North Dakota Racing Commission may expend moneys and earnings upon moneys deposited in the racing promotion special fund that was created by the 1991 Legislative Assembly in Senate Bill No. 1260.

I trust that I have adequately responded to your inquiry.

Sincerely,

Nicholas J. Spaeth

reb/jfl