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FORMAL)
OPINION)

No. 08-03

OF)

AG Alpha: RV RA AGBCP

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November 21, 2008

Dan Hartman, Director of the Division of Racing Events and Roxy Huber, Executive Director of the Department of Revenue, have requested an opinion as to the legality of pari-mutuel wagering by Colorado residents by telephone, internet or other electronic device.

QUESTION PRESENTED AND ANSWER

The question presented by the Division of Racing is:

Does current Colorado law prohibit Youbet.com and XpressBet, Inc., both foreign companies, from taking pari-mutuel wagering made by Colorado residents via the telephone, internet or other electronic device?

Answer:

Yes. Colorado law prohibits companies outside of Colorado from taking pari-mutuel wagering made by Colorado residents via the telephone, internet, or other electronic device.

BACKGROUND

Two non-Colorado companies, XpressBet, Inc. and Youbet.com, provide Colorado residents the opportunity to participate in pari-mutuel wagering on horse and dog races via the internet and via telephone. XpressBet claims it holds a valid multi-jurisdictional hub license issued by the Oregon Racing Commission, which permits it to open accounts and

place wagers on behalf of residents located in states in and outside Oregon through its Oregon-based call center and “totalizator” hub. Youbet states that it has wagering hubs in both Oregon and California.

In January 2007, the Colorado Division of Racing Events (the “Division”) sent letters to both XpressBet and Youbet requesting they close the pari-mutuel wagering accounts for any and all Colorado residents, cease opening such accounts in the future, update their websites to reflect the fact that internet wagering is prohibited in Colorado, and notify the Division in writing that they have fully complied with the requests. XpressBet wrote to state it disagreed with the Division’s position regarding internet-based pari-mutuel wagering, but agreed to temporarily suspend all wagering activity on behalf of its Colorado account holders pending resolution of the dispute. Youbet, on the other hand, both disagreed with the Division’s position and refused to cease accepting wagers from Colorado account holders.

On February 13, 2007, the Division requested an informal opinion regarding the legality of pari-mutuel wagering via the internet, telephone or other electronic device (essentially the same questions asked here). In response to that request, this office informally opined that such wagering is prohibited by Colorado law. The Division now seeks a formal opinion on this issue.

DISCUSSION

Colorado law is unambiguous in its requirement that all pari-mutuel betting, including betting by telephone, the internet or other electronic devices, be conducted through facilities licensed in Colorado. Since they are not licensed in Colorado, Youbet.com and XpressBet therefore may not accept such wagers from Colorado residents.

Colorado law provides that pari-mutuel wagers made “by messenger, telephone, telegraph, facsimile machine, or other electronic device” on races conducted in or broadcast in Colorado may only be accepted by “associations or simulcast facilities licensed by the [Colorado Racing C]ommission.” C.R.S. § 12-60-703.5(2)(a) (2008).

The goal in construing a statute is to discern and give effect to the intent of the legislature. *Colorado Dept. of Revenue v. Woodmen of the World*, 919 P.2d 806, 809 (Colo. 1996). Where the language is clear and unambiguous, the courts will not resort to interpretative rules to discern their meaning. *People v. Andrews*, 871 P.2d 1199, 1201 (Colo. 1994). Words and phrases in a statute are to be construed “according to their familiar and generally accepted meaning.” *Water Quality Control Div. v. Casias*, 843 P.2d 665, 666 (Colo. App. 1992).

Section 12-60-703.5(2)(a) is clear and unambiguous in its requirement that all pari-mutuel wagers made over the telephone or over the internet on races held in or broadcast in Colorado must be made with facilities licensed by the State of Colorado, so no further

interpretation is needed. *See Andrews*, 871 P.2d at 1201. The only term that could possibly be considered ambiguous is “electronic device,” in that it may be argued whether the internet is an “electronic device.” An analysis of the terms and an understanding of how individuals access the internet resolve this potential ambiguity. The internet itself is a series of electronic devices. *See Merriam-Webster Collegiate Dictionary*, 654 (11th Ed. 2003) (defining internet as “an electronic communications network that connects computer networks and organizational computer facilities around the world”). Further, to place pari-mutuel wagers over the internet, one needs an electronic device, a computer, to access the internet. So, both the individual placing a pari-mutuel wager over the internet and the person accepting that wager must use an “electronic device” to access the internet.

According to the “familiar and generally accepted meaning” of the term “electronic device,” the internet, and the tools necessary to access the internet, are “electronic devices” as that term is used in § 12-60-703.5(2)(a). *Casias*, 843 P.2d at 666.

CONCLUSION

The law in Colorado is clear that pari-mutuel wagers placed over the internet or by telephone are permitted when received by a track or simulcast facility licensed by the State of Colorado. Because Youbet.com and XpressBet are not licensed by the Colorado Racing Commission, it is illegal for Colorado residents to place pari-mutuel wagers with those entities and for those entities to accept pari-mutuel wagers from Colorado residents.

Issued this 21st day of November, 2008.

JOHN W. SUTHERS
Colorado Attorney General