



WYOMING LEGISLATIVE SERVICE OFFICE

Memorandum

DATE July 28, 2025

TO Co-Chairman Jayme Lien

FROM Tamara Rivale, Legislative Counsel

SUBJECT Legal History of Simulcasting, OTB, and HHR

QUESTION PRESENTED

What is the legal history of simulcasting, off-track betting (OTB), and historic horse racing (HHR) in Wyoming?

SHORT ANSWER

Wyoming's framework for pari-mutuel wagering through simulcasting, off-track betting, and historic horse racing terminals has evolved over nearly four decades through a combination of legislative action, agency rulemaking, Attorney General guidance, and judicial interpretation. Wyoming authorized simulcasting on televised races in 1987, with county approval required for off-track locations and a 100-mile restriction near permitted premises.

After courts ruled that historic horse racing terminals did not qualify as simulcasting or lawful pari-mutuel wagering under then-existing statutes, the Legislature amended the law in 2013 to allow wagering on historic races. More recently, Attorney General interpretations and administrative rules have clarified the 100-mile restriction, and courts have held that counties lack authority to revoke off-track betting approvals once permits are issued.

DISCUSSION

In 1987, the Legislature first authorized simulcasting, which was limited to pari-mutuel wagering on televised interstate and intrastate races and off-track betting. The law granted the then Pari-Mutuel Commission regulatory authority and imposed requirements for the county to approve off-track betting, as well as the 100-mile proximity limitation

restrictions. From the 1990s through the early-2000s, legislative attempts to expand simulcasting and pari-mutuel wagering to dog and rodeo events were vetoed, but the Legislature overrode the veto in 2001 to enact the expansion.

In 2003, the Pari-Mutuel Commission adopted a rule removing the word "live" from the definition of "simulcast." This change enabled the approval of simulcasting permits that included wagering on historic horse racing terminals, known then as "instant racing." The legality of this expansion was challenged in 2005 and 2006, and courts ultimately limited the Commission's authority, holding that the statutes in effect required simulcasting to involve live events.

Since then, opinions from the Wyoming Attorney General have clarified the application of the 100-mile restriction for off-track betting establishments and the type of historic horse racing games that comply with pari-mutuel statutes. Courts have also clarified the county commissioners' scope of authority related to approval for off-track betting and historic horse racing. Recent litigation has resulted in judicial interpretation that counties lack statutory authority to revoke off-track betting/historic horse racing approval.

The following summaries describe major cases, events, and publicly available interpretations that have shaped the legal framework for simulcasting, off-track betting, and historic horse racing in Wyoming. **Table 1** provides a timeline of these developments along with corresponding legislative actions. In addition, detailed summaries of the legislative history of simulcasting are included in **Appendix A**.

Significant Legal Developments

Agency Rules AR03-023 - Chapter 1 (Simulcast)¹
Wyoming Pari-Mutuel Commission
May 21, 2003

This rulemaking amended the definition of "simulcast" in Chapter I of the then-Pari-Mutuel Commission's rules by removing the word "live." The amendment was intended to allow simulcast operators to explore new technologies in pari-mutuel racing. It allowed the Pari-Mutuel Commission to approve permits for "instant racing," i.e., historic horse racing terminals.

¹See 2003 Wyoming Pari-Mutuel Commission Rules, Chapter 1: Definitions Agency Rules, available at: https://rules.wyo.gov/DownloadFile.aspx?source_id=5129&source_type_id=81&doc_type_id=110&include_meta_data=Y&file_type=pdf&filename=5129.pdf&token=136143039143241240045182111155007198235056138020.

Wyoming Downs Rodeo Events, LLC v. State, Docket No. 164-213²

Author: Hon. Edward L. Grant, District Judge, First Judicial District, Laramie District Court

July 7, 2005

Wyoming Downs Rodeo Events, LLC sought a declaratory judgment that the operation of its instant racing terminals that were approved by the then-Pari-Mutuel Commission was lawful. The Cheyenne Police Department, acting on advice from District Attorney Forwood, had ordered the terminals removed from Cheyenne.

The District Court concluded that the Commission exceeded its statutory authority by approving the terminals and that the machines were unlawful gambling devices under W.S. 6-7-101(a)(iv). The District Court denied Wyoming Downs Rodeo Events' motion for summary judgment, granted the State's motion for summary judgment, and denied the plaintiffs' request for a permanent injunction.

Wyo. Downs Rodeo Events, LLC v. State, 2006 WY 55³

Author: Chief Justice Hill

May 4, 2006

Wyoming Downs Rodeo Events, LLC and Wyoming Horseracing, Inc. appealed the judgment from the First Judicial District Court.

The Wyoming Supreme Court affirmed the District Court's ruling. It concluded that the Wyoming Pari-Mutuel Commission lacked statutory authority to approve instant racing terminals and that the devices fell within the definition of illegal gambling devices under W.S. 6-7-101(a)(iv). The Court noted that the statutory definition of "simulcasting" in W.S. 11-25-102(a)(vii)(C) indicated pari-mutuel wagering contemplated live events rather than historical races.

Wyo. Downs, LLC v. Bd. of Cnty. Comm'rs for Cnty. of Sweetwater, No. C-14-101-J⁴

Author: Hon. Kautz, District Judge, Eighth Judicial District, Sweetwater County District Court

Aug. 21, 2014

² Wyoming Downs Rodeo Events, LLC v. State, No. 164-213 (Wyo. Dist. Ct. July 7, 2005), included as Appendix B.

³ Wyoming Downs Rodeo Events, LLC v. State, 2006 WY 55, 134 P.3d 1223 (Wyo. 2006), available at: <https://documents.courts.state.wy.us/Opinions/2006WY55.pdf>.

⁴ Wyo. Downs, LLC v. Bd. of Cnty. Comm'rs for Cnty. of Sweetwater, No. C-14-101-J (Wyo. Dist. Ct. Aug. 21, 2014) included as meeting material of the June 9 Select Gaming Meeting, available at: https://wyoleg.gov/InterimCommittee/2025/S44-20250609PUBLICCOMMENT_WyomingDownsvSweetwaterCoDecisionLetter.pdf.

The Eighth Judicial District Court reversed the Sweetwater County Board of County Commissioners' denial of Wyoming Downs' application to operate an off-track betting facility.

First, the District Court held that the Board's decision was arbitrary and capricious under the Wyoming Administrative Procedure Act because it was based on protecting the economic interests of a competitor. Second, the District Court ruled that the denial violated equal protection under the Wyoming Constitution because it found economic protectionism by itself was not a legitimate state interest. Third, the District Court held that the Board exceeded its statutory authority under W.S. 11-25-102(a)(vii)(B) by denying the application without a legitimate basis, especially after having previously approved an OTB facility for the applicant's competitor.

Wyoming Attorney General Informal Opinion - Simulcasting Within 100 Miles⁵

Attorney General: Peter K. Michael

Jan. 7, 2015

The Wyoming Attorney General's Office issued an informal opinion to the then-Pari-Mutuel Commission interpreting W.S. 11-25-102(a)(vii)(C), which reads:

(C) No simulcasting may be conducted within one hundred (100) miles of any premises permitted under this act, except that the commission may waive the one hundred (100) mile limitation if the simulcast permit application includes written approval from the permittee whose permitted premises is within the one hundred (100) mile limitation;

The opinion concluded that simulcasting is only prohibited within 100 miles of a permitted *live pari-mutuel event during the actual time of the live event*. This is because a location becomes a "permitted premise" only during the specified time of the live event under W.S. 11-25-105(a). The Attorney General also emphasized that the Commission's administrative rule that incorporated this interpretation aligned with legislative intent and was entitled to deference.

Wyoming Attorney General Informal Opinion - Legality of Historic Racing Terminals under Wyoming Law⁶

Attorney General: Peter K. Michael

⁵ Wyoming Attorney General, Informal Opinion on Simulcasting Within 100 Miles (Peter K. Michael, Jan. 7, 2015) included as meeting material of the June 9 Select Gaming Meeting, available at: https://wyoleg.gov/InterimCommittee/2025/S44-20250609PUBLICCOMMENT_CV39836MotiontoStay.pdf#page=37.

⁶ Wyoming Attorney General, Informal Opinion on the Legality of Historic Racing Terminals under Wyoming Law (Peter K. Michael, Sept. 23, 2015), included as Appendix C.

September 23, 2015

This informal opinion concluded that certain historic horse racing terminals operating in Wyoming did not comply with state gambling and pari-mutuel laws. While based on historic races, the inclusion of random "bonus rounds" and other chance elements made the terminals more like slot machines than legal pari-mutuel events. These random elements led the Attorney General to classify the terminals as "gambling devices," rendering them illegal under Wyoming criminal law.

Wyoming Horse Racing, LLC v. Campbell County Board of Commissioners, Docket No. S-22-0114⁷

District Court of the Sixth Judicial District, Campbell County
March 1, 2022

Wyoming Horse Racing, LLC, and Wyoming Downs, LLC petitioned for judicial review of Campbell County Resolution 2077, which had revoked the County's prior approval of simulcasting or off-track betting and historic horse racing facilities. The petitioners argued the County lacked statutory authority under the Wyoming Pari-Mutuel Act to rescind previously granted approvals after the Wyoming Gaming Commission had issued the permits.

The district court held that the Board of County Commissioners acted in excess of its statutory authority under W.S. 11-25-102(a)(vii)(B), which provides:

(B) Simulcasting may be conducted off the permitted premises only if the board of county commissioners of the county in which such simulcasting will be conducted grant [grants] its approval;

The District Court held the statutes did not grant the county express or implied power to revoke prior approvals after permits have been issued by the Wyoming Gaming Commission. The District Court held that Resolution 2077 was an adjudicatory act subject to judicial review and that the commissioners' attempt to revoke earlier resolutions exceeded their statutory authority. The court set aside Resolution 2077 under W.S. 16-3-114(c)(ii)(C) as agency action in excess of jurisdiction and declined to reach remaining arguments.

Campbell County Bd. of Comm'rs v. Wyo. Horse Racing, LLC, 2023 WY 10⁸

⁷ Wyoming Horse Racing, LLC v. Campbell County Bd. of Comm'rs, No. S-22-0114 (Wyo. 6th Jud. Dist. Ct. Mar. 1, 2022), included as Appendix D.

⁸ Campbell County Bd. of Comm'rs v. Wyo. Horse Racing, LLC, 2023 WY 10, 523 P.3d 901 (Wyo. 2023), available at:

Author: Boomgaarden, Justice
 Jan. 31, 2023

The Campbell County Board of Commissioners appealed to the District Court ruling that the Board exceeded its statutory authority by revoking the approvals for simulcasting and historic horse racing and setting aside the County's Resolution 2077. Wyoming Horse Racing, LLC, and Wyoming Downs, LLC were seeking judicial review under the Wyoming Administrative Procedure Act (WAPA) of Resolution 2077, which revoked prior county approval.

The Wyoming Supreme Court reviewed whether Campbell County had the authority under the Pari-Mutuel Act to revoke its prior approvals once the Gaming Commission had issued permits and authorized simulcasting or off-tracking betting and historic horse racing facilities. The Wyoming Supreme Court ruled that Campbell County lacked the authority to revoke its prior approvals, as the Board's power under W.S. 11-25-102(a)(vii)(B) was limited to approving or denying applications before permits were issued. The Court affirmed the district court's ruling, finding no implied authority to revoke approvals.

Table 1. Timeline of Legal Developments and Legislative Actions

Year	Legal Event or Action	Summary
1987	HB 10 (Ch. 28)	Authorized simulcasting; required county approval for off-premises operations and prohibited simulcasting within 100 miles of permitted premises unless waived.
1991	HB 305 (Ch. 148)	Clarified simulcast permits limited to live race permit holders; steward required.
1999–2000	HB 270 & HB 103	Vetoed bills to expand pari-mutuel to dog and rodeo events.
2001	HB 19 (Ch. 117)	Legislature overrode veto to allow simulcast dog racing.
2003	Rule AR03-023	Commission removed "live" from "simulcast" to authorize instant racing.
2005	Wyo. Downs v. State	District Court held Commission lacked authority to approve instant racing terminals; found devices unlawful.

<https://documents.courts.state.wy.us/Opinions/Campbell%20v.%20Wyoming%20Horse%20S-22-0114.pdf>

WYOMING LEGISLATIVE SERVICE OFFICE *Memorandum*

Year	Legal Event or Action	Summary
2006	Wyo. Downs v. State	Wyoming Supreme Court affirmed lower court; simulcasting requires live events.
2010–2012	SF 47, HB 31, HB 36	Defined live race day requirements; regulated source market fees; extended permit terms.
2013	HB 25 (Ch. 75)	Authorized HHR terminals; redefined "pari-mutuel event" and "simulcasting."
2014	Wyo. Downs v. Sweetwater Cty.	Board’s denial of OTB found arbitrary and capricious; violated equal protection under Wyo. Const., exceeded authority.
2015	AG Opinions	100-mile rule applies only during live events; HHR terminals with bonus rounds were illegal gambling devices.
2022	Wyo. Horse Racing v. Campbell Cty.	District court held county lacked revocation authority for OTB/HHR.
2023	Wyo. Horse Racing v. Campbell Cty.	Wyo. Supreme Court affirmed county commissions lacked revocation authority or OTB/HHR.

Source: LSO review of case law, legislation, and available interpretive authorities.

APPENDIX A

House Bill 10 - Pari-mutuel events, Wyo. Sess. Laws, ch. 28⁹

Prime Sponsor: Representative Wallis
1987 General Session

This act authorized the sale of pari-mutuel pools on interstate or intrastate televised pari-mutuel events, termed "simulcasting." It established rules for simulcasting, including the requirement that simulcasting off the permitted premises be approved by the board of county commissioners of the applicable county and the limitation on simulcasting within 100 miles of any permitted premises. The act gave the Wyoming Pari-Mutuel Commission authority to regulate events, issue permits, and enforce penalties. It also created the Breeder Award Fund.

House Bill 305 - Pari-mutuel amendments, Wyo. Sess. Laws, ch. 148¹⁰

Prime Sponsor: Representative Wallis
1991 General Session

This act clarified that a simulcast permit could be issued only to applicants already holding a permit to conduct live pari-mutuel events. It also extended the maximum period stewards could suspend licenses for rule violations and required that a steward be present at each simulcast location.

House Bill 270 - Pari-mutuel event definition amendments, 1999 Wyo. Sess. Laws [vetoed]¹¹

Prime Sponsor: Representative McMurtrey
1999 General Session

This act would have authorized simulcasting of dog races as pari-mutuel events. Governor Geringer vetoed the act due to concerns about expanding gambling and its impact on tribal negotiations. The Legislature did not override the veto.

House Bill 103 - Pari-mutuel event expansion, 2000 Wyo. Sess. Laws [vetoed]¹²

Prime Sponsor: Representative McMurtrey
2000 Budget Session

This act would have authorized pari-mutuel wagering on select rodeo events and simulcast dog racing. Governor Geringer vetoed the act over similar concerns as those he expressed with the prior years' veto. The Legislature did not override the veto.

⁹ Available at: <https://wyomingdigitalcollections.ptfs.com/aw-server/rest/product/purl/WSL/i/99f44a7e-7ecf-40cd-90be-d369febbe073>.

¹⁰ Available at: <http://wyomingdigitalcollections.ptfs.com/aw-server/rest/product/purl/WSL/i/feef510e-ff82-45b1-8b61-f06e12c43cb3>.

¹¹ Available at: <http://wyomingdigitalcollections.ptfs.com/aw-server/rest/product/purl/WSL/i/e630ca36-12c7-4b3a-95ce-6083b0175bce>.

¹² Available at: <http://wyomingdigitalcollections.ptfs.com/aw-server/rest/product/purl/WSL/i/f60cb6a8-bf02-4ad4-8a6f-973d18693461>.

House Bill 19 - Pari-mutuel commission-amendments, 2001 Wyo. Sess. Laws, ch. 117¹³

Prime Sponsor: Representative Stafford

2001 General Session

This act amended the definition of "pari-mutuel event" to authorize simulcasting of dog racing in Wyoming. Governor Geringer vetoed the act due to concerns about expanded gambling and tribal negotiations, but the Legislature overrode the veto.

Senate File 61 – Pari-mutuel wagering, Wyo. Sess. Laws, ch. 15¹⁴

2006 Budget Session

This act distinguished between live and simulcast racing for purposes of calculating takeout rates. It increased the percentage of wagers that a permittee could retain from 25.90% to 35% on simulcast wagers. It also authorized the Wyoming Pari-Mutuel Commission to access certain criminal history records.

Senate File 47 - Pari-mutuel wagering – Simulcasting, Wyo. Sess. Laws, ch. 17¹⁵

Prime Sponsor: Senator Schiffer

2010 Budget Session

This act required the Wyoming Pari-Mutuel Commission to set live race day requirements for simulcasting permits, and it defined “horsemen’s association.”

House Bill 31 - Out-of-state simulcasting and source market fees, Wyo. Sess. Laws, ch. 6¹⁶

Prime Sponsor: Joint Travel, Recreation, Wildlife and Cultural Resources Interim Committee

2011 General Session

This act authorized the Wyoming Pari-Mutuel Commission to regulate out-of-state simulcast facilities accepting wagers from Wyoming residents and impose a source market fee.

Senate File 27 - Pari-mutuel licensing and steward authority, Wyo. Sess. Laws, ch. 33¹⁷

Prime Sponsor: Joint Travel, Recreation, Wildlife and Cultural Resources Interim Committee

2011 General Session

This act limited licensing to employees directly involved in racing or wagering and increased steward fine authority. It also required a steward to be present at each simulcast location.

¹³ Available at: <https://www.wyoleg.gov/Legislation/2001/HB0019>.

¹⁴ Available at: <https://www.wyoleg.gov/Legislation/2006/SF0061>.

¹⁵ Available at: <https://www.wyoleg.gov/Legislation/2010/SF0047>.

¹⁶ Available at: <https://www.wyoleg.gov/Legislation/2011/HB0031>.

¹⁷ Available at: <https://www.wyoleg.gov/Legislation/2011/SF0027>.

House Bill 36 - Pari-mutuel permit terms, Wyo. Sess. Laws, ch. 4¹⁸

Prime Sponsor: Representative Wallis, S

2012 Budget Session

This act extended the maximum term of pari-mutuel and simulcasting permits from one year to three years.

House Bill 25 - Simulcasting of pari-mutuel events, Wyo. Sess. Laws, ch. 75¹⁹

Prime Sponsor: Representative Wallis, S

2013 General Session

This act authorized historic horse racing terminals by amending the definition of “pari-mutuel event” to include wagering on previously run events using electronic systems that incorporate an opportunity for skill or judgment and are not determined entirely by chance. It redefined “simulcasting” to include both live and historic events transmitted electronically, authorized rulemaking, and conformed related provisions. The act also established fees on total wagers placed through historic horse racing terminals, to be distributed to the Pari-Mutuel Commission and the applicable local government.

¹⁸ Available at: <https://www.wyoleg.gov/Legislation/2012/HB0036>.

¹⁹ Available at: <https://www.wyoleg.gov/Legislation/2013/HB0025>.

Wyo. Downs Rodeo Events v. V.

District Court of Wyoming, First Judicial District, Laramie County

July 7, 2005, Decided; July 7, 2005, Filed

Docket No. 164-213

Reporter

2005 Wyo. Trial Order LEXIS 1 *

Wyoming Downs Rodeo Events, LLC, a Nevada limited liability company, Plaintiff, v. State of Wyoming, and Hon. Jon R. Forwood, District Attorney, First Judicial District, State of Wyoming, Defendants.

Notice: [EDITOR'S NOTE: THIS ORDER HAS BEEN SIGNED BY THE JUDGE, BUT SIGNATURE TEXT WAS ILLEGIBLE IN THE ORIGINAL DOCUMENT AND THEREFORE THE JUDGE'S NAME IS NOT DISPLAYED.]

Opinion

[*1] ORDER ON CROSS-MOTIONS FOR SUMMARY JUDGMENT

THIS MATTER came before the Court upon cross-motions for summary judgment, and the Court, having reviewed the briefs filed herein together with supporting materials submitted by the parties, and heard the arguments of counsel in favor of and in opposition to the Motions, and being otherwise advised in the premises, finds and concludes as follows:

1. This matter is an action by Plaintiffs upon their First Amended Complaint seeking the Court's declaration that certain Instant Racing terminals, approved by the Wyoming Pari-Mutuel Commission, are

lawful for operation in Wyoming, and further seeking injunctive relief to restrain Defendants, the State of Wyoming and HOHL Jon Forwood, District Attorney for the First Judicial District, from taking any action against the Plaintiffs' operation of the Instant Racing terminals.

2. As set out in Plaintiffs' First Amended Verified Complaint and affidavits filed in support of their Motion for Summary Judgment, the following relevant factual and procedural background is presented:

a. Plaintiffs are the permittees and operator of the only licenced and permitted horse track to the State of Wyoming, located in [*2] the vicinity of Evanston, Wyoming, pursuant to the authority set out in Wyo. Stat. § 11-25-105(a). Further, pursuant to the authority granted to the Wyoming Pari-Mutuel Commission by Wyo. Stat. § 11-25-102(vii)(A), to permit pari-mutuel wagering on "simulcast" events, Plaintiff, Wyoming Horseracing, Inc., operates four off-track betting establishments ("OTBs"), located in Evanston, Rock Springs, Cheyenne and Evansville, Wyoming.

b. "Instant Racing" is a patented pari-mutuel wagering system consisting of 4 number of remote computer terminals connected to a central server located in the State of Maryland, Die patent for the "Instant Racing", system is held by Race

Tech, ULC, an Arkansas limited liability company. "Instant Racing" is more particularly described as follows:

i. The "Instant Racing" central server contains nearly 200,000 races which have been previously run at various locations around the United States under the authority of the state licencing and regulatory agency of the particular jurisdiction.

ii. When money is inserted at a remote terminal (in either \$.25 or \$1.00 denominations), information regarding an historic race is displayed on the terminal without identification of the location where, or date on which, it was run. Horses [*3] and jockeys' or dogs, are identified only by number, such that it is a statistical impossibility for the wagerer to know the result of the race prior to the placement of his wager. True and accurate past performance information (as published in the "Daily Racing Form" for horse races, or "Rosner" for dog races, on the date of the race), presented in graphic form, is displayed on the terminal to enable the wagerer to handicap the race prior to placing the wager.

iii. Following placement of The wager, the player has the option of viewing the entire race, or viewing only the final, furlong of the race, and after the race is shown, the date and location of the race is disclosed to the player.

iv. The wagered amount is placed in 9 pari-mutuel pool of similar, denomination wagers, and the first wagerer within the pool to have placed a winning wager wins the pool, less authorized deductions

established by the law of the jurisdiction in which the wager was placed. If no wagerer within a particular pari-mutuel pool is successful, the pool is carried over.

v. Wagerers who utilize the handicapping information provided enjoy a significant increase in the odds of placing a winning wager over the odds [*4] of winning based upon pure chance.

c. The Wyoming Pari-Mutuel Commission ("Commission") is the State agency empowered by law to oversee and regulate certain pari-mutuel wagering within the State of Wyoming. In particular, the Commission is authorized, pursuant to Wyo. Stat. § 11-25-104(e), to permit and supervise the conduct of pari-mutuel events authorized by statute; to regulate, pursuant to Wyo. Stat. § 11-25-102(a)(v), such pari-mutuel events as it prescribes; and to permit and regulate "simulcasting," statutorily defined as "the sale of pari-mutuel pools on interstate or intrastate televised pari-mutuel events as prescribed the commission." See Wyo. Stat. § 11-25-102(a)(vii).

d. Commencing in 2002, the Commission investigated "Instant Racing." Following the investigation, the Commission determined that "Instant Racing" is a form of pari-mutuel wagering; however it also determined that, its regulatory definition of "simulcasting" did not contemplate the display of an historic horse or dog race because the Commission's rules defined the term "simulcast" as the "sale of pari-mutuel pools on interstate or intrastate televised *live* pari-mutuel events," (emphasis added) Rules of the Wyoming Pari-Mutuel Commission, Ch. 1,

§(xx)(2002).

e. On February 7, 2003, the Commission [*5] proposed amendments to its Rules including a change in the regulatory definition of "simulcast" to delete the word "live." In the accompanying statement of reasons for the proposed rule change, the Commission stated that the purpose of the change was to "allow the simulcast operator to explore new technologies in pari-mutuel racing."

f. The proposed rule change was submitted to the office of the Attorney General and legislative Service Office on April 18, 2003, and following review by the Legislative Service Office, it found that the "rules appear to be within the scope of statutory authority and legislative intent."

g. The rule change was approved by the Governor on May 20, 2003, as within the scope of the statutory authority delegated to the adopting agency, and within the scope of the legislative purpose of the statutory authority granted to the agency. On May 21, 2003, the rules were duly filed with the Secretary of State, State Of Wyoming.

h. Following the rule change, on July 11, 2003, at a regular meeting of the Commission, Wyoming Horseracing, Inc., requested permits to operate "Instant Racing" terminals at its OTBs within the State of Wyoming. Following a presentation regarding [*6] the system by Race Tech, LLC, the Commission determined that "Instant Racing" is a form of pari-mutuel wagering. On motion made and seconded, the Commission unanimously approved permits for ten

"Instant Racing" terminals to be operated on a trial basis for ninety days.

i. Following the granting of, and in reliance on, the Commission's permit, Wyoming Horseracing, Inc., purchased and began operating ten "Instant Racing" terminals at its OTB located in Evanston, Wyoming.

j. On February 6, 2004, following the successful demonstration of the operation of the "Instant Racing" terminals previously permitted, Plaintiff, Wyoming Horseracing, Inc., requested the Commission's authorization to operate an additional 70 "Instant Racing" terminals at its OTB's in Wyoming. On motion made and seconded, the Commission unanimously approved permits for an additional 70 "Instant Racing" terminals.

k. Following the granting of, and in reliance on, the Commission's permit, Plaintiff, Wyoming Downs Rodeo Events, LLC, purchased an additional 70 "Instant Racing" terminals, which were installed and operated by Plaintiff, Wyoming Horseracing, Inc., at the OTBs in Evanston, Rock Springs, and Cheyenne, pursuant [*7] to a lease agreement between the Plaintiffs.

l. On April 20, and June 7, 2004, the Wyoming Attorney General, provided informal opinions to the Commission, questioning the legality of the "Instant Racing" terminals which the Commission had permitted. As a result of these questions, at its June 14, 2004, regular meeting, the Commission reconsidered its permits. Following the receipt of additional information from Race Tech, LLC, concerning the function and operation of

the "Instant "Racing" terminals, on motion made and seconded, the Commission continued the permits for the 80 "Instant Racing" terminals. The Commission further determined that the Attorney General would retain the services of an expert to review the function and operation of the "Instant Racing" terminals, and to determine whether the "Instant Racing" terminals "are pari-mutuel according to the Wyoming Statutes on pari-mutuel wagering."

m. On June 28, 2004, Wyoming Horseracing, Inc., was ordered by an officer of the Cheyenne Wyoming Police Department to cease operating the "Instant Racing" terminals situated in its Cheyenne OTB, and to remove all such terminals on or before noon, July 11, 2004. Plaintiff is informed and [*8] believes, and therefore alleges that the order to cease operation and to remove the terminals was given on the advice and direction of Defendant, the Hon. Jon R. Forwood. By subsequent agreement between the parties hereto, the order was amended to require that the terminals be shut down, but not removed, pending the declaration sought in this case.

Plaintiffs contend that, in light of this history, the Instant Racing terminals are "expressly authorized by law," under Wyo. Stat. § 6-7-101 (a)(iii)(C), and therefore, their operation does not violate the gambling statute, nor are they prohibited "gambling devices" under Wyo. Stat. § 6-7-101(a)(iv).

Defendant generally contend that in authorizing and permitting the operation of the Instant Racing terminals, the Wyoming

State Pari-Mutuel Commission exceeded the authority granted to it because Instant Racing terminals are not expressly authorized by Wyo. Stat. §§11-25-101, *et seq.*, and that the Instant Racing terminals constitute prohibited "gambling devices," as defined by Wyo. Stat. 16-7-101 (a) (iv). Defendants further contend that the Instant Racing system is unlawful in light of Wyo. Stat. § 11-25-107, because the identities of the horses are withheld until the wager is placed, and that the system is unlawful because there was no county election specifically approving the [*9] system in Laramie County prior to the Commission's permits to operate the system.

The Court concludes that in approving the Instant Racing terminals, the Wyoming State Pari-Mutuel Commission exceeded the authority granted to it by Wyo. Stat. § 11-25-101, *et seq.*, and further concludes that the Instant Racing terminals are unlawful "gambling devices" prohibited by Wyo. Stat. § 6-7-101(a)(iv).

It is, therefore,

ORDERED that the Plaintiffs' Motion for Summary Judgment be and is hereby DENIED. and it is further

ORDERED that the Defendants' Motion for Summary Judgment be and is hereby GRANTED, and it is further

ORDERED that Plaintiffs' application for permanent injunction be and is hereby DENIED.

Dated this 7th day of July, 2005.

/s/ [Signature]

DISTRICT JUDGE

End of Document



RECEIVED

SEP 28 2015

BY: *cm*

Office of the Attorney General

Governor
Matthew H. Mead

Attorney General
Peter K. Michael

Administration Division
123 State Capitol
Cheyenne, Wyoming 82002
307-777-7841 Telephone
307-777-6869 Fax

Chief Deputy Attorney General
John G. Knepper

September 23, 2015

Charles E. Moore
Executive Director
Wyoming Pari-Mutuel Commission
Energy II Building
951 Werner Court, Suite 335
Casper, WY 82601

Dear Director Moore:

You asked this office to answer "whether the current historic racing terminals are legal under Wyoming's pari-mutuel and gambling laws."

Short Answer

No. Although "pari-mutuel" in some respects, each of the nine current historic racing terminals' themes contain events or characteristics that are contrary to Wyoming's pari-mutuel statutes.

Background

In considering your question, I have reviewed Wyoming's general gambling statutes (Wyoming Statute § 6-7-101, *et seq.*), pari-mutuel statutes (Wyoming Statute § 11-25-101, *et seq.*), and pari-mutuel rules and regulations. Further, I reviewed various documentation you provided me, including but not limited to, a February 6, 2015, Report of Findings prepared by Gaming Laboratories International (GLI). (Attachment 1).

Following that initial review, it became apparent that the game themes' manufacturer, Race Tech, LLC, offered a differing explanation of how some of the game theme outcomes were determined. As a result, this office sought further review by GLI to resolve any discrepancies.

On June 9, 2015, GLI completed an Updated Report of Findings, providing further details necessary for this opinion. (Attachment 2). The Updated Report of Findings provides an operational analysis of the historic racing machines in Wyoming, and the primary factual basis upon which this opinion is based.

Both operators offering historic racing games, along with Race Tech, were provided an opportunity to review the GLI Updated Report of Findings to verify its accuracy. Following this informal "comment period," the operators and Race Tech generally acknowledged that the report was accurate. Each operator also provided its own legal analysis as to the legality of the historic racing terminals, which this office carefully considered. Factually, one discrepancy was identified regarding an individual game theme's payout. According to the comments, which this office has confirmed, "Wild West Willie's Lucky Draw" does not offer a "Trinella" pool payout as stated in GLI's Updated Report of Findings. However, that discrepancy does not affect this office's legal analysis discussed below. Further, one commenter took exception to the use of the words "random or randomly appear[ing] 28 times." The comment asserted that the frequency of those words "provide[d] an attack point for those against [the historic racing terminals,]" but recognized the usage of those words to be "unavoidable."

With that said, "Instant Racing" is a patented computerized machine connected to a central server storing more than 100,000 videos of horse races that have been run in various locations in the United States. These Instant Racing machines allow players to wager on these previously run races stored on the central server. At the time of this opinion, there are nine different game themes operating in Wyoming.

When a player inserts money into the Instant Racing machine, information regarding a randomly selected historic race is displayed without identifying the race's location or date the race was run. The horses are identified only by number and the player is therefore unable to know the outcome of the race before the wager is placed. The wagered money is pooled with other wagers placed on similar game themes and denominations across the United States.

Depending upon each of the nine game themes, there are different wagering denominations including \$.05, \$.25, \$1.00 and \$5.00. The first player within the pool to have placed a winning wager wins the pool, less authorized deductions established by the law of the jurisdiction in which each wager was placed. If no player within a particular pari-mutuel pool is successful, the pool is carried over.

If a player chooses to use it, limited past performance information (presented in graphic form) is available to predict the race's top three finishers. Alternatively, the player may forgo using this past performance information and use the "handi-helper" function that automatically chooses the order of finishers based upon past performance statistics.

There are different ways to win each game theme. All game themes begin with an initial horse race where the player has the opportunity to use limited past performance information to

predict the winning three horses. Once the wager is placed, the machine displays a brief video clip of the horses crossing the finish line, and the race's date and location are then revealed to the player. Depending on the theme, it may contain one or more "bonus" rounds to determine the ultimate outcome and whether a player wins or loses. Most, if not all, of those bonus rounds appear to be based upon random events where the player is unable to exercise "skill or judgment" to increase his odds of success.

Relevant History

In 2004, the Wyoming Pari-Mutuel Commission sought an opinion from this office as to the legality of Instant Racing machines in Wyoming. In two separate opinions, this office considered similar Instant Racing machines under the Wyoming pari-mutuel statutes as they existed in 2004. (Attachments 3 & 4). Attorney General Pat Crank concluded that the Instant Racing machines were illegal gambling devices, because "historic" horse racing did not qualify as a "pari-mutuel event" under Wyoming law and that the statutes would have to be amended for historic horse racing to be legal.

In the 2004 opinions, Attorney General Crank also questioned the so called "bonus rounds" included in the Instant Racing machines and whether they "crossed the line into illegal gambling." That opinion stated that: "The determination as to whether these machines qualify as a pari-mutuel form of wagering likely requires a fact based analysis that is inappropriate, if not impossible, to provide in the format of an Attorney General legal opinion. The Pari-Mutuel Commission will need to make specific factual determinations to determine the exact characteristics of this new form of wagering."

On June 28, 2004, following the opinions, Wyoming Horseracing, Inc., was ordered by law enforcement to cease operating the "Instant Racing" terminals situated in its Cheyenne off track betting location, and to remove all terminals. Wyoming Downs Rodeo Events, LLC filed an action for declaratory judgment, seeking the district court's declaration that Instant Racing was lawful in Wyoming.

The matter proceeded to the Wyoming Supreme Court. Under the Wyoming pari-mutuel statutes in existence at the time, the Court generally concluded that historic races did not qualify as a "simulcast" race and, therefore, the Wyoming Pari-Mutuel Commission lacked authority to authorize their use in the state. The Court further concluded that under existing law, those machines were "illegal gambling devices."

[W]e conclude that the district court correctly construed and applied the applicable statutes and that it did not err as a matter of law in applying the statutes as it did. The description of the "Instant Racing" gaming device found in the patent documents makes it unmistakable that it is a "gambling device" as defined by Wyoming law. Moreover, the description of the gaming device's operation provided in Wyoming Downs' affidavit, as well as the photographs depicting the

gaming device which were put into evidence, corroborate the inescapable conclusion that the "Instant Racing" terminals are "gambling devices" that the Wyoming State Pari-mutuel Commission could not authorize via the statutory powers granted to it.

Wyo. Downs Rodeo Events, LLC v. State, 2006 WY 55, ¶ 14, 134 P.3d 1223, 1230 (Wyo. 2006).

In 2013, the Legislature amended Wyoming's pari-mutuel statutes to allow for wagering on "historic" pari-mutuel events through the use of an "electronic system or device." Pursuant to that statutory change, the Wyoming Pari-Mutuel Commission adopted amended rules to regulate "historic racing."

Upon reviewing Gaming Laboratories International's Updated Report of Findings, this opinion answers whether these Instant Racing machines qualify as pari-mutuel in nature and are legal under Wyoming statutes as amended in 2013.

Relevant Law

Wyoming law provides that both "gambling" and "professional gambling" are crimes. Wyo. Stat. Ann. § 6-7-102. "Gambling" is defined by Wyoming Statute § 6-7-101:

(iii) "Gambling" means risking any property for gain contingent in whole or in part upon lot, chance, the operation of a gambling device or the happening or outcome of an event, including a sporting event, over which the person taking a risk has no control, but does not include any of the following:

* * * *

(C) Other acts or transactions now or hereafter expressly authorized by law[.]

Wyo. Stat. Ann. § 6-7-101(a)(iii). "Gambling device" is defined as "any device, machine, paraphernalia or equipment except an antique gambling device that is used or usable in the playing phases of any professional gambling activity, whether that activity consists of gambling between persons or gambling by a person involving the playing of a machine[.]" Wyo. Stat. Ann § 6-7-101(a)(iv).

"Notwithstanding W.S. 6-7-101(a)(iv) . . . the commission may authorize and promulgate rules providing for pari-mutuel wagering on events that have previously occurred, utilizing an electronic system or device that affords an opportunity for the exercise of skill or judgment where the outcome is not completely controlled by chance alone[.]" Wyo. Stat. Ann § 11-25-102(a)(v).

“Professional gambling” means: “(A) Aiding or inducing another to engage in gambling, with the intent to derive a profit therefrom; or (B) Participating in gambling and having, other than by virtue of skill or luck, a lesser chance of losing or a greater chance of winning than one (1) or more of the other participants[.]” Wyo. Stat. Ann § 6-7-101(viii).

As an exception to “gambling,” Wyoming statutes established the Wyoming Pari-Mutuel Commission, which regulates pari-mutuel events and wagering thereupon. *See* Wyo. Stat. Ann. § 11-25-101. The Commission is required to “make reasonable rules and regulations for the control, supervision and direction of applicants and permittees, including regulations providing for resolving scheduling conflicts and settling disputes between permittees and the supervising, disciplining, suspending, fining and barring from pari-mutuel events of all persons required to be licensed by this act, and for the holding, conducting and operating of all pari-mutuel events conducted pursuant to this act.” Wyo. Stat. Ann. § 11-25-104(e).

Wyoming pari-mutuel statutes provide the following pertinent definitions:

(iv) “Event” means a pari-mutuel event;

(v) “Pari-mutuel event” means the events which are authorized by the commission for the conduct of horse racing (to include quarter horse, thoroughbred or other approved races), harness racing, cutter racing, chariot racing, chuckwagon racing, professional roping events and simulcasting of dog racing and the events described in this paragraph as prescribed by the commission. Notwithstanding W.S. 6-7-101(a)(iv) and 11-25-107, the commission may authorize and promulgate rules providing for pari-mutuel wagering on events that have previously occurred, utilizing an electronic system or device that affords an opportunity for the exercise of skill or judgment where the outcome is not completely controlled by chance alone;

(vi) “Pari-mutuel wagering” means wagering on the outcome of pari-mutuel events in which those who wager purchase tickets of various denominations on entrants in the events and all wagers for each event are pooled and held by the permittee for distribution, and when the outcome of the event has been decided, the permittee distributes the total wagers comprising the pool, less an amount not greater than twenty-five and nine-tenths percent (25.90%) for live racing and in the event of simulcasting an amount not to exceed the percentage allowed at the host track or thirty-five percent (35%), whichever is less and less the amount for breakage to holders of tickets on the winning entries;

(vii) “Simulcasting” means the sale of pari-mutuel pools electronically transmitted live or historic on interstate or intrastate pari-mutuel events as prescribed by the commission.

Wyo. Stat. Ann. § 11-25-102(a)(iv)-(vii).

Discussion

With that statutory framework in mind, and given this office's prior recognition of the difficulty associated with determining the legality of each Instant Racing game theme, it is simpler to identify what the law requires of a historic racing theme rather than what it prohibits. This analysis will provide guidance both on machines already in use, and on machines that may be presented for Commission approval in the future.

The Commission has adopted the Association of Racing Commissioners International model rules, ARCI-004-155 Proprietary Wagers. The Instant Racing machines in this state appear to operate according to those rules as discussed in GLI's Updated Report of Findings. However, to the extent those rules allow wagering on events that do not comply with Wyoming pari-mutuel statutes, the rules may need to be revisited.

An administrative agency's authority to promulgate rules is circumscribed by the statutes that govern its activities. Rules promulgated in excess of an agency's authority are null and void. *McLean v. Hyland Enters., Inc.*, 2001 WY 111, ¶ 30, 34 P.3d 1262, 1270 (Wyo. 2001). An agency may not rewrite a statute through its rulemaking power. *U.S. West Comm'ns, Inc. v. Wyo. Pub. Serv. Comm'n*, 992 P.2d 1092, 1096 (Wyo. 1999).

Whether the Instant Racing machines operating in Wyoming are "legal" is ultimately dependent upon Wyoming statutes. Pursuant to Wyoming statute, the Commission may authorize wagering on "historic" pari-mutuel events provided that:

1. The wager is "on the outcome of pari-mutuel events," specifically, horse racing, harness racing, cutter racing, chariot racing, chuckwagon racing, a roping event, or dog racing;
2. The pari-mutuel events "have previously occurred";
3. The player utilizes an "electronic system or device that affords an opportunity for the exercise of skill or judgment"; and
4. The outcome is "not completely controlled by chance alone."

Wyo. Stat. Ann. § 11-25-102(a)(v)-(vi).

As stated above, the Commission employed an independent third party, Gaming Laboratories International, to review each of the nine Instant Racing Machines operating in Wyoming. GLI categorized the nine game themes into "base types." Base Type 3 contains six similar game themes, and Base Type 4 contains three similar game themes.

Analysis of the Individual Game Themes

Base Type 3 Game Themes:

1. Wild West Willie's Lucky Draw

A player of this game theme makes his selections of horse numbers based upon his expectation of how the first three horses will finish. Past performance information is available to the player prior to making his selections. The player's selected numbers are placed in the center column of a five column, three row grid. Remaining grid positions are filled with random numbers ranging from 1 to 10 and represent horse numbers from the race. The numbers of the first, second and third place finishers in the horse race are replaced with corresponding graphic symbols within the grid. This game theme has five paylines across the grid which the player may wager on from one to five of those paylines.

Following the horse race and the random placement of all horse numbers/symbols in the grid, the machine evaluates the paylines for combinations of three, four or five of the same symbol. If three or more of the first place finishing horse's symbol appears on a payline in which the player wagered, the player then qualifies for a bonus game. The bonus game consists of two rounds.

In the first round, five target symbols are displayed hiding a "multiplier value" ranging from 2 to 10 and are randomly placed. The player selects the symbol and reveals the multiplier value to be used in the second round.

In the second round, the player is presented with statistical information and selects one horse he expects to win a historic race. An animated graphical depiction of the horse race is shown in place of the actual historic race. Depending upon how the player's selected horse finishes in this animated race, the player is awarded a share of the prize pool. That share is multiplied by the randomly selected multiplier value from the first round of the bonus game to determine the final outcome.

2. Pigs in Mud 2

A player of this game theme makes his selections of horse numbers based upon his expectation of how the first three horses will finish. Past performance information is available to the player prior to making his selections. The player's selected numbers are placed in the leftmost column of a five column, three row grid. Remaining grid positions are filled with random numbers ranging from 1 to 10 and represent horse numbers from the race. The numbers of the first, second and third place finishers in the horse race are replaced with corresponding graphic symbols within the grid. This game theme has five paylines across the grid which the player may wager on from one to five of those paylines.

Following the horse race and the random placement of all horse numbers/symbols in the grid, the machine evaluates the paylines for combinations of three, four or five of the same symbol. The "wild" symbol may also randomly appear in the grid as a substitute for a winning symbol and may have a multiplier from 2 to 10 to increase winning line payouts. If three or more of the first, second or third place finishing horse's symbol appears on a payline in which the player wagered, the player then qualifies for a bonus game.

In the bonus game, the player selects from images of five mud pits. Four of the mud pits are associated with a hidden prize value, while one mud pit reveals a "bathtub" with no prize value. The player selects mud pits one at a time, revealing prize values until the bathtub is revealed, or until all four prizes are revealed. To determine the final outcome, the initial prize amount is added to the bonus game prize amount, which may be multiplied by the number of times the player qualified on the five paylines.

3. Yukon Willie's Gold Rush

A player of this game theme makes his selections of horse numbers based upon his expectation of how the first three horses will finish. Past performance information is available to the player prior to making his selections. The player's selected numbers are placed in the leftmost column of a five column, three row grid. Remaining grid positions are filled with random numbers ranging from 1 to 10 and represent horse numbers from the race. The numbers of the first, second and third place finishers in the horse race are replaced with corresponding graphic symbols within the grid. This game theme has five paylines across the grid which the player may wager on from one to five of those paylines.

Following the horse race and the random placement of all horse numbers/symbols in the grid, the machine evaluates the paylines for combinations of three, four or five of the same symbol. The "wild" symbol may also randomly appear in the grid as a substitute for a winning symbol and may have a multiplier from 2 to 10 to increase winning line payouts. If three or more of the first, second or third place finishing horse's symbol appears on a payline in which the player wagered, the player then qualifies for a bonus game.

In the bonus game, the player selects from images of five mountains. Four of the mountains are associated with a hidden prize value, while one mountain is a "dud" with with no prize value. The player selects mountains one at a time, revealing prize values until the "dud" is revealed, or until all four prizes are revealed. To determine the final outcome, the initial prize amount is added to the bonus game prize amount, which may be multiplied by the number of times the player qualified on the five paylines.

4. Treasures of Egypt

A player of this game theme makes his selections of horse numbers based upon his expectation of how the first three horses will finish. Past performance information is available to the player prior to making his selections. The player's selected numbers are placed in the leftmost column of a five column, three row grid. Remaining grid positions are filled with random numbers ranging from 1 to 10 and represent horse numbers from the race. The numbers of the first, second and third place finishers in the horse race are replaced with corresponding graphic symbols within the grid. This game theme has five paylines across the grid which the player may wager on from one to five of those paylines.

Following the horse race and the random placement of all horse numbers/symbols in the grid, the machine evaluates the paylines for combinations of three, four or five of the same symbol. The "wild" symbol may also randomly appear in the grid as a substitute for a winning symbol and may have a multiplier from 2 to 10 to increase winning line payouts. If three or more of the first, second or third place finishing horse's symbol appears on a payline in which the player wagered, the player then qualifies for a bonus game.

In the bonus game, the player selects from images of five coffins. Four of the coffins are associated with a hidden prize value, while one coffin reveals a "mummy" with no prize value. The player selects coffins one at a time, revealing prize values until the "mummy" is revealed, or until all four prizes are revealed. To determine the final outcome, the initial prize amount is added to the bonus game prize amount, which may be multiplied by the number of times the player qualified on the five paylines.

5. Sir Willie's Treasure Quest

A player of this game theme makes his selections of horse numbers based upon his expectation of how the first three horses will finish. Past performance information is available to the player prior to making his selections. The player's selected numbers are placed one per row in random order and random position in a five column, three row grid. Remaining grid positions are filled with random numbers ranging from 1 to 10 and represent horse numbers from the race, or may be randomly filled with a "wild," "bonus," or "extra" symbol. The numbers of the first, second and third place finishers in the horse race are replaced with corresponding graphic symbols within the grid. This game theme has nine paylines across the grid which the player may wager on from one to nine of those paylines.

Following the horse race and the random placement of all horse numbers/symbols in the grid, the machine evaluates the paylines for combinations of three, four or five of the same symbol. If three "bonus" symbols appear on an active payline in which the player wagered, and at least one of the player's three selections from the historic race finish in the top three positions, the player then qualifies for a bonus game. This game theme's bonus round has up to three levels.

In the first level, the player selects one of five swords, each embedded in a stone displayed on the screen. Four of the swords are associated with an animation that ends the bonus round, and one is associated with an animation of the sword rising from the stone. If the player selects the sword rising from the stone, they advance to the next bonus level.

In the second level, the player selects one of five keys. Four of the keys are associated with an animation that ends the bonus round, and one is associated with an animation of the key unlocking the drawbridge. If the player selects the key unlocking the drawbridge, they advance to the next bonus level.

In the third level, the player selects one of five doors. Four of the doors are associated with an animation that ends the bonus round, and one is associated with an animation of a princess. To determine the final outcome, the initial prize amount is added to the bonus game prize amount, which may be multiplied by depending upon the outcome and amount wagered.

6. Cruisin' for Cash

A player of this game theme makes his selections of horse numbers based upon his expectation of how the first three horses will finish. Past performance information is available to the player prior to making his selections. The player's selected numbers are placed one per row in random order and random position in a five column, three row grid. Remaining grid positions are filled with random numbers ranging from 1 to 10 and represent horse numbers from the race, or may be randomly filled with a "wild," "bonus," or "extra" symbol. The numbers of the first, second and third place finishers in the horse race are replaced with corresponding graphic symbols within the grid. This game theme has nine paylines across the grid which the player may wager on from one to nine of those paylines.

Following the horse race and the random placement of all horse numbers/symbols in the grid, the machine evaluates the paylines for combinations of three, four or five of the same symbol. If three "bonus" symbols appear on an active payline in which the player wagered, and at least one of the player's three selections from the historic race finish in the top three positions, the player then qualifies for a bonus game. This game theme's bonus round has up to three levels.

In the first level, the player selects one of twenty-one checkered flags. Twenty of the flags are associated with an animation that ends the bonus round, and one is associated with an animation of Rocko's hot rod. If the player selects Rocko's hot rod, they advance to the next bonus level.

In the second level, the player selects one of seven car keys. Six of the keys are associated with an animation that ends the bonus round, and one is associated with an animation of the Rocko's hot rod starting. If the player selects the key starting Rocko's hot rod, they advance to the next bonus level.

In the third level, the player does not have any input. An animation of a car race is displayed between Rocko's hot rod and three other cars. The cars finish in a random order. If Rocko's hot rod finishes first, the largest bonus round payoff is awarded.

Analysis of Base Type 3 Game Themes:

First, the wager is required to be "on the outcome of pari-mutuel events." Wyo. Stat. Ann. § 11-25-102(a)(vi). In general, each of the six game theme "outcomes" are based upon the following events:

1. A historic horse race;
2. Random placement of numbers and symbols into a grid, which is evaluated for three or more first place symbols on an active payline;
3. The selection of various symbols hiding random multiplier values; and
4. A second historic horse race shown in animated graphical depiction ("Wild West Willie's Lucky Draw" only).

The first event in each game theme appears to be an actual horse race, which is a pari-mutuel event. *See* Wyo. Stat. Ann. § 11-25-102(a)(v). The second event in each game theme, random placement of numbers in a grid to determine qualification for a bonus round, is similar to a slot machine event, not a pari-mutuel event as defined by statute. The third event in each game theme, selecting symbols at random, is the electronic equivalent of a "scratch off ticket" and not a pari-mutuel event. The fourth event, only present in "Wild West Willie's Lucky Draw," is technically a horse race, thus, a pari-mutuel event. However, it is questionable whether the Legislature intended to include an animated graphical depiction of a horse race as a pari-mutuel event in lieu of an actual horserace.

Second, the pari-mutuel events must "have previously occurred." Wyo. Stat. Ann. § 11-25-102(a)(v). The horse races in each game theme have previously occurred as required, however, the bonus round events are neither pari-mutuel events, nor have they previously occurred. The bonus round events "occur" in real time as the machine makes random calculations for grid placement and prize values, and as the player selects various symbols at random.

Third, the player must utilize an "electronic system or device that affords an opportunity for the exercise of skill or judgment where the outcome is not completely controlled by chance alone." Wyo. Stat. Ann. § 11-25-102(a)(v). The game themes appear to afford this mandatory opportunity by offering handicapping information on the historic horse races. However, with respect to both qualifying for the bonus rounds and to choosing the symbols hiding the prize values that determine the ultimate outcome, these events are randomly determined. Although skill or judgment may play a part in determining which numbers are placed in the grid, number/symbol placement is determined at random. In fact, it appears that even if the player successfully picks one or more horses that place in the top three positions, the player may not win money depending

upon the random placement of number/symbols in the grid. Finally, no skill or judgment is exercised in picking the bonus game symbols, whether the player is awarded a 2 or 10 multiplier to the outcome is based purely upon chance.

The Base Type 3 game themes do not meet the statutory requirements of Wyoming pari-mutuel wagering. The game themes consist of wagering on non-pari-mutuel events that have not previously occurred, and wagering on the outcome of those events is controlled by chance alone.

Base Type 4 Game themes:

“Double Horseshoes,” “Very Cherry,” and “Super Fired Up Sevens”

These three game themes are nearly identical in the way they are played. All three game themes consist of an initial historic horse race and a subsequent “bonus” race. The main difference in the games is the visual display of the symbols for entertainment purposes.

A player in these game themes makes his selections of horse numbers based upon his expectation of which three horses may finish first in the initial historic race. Past performance information is available to the player prior to making his selection. The player’s selected horse numbers are compared to the historic race result and if any of the player’s selections finish first, the player qualifies pool in the “bonus wager.”

In the bonus wager, the machine randomly selects a second historic race. The player is not provided past performance or “handicapping” information for the second historic horse race. Further, the player does not “choose” any horses in the second historic race. Finally, this second race is not shown to the player, the results of the second race are only considered internally in combination with the results of the first race to determine whether the player “wins or loses.” There does not appear to be any way for the player to know that a second historic horse race takes place.

For example, assume the player selects horse numbers 4, 5 and 6 in the initial race. Next, assume that the 4 horse wins. The machine then selects a random second historic race. Based upon the outcome of the second race, the machine compares those results to a table of permutations and awards the prize accordingly. Each permutation of finish orders corresponds to a prize pool and if the player’s selected numbers and finish order match according to the permutation, that player wins the corresponding prize pool. The matched permutation determines symbols to be shown on an “entertaining display” similar to that of a slot machine. A single payline is used to display winning symbols. If none of the selected numbers match, no prize is awarded.

Analysis of Base Type 4 Game Themes:

First, the wager is required to be “on the outcome of pari-mutuel events.” Wyo. Stat. Ann. § 11-25-102(a)(vi). This game theme’s “outcome” is based upon the following events:

1. A historic horse race where the player selects his horses; and
2. A historic horse race where the player does not select his horses.

Both events appear to be an actual horse race, which is a pari-mutuel event. However, according to GLI’s Updated Report of Findings, a player does not appear to have an indication that a second horse race takes place. The player is not given past performance information on a second race, is not given the chance to select horses for a second race, the second race is not displayed on the machine, and the results of that second race are not displayed. In fact, absent having knowledge of the machine’s internal workings from the GLI Updated Report of Findings, a player has no evidence that he is wagering on the outcome of a second race. The “results” of this second race are simply compared to the results of the initial historic horse race to create a permutation that determines whether the player wins or loses. For these reasons, it is questionable whether this second historic horse race qualifies as a “pari-mutuel event” and, therefore, questionable whether the ultimate outcome is based on pari-mutuel events.

Second, the pari-mutuel events must “have previously occurred.” Wyo. Stat. Ann. § 11-25-102(a)(v). The game theme’s horse races have previously occurred as required, according to GLI’s Updated Report of Findings. However, as discussed above, the second race only exists “internally” and the player is unaware that he is wagering on the outcome of this second race. This raises questions about whether the second race meets this statutory provision’s intent.

Third, the player must utilize an “electronic system or device that affords an opportunity for the exercise of skill or judgment where the outcome is not completely controlled by chance alone.” Wyo. Stat. Ann. § 11-25-102(a)(v). The game theme appears to afford an opportunity for the player to exercise skill or judgment where the outcome is not completely controlled by chance alone by offering handicapping information on the initial historic horse race. However, the game theme does not afford this same opportunity on the second historic horse race. No past performance information is available to the player in which to exercise skill or judgment, and the outcome of the second race appears to be based upon chance alone.

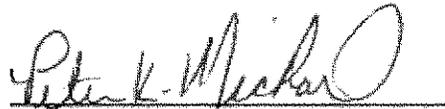
Director Charles Moore
September 23, 2015
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Conclusion

The Instant Racing game themes operating in Wyoming are contrary to Wyoming's pari-mutuel statutes. Although all game themes are lawful to an extent, the ultimate outcome is determined, in part, by events that are non-pari-mutuel in nature and based upon total chance. Just as giving someone a scratch-off ticket with each "live" horse race wager does not make scratch-off tickets legal in Wyoming, combining one historic pari-mutuel event with a series of non-pari-mutuel "bonus round" events does not make the game themes lawful.

The Legislature amended Wyoming statutes, allowing an additional medium for wagering on pari-mutuel events. It did not legalize wagering on events that, on their own, would otherwise be illegal. Irrespective of the 2013 amendment, the Wyoming Supreme Court's observation back in 2006 remains apropos: "[W]e are dealing with a slot machine that attempts to mimic traditional pari-mutuel wagering. Although it may be a good try, we are not so easily beguiled." *Wyo. Downs Rodeo Events, LLC v. State*, 2006 WY 55, ¶ 18, 134 P.3d 1223, 1230 (Wyo. 2006).

Please do not hesitate to contact us if you have any further questions.



Peter K. Michael
Wyoming Attorney General



Misha E. Westby
Deputy Attorney General



Michael T. Kahler
Senior Assistant Attorney General

IN THE DISTRICT COURT FOR THE SIXTH JUDICIAL DISTRICT

STATE OF WYOMING, COUNTY OF CAMPBELL

IN THE MATTER OF RESOLUTION NO.)
2077 OF THE CAMPBELL COUNTY)
BOARD OF COMMISSIONERS)
RESOLUTION REGARDING)
SIMULCASTING WITHIN CAMPBELL)
COUNTY, WYOMING PURSUANT TO)
W.S. 11-25-102(A)(vii)(B))
)
)
)
)

Civil Action No. 39836

FILED
CAMPBELL COUNTY, WYOMING
MAR 25 2022
G. M. M. M.
DEPUTY CLERK OF THE DISTRICT COURT

DECISION AND ORDER ON APPEAL

This matter comes before the court on Petitioners', Wyoming Horse Racing, LLC's and Wyoming Downs, LLC's (collectively "Petitioners"), *Petition for Judicial Review*, filed May 7, 2021. Petitioners appeal Resolution 2077 passed by the Campbell County Board of Commissioners. Having reviewed the record on appeal, considered the arguments and briefs of counsel, being otherwise fully informed in the premises, and for reasons explained herein, the court finds that Resolution 2077 must be set aside.

ISSUES

The court re-phrases the issues on appeal as follows:

1. Does this court have jurisdiction to consider Petitioners' appeal?
2. Did the Campbell County Board of Commissioners exceed their statutory authority by revoking previous resolutions approving simulcast operations?

FACTS

Since September 2013, Petitioners have operated pari-mutuel wagering on live horse racing, historic horse racing, and simulcast events in Campbell County, Wyoming. Appendix 2, *Petition for Judicial Review*. Petitioners' operations were permitted by Resolutions 1801 and 1804 respectively, passed by the Campbell County Board of Commissioners ("Commissioners") pursuant to authority granted under W.S. §11-25-201(a). The Commissioners subsequently approved Resolution 1830 in 2014, effectively allowing Petitioners to continue conducting pari-mutuel wagering on live horse racing, historic horse racing, and simulcast events in Campbell County. Appendix 4, *Petition for Judicial Review*. In July 2020, the Commissioners approved Resolution 2046, once again allowing Petitioners to engage in pari-mutuel wagering and simulcast operations. Appendix 5, *Petition for Judicial Review*.

On April 20, 2021, the Commissioners passed Resolution 2077 after consideration during a public meeting. R.A. 00004. According to this Resolution, "[t]he previous resolutions of the Campbell County Board of Commissioners concerning approval of simulcasting off of permitted live horse racetrack premises are hereby revoked and superseded by this Resolution". R.A. 14-15. As a result of Resolution 2077, Petitioners could no longer be able to conduct their simulcast operations as they had under previous resolutions. The changes invoked by Resolution 2077 state that a simulcasting operator must be "(1) a live horse racing operator that is both (i) licensed to conduct the minimum live race days required under W.S. 11-25-104(m) and WY Rules and Regulations 038.0001.10 §3 within Campbell County on an annual basis and (ii) conducting said live horse racing consistent with the aforementioned statute and regulations, or (2) if the simulcasting operator does not satisfy the first requirement, then such simulcasting operator may conduct simulcasting off of a permitted live horse racetrack premises within Campbell County only if written approval is given by any simulcasting operator that is licensed to conduct the minimum live race days required under W.S. §11-25-104(m) and WY Rules and Regulations 038.0001.10 § 3 within Campbell County on an annual basis and conducts said live horse racing consistent with

the aforementioned statute and regulation...". *Id.* Petitioners timely appealed Resolution 2077.

APPLICABLE LAW AND STANDARD OF REVIEW

For administrative appeals, W.S. § 16-3-114(c) states as follows:

To the extent necessary to make a decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. In making the following determinations, the court shall review the whole record or those parts of it cited by a party and due account shall be taken of the rule of prejudicial error. The reviewing court shall:

(i) Compel agency action unlawfully withheld or unreasonably delayed; and

(ii) Hold unlawful and set aside agency action, findings, and conclusions found to be:

(A) Arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law;

(B) Contrary to constitutional right, power, privilege or immunity;

(C) In excess of statutory jurisdiction, authority or limitations or lacking statutory right;

(D) Without observance of procedure required by law; or

(E) Unsupported by substantial evidence in a case reviewed on the record of an agency hearing provided by statute.

The Wyoming Supreme Court describes the "arbitrary and capricious" standard of review as follows:

The arbitrary and capricious standard remains a "safety net" to catch agency action which prejudices a party's substantial rights or which may be contrary to the other W.A.P.A. review standards yet is not easily categorized or fit to any one particular standard. Although we explained the "safety net" application of the arbitrary and capricious standard in *Newman*, we will refine it slightly here to more carefully delineate that it is not meant to apply to true evidentiary questions. Instead, the arbitrary and capricious standard will apply if the hearing examiner refused to admit testimony or documentary exhibits that were clearly admissible or failed to provide appropriate findings of fact or conclusions of law. This

listing is demonstrative and not intended as an inclusive catalog of all possible circumstances.

Dale v. S & S Builders, LLC, 2008 WY 84, ¶ 23, 188 P.3d 554, 561 (Wyo. 2008).

For conclusions of law requiring *de novo* review, the Wyoming Supreme Court directs that:

An agency's conclusions of law are to be affirmed if they are in accordance with the law. *Dale v. S & S Builders, LLC*, 2008 WY 84, ¶ 26, 188 P.3d 554, 562 (Wyo. 2008). A reviewing court does not defer to the agency's determination on issues of law; instead, it must correct any error made by the agency in either interpreting or applying the law. *Three Sons, LLC v. Wyoming Occupational Health and Safety Commission*, 2007 WY 93, ¶ 11, 160 P.3d 58, 63 (Wyo. 2007).

Town of Evansville Police Dep't v. Porter, 2011 WY 86, ¶ 11, 256 P.3d 476, 481 (Wyo. 2011); see also, *Three Sons LLC v. Wyoming Occupational Health and Safety Commission*, 2007 WY 93, ¶ 11, 160 P.3d 58, 63 (Wyo. 2007); *Town of Evansville Police Dep't v. Porter*, 2011 WY 86, ¶ 11, 256 P.3d 476, 481 (Wyo. 2011).

Because there was not a contested case hearing, the court considers Rule 12.09(a), providing that, “[r]eview shall be conducted by the reviewing court and shall be confined to the record as supplemented pursuant to Rule 12.08 and to the issues set forth in the petition and raised before the agency”. Commissioners assert that, if judicial review is appropriate, the court’s duty is to “determine whether 1) Wyoming and U.S. Constitutions and Wyoming Statutes provide the Commissioners with the authority to act as they did and, if so; 2) whether Resolution 2077 was supported by a rational basis”. *Reply Brief*, p. 16. To the extent this court is tasked with reviewing the Wyoming Constitution, U.S. Constitution, or Wyoming Statutes, they are addressed purely as questions of law. *In re Adoption of Majb*, 2020 WY 72, ¶4, 465 P.3d 405, 407 (Wyo. 2020) (citations omitted).

DISCUSSION

1. *Jurisdiction.*

The Commissioners argue that because the Resolution is a legislative act and not an adjudicatory act, the issue on appeal is outside this court's jurisdiction. *Commissioner's Reply Brief*, p. 1.

The first and fundamental question on every appeal is that of jurisdiction; this question cannot be waived; it is open for consideration by the reviewing court whenever it is raised by any party, or it may be raised by the court of its own motion. *Hirschfield*, 944 P.2d at 1141 (quoting *Gookin v. State Farm Fire & Casualty Ins. Co.*, 826 P.2d 229, 232 (Wyo.1992)).

Wyoming Cmty. Coll. Comm'n v. Casper Cmty. Coll. Dist., 2001 WY 86, ¶ 12, 31 P.3d 1242, 1247-48 (Wyo. 2001).

This court is mindful that it should not involve itself with matters properly within the province of another branch of government.

One of the functions of this court is to safeguard the integrity of the State Constitution. In this instance that means that our function, stated in a concrete manner, is that of endeavoring to provide for a meaningful judicial review of the action of the Board while at the same time avoiding any infringement upon the proper exercise by that Board of its executive function.

Bd. of Cty. Comm'rs of Teton Cty. v. Teton Cty. Youth Servs., Inc., 652 P.2d 400, 410 (Wyo. 1982).

Although this court previously denied the Commissioners' *Motion to Dismiss* for lack of jurisdiction, in accordance with Rule 12.09, the court evaluates the Record on Appeal together with the parties' briefs and arguments to determine if Resolution 2077 should be construed as a legislative act or an adjudicatory function. In order to determine if the Resolution is legislative or adjudicative, this court begins by looking at the specific statutes and rules invoking¹ judicial review, including the Administrative

¹ The court agrees with the Commissioners that Rule 12.01 does not independently afford the court with jurisdiction, but rather prefaces the procedures to be followed. *Commissioner's Reply Brief*, p. 1. Nonetheless, the Rule also provides for certain standing prerequisites (*e.g.*, "aggrieved or adversely affect" and an "agency"), a significant part of the jurisdictional analysis.

Procedures Act (“APA”), Wyo. Stat. Ann. §16-3-101 *et seq*, and Wyo. R. App. Proc. 12.01. Specifically, Wyo. R. App. 12.01 provides:

To the extent judicial review of administrative action by a district court is available, any person aggrieved or adversely affected in fact by a final decision of any agency in a contested case, or who is aggrieved or adversely affected in fact by any other agency action or inaction, or who is adversely affected in fact by a rule adopted by that agency, may obtain such review as provided in this rule. All appeals from administrative agencies shall be governed by these rules.

Furthermore, the Wyoming Supreme Court has explained:

The board of county commissioners is an agency as defined by the Wyoming Administrative Procedure Act, § 16-3-101(b)(i), W.S.1977; and, therefore, its actions come under the purview of the Administrative Procedure Act, unless the action taken fits within a statutory exception. See also, *Monahan v. Board of Trustees of Elementary School Dist. No. 9, Cty. of Fremont, Wyo.*, 486 P.2d 235 (1971); *Board of Cty. Comm'rs of Teton Cty. v. Teton Cty. Youth Services, Inc.*, Wyo., 652 P.2d 400 (1982).

Holding's Little Am. v. Bd. of Cty. Comm'rs of Laramie Cty., 670 P.2d 699, 701-02 (Wyo. 1983).

Therefore, the Commissioners are an “agency” subject to the provisions of Rule 12.01.

The Administrative Procedure Act (“APA”) authorizes the court to review “all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action”. Wyo. Stat. Ann. §16-3-114(c). In addition, a court may set aside an agency decision if that decision is in excess of the agency’s statutory jurisdiction. *Id.* at (c)(ii)(C). However, precedent makes clear that the Administrative Procedures Act does not apply to legislative actions or hearings. See, *McGann v. City Council of City of Laramie*, 581 P.2d 1104, 1106 (Wyo. 1978); *Holding's Little Am. v. Bd. of Cty. Comm'rs of Laramie Cty.*, 670 P.2d 699, 702 (Wyo. 1983) (“We have specifically held that the provisions of the Administrative Procedure Act do not apply to legislative actions or hearings. Therefore, if the actions taken regarding the IDR bonds were considered to be legislative in nature, judicial review under the

Administrative Procedure Act would not be available”. Citing, *McGann v. City Council of City of Laramie*, Wyo., 581 P.2d 1104 (1978); *Lund v. Schrader*, Wyo., 492 P.2d 202 (1971); *Scarlett v. Town Council, Town of Jackson, Teton County, Wyo.*, 463 P.2d 26 (1969). In *Holdings Little America v. Board of County Commissioners of Laramie County*, the Wyoming Supreme Court expressly determined that certain types of agency actions are legislative and therefore not governed by the APA. In the *Holdings Little Am.*, case, Specifically, the Court concluded judicial review was unavailable under the APA. These cases include annexation cases, zoning cases, and school unification proceedings. The Court then determined that the issuance of IDR bonds, at issue in that case, was not a legislative act and therefore was subject to judicial review. However, there is no such controlling precedent for pari-mutuel wagering or proceedings under Wyo. Stat. Ann. §11-25-101 *et seq.*

Resolution 2077 consists of two primary parts: the first invokes future requirements for simulcast operators (live horse racing), and the second revokes previous resolutions that permitted simulcasting outside live horse racetrack premises. R.A. 00004. The Commissioners argue Resolution 2077 is legislative and not adjudicative based upon its “prospective” applicability. *Reply Brief*, p. 30. In support, the Commissioners cite to *L C & S, Inc. v. Warren County Area Plan Comm’s*, 244 F.3d 601 (7th Cir. 2001).

The court finds this case distinguishable from the present case in several respects, most notably its involvement with amending zoning ordinances. Wyoming precedent clearly recognizes that zoning issues are properly left to the legislature and are not adjudicative in nature. Furthermore, in *L C & S, Inc. v. Warren County Area Plan Comm’s*, the board’s authority to amend the ordinance was not at issue. Instead, the court addressed proclaimed due process and notice violations. While the Commissioners are correct that the absence of a sanction for previous conduct was a critical component of the court’s jurisdictional analysis, in the present case, the Resolution, while not sanctioning prior conduct, revoked prior resolutions and without express statutory authority.

The court recognizes the prospective nature of the first part of the Resolution; it clearly applies to future Pari-Mutuel events. However, the broad scope of the Gaming Commission's authority under the Pari-Mutuel Wagering Act³ coupled with the second part of the Resolution revoking prior authorization to conduct activities without express statutory authority, the court finds that the Resolution must be construed as an adjudicative and not a legislative act. Therefore, the court finds that it has jurisdiction to consider this appeal.

2. W.S. §16-3-114(c).

The Commissioners argue that the present controversy "...arises from the exercise of local control over off-track betting in Campbell County by its Board of County Commissioners-local control that was expressly and impliedly delegated to the Commissioners by statute". *Reply Brief*, p. 9. Furthermore, the Commissioners state that "[b]y granting the Commissioners the authority to approve off track betting operations in Campbell County, the Legislature and the Gaming Commission also granted the implied power to revoke and condition that approval". *Id.* at 16.

The County's ability to authorize pari-mutuel events, and the authority to issue resolutions, emanates from Wyo. Stat. Ann. §11-25-101 *et seq.*, Wyoming's Pari-Mutual wagering laws. Counties do not have sovereignty independent from the state, and the only power available to the county is the power delegated to them by the state. *Seherr-Thoss v. Teton Cty. Bd. Of Cty. Comm'rs*, 2014 WY 82, ¶ 24, 329 P.3d 936, 946 (Wyo. 2014)(Citations omitted). The pari-mutuel statutes allow the Gaming Commission to authorize simulcasting subject to various conditions, including prior approval by the county where such simulcasting is conducted. Wyo. Stat. Ann. §11-25-102(a)(vii)(B).

³ Under Wyo. Stat. Ann. §11-25-101 *et seq.*, the Gaming Commission's authority includes supervising permittees and events, resolving conflicts between permittees, and the requirement to promulgate rules for the "supervising, disciplining, suspending, fining and barring" all persons required to be licensed under the Act.

A "Pari-mutuel event" is defined as "the events which are authorized by the commission for the conduct of horse racing (to include quarter horse, thoroughbred or other approved races), harness racing, cutter racing, chariot racing, chuckwagon racing, professional roping and rodeo events...". Wyo. Stat. Ann. §11-25-102(a)(v). This definition further provides that "...the commission may authorize and promulgate rules providing for pari-mutuel wagering on events that have previously occurred, utilizing an electronic system or device that affords an opportunity for the exercise of skill or judgment where the outcome is not completely controlled by chance alone". *Id.* The commission is responsible for issuing pari-mutuel permits and may only issue such permits to a county, city, incorporated town, county fair board, or any corporation or association with approval by the board of county commissioners. Wyo. Stat. Ann. §11-25-201(a).

The Resolution explains that it was adopted "pursuant to its authority set forth in W.S. 11-25-102(a)(vii)(B)". R.A. 00004. However, W.S. §11-25-102(a)(vii)(B) does not expressly permit the Commissioners to revoke prior resolutions or to regulate pari-mutuel events; only express authority to "approve" an applicant. The court finds this authority to the County carries with it the implied authority to reject an application. Beyond this implied authority to the counties, the enabling statutes demonstrate a clear intent for the Gaming Commission to regulate the permitting process as well as the conduct of those approved.

To show implied authority to revoke prior approvals, the Commissioners cite several cases, including *Cerrillos Gravel Prod., Inc. v. Bd. of Cty. Comm'rs of Santa Fe Cty.*, 2005-NMSC-023, 138 N.M. 126, 117 P.3d 932. Therein, the court evaluated the authority of a county board to implement and enforce zoning ordinances. The court explained:

The broad enabling legislation need not expressly authorize suspension or revocation as long as those actions are consistent with the statutory authority to enforce zoning regulations. *See City of Santa Fe v. Gamble-Skogmo, Inc.*, 73 N.M. 410, 412-15, 389 P.2d 13, 16-18 (1964) (holding that an ordinance creating an historical district and requiring new buildings to harmonize with old ones was within the scope of the enabling

statute allowing municipalities to zone consistently with a comprehensive plan to promote the general health and welfare).

Cerrillos Gravel Prod., Inc. v. Bd. of Cty. Comm'rs of Santa Fe Cty., 2005-NMSC-023, ¶ 14, 138 N.M. 126, 130, 117 P.3d 932, 936.

Unlike the situation in *Cerrillos Gravel*, the enabling legislation for the County in the present case is not “broad.” Specifically, there is not specific statutory authority for a county to “enforce” or to regulate those applicants approved by the Gaming Commission. Conversely, the Gaming Commission, not the county, is charged with the authority to suspend a permit, to monitor the total amount of money wagered (11-25-201(b)(i)), to monitor the amount distributed to the county and city or town (11-25-201(b)(ii)), and to fully vet an applicant (11-25-201(e)).

In addition, the Commissioners cite *Hackel v. Macomb County Comm'n*, 826 N.W. 2d 753 (Mich. App. 2012) to show that the Commissioners implied authority to revoke the prior resolutions and to change the terms of the permitting process. This case shows that the normal meaning of ‘approve’ with relation to government action naturally implies the power to “disapprove”. *Reply Brief*, p. 17. The court agrees. There is not reason to believe that the Commissioners have an obligation to approve any application. The natural corollary to the power to “approve” is the power to disapprove, otherwise the language in the statute is rendered meaningless. Furthermore, the court cannot accept the Commissioners’ “two-step process along parallel tracks” argument. A plain reading of the statutes shows that the Gaming Commission is vested with broad regulatory authority, and that the county approval, as required in Wyo. Stat. Ann. §11-205-201(a) is a *condition precedent* for the Gaming Commission’s approval. Unlike the situation in *Hackel*, there was no permit to “approve” or disapprove in the present case. The Commissioners approved a resolution (#2077) that defined the types of permits that could be approved in the future, and revoked previous resolutions that approved prior applicants for pari-mutuel wagering and horseracing.

The court must consider the words in the Pari-Mutuel Wagering Act within the context they were written. The statutory scheme provides the Gaming Commission with

broad authority, the primary responsibility for approving permits, and the responsibility of oversight of such activities. A party is permitted to conduct pari-mutuel events only after the county and the commission approve the application. However, the statute specifically requires the applicants to disclose to the **commission**, not the county, their identity, a proper financial statement showing the financial responsibility of the applicant, the purpose and use of the permit, the events to be conducted under the permit and the arrangements therefore, the manner of wagering, the names and identification of those to supervise the manner of wagering, and the controls and supervision by the permittee. Wyo. Stat. Ann. §11-25-201(e). Furthermore, the commission may “issue, amend or refuse to issue permits in its discretion”. *Id.* at (f).

Considering the statutory duties vested with the Gaming Commission, with no provision for the County, aside from granting (or impliedly rejecting) approval, it would be incongruent to find that a County has the additional authority to revoke prior approvals, including those resolutions that approved simulcasting outside live horse race-track premises. The statutes expressly allow the commission to issue permits for a definitive time-period (3 years), and subject to the commission’s oversight. The statutes do not specifically authorize a county to revoke prior approvals, nor can the court find that such authority is implied. A plain reading of the statutes shows that once an applicant is approved by the commission and the county via resolution, the terms of the three (3) year permit are governed exclusively by the Gaming Commission. The Commissioners’ revocation of the prior approvals is at odds with these statutes. Given the “restrictive approach that precedent takes with county powers”, (*Bd. Of Trustees of Laramie Cty. v. Bd. Of Cty. Commissioners of Laramie Cty.*, 2020 WY 41, ¶ 19, 460 P.3d 251, 260 (Wyo. 2020)), coupled with the rules of statutory construction, the court finds that the Commissioners lacked the implied authority to revoke the prior resolutions, and doing so exceeded the power available to them under these circumstances. As a result, the court finds that Resolution 2077 must be set aside.

Having concluded that the Commissioners lacked authority to revoke the prior resolutions as demonstrated in Resolution 2077, the court finds that it is unnecessary to determine whether the County has the authority to establish, by resolution, the

parameters for granting approval to an applicant or to determine the notice and/or due process claims addressed in the parties' briefs.

CONCLUSION

The court concludes that it has jurisdiction to consider this appeal. Resolution 2077 was an adjudicatory act and not legislative. Furthermore, Resolution 2077 revoked prior resolutions serving as the Commissioners' prior "approval," as contemplated by Wyo. Stat. Ann. §11-25-201(a), for the Petitioners' permit to conduct pari-mutuel and simulcast activities pursuant to Wyo. Stat. Ann. §11-25-101 *et seq.* Once those approvals were granted, the regulation of the Petitioners' permit was vested exclusively with the Gaming Commission and the revocation of those resolutions exceeded the Commissioners' authority. Accordingly, the court finds that Resolution 2077 must be set aside pursuant to Wyo. Stat. Ann. §16-3-114(c)(ii)(C). The court further finds that the remaining issues presented in this appeal need not be addressed for the reasons explained herein.

ORDER

Having carefully considered the record and the briefs filed herein, the court hereby orders the following:

1. *The Petition for Judicial Review* dated May 7, 2021 is hereby GRANTED and Campbell County Resolution No. 2077 is hereby SET ASIDE.

Dated this 22 day of March, 2022.

Copies:

Sundahl Powers Kapp & Martin
MacPherson & Thompson
Hirst Applegate
Holland & Hart

3/28/2022 pm


F. Scott Peasley
District Court Judge