BOARD OF BUSINESS REGULATION
TRANSMITTAL OF INFORMATION BY FLORIDA RACE TRACKS

To: Richard A. Pallot, Chairman, Board of Business Regulation, Miami

Prepared by: Herbert T. Schwartz, Deputy Attorney General and George R. Georgieff, Assistant Attorney General

QUESTION:
Is it unlawful for Florida horse tracks to comply with a request for track and racing information by the New York City Off Track Betting Corporation?

SUMMARY:
The apparent exception created in 18 U.S.C. §1084(b) does not apply to Florida because the state's authority to exercise its police power in regulation of gambling activities is recognized by Congress in 18 U.S.C. §1084(c). Therefore, the transmission of racing data from Florida race tracks to the New York City Off Track Betting Corporation would violate Florida law.

The provisions of Florida Statutes involved are §550.35, particularly §550.35(1)-(4), and §550.16, relating to the authorization of a pari-mutuel pool within a track enclosure.

As I understand the particulars, spokesmen for the New York City Off Track Betting Corporation have sought to make arrangements with the several horse tracks in Florida whereby in exchange for a consideration said tracks would provide the New York enterprise with immediate reports pertaining to races conducted within their enclosures. In short, this would provide the state of New York with an additional track posting so that off-track betters in New York would not have to wait in order to receive all pertinent information such as odds, post positions, scratches, jockey changes, weights, and of course the results of any given race.

I understand also that the spokesmen for the New York City off track betting enterprise have concluded that §1084 of Title 18 of the United States Code is a lawful predicate upon which to base the authorization of such a contractual arrangement between the Florida tracks and their corporation.

Subsection (b) of §1084, U.S.C. supra, reads in pertinent part as follows: "Nothing in this section shall be construed to prevent the transmission . . . from a State where betting on that sporting event or contest is legal into a State in which such betting is legal." This provision of the federal law standing alone would seem to permit the transmission of the information from Florida to New York except for the provisions of Florida law which make such transmission illegal. The provisions of Florida law cited below must be viewed in pari materia:

It shall be unlawful for any person to transmit by any means whatsoever racing information to any other person, or to relay the same to any other person by word of mouth, by signal, or by use of telephone, telegraph, radio, or any other means, when the information is knowingly used or intended to be used for illegal gambling purposes, or in furtherance of such gambling. Section 550.35(2), F. S.

The sale of tickets or other evidences showing an interest in or a contribution to a pari-mutuel pool is hereby permitted within the enclosure of any horse race track and dog race track licensed and conducted under this law, but not elsewhere in this state . . . . Section 550.16(1), F. S. (Emphasis supplied.)
I am of the opinion that these statutes announce the public policy of Florida as being clearly opposed to any form of off-track betting.

Further, this view is substantiated by §550.35(3), F. S., which reads:

This section shall be deemed an exercise of police power of the state for the protection of the public welfare, health, peace, safety and morals of the people of the state and all of the provisions herein shall be liberally construed for the accomplishment of this purpose.

The legislature has made clear not only what the public policy of Florida is in regard to regulation of gambling, but that the regulatory statutes are to be liberally construed to accomplish the expressed legislative mandate.

Thus, it becomes a matter of critical importance to view the obvious Congressional intent contained in 18 U.S.C. §1084(c): “Nothing contained in this section shall create immunity from criminal prosecution under any laws of any State, Commonwealth of Puerto Rico, territory, possession, or the District of Columbia.” The clear and unambiguous language of 18 U.S.C. §1084(c) makes it apparent that Congress did not intend to insulate a person from prosecution under the gambling law of the several states.

Congress clearly did not intend to nullify the expressed public policy and statutory regulation of gambling activities in Florida by the enactment of 18 U.S.C. §1084. The legislative history of the act is most instructive:

... the purpose of [subsection c] ... makes certain that the area encompassed by the bill is not preempted by the Federal Government. 1961 U.S. Code Cong. and Adm. News, p. 2631.

... the right of a state to prosecute for a violation of its penal laws is preserved by [subsection c] which is a disclaimer of any possible preemption by the Federal Government. id. at 2633.

Thus, it is clear that the Florida provisions prohibiting off-track betting and the transmission of information relating thereto are precisely the type of state penal laws envisioned by the disclaimer contained in 18 U.S.C. §1084(c).

In the event that the New York enterprise or those acting on its behalf are found to be establishing sources of information without the express approval or consent of the Department of Business Regulation acting pursuant to a lawful mandate, I am satisfied that injunctive relief in the appropriate federal district court could be sought and secured since their action in so doing would constitute a violation of the criminal laws of this state.

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CONCEALED FIREARMS
CARRYING BY PART-TIME OR AUXILIARY POLICE OFFICER

To: C. S. Berman, Chief of Police, Miami Springs
Prepared by: Reeves Bowen, Assistant Attorney General

QUESTION:

May a “part-time or auxiliary police officer,” as defined in §23.061(4), F. S., when acting within the scope of his official duties, carry a pistol on his person, either concealed or unconcealed, without obtaining a license from the county commissioners?

SUMMARY:

Lawfully authorized, appointed and qualified “part-time or auxiliary police officers,” as defined by §23.061(4), F. S., may carry a pistol on their persons, whether concealed or unconcealed, without