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Via Email regcomments@gcb.nv.gov

Marie Bell, Executive Secretary
Nevada Gaming Commission
1919 College Parkway
Carson City, Nevada 89706

Re: **2020-07R: Comments to Proposed Amendments to NGC Regulation 22**

Dear Executive Secretary Bell:

I am counsel to Las Vegas Dissemination, Inc. (“LVDC”), and to Nevada Disseminator Service, Inc. (“NDS”). Please accept this letter as comments regarding the amendment to NGC Regulation 22.080 recently adopted with a sunset provision (“Amendment”), for the workshop to be held on September 22, 2020.

As you know, LVDC has been a licensed disseminator of race information in Nevada since 1988. LVDC was founded by John Gaughan. Since its inception, LVDC has been an integral part of Nevada’s race wagering industry. And has been supplying the pari-mutuel industry since 1984, and was a pioneer in the creation of simulcasting for the racing industry.

Executive Summary

Notwithstanding the statements made by proponents of the Amendment at the August 27, 2020 Nevada Gaming Commission (“Commission”) meeting, LVDC maintains its belief that the Amendment is contrary Nevada’s statutes. This belief is based not only on the plain language of NRS 463.430 and related statutes, but also on the legislative history of these statutes. The Nevada Legislature has made it clear that information regarding out of state horse racing to be used to the operation or maintenance of a race book in Nevada must be **received** from a person who either is a licensee under NRS 463.430-480, or from an affiliate licensee by means of a computerized system for bookmaking. The exception in NRS 463.430(2)(a) only exempts those who **provide** a free televised broadcast from violating the statute.; thus, the use of a free broadcast to maintain and operate... any race book remains unlawful.

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Requirement for Licensed Disseminators

The Nevada Gaming Control Act requires that: (1) those wishing to supply or disseminate with Nevada race information from outside the state must be licensed as a disseminator, and (2) race books must only use race information from licensed disseminators to maintain and operate their books, including determining the results of races.

Specifically, NRS § 463.430, provides, in its entirety:

1. It is unlawful for any person in this state to receive, supply or disseminate in this state by any means information received from any source outside of this state concerning racing, when the information is to be used to maintain and operate any gambling game and particularly any race book, except off-track pari-mutuel wagering for which the user is licensed pursuant to chapter 464 of NRS, without first having obtained a license so to do as provided in NRS 463.430 to 463.480, inclusive.
2. The provisions of this section do not apply to:
 - (a) Any person who provides a televised broadcast which is presented without charge to any person who receives the broadcast.
 - (b) Any licensee who has been issued a gaming license and receives from or supplies to any affiliated licensee, by means of a computerized system for bookmaking used by the licensee and the affiliated licensee, information concerning racing.
3. For the purposes of this section:
 - (a) Any broadcasting or display of information concerning racing held at a track which uses the pari-mutuel system of wagering is an incident of maintaining and operating a race book.
 - (b) “Affiliated licensee” means any person to whom a valid gaming license or pari-mutuel wagering license has been issued that directly, or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, a licensee.

However, the current language of this statute has changed numerous times since its adoption, and such changes are relevant to the Amendment.

Nevada first required disseminators of race information to be licensed in 1949. 1949 Statutes of Nevada, Ch. 152, p. 236. Such licensing was deemed to be for the purpose of protecting the public and the public interest. *See Dunn v. Tax Commission*, 67 Nev. 173 (Nev. 1950) (setting forth history of racing dissemination in Nevada, and rejecting contention that such regulation was not for intended for the protection of the public). Such licensing was brought within the Commission’s authority in 1959, when the Commission was established. 1959 Statutes of Nevada, p. 45 (amending NRS 463.440).

Originally, it was unlawful merely to supply or disseminate race information from out of state to be used for a race book inside Nevada, with public utilities excluded from the prohibition, an exception that would have included free television broadcasts. But in 1983, the legislature made it unlawful to receive such information, as well, 1983 Statutes of Nevada Ch. 416, p. 1035. At the same time, the Legislature also amended NRS 436.440, to add the following statement, which is also relevant to the issues raised by the Amendment

1. In addition to the state policy concerning gaming as set forth in NRS 463.0129, the legislature hereby finds, and declares to be the public policy of this state concerning activities and information related to wagering on horse races that:

(a) All persons licensed to operate and maintain a sports pool or horse race book are entitled to receive on a fair and equitable basis all information concerning horse racing that is being disseminated into and within this state.

(b) In order to protect the health, safety, morals, good order and general welfare of the public, *all persons, associations, locations, practices and activities related to the dissemination and use of information concerning horse racing should be controlled, supervised and properly licensed.*

NRS 463.440, adopted 1983 Statutes of Nevada, Ch. 416, p. 1036 (emphasis added).

Exception to Prohibition on Providing Free Broadcast

History of the Exception

The exception in NRS 463.430 (2)(a), which has been the focal point of discussion in connection with the Amendment, has evolved. This evolution helps to illustrate the legislative intent for the exception.

In 1985, NRS 463.430(2) was amended to replace the language exempting public utilities from the statutory prohibition to the following:

2. The provisions of this section do not apply to any televised broadcast which is presented without charge to any person who receives the broadcast.

1985 Statutes of Nevada, Ch. 654, p. 2141. Thus, following the 1985 change, it was unlawful to receive, supply or disseminate out of state race information without the proper licenses, but this prohibition did not apply to a free televised broadcast. Had the language remained thus, then the arguments set forth by the proponents of the change to NGC Regulation 22.080 would have an argument that the statute permitted the proposed change.

However, in 1989, NRS 463.430(2) was amended *again*. A new subsection (b) was added and the language from 1985 was changed to what is now found in NRS 463.430(2)(a) (the “Exception”) as follows:

2. The provisions of this section do not apply to:

(a) **Any person who provides** a televised broadcast which is presented without charge to any person who receives the broadcast

(b) Any licensee who has been issued a gaming license and receives from or supplies to any affiliated licensee, by means of a computerized system for bookmaking used by the licensee and the affiliated licensee, information concerning racing.

1989 Statutes of Nevada, Ch. 519, p. 1097.

Interpreting the Exception

Courts generally give great deference to an agency's interpretation of a statute that the agency is charged with enforcing, provided that the regulation does not conflict with existing statutory provisions. *State, Div. of Insurance v. State Farm*, 116 Nev. 290, 293 (Nev. 2000). Here, the interpretation of NRS 463.430 upon which the amendment to NGC Regulation 22.080 is based conflicts with the statutory provision.

Where the language of a statute is plain and unambiguous, and its meaning is clear and unmistakable, there is no room for construction, and the courts are not permitted to search for its meaning beyond the statute itself. *Attorney General v. Board of Regents*, 114 Nev. 388, 392 (Nev. 1998). Words must be given their plain meaning, unless this violates the spirit of the act. *McKay v. Bd. Of Supervisors*, 102 Nev. 644, 648, 730 P.2d 438, 441 (1986). Here, the 1989 amendment removed language that arguably could have allowed both the **provision** and **receipt** of free televised race information by race books. The revised language limits the Exception to the **person who provides** free broadcasts of race information. Removal of such language is a clear indication of the Legislature's intent. *McKay v. Bd. Of Supervisors*, 102 Nev. at 651 (noting that deletion of a previously permitted practice during a statutory amendment indicated that the practice was intended to be prohibited).

Following the 1989 amendments, the general rule prohibits the receipt, supplying, or dissemination of out of state racing information when such information will be used to operate or maintain a sports book. The Exception, as modified in 1989, no longer exempts the free broadcast of race information, but instead, only exempts the **broadcaster** from providing a free broadcast. In other words, the Legislature intended to (a) exempt from liability a person who provides a free television broadcast to a race book without securing a disseminator's license, while (b) assuring that a race book obtain race information from a state licensed disseminator in connection with race book operations (i.e. confirming winners, making payouts, etc.).

The Amendment, however, allows a race book, with permission of the Board Chair, to determine the winners or wager payouts on a horse race based on nationally televised broadcasts of races, which broadcasts it would not receive from a licensed disseminator from within the State of Nevada. Thus, the Amendment is inconsistent with NRS 463.430.

The Amendment also is inconsistent with the legislative mandate of NRS 463.440 (1)(b) that “*all persons, associations, locations, practices and activities related to the dissemination and use of information concerning horse racing should be controlled, supervised and properly licensed*” because the Amendment would allow a race book to operate using information that comes from a source that is not “*controlled, supervised and properly licensed.*”

While, during the hearing, DAG Michela cited the statutory language in subsection (1)(a), stating that race books are entitled “to receive on a fair and equitable basis all information concerning horse racing that is being disseminated into and within this state,” he failed to acknowledge the above language in the immediately following subsection, which makes clear that the purpose of requiring licensure for all aspects of out of state race information is to ensure that said information is fairly and equitably available, and under this State’s regulation. Free televised broadcast are not under this Commission’s control, and therefore, should not be used to maintain and operate race books in this state.

Similarly, the contention of the DAG that the amendment is consistent with the statute does not appear to have taken the legislative history, including the narrowing of the exemption found in 463.430(2)(a), into consideration.

Nor can it be said that the Exception is meaningless if race books are not permitted to use information from free broadcasts for maintaining and operating the race book. As the 1989 amendment to NRS 463.430 made clear, the purpose of the Exception is to avoid the criminalization of the conduct of those who broadcast race information for the free entertainment of television viewers. It did not permit such race information from broadcasters to be used by race books to determine race winners or payouts (i.e. “maintain and operate” the race book).

And finally, the statement that the interpretation put forth by LVDC (and supported by NDS) would mean that race books could not receive race information unless the race books were themselves licensed as disseminators does not take into account the state’s prohibition against receiving information from outside the state. A race book that receives race information from a Nevada licensed disseminator is not receiving the information from out of state, and therefore, is not in violation of the statute. Similarly, a race book does not need to be licensed as a disseminator because it is receiving the information from within the state (i.e. from a licensed disseminator).

Conclusion

In sum, the Legislature has adopted a policy that all persons and activities associated with disseminating race information should be “controlled, supervised and properly licensed.” Similarly, it requires that (1) those wishing to supply or disseminate with Nevada race information from outside the state must be licensed as a disseminator, and (2) race books must only use race information from licensed disseminators to maintain and operate their books, including determining the results of races. There are only two exceptions – one for licensed affiliates and the other is the Exception. The Exception allows a person to provide, without a license, a free televised broadcast. The Exception does not allow a race book to receive that broadcast for use to “maintain or operate” the race book (including to determine winners or payouts).

We believe the now-prior version of NGC Regulation 22.080(4) aligns with the statutory requirements. It stated:

“[a] licensed race book shall determine the winners of or payouts on wagers on horse and other animal races only with information the book receives from licensed disseminators pursuant to Regulations 20 and 21.”

NGC Reg. 22.080(4) (emphasis added).

LVDC would respectfully request that the Commission repeal the amended version of NGC Regulation 22, or in the alternative, allow the sunset provision to run its course.

Best regards,

A handwritten signature in black ink, appearing to read 'Mark E. Ferrario', is written over a large, thin, horizontal oval scribble.

Mark E. Ferrario
Shareholder

MEF:TDC

cc: John Gaughan
Gregory Wright
Todd J. Roberts