

BEFORE THE NEBRASKA STATE RACING COMMISSION

IN RE: }
 }
THE APPLICATION OF FONNER PARK }
FOR APPROVAL OF }
THE HISTORIC HORSE RACING }
PARI-MUTUEL FORM OF WAGERING }
AND }
THE PARIMAX MUTUEL WAGERING SYSTEM }

FINAL ORDER

FINDINGS OF FACT, CONCLUSIONS OF LAW, and FINAL ORDER

This matter came before the Nebraska State Racing Commission (hereinafter the “Commission”) on the application of Hall County Livestock Improvement Association, a Nebraska non-profit organization, d/b/a Fonner Park (hereinafter “Fonner”) for approval of the Historic Horse Racing (hereinafter “HHR”) form of pari-mutuel wagering and the PariMAX Mutuel Wagering System (hereinafter “PariMAX”).

After providing public notice in full compliance with Nebraska law, the Commission held an initial evidentiary hearing on this application in Lincoln, Nebraska on January 16, 2019. At the conclusion of that hearing, the Commission granted interested parties until 4 pm CST on February 1, 2019 to submit additional materials to the Commission before a supplemental evidentiary hearing was scheduled.

Thereafter, after providing public notice in full compliance with Nebraska law, the Commission convened a supplemental evidentiary hearing in Grand Island, Hall County, Nebraska on July 31, 2019.

WITNESSES

During the course of the evidentiary hearings the following individuals testified:

Proponents:

- 1: Chris Kotulak, Chief Executive Office of Fonner Park
- 2: Cavot Haggin, PariMAX
- 3: Tim Yelton, PariMAX
- 4: J. Curtis Linnell, Executive Vice-President, Thoroughbred Racing & Protective Bureau
- 5: Zac Mader, President, Nebraska Thoroughbred Breeders Association
- 6: Jesse Compton, Board Member and Licensed Trainer, Nebraska Horsemen's Benevolent and Protective Association
- 7: Mike Newlin, Vice-President, Omaha Exposition & Racing, Inc.
- 8: June O'Neill, Licensed Trainer and Thoroughbred Breeder
- 9: Barry Lake, President, Nebraska Horsemen's Benevolent and Protective Association

Opponents:

- 10: Nate Grasz, Policy Director, Nebraska Family Alliance
- 11: Laura Nigro, Assistant Nebraska Attorney General
- 12: Pat Loontjer, Executive Director, Gambling with the Good Life

EXHIBITS

The Commission received into evidence the following exhibits:

- 1: Kentucky Racing Regulations – redline version: 1:001, 1:011, 1:090, 1:005, 1:125, 2:010, 2:060, and 2:190.
- 2: Kentucky Racing Regulations: 1:001, 1:011, 1:090, 1:005, 1:125, 2:010, 2:060 and 2:1290.
- 3: Decision of Franklin County (KY) Circuit Court, Division II, Case No: CI-01-01154.
- 4: Brief of Fonner Park in support of the PariMAX Historic Horse Racing pari-mutuel wager.
- 5: Written report: A Field Trip to Ellis Park, Kentucky by Pat Loontjer. (Objection by Fonner Park was overruled).

- 6: Written report: Gambling with the Good Life History by Pat Loontjer.
- 7: Neb. Rule of Racing 23.001.01.
- 8: Email from Barry Lake dated January 16, 2019 referencing court decisions in Wyoming.
- 9: Letter of January 3, 2019 submitted by Wyoming Pari-Mutuel Racing Commission.
- 10: Documents submitted by the Wyoming Pari-Mutuel Racing Commission dated January 3, 2019.
- 11: Letter and documents submitted by the Kentucky Horse Racing Commission dated January 9, 2019.
- 12: Email from Oregon Racing Commission dated January 11, 2019.
- 13: Email from Edward Menton dated January 23, 2019.
- 14: Supplemental email brief submitted by Fonner Park on February 1, 2019.
- 15: Letter brief of PariMAX Holdings, LLC in support of PariMAX Pari-Mutuel Wagering System.

The Commission took judicial notice of the Nebraska Constitution, Neb. Rev Stat. section 2-1201, as amended, through and including Neb. Rev. Stat. section 2-1246, as amended, and the Nebraska Rules of Racing as adopted by the Commission.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter came before the Commission for determination on July 31, 2019 in Grand Island, Hall County, Nebraska. Following the evidentiary hearings, the testimony, and the evidence received, the Commission made the following Findings of Fact and Conclusions of Law:

1: The Nebraska Constitution, Nebraska Statutes and the Nebraska Rules of Racing are the controlling legal foundation for any decision related to pari-mutuel wagering in Nebraska.

2: The Nebraska Constitution specifically provides the approval of pari-mutuel wagering:

“...licensing and regulation of wagering on the results of horseraces wherever run, either within or outside of the state, by the pari-mutuel method, when such wagering is conducted by licensees within a licensed racetrack enclosure.”

Nebraska Constitution, Article III – 24 (Emphasis Added).

3: Neb. Rev. Stat. section 2-1201.01 provides:

“The purpose of the State Racing Commission is to provide statewide regulation of horseracing in order to prevent and eliminate corrupt practices and fraudulent behavior, and thereby maintain a high level of integrity and honesty in the horseracing industry of Nebraska and to insure that all funds received by the commission are properly distributed.”

4: Neb. Rev. Stat. section 2-1207 (1) provides:

“Within the enclosure of any racetrack where a race or race meeting licensed and conducted under sections 2-1201 to 2-1218 is held or at a racetrack licensed to simulcast races or conduct interstate simulcasting, the parimutuel method or system of wagering on the results of the respective races may be used and conducted by the licensee. Under such system, the licensee may receive wagers of money from any person present at such race or racetrack receiving the simulcast race or conducting interstate simulcasting on any horse in a race selected by such person to run first in such race, and the person so wagering shall acquire an interest in the total money so wagered on all horses in such race as first winners in proportion to the amount of money wagered by him or her. (Emphasis Added).

5: Fonner Park is a racing association licensee of the Commission and operates a horse racing facility offering pari-mutuel wagering on races at its facility in Grand Island, Hall County, Nebraska.

6: Based on the foregoing, the Commission has the constitutional and statutory duty, authority, and obligation to determine the validity of a wager complying with the definition of pari-mutuel wagering in Nebraska by a licensing racing association within a

licensed racetrack enclosure without the necessity of statutory enactment or constitutional amendment.

- 7: For example, *inter alia*, the Commission has previously approved the following wagers in Nebraska for licensed racing associations within a licensed racing enclosure: win, place, and show; daily double, Pick N, exacta, and trifecta.
- 8: Technological growth and developments have allowed totalizator companies the ability to specifically program totalizator machines to offer pari-mutuel wagers in addition to those identified in section 7 hereinabove, with such pari-mutuel wagers complying in all respects with the rules and regulations in Nebraska of pari-mutuel wagering.
- 9: Fonner has requested that the Commission authorize the implementation of the pari-mutuel wager more commonly referred to as Historic Horse Racing (“HHR”). Further, Fonner has requested the Commission approve the pari-mutuel HHR wager and related software specifically known as the PariMAX Pari-Mutuel Wagering System (“PariMAX”).
- 10: That other states, *inter alia*, Kentucky, Wyoming and Oregon have statutes and rules of racing similar to Nebraska, and such states have previously authorized the Historic Horse Racing pari-mutuel wager and the PariMAX Pari-Mutuel Wagering System.
- 11: The Commission was presented with unrefuted testimony to the following facts:
 - A: That the money wagered on the PariMAX terminals is tied into a mutual pool, and a percentage is returned to the licensed racetrack.
 - B: That the PariMAX terminals are not slot machines, and there are no predetermined chip programmers, as are typical of slot machines.

- C: That the PariMAX terminals operate like the independent betting terminals already in operation at Nebraska racetracks today.
- 12: J. Curtis Linnel, the Executive Vice-President of the Thoroughbred Racing Protective Bureau (hereinafter “TRPB”), presented the following unrefuted testimony:
- A: That the TRPB is an independent third-party auditor of pari-mutuel systems.
- B: That the TRPB audits and/or reviews \$10 billion in wagers across the country each year.
- C: That the TRPB is the industry recognized and definitive expert for pari-mutuel systems.
- D: That the PariMAX systems are pari-mutuel terminals and not independent machines.
- E: That the PariMAX terminals are pari-mutuel in that there are specific wagers and pools, statutory commissions are deducted, and the payouts go from the pools to the customers.
- F: That the only thing leveraged against the pool is the recognized statutorily permitted takeout rate (fees and expenses are not leveraged).
- 13: The PariMAX terminals have some visual similarities to slot machines. However, Nebraska law does not allow the design of the terminals to weigh into or be considered in the decision of whether the terminals comport with the requirements of pari-mutuel wagering in Nebraska law.
- 14: “Parimutuel” or “pari-mutuel wagering” is not defined by Nebraska statutes or regulations. However, the federal Interstate Horse Racing Act, 15 U.S.C. section 3001, *et seq.*, defines pari-mutuel wagering as “any system whereby wagers with respect to the

outcome of a horse race are placed with, or in, a wagering pool conducted by an entity licensed or otherwise permitted to do so under State law, and in which the participants are wagering with each other and not against the operator.” The PariMAX terminals meet that definition, and the HHR wagers permitted on the terminals are pari-mutuel wagers complying with this definition.

- 15: That the essential element of a pari-mutuel wagering system is that the patron does not wager against the Association. HHR and PariMAX satisfy this element.
- 16: That the request of Fonner Park for the approval of the pari-mutuel Historic Horse Racing wager and the PariMAX Pari-Mutuel Wagering System is within the express jurisdiction and authority of the Commission.

Further, this type of wager meets every statutory definition of pari-mutuel wagering including the Nebraska Constitution mandate of the state to govern the “licensing and regulation of wagering on the results of horseraces, wherever run, either within or outside of the state, by the pari-mutuel method, when such wagering is conducted by licensees within a licensed racetrack enclosure.”

See, Nebraska Constitution, Article III-24. (Emphasis Added)

- 17: The Commission finds that the Nebraska Constitution provides specific constitutional exceptions to the prohibition in Nebraska against games of chance and specifically permits and authorizes the licensing and regulation of pari-mutuel wagers on horse races.

See, Nebraska Constitution, Article III-24.

- 18: Through the testimony at the evidentiary hearings and the evidence received, the Commission hereby finds:

A: That Historic Horse Racing is a valid pari-mutuel wager in full compliance with the Nebraska Constitution and Nebraska law and is hereby approved as a pari-mutuel wager under Nebraska law; and

B: That the PariMAX Pari-Mutuel Wagering System is a valid pari-mutuel wagering system and related wagering software, with security and auditing systems in full compliance with the Nebraska Constitution, Nebraska law, and the Nebraska Rules of Racing and is hereby approved as a pari-mutuel wagering system and software.

FINAL ORDER

At the Commission's July 31, 2019 public hearing in Grand Island, Hall County, Nebraska and upon proper statutorily compliant notice, a motion was made and seconded to approved the Historic Horse Racing pari-mutuel wager and the PariMAX System of pari-mutuel wagering before the full five members of the Nebraska State Racing Commission

Thereafter, discussion was held on the motion before calling the question for a vote of the motion on the record.

Voting to approve the motion were:

Commissioner Dennis P. Lee
Commissioner Jeffrey P. Galyen
Commissioner Hellen Abbott Feller

Voting against the motion were:

Commissioner Thomas Patterson
Commissioner Janell Beveridge

The motion was approved, 3-2.

IT IS THEREFORE THE ORDER OF THE NEBRASKA STATE RACING COMMISSION that the application of Fonner Park for approval of the Historic Horse Racing (HHR) pari-mutuel wager is hereby approved, and the PariMAX Pari-Mutuel Wagering System is hereby approved.

IT IS SO ORDERED this 4th day of December, 2019.

NEBRASKA STATE RACING COMMISSION

By: _____



Dennis P. Lee
Chairman