



DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

April 5, 2002

Steven W. Barham
Executive Director
Oregon Racing Commission
Portland State Office Building, Suite 310
800 NE Oregon Street #1
Portland, OR 97232

Clifton D. Lewis
Director of Business Services
Oregon State Fair and Exposition Center
2330 17th Street NE
Salem, OR 97303-1788

Re: Opinion Request OP-2002-2

Dear Mr. Barham and Mr. Lewis:

You ask who controls or owns several portable horse stalls that the Oregon State Fair and Exposition Center (Fair) purchased with a special track fund established by ORS 462.057(1)(c)(F). We conclude that the Fair controls the stalls, which are owned by the State of Oregon.

Discussion

The Oregon Racing Commission (ORC) regulates animal racing in Oregon. ORC may grant the Fair up to 65 days per fiscal year to conduct racing at the state fairgrounds. ORS 462.125(5). When the Fair conducts races, it must make the payments required of horse and mule racing licensees under ORS 462.057(1). *Id.* Specifically, ORS 462.057(1)(c)(F) requires the Fair to deposit from the gross mutual wagering into

a special track fund to be used primarily for improving the race track facilities benefiting the horse and mule owners, trainers or breeders in the barn area – .2 percent. All such funds shall be retained by the licensee in a separate account from all other funds and no disbursements or transfers shall be made therefrom without prior approval of the commission. All physical *improvements* paid from such funds shall satisfy reasonable fire, health, quality and construction standards established or approved by the commission. Unless the commission provides

otherwise, such *improvements* shall be made on the racecourse where the race meet which created the fund was held. (emphasis added.)

With funds paid under this statute, the Fair purchased portable horse stalls to improve its track facilities. This purchase was approved by ORC. The question presented is who controls the improvements, which requires us to interpret ORS 462.057(1)(c)(F).

In interpreting a statute, our task is to discern the intent of the legislature. ORS 174.020; *PGE v. Bureau of Labor and Industries*, 317 Or 606, 610, 859 P2d 1143 (1993). We first examine the statute's text and context, including other provisions of the same statute, related statutes, and prior versions of the statute. In so doing, we consider statutory and judicially developed rules of construction that bear directly on how to read the text, including the rule that "words of common usage typically should be given their plain, natural, and ordinary meaning." *Id.* at 611. If the legislative intent is clear from the text and context of the statute, we look no further.

Under ORS 462.057(1)(c), the Fair must allocate .2 percent of gross mutuel wagering to a "special track fund." The Fair may, with the approval of ORC, disburse or transfer money from that fund. The fund must be used for "improvements" to those track facilities that benefit the horse and mule owners, trainers or breeders in the barn area. This statute thus describes in detail how the special track fund is to be used to create improvements. We examine the meaning of the word "improvement" to determine how an improvement, once made, is controlled.

When a term has a well-defined legal meaning, we are ordinarily to apply that meaning in interpreting a statute. *Stull v. Hoke*, 326 Or 72, 78, 948 P2d 722 (1997). The legal definition of "improvement" is an "addition to real property, whether permanent or not; [especially] one that increases its value or utility or that enhances its appearance." BLACK'S LAW DICTIONARY 761 (7th Ed. 1999). In Oregon, a permanent improvement becomes part of the realty and is therefore property of the real property owner (although an improver may seek restitution for the value of an improvement under some circumstances). *Jensen v. Probert*, 174 Or 143, 149-159, 148 P2d 248 (1944); *Kerr v. Miller*, 159 Or App 613, 623-625, 977 P2d 438 (1999). Improvements that are easily removed without damage to the realty remain the property of the improver. *Jensen*, 174 Or at 159-161; 42 CJS, Improvements §§ 3, 4. Thus, the owner of a racecourse improved with a disbursement from the special track fund becomes the owner of any permanent improvements. A nonpermanent improvement is owned by the party that made the requisite expenditure for the purchase of the improvement.

Here, the State Fair owns the racecourse and purchased the portable stalls. The State of Oregon holds title to the fairgrounds, including the racecourse, by and through the Oregon State Fair Commission. *See* ORS 270.020, ORS 565.090(1).¹ The Fair purchased the stalls with funds

¹ Much of the property comprising the fairgrounds initially was purchased by the State Agricultural Society. In 1885, the legislature transferred the Society's property to the State Board of Agriculture, and assigned the Board additional authority to hold in fee simple "such additional real estate as it may purchase or receive by donation." Or Laws 1885 pp 58-59, §§ 4, 11; Lord's Oregon Laws §§ 5372, 5379 (1910). In 1951, the legislature created the

it contributed to the special track fund. Thus, the Fair controls the stalls, whether they are a permanent part of the realty or not.

The horse and mule owners, trainers, and breeders, who are mentioned in ORS 462.057, do not control improvements purchased under this statute. The phrase "race track facilities benefiting horse and mule owners, trainers or breeders in the barn area" describes the location at which improvements using money from the special track fund are to be made. ORS 462.057(1)(c)(F). Presumably, ORC has veto authority over any proposed disbursements from the special track fund that would not provide improvements at facilities benefiting the owners, trainers and breeders. *See* Letter of Advice dated May 12, 1972, to Representative Marvin J. Hollingsworth (OP-6912). Once a disbursement has been made from the fund, however, ORS 462.057 only provides ORC with authority to establish fire, health, quality, and construction standards for "physical improvements" to the race track facilities. ORS 462.057(1)(c)(F). Similarly, the statute does not provide horse and mule owners, trainers and breeders with control over the use of improvements. Attributing any authority to control the use of improvements to them would violate the rule of statutory construction that directs a reviewing court "not to insert what has been omitted, or to omit what has been inserted." ORS 174.010.

Sincerely,

Donald C. Arnold
Chief Counsel
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