

TRADE AND COMMERCE: HORSE RACING AND PARI-MUTUEL WAGERING.

Meaning of term "satellite facility." Sole authority of Virginia Racing Commission to license satellite facility upon approval by qualified voters in city or county referendum on question of permitting pari-mutuel wagering at facility. Voter approval of pari-mutuel wagering on live horse racing at licensed racetrack constitutes voter approval of pari-mutuel wagering on simulcast horse racing at that racetrack. Voter approval permitting pari-mutuel wagering at licensed racetrack only does not constitute voter approval of pari-mutuel wagering at satellite facility. No requirement that licensed racetrack be in existence and operating before licensee may open satellite facility to transmit daily simulcast horse racing pursuant to terms of license.

The Honorable Robert G. Marshall
Member, House of Delegates
February 11, 2000

You inquire regarding the term "satellite facilities" as it is used in Chapter 29 of Title 59.1, §§ 59.1-364 through 59.1-405 of the *Code of Virginia* ("Chapter 29").

A referendum on the question whether pari-mutuel wagering should be permitted at satellite facilities must be presented to the qualified voters of a county or city. Clearly, voter approval of pari-mutuel wagering on live horse racing at a licensed racetrack constitutes voter approval of pari-mutuel wagering on simulcast horse racing at that licensed racetrack. I am, however, of the opinion that voter approval permitting pari-mutuel wagering at a licensed racetrack only does not constitute voter approval of pari-mutuel wagering at satellite facilities.

The statutory provisions governing horse racing and pari-mutuel wagering in the Commonwealth are contained in Chapter 29. Section 59.1-365 defines terms that are used in Chapter 29. The term "satellite facility" is defined to mean "all areas of the property at which simulcast horse racing is received for the purposes of pari-mutuel wagering, and any additional areas designated by the Commission." The term "simulcast horse racing" is defined as

the simultaneous transmission of the audio or video portion, or both, of horse races from a licensed horse racetrack or satellite facility to another licensed horse racetrack or satellite facility, regardless of state of licensure, whether such races originate within the Commonwealth or any other jurisdiction, by satellite communication devices, television cables, telephone lines, or any other means for the purposes of conducting pari-mutuel wagering.^[1]

The definition of "simulcast horse racing" clearly permits the receipt by a "satellite facility" of the audio and/or video transmission of horse races.²

"The Virginia Racing Commission is vested with control of all horse racing with pari-mutuel wagering in the Commonwealth, with plenary power to prescribe regulations and conditions under which such racing and wagering shall be conducted."³ Furthermore, "[t]he conduct of any horse racing with pari-mutuel wagering participation in such racing or wagering ... is a privilege which may be granted or denied by the Commission."⁴ The Commission has "all powers and duties necessary to carry out the provisions of [Chapter 29] and to exercise the control of horse racing as set forth in § 59.1-364."⁵ "If the language of a statute is plain and unambiguous, and its meaning perfectly clear and definite, effect must be given to it."⁶ It is unnecessary to resort to any rules of statutory construction when the language of a statute is unambiguous.⁷ In those situations, the statute's plain meaning and intent govern.

The Commission has authority to grant an initial license "to construct, establish, operate or own a ... satellite facility" only after voter approval of a referendum held in the county or city in which such satellite facility is to be located.⁸ Section 59.1-391 sets out the requirements for the filing of a petition requesting that a local referendum be held to decide the question of pari-mutuel wagering in accordance with Chapter 29. The petition must be signed by five percent of the qualified voters and filed with the circuit court of the county or city where the racetrack is to be located.⁹ Voter approval, therefore, is required for operation of a satellite facility.

Section 59.1-369(4) provides the only limitation placed on the Commission relating to licensure of satellite facilities:

The Commission shall promulgate regulations and conditions under which simulcast horse racing shall be conducted at a licensed horse racetrack or satellite facility in the Commonwealth and all such other regulations it deems necessary and appropriate to effect the purposes of [Chapter 29]. Such regulations shall include provisions that all simulcast horse racing must comply with the Interstate Horse Racing Act of 1978 (15 U.S.C. § 3001 et seq.) and shall require the holder of an unlimited license to schedule not less than 150 live racing days in the Commonwealth each calendar year; however, the Commission shall have the authority to alter the required number of live racing days during the first five years of operation based on what the Commission deems to be in the best interest of the Virginia horse industry. *Such regulations shall authorize up to six satellite facilities and restrict majority ownership of satellite facilities to an entity licensed by the Commission which owns a horse racetrack in the Commonwealth.* Nothing in this subdivision shall be deemed to preclude private local ownership or participation in any satellite facility. Wagering on simulcast horse racing shall take place only at a licensed horse racetrack or satellite facility. [Emphasis added.]

"[T]he plain, obvious, and rational meaning of a statute is always to be preferred to any curious, narrow, or strained construction."¹⁰ Statutes should not be construed to frustrate their purpose.¹¹ In addition, the use of the word "shall" in a statute generally implies that its terms are intended to be mandatory, rather than permissive or directive.¹² Finally, when a statute creates a specific grant of authority, the authority exists only to the extent specifically granted in the statute.¹³

The plain language of § 59.1-369(4) requires the Virginia Racing Commission to adopt regulations authorizing a licensee¹⁴ to own or operate "up to six satellite facilities." The plain language does not require that a racetrack be in existence and operating in order for a satellite facility to offer simulcast horse racing. Consequently, I am required to conclude that should the Commission issue a license to operate a racetrack and/or a satellite facility, the clear definition of the term "simulcast horse racing" permits the licensee to operate a satellite facility on a daily basis pursuant to the terms of the license.

The clear and unambiguous words of a statute must be accorded their plain meaning.¹⁵ Words in a statute are to be given their common meaning unless a contrary legislative intent is manifest.¹⁶ The Virginia Racing Commission, therefore, clearly has been given the sole authority by the General Assembly to promulgate regulations and conditions for the operation of a satellite facility in the Commonwealth.

As noted earlier, a referendum on the question whether pari-mutuel wagering should be permitted at satellite facilities must be presented to the qualified voters of a county or city. Clearly, voter approval of pari-mutuel wagering on live horse racing at a licensed racetrack constitutes voter approval of pari-mutuel wagering on simulcast horse racing at that licensed racetrack. I am, however, of the opinion that voter approval permitting pari-mutuel wagering at a licensed racetrack only does not constitute voter approval of pari-mutuel wagering at satellite facilities.

¹Section 59.1-365.

²*Id.*

³Section 59.1-364(A).

⁴Section 59.1-364(B).

⁵Section 59.1-369.

⁶*Temple v. City of Petersburg*, 182 Va. 418, 423, 29 S.E.2d 357, 358 (1944); *see also* Op. Va. Att'y Gen.: 1998 at 38, 40-41; 1993 at 256, 257.

⁷*See Ambrogi v. Koontz*, 224 Va. 381, 386, 297 S.E.2d 660, 662 (1982); *see also* Op. Va. Att'y Gen.: 1998 at 3, 5; 1993 at 99, 100.

⁸Section 59.1-391.

⁹Section 59.1-391(1).

¹⁰Turner v. Commonwealth, 226 Va. 456, 459, 309 S.E.2d 337, 338 (1983).

¹¹See 1982-1983 Op. Va. Att'y Gen. 309, 311 (illogical result frustrates purpose of statute).

¹²See Andrews v. Shepherd, 201 Va. 412, 414-15, 111 S.E.2d 279, 281-82 (1959); see also Schmidt v. City of Richmond, 206 Va. 211, 218, 142 S.E.2d 573, 578 (1965); Op. Va. Att'y Gen.: 1998 at 56, 58; 1996 at 178, 178; 1991 at 238, 240; 1989 at 250, 251-52; 1985-1986 at 133, 134.

¹³See 2A Norman J. Singer, Sutherland Statutory Construction § 47.23 (5th ed. 1992 & Supp. 1999); Op. Va. Att'y Gen.: 1992 at 145, 146; 1989 at 252, 253; 1980-1981 at 209, 209-10.

¹⁴"*Licensee*' includes any person holding an owner's, operator's or limited license under §§ 59.1-375 through 59.1-386 of [Chapter 29]. The licensee under a limited license shall not be deemed an owner for the purposes of owning or operating a satellite facility." Section 59.1-365.

¹⁵See Diggs v. Commonwealth, 6 Va. App. 300, 302, 369 S.E.2d 199, 200 (1988).

¹⁶1997 Op. Va. Att'y Gen. 84, 86.