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OHIO HORSE RACING INDUSTRY

June 25, 2009

The Honorable Ted Strickland
Governor
Statehouse
Columbus, OH 43215

The Honorable Bill Harris
President of the Senate
Ohio Senate
Statehouse
Columbus, OH 43215

The Honorable Armond Budish
Speaker of the House
Ohio House of Representatives
77 South High Street, 14th Floor
Columbus, OH 43215

The Honorable Ron Amstutz
Ohio House of Representatives
77 South High Street, 10th Floor
Columbus, OH 43215

The Honorable Jay Goyal
Ohio House of Representatives
77 South High Street, 14th Floor
Columbus, OH 43215

The Honorable Vernon Sykes
Ohio House of Representatives
77 South High Street, 14th Floor
Columbus, OH 43215

The Honorable John Carey
Ohio Senate
Statehouse
Columbus, OH 43215

The Honorable Dale Miller
Ohio Senate
Statehouse
Columbus, OH 43215

The Honorable Mark Wagoner
Ohio Senate
Statehouse
Columbus, OH 43215

Dear Gentlemen:

On behalf of the Ohio Horse Racing Industry, we are strong proponents of the proposal to permit horse racing tracks to operate electronic lottery devices on behalf of the Ohio Lottery. However, we believe that the use of electronic lottery devices could not simply be authorized by Executive Order or the promulgation of administrative rules rather than by the General Assembly. This letter briefly outlines the reasons we believe that the State Lottery Commission's conduct of lotteries through the use of electronic lottery devices should be authorized by statute rather than by Executive Order or administrative rule.

First, Article XV, § 6 of the Constitution places primary responsibility on the General Assembly to "authorize an agency of the state to conduct lotteries, to sell rights to participate therein, and to award prizes by chance to participants" Although the General Assembly has exercised its power to authorize a "lottery" under this section, see R.C. Chapter 3770, it has done so thus far in terms of lotteries involving the sale of "tickets." See, e.g., R.C. 3770.03(A)(2) & (B)(1). Indeed, to date, the Lottery Commission has conducted only lotteries that involve the sale of tickets, either instant tickets or tickets for a drawing of numbers. Although R.C. Chapter 3770 may be more broadly interpreted as authorizing lotteries not involving the sale of tickets, there is a substantial risk that, without express authorization from the General Assembly, the conduct of lotteries not involving the sale of tickets could be held unlawful. Express statutory authorization will serve to insulate the conduct of such lotteries from legal attacks that may adversely impact the revenue from such lotteries.

Second, the Ohio criminal code currently prohibits the use of "slot machines" and "gambling devices." See R.C. 2915.02(A). Absent express authorization from the General Assembly, including an exception for state-run lotteries conducted through the use of electronic lottery devices—which would not be defined as slot machines—electronic lottery sales agents face the potential of running afoul of Ohio's criminal statutes.

Third, the legal uncertainty created by executive, rather than legislative authorization, and the lack of an exception from Ohio's criminal statutes, would severely hamper electronic lottery sales agents' ability to raise the capital required for the infrastructure improvements necessary to conduct lotteries through the use of electronic lottery devices. Lenders and investors would be reluctant to support such improvements given the possibility of adverse results from potential legal challenges.

Fourth, reliance on authorization contained in an Executive Order or administrative regulations would leave the future conduct of such lotteries to the whims of future administrations. Given that gubernatorial elections are conducted every four years, and the next such election is rapidly approaching in 2010, the risk of future political reversal on this issue will make it nearly impossible for electronic lottery sales agents to raise the required capital. Although contractual arrangements may, to some extent, prevent the abrupt cessation of lotteries conducted through the use of electronic lottery devices, lenders and investors simply will not provide the long-term support necessary for such large capital projects when a future governor may simply revoke authorization. Legislative authorization would insulate against this possibility by requiring both legislative and executive concurrence in the revocation of authorization.

Fifth, legislative authorization, which clearly defines and limits the number of electronic lottery sales agents, would also assist those agents in raising the required capital. Lenders and investors will be averse to financially supporting the necessary improvements when the executive authority may in the future unilaterally expand both the number and location of electronic lottery sales agents. Such expansion poses the risk of oversaturation of the market, rendering investment in such projects unwise.

June 25, 2009

Page 3

Sixth, as you are keenly aware, the credit markets are extremely tight. Our collective discussions have determined that investment bankers are not interested in financing projects and licensing fees given the foregoing issues.

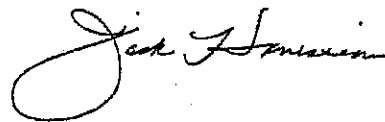
All these reasons lead to one ultimate conclusion: that the absence of legislative authorization will severely hamper and, indeed, may prevent, the financial ability to commence the lottery commission's conduct of lotteries through the use of electronic lottery devices. And, absent such legislative authorization, the state simply will not come close to realizing the revenue projected from the conduct of such lotteries.

Accordingly, we respectfully request that your proposal be duly authorized by state statute.

Sincerely,



John J. Carlo
President
Lebanon Raceway



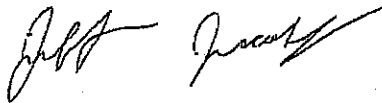
Jack Hanessian
President
River Downs



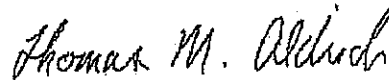
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