



STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WASDEN

May 21, 2020

Senator Steve Vick
Idaho Senate
Capitol Building
Boise, ID 83720

Via Email to: svick@senate.idaho.gov

Re: Inquiry Regarding Idaho Racing ADW Fund Disbursement per Idaho Code § 54-2512(10)

Dear Senator Vick,

This letter is in response to your inquiry concerning the distribution of advance deposit wagering source market fees to simulcast sites.

Question Presented

“Without actually employing a simulcast license for a ‘brick-and mortar’ simulcast site in the state of Idaho, is the mere possession of a simulcast license sufficient to receive a portion of the 30% distribution allocated to simulcast sites from the source market fee distribution under Section 54-2512, Idaho Code?”

Brief Answer

No. In order to receive a source market fee distribution for “simulcast sites” pursuant to Idaho Code § 54-2512(10), a licensee must first operate a physical location where the public can wager upon the results of simulcast/televised races.

1. Simulcast Sites Pursuant to Idaho Code § 54-2512(10)

Per Idaho Code § 54-2512(10), out-of-state ADW entities are required to pay a ten percent (10%) source market fee to the Racing Commission for further distribution. Per that same subsection, the Commission distributes the source market fee proceeds as follows:

Distribution of the source market fee shall be forty percent (40%) to purses to be deposited directly into the horsemen's purse account at all tracks weighted by

number of races ran through the year of distribution, thirty percent (30%) to the simulcast sites in the state weighted by the annual simulcast handle, five percent (5%) to the track distribution fund, five percent (5%) to the breed distribution fund, five percent (5%) to the Idaho state racing commission, five percent (5%) to the public school income fund, and ten percent (10%) for track operating expenses at the live tracks with distribution weighted on the number of race days.

Id., in relevant part.

Your question turns on interpretation of the term “simulcast site,” as used in I.C. § 54-2512(10) and whether that term encompasses simulcast operators who only accept wagers online and have no physical site where wagers can be made. The Idaho Racing Act (“the Act”) does not define the term “simulcast site.” Interpretation of a statute must begin with the literal words, and those words must be given their plain, usual, and ordinary meaning. *State v. Montgomery*, 163 Idaho 40, 44, 408 P.3d 38, 42 (2017) (internal citation omitted). A statute must be construed as a whole. *Id.* (internal citation omitted).

While neither “simulcast site” nor “site” themselves are defined in the Act, the Act repeatedly refers to simulcast operations as occurring at a physical location. Idaho Code § 54-2502(13) defines “simulcast” as the sending of a signal to a location:

[T]he telecast or other transmission of live audio and visual signals of a race, transmitted from a sending track to a receiving location, for the purpose of wagering conducted on the race at the receiving location.” (Emphasis added).

Idaho Code § 54-2512(1) provides for the Idaho State Racing Commission (the Commission) to issue a simulcast license and provides for simulcasting to occur at a place in the race meet grounds or enclosure:

Any licensee conducting a race meet under this chapter may provide a place or places in the race meet grounds or enclosure at which such licensee may conduct and supervise the use of the pari-mutuel system by patrons on the result of . . . simulcast and/or televised races . . . there shall be no more simulcasting sites in the state than there are licensed live race meet sites.

Idaho Code § 54-2512(3) allows the Commission to issue a simulcast license for a facility not located on the race meet facility grounds:

[A] license may be issued to conduct and supervise the use of the pari-mutuel system by patrons on the result of simulcast and/or televised races in a facility not located on the grounds of a live horse race meet facility, but within the county that the live horse race facility is located . . .

Idaho Code § 54-2512(4) allows the Commission to issue a simulcast license for a facility located in another county:

[A] license may be issued to conduct and supervise the use of the pari-mutuel system by patrons on the result of simulcast and/or televised races in a facility located in another county within the state other than the county where the licensee's live racetrack facility is located . . .

The Commission's administrative rule concerning simulcasting defines "simulcast facility" as including the physical premises where simulcasting occurs:

The physical premises, structure and equipment utilized by a guest or host association for conducting pari-mutuel wagering on horse racing events and permitted pari-mutuel events.

IDAPA 11.04.02.010.13, in relevant part. The Commission's administrative rule concerning simulcasting defines the term "enclosure" as "Includ[ing] all enclosed areas of the simulcast wagering facility." IDAPA 11.04.02.010.04.

The Act and the Commission's administrative rules only refer to simulcasting as occurring at a place, facility or location. Construing the plain meaning of these terms as used in statute and rule compels the conclusion that the term "simulcast site" in Idaho Code § 54-2512(10) means a physical location set aside for specific use by the public in conducting pari-mutuel wagering on simulcast races. Therefore, in order to receive any distribution for a simulcast site pursuant to Idaho Code § 54-2512(10), a simulcast licensee must conduct pari-mutuel wagering by the public on simulcast races at a physical location within the state of Idaho.

In the event a simulcast licensee conducted some wagering online and some wagering at a physical location within the state of Idaho, only those wagers conducted for races simulcast at that physical location would qualify for a portion of the source market fee distribution, as discussed below.

2. Amount of Distribution to a Simulcast Site Under Idaho Code § 54-2512(10)

The amount of the ADW source market fee distribution awarded to each simulcast site is "weighted by the annual simulcast handle." Idaho Code § 54-2512(10). "Handle" is defined as the "total amount of money wagered on a race less refunds and cancels." IDAPA 11.04.02.010.07. The definition of "simulcast" in Idaho Code § 54-2502(13) refers to wagering conducted at the location receiving audio or video signals of a race. As such, "annual simulcast handle" refers to the total amount of money for the year, minus refunds and cancels, wagered on races received via signal at the physical location where the wagering occurred.

Undoubtedly, wagers placed by individuals physically present at the simulcast site fall within and count as "simulcast handle" for purposes of Idaho Code § 54-2512(10). In addition, that same subsection authorizes licensees to use ADW as a method of wagering on simulcast races:

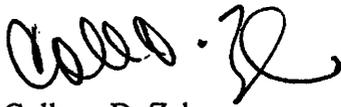
Advance deposit wagering on live and/or simulcast horse racing conducted by licensees is hereby declared to be lawful and *within the scope of the licensee's license*. As used in this section, "advance deposit wagering" means a form of wagering in which an account holder may deposit money with a licensee and then use the balance to fund wagers. The bettor can then contact the licensee from a location *without actually being physically present at the licensee's premises* in order to communicate the desired use of those funds for wagering purposes. [. . .] For purposes of this section, wagering instructions concerning funds held in an advance deposit account *shall be deemed to be issued within the licensee's enclosure*.

Id., in relevant part (Emphasis added). These provisions mean that, for purposes of calculating the source market distribution under I.C. § 54-2512(10), the annual simulcast handle also includes ADW betting communicated to the licensee's simulcast site for races transmitted to the simulcast site.

Should no money be wagered during the year on simulcast races transmitted to the licensee's simulcast site, it then follows that a simulcast licensee would have no "simulcast handle" entitling it to any of the source market fee distribution to simulcast sites.

I hope you find this analysis useful. Should you have any additional questions, please feel free to contact our office.

Sincerely,

A handwritten signature in black ink, appearing to read "Colleen D. Zahn". The signature is fluid and cursive, with a large initial "C" and a stylized "Z" at the end.

Colleen D. Zahn
Deputy Attorney General
Chief, Criminal Law Division