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SPRINGFIELD

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SPORTS AND GAMING:

Definition of the Term "Resident of the State of Illinois" as That Term is Used in Sections 30 and 31 of the Illinois Horse Racing Act of 1975.

John Block, Director
Department of Agriculture
Junior Livestock Building
Illinois State Fairgrounds
Springfield, Illinois 62706

Dear Mr. Block:

I have your letter wherein you inquire whether the meaning applied to the term "resident of the State of Illinois" by the Illinois Department of Agriculture is a proper definition of that term. You set forth the Department of Agriculture's definition of the term "resident of the State of Illinois" in the following manner:

- "1. The Illinois Department of Agriculture by regulation and rule has defined resident of the State of Illinois to be an individual who resides in the State of Illinois and is domiciled here which shall include the maintenance of Illinois as his voting address and the filing of an Illinois income tax return upon which the individual shows this as his prime residence.
2. With respect to partnership or joint ventures, the Illinois Department of Agriculture has taken the position that resident means that all of the individual members of the partnership or joint venture must meet the same aforesaid qualifications.
3. The Illinois Department of Agriculture has taken the position insofar as corporations are concerned, that a corporation would qualify as a resident if it is an Illinois corporation and if all the stockholders, directors and officers of the corporation meet the same aforesaid requirements of an individual for residence."

For the reasons hereinafter stated, it is my opinion that a "resident of the State of Illinois" is an individual who is physically present in the State with the intention to remain. It is also my opinion that a corporation, which has been organized under the laws of the State of Illinois, is a resident of this State. Therefore, the meaning applied to the term "resident of the State of Illinois" by the Illinois Department of Agriculture is, in some respects, too

John Block - 3.

restrictive and should be modified to conform with this opinion.

Section 30 of the Illinois Horse Racing Act of 1975 (Ill. Rev. Stat. 1976 Supp., ch. 8, par. 37-30) provides in pertinent part as follows:

" * * *

(1) The Department of Agriculture shall, by rule, with the advice and assistance of the Illinois Thoroughbred Breeders Fund Advisory Board;

1. Qualify stallions for Illinois breeding; such stallion shall be owned by a resident of the State of Illinois and standing for service within the State of Illinois at the time of a colt's conception, and such stallion must not stand for service at any place outside the State of Illinois during that calendar year in which the colt is conceived and that the owner of the stallion was for the 12 months prior, a resident of Illinois.

* * *

(Emphasis added.)

Section 31 of the same Act (Ill. Rev. Stat. 1976 Supp., ch. 8, par. 37-31) provides in pertinent part as follows:

" * * *

(j) The Department of Agriculture shall, by rule, with the assistance and advice of the Illinois Standardbred Breeders Fund Advisory Board;

John Block - 4.

1. Qualify stallions for Illinois Colt Stake breeding; such stallion shall be owned by a resident of the State of Illinois and standing for service at and within the State of Illinois at the time of a colt's conception, and such stallion must not stand for service at any place outside the State of Illinois during that calendar year in which the colt is conceived and that the owner of the stallion was for the 12 months prior, a resident of Illinois.

* * *

(Emphasis added.)

The above provisions restrict qualification for Illinois breeding and Illinois Colt Stake breeding to stallions owned by residents of the State of Illinois who have been residents for a period of 12 months or more.

A "resident", in the individual sense, has been defined as one who is physically present in the State with the intention to remain. (Hughes v. Illinois Public Aid Commission (1954), 2 Ill. 2d 374, 380; Routt v. Barrett (1947), 396 Ill. 322, 344.) There is no requirement that an individual be a citizen of the United States or have sufficient income to file a tax return in order to qualify as a resident. Therefore, even though such actions do provide evidence of Illinois residence, to require that one have an Illinois voting address, or file an Illinois income tax return would be too restrictive.

John Block - 5.

Since a partnership or joint venture is not a legal entity, it is proper to look at the individual partners for the purpose of determining residency. (Heinz v. The Industrial Commission (1919), 288 Ill. 342, 346; Wheaton v. Bartlett (1902), 105 Ill. App. 326, 329.) Therefore, the requirement that all members of a partnership qualify individually as residents of the State is a proper one.

A corporation is a resident of the State in which it is created. (Martin v. Central Trust Company of Illinois (1927), 327 Ill. 622, 635; Thornton v. Nome & Sinook Company (1931), 260 Ill. App. 76, 83.) Therefore, any Illinois corporation which has been in existence for 12 months qualifies as a resident of the State under sections 30 and 31 of the Illinois Horse Racing Act of 1975. Since a corporation is a legal entity, it would be improper to deny qualification to its stallions because all of its shareholders, directors and officers are not residents of the State of Illinois.

Very truly yours,

A T T O R N E Y G E N E R A L