

**Office of
The City Attorney
City of San Diego**

MEMORANDUM

DATE: February 29, 2016

TO: Andrew Hoffman
Lieutenant, Vice Permits and Licensing

FROM: Michelle Garland
Deputy City Attorney

SUBJECT: Local Police Regulation of Minisatellite Wagering Sites

INTRODUCTION

The State of California regulates horse racing and allows for wagering on horse races under certain circumstances. Horse racing, wagering, and licensing are governed by California Business and Professions Code (Business and Professions Code) sections 19400 through 19668. The scope of the state statutes is quite broad, regulating matters ranging from licensing, to jockeys, to labor relations, to horse medicine, to wagering. State law grants “[j]urisdiction and supervision over meetings in this State where horse races with wagering on their results are held or conducted, and over all persons or things having to do with the operation of such meetings” in the California Horse Racing Board (Board). Cal. Bus. & Prof. Code § 19420.

Satellite wagering, including “minisatellite wagering,” at certain locations, is allowed under certain circumstances. “Minisatellite wagering site” is defined as a “location where satellite wagering may be conducted, with the approval of the board, provided that the wagering occurs in an area that is restricted to those who are 21 years of age or older.” Cal. Bus. & Prof. Code § 19410.7. Minisatellite wagering sites are often part of a restaurant or other commercial establishment.

A minisatellite wagering site recently opened in the City of San Diego. This is the first such site in San Diego, and it is unclear whether other sites are intended. Minisatellite wagering sites are not currently regulated by the San Diego Municipal Code (Municipal Code). Municipal Code Chapter 3, Article 3, designates certain business activities as police regulated and imposes licensing and operating requirements, but does not address minisatellite wagering sites. In anticipation of future questions, you have asked whether minisatellite wagering sites could be designated as police regulated and subject to police regulation if the City so desires. Other gambling-related activities, such as charitable bingo games, cardrooms, and non-profit casino

parties are currently regulated by the Municipal Code and enforced by the Police Department. The answer to your question depends on whether City licensing and operating regulation of minisatellite wagering sites is preempted by state law.¹

QUESTION PRESENTED

May the City regulate minisatellite horse race wagering sites as police regulated businesses subject to Chapter 3, Article 3 of the Municipal Code?

SHORT ANSWER

Most likely, no. A court would likely find that licensing and operational regulation of minisatellite horse race wagering sites is fully occupied by state law, to the exclusion of additional local regulation.

GENERAL PRINCIPLES OF PREEMPTION

The City does not currently require police permits for, or otherwise regulate, minisatellite wagering sites. Generally, a city may “make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.” Cal. Const. art. XI, § 7. A conflict with general laws (state law) exists if a local law “duplicates, contradicts, or enters an area fully occupied by general law, either expressly or by legislative implication.” *City of Claremont v. Kruse*, 177 Cal. App. 4th 1153, 1168 (2009) (citing *Action Apartment Assn., Inc. v. City of Santa Monica*, 41 Cal. 4th 1232, 1242 (2007)). An area has been fully occupied by state law when “the Legislature has expressly manifested its intent to fully occupy the area or when it has impliedly done so in light of recognized indicia of intent.” *Big Creek Lumber Co. v. County of Santa Cruz*, 38 Cal. 4th 1139, 1150 (2006).

Indicia of intent include:

- (1) the subject matter has been so fully and completely covered by general law as to clearly indicate that it has become exclusively a matter of state concern;
- (2) the subject matter has been partially covered by general law couched in terms as to indicate clearly that a paramount state concern will not tolerate further or additional local action; or
- (3) the subject matter has been partially covered by general law, and the subject is of such a nature that the adverse effect of a local ordinance on the transient citizens of the state outweighs the possible benefit to the locality.

¹ This memorandum does not analyze any local zoning or land use conditions that may apply to minisatellite wagering sites or opine on the relationship between state regulations on the licensing and operation of such sites and local land use ordinances.

Kruse, 177 Cal. App. 4th at 1169 (citing *American Financial Services Assn. v. City of Oakland*, 34 Cal. 4th 1239, 1252 (2005)).

Thus, the question is whether the licensing and regulation of horse racing and wagering, or minisatellite wagering, has been fully occupied by state law, such that the City is preempted from regulating these gambling-related activities.

STATE REGULATION OF HORSE RACING AND WAGERING

Gambling-related activities in California are heavily regulated by state law. The California Constitution specifically addresses horse racing and authorizes the State Legislature to “provide for the regulation of horse races and horse race meetings and wagering on the results.” Cal. Const. art. IV, § 19(b). The Legislature has done so by enacting the Horse Racing Law in the Business and Professions Code. The Horse Racing Law specifically declares its intent as:

- (a) Assuring protection of the public.
- (b) Encouraging agriculture and the breeding of horses in this state.
- (c) Providing for maximum expansion of horse racing opportunities in the public interest.
- (d) *Providing uniformity of regulation for each type of horse racing.*

Cal. Bus. & Prof. Code § 19401 (emphasis added).

Consistent with this clearly stated legislative intent, the Horse Racing Law regulates nearly every aspect of horse racing and wagering. Implementation and supervision of the regulations are delegated to the Board, which is authorized to promulgate additional rules, enforce the laws, rules, and regulations, issue licenses related to horse racing, and resolve disputes involving enforcement of the horse racing laws and regulations. Cal. Bus. & Prof. Code §§ 19420, 19440. Specifically, the Board “may prescribe rules, regulations, and conditions . . . under which *all* horse races with wagering on their results shall be conducted in this State.” Cal. Bus. & Prof. Code § 19562 (emphasis added). The jurisdiction of the Board is very broad and extends to “meetings in this State where horse races with wagering on their results are held or conducted, and over *all* persons or things having to do with the operation of such meetings. . . .” Cal. Bus. & Prof. Code § 19420 (emphasis added).

Pursuant to this authority, the Board has promulgated additional regulations contained in the California Code of Regulations. These regulations cover a wide variety of matters related to horse racing and wagering, including licensing, the actual running of races, veterinary practices, security, conflict of interest, and wagering. Cal. Code Regs. title 4, §§ 1400-2105.

Wagering on horse racing is also heavily regulated by the Horse Racing Law and corresponding regulations. The statutes are detailed and broad, and criminalize any type of horse race wagering outside the parameters of state law. Cal. Bus. & Prof. Code §§ 19590-19619.7. Satellite

wagering, including minisatellite wagering, is specifically regulated in Business and Professions Code sections 19605 through 19608.8. In 2007, the Legislature amended the wagering statutes to expand minisatellite wagering sites. The Legislature specifically declared that “the horse racing industry needs many more wagering sites to adequately serve the people of the state” and “[i]t is the intent of the Legislature, in enacting this measure, to make the sport of horse racing more accessible to the citizens of this state.” Assem. Bill 241, Section 1 (2007).

The Horse Racing Law does not expressly state that local licensing and regulation is preempted. However, courts have previously declared various aspects of horse racing and wagering to be matters of statewide concern. As early as 1956, one court described the Horse Racing Law as “a full and comprehensive legislative treatment of legalized horse racing in this State which is a clear and complete plan for the state-wide control of the subject matter. . . . There can be no legitimate doubt that the state has taken over in its entirety the whole subject of horse racing.” *Desert Turf Club v. Board of Supervisors of Riverside County*, 141 Cal. App. 2d 446, 450 (1956). Similarly, the state law prohibitions related to horse race wagering have been determined to “clearly” occupy the field of the criminal aspects of horse race wagering. *In re Loretizo*, 59 Cal. 2d 445, 447 (1963). Likewise, a court would likely find the licensing and operation of minisatellite wagering sites to be fully occupied by state law and not subject to additional local regulation.²

CONCLUSION

Based on the breadth of state regulation of the entire horse racing industry, including wagering, and the lack of any reference to or contemplation of local control, it is likely that municipal regulation of minisatellite wagering sites as a police regulated industry is preempted by state law.

² The Municipal Code does regulate other gambling-related activities such as cardrooms, charitable bingo games, and non-profit casino parties. However, each ordinance is based on a statutory grant of authority not present in relation to horse racing and wagering, specifically:

Cardrooms – Cal. Bus. & Prof. Code §§ 19960-19961, 19961.06-19963, 19982-19983.

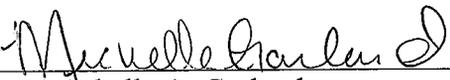
Charitable Bingo Games – Cal. Penal Code § 326.5(a); Cal. Const. art. IV, § 19.

Charitable Casino Parties – Cal. Bus. & Prof. Code § 19986(m).

Andrew Hoffman
Lieutenant, Vice Permits and Licensing
February 29, 2016
Page 5

Although there is no express preemption clause within the Horse Racing Law, the broad sweeping policy statements and grants of jurisdiction, as well as the detailed and comprehensive nature of the statutes and regulations, provide indicia of the Legislature's intent to fully occupy the field of horse racing and wagering to the exclusion of local regulation.

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