

IN THE CIRCUIT COURT OF THE
SECOND JUDICIAL CIRCUIT IN AND
FOR LEON COUNTY, FLORIDA

FLORIDA QUARTER HORSE TRACK
ASSOCIATION, INC.,

Plaintiff,

v.

Case No. 09CA2088

STATE OF FLORIDA, DEPARTMENT OF
BUSINESS AND PROFESSIONAL REGULATION,
DIVISION OF PARI-MUTUEL WAGERING;
JEFFERSON COUNTY KENNEL CLUB, INC.;
WASHINGTON COUNTY KENNEL CLUB,
INCORPORATED; and PENSACOLA
GREYHOUND TRACK, INC.,

Defendants.

FILED
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CLERK OF CIRCUIT COURT
LEON COUNTY, FLORIDA

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

The plaintiff, Florida Quarter Horse Track Association, Inc., sues the defendants, State of Florida, Department of Business and Professional Regulation, Division of Pari-Mutuel Wagering, Jefferson County Kennel Club, Inc., Washington County Kennel Club, Inc., and Pensacola Greyhound Track, Inc., and alleges:

1. This is an action for declaratory and injunctive relief pursuant to chapter 86, Florida Statutes.
2. The plaintiff, Florida Quarter Horse Track Association, Inc. (the "Association"), is a Florida not for profit corporation authorized to conduct business in the State of Florida.
3. The defendant, State of Florida, Department of Business and Professional Regulation, Division of Pari-Mutuel Wagering (the "Division") is an agency of the executive branch of the government of the State of Florida and is the agency responsible for the regulation of Florida's pari-mutuel wagering industry and the enforcement of chapter 550, Florida Statutes.

4. The defendant, Jefferson County Kennel Club, Inc. (“JCKC”), is a Florida corporation authorized to conduct business in the State of Florida and is the holder of a pari-mutuel mutual permit issued by the State of Florida and an operating license issued by the Division that collectively authorize JCKC to conduct pari-mutuel wagering on greyhound racing in Jefferson County, Florida.

5. The defendant, Washington County Kennel Club, Incorporated (“WCKC”), is a Florida corporation authorized to conduct business in the State of Florida and is the holder of a pari-mutuel mutual permit issued by the State of Florida and an operating license issued by the Division that collectively authorize WCKC to conduct pari-mutuel wagering on greyhound racing in Washington County, Florida.

6. The defendant, Pensacola Greyhound Track, Inc. (“PGT”), is a Florida corporation authorized to conduct business in the State of Florida and is the holder of a pari-mutuel mutual permit issued by the State of Florida and an operating license issued by the Division that collectively authorize PGT to conduct pari-mutuel wagering on greyhound racing in Escambia County, Florida.

7. Section 6 of Chapter 96-364, Laws of Florida provides in relevant part as follows:

For the three permitholders which conducted a full schedule of live racing in 1995, and are closest to another state which authorizes greyhound pari-mutuel wagering, the maximum tax savings per state fiscal year shall be \$500,000.

8. Collectively, JCKC, WCKC and PGT may be referred to herein as the “defendant Dog Tracks”.

9. The plaintiff seeks the issuance of a declaratory judgment that:

(a) determines and declares the parties rights under Section 6 of Chapter 96-364, Laws of Florida, now codified as part of section 550.09514, Florida Statutes (2007);

(b) declares that said Section 6 of Chapter 96-364, Laws of Florida, is a special law enacted under the guise of a general law in violation of article III,

section 10 of the Florida Constitution; and

(c) directs the Division to enforce the provisions of Chapter 550 against the defendant Dog Tracks without regard to the unconstitutional provisions of Section 6 of Chapter 96-364, Laws of Florida.

10. The organizational purposes of the Association are contained in Article III of the Articles of Incorporation filed with the Department of State and include the following purposes relevant to the Association's initiation and participation in this proceeding:

III (A). The corporation is organized to serve public interests; specifically the interests of quarter horse racing, quarter horse race tracks, and quarter horse owners in the hopes of returning economically viable quarter horse racing back to Florida which the membership views as critical to achieve the public purposes expressed in s. 550.26165 and 550.2625, Florida Statutes. Accordingly, it shall not be operated for the benefit of private interests.

* * *

III (E). The corporation shall represent and advocate the interests of its members before public bodies, executive and legislative, administrative tribunals and courts of law in which the interests of the membership are affected.

11. All of the members of the Association hold pari-mutuel permits and two of the members, Gretna Racing, LLC and ELH Jefferson, LLC, have permitted locations within an area in which the profitability of the business that will be conducted at such locations will be negatively impacted by the tax exemptions illegally and unconstitutionally granted to the defendant Dog Tracks by Section 6 of Chapter 96-364, Laws of Florida. These members are also taxpayers who are liable for various taxes paid to the State of Florida, including pari-mutuel taxes imposed by state law and collected by the Division.

12. The interests that the Association seek to protect through the initiation of this action are germane to the Association's organizational purposes set forth in paragraph 10 above and therefore are within the Association's general scope of interests and activity.

13. Although the individual members of the Association would have standing to initiate this action as competing pari-mutuel permitholders as provided in *West Flagler Kennel Club, Inc. v. Florida State Racing Association*, 153 So.2d 5 (Fla. 1963) and *Miami Beach Kennel Club, Inc. v. Board of Business Regulation*, 265 So.2d 373 (Fla. 3d DCA 1972), neither the claims asserted nor the relief sought through this complaint are of such a nature as to preclude the Association from fully and adequately representing the interests of its membership herein. *Florida Home Builders Association v. Department of Labor and Employment Security*, 412 So.2d 351 (Fla. 1982).

14. Section 6 of Chapter 96-364, Laws of Florida confers upon the defendant Dog Tracks an enhanced tax exemption that does not apply universally throughout the state, but only applies to a limited class of permitholders that are “the three permitholders that conducted a full schedule of live racing in 1995, and are the closest to another state that authorizes greyhound wagering.” Because the class of eligible permitholders is limited by both the conduct of a prior event (the conduct of a full schedule of live racing in the year prior to the enactment of the law) and by a particular geographic location (being located closest to another state that authorized greyhound racing, i.e., Alabama), Section 6 of Chapter 96-364 creates a closed class of eligible permitholders, consisting solely of the defendant Dog Tracks, which class of eligible permitholders is not capable of later duplication inasmuch as the class created by Section 6 of Chapter 96-364 closed immediately upon the enactment of said law.

15. Section 6 of Chapter 96-364, Laws of Florida violates article III, section 10, Fla. Const. (1968) as said law was a special law, the effectiveness of which was not conditioned upon approval of the voters of the electors in the areas affected---being Jefferson, Washington and Escambia Counties---as required by said article III, section 10.

WHEREFORE, the plaintiffs jointly request that the Court issue a declaratory judgment that:

(a) determines and declares the rights of the parties under Section 6 of Chapter 96-364, Laws of Florida, now codified as part of section 550.09514(1), Fla. Stat. (2007);

(b) declares that Section 6 of Chapter 96-364, Laws of Florida, now codified as part of section 550.09514(1), Fla. Stat. (2007), is a special law enacted under the guise of a general law in violation of article III, section 10 of the Florida Constitution;

(c) directs the Division to enforce the provisions of Chapter 550 against the defendant Dog Tracks without regard to the unconstitutional provisions of Section 6 of Chapter 96-364, Laws of Florida.

DATED this 29th day of May, 2009

Respectfully submitted,



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