

STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
DIVISION OF PARI-MUTUEL WAGERING

FILED	
Department of Business and Professional Regulation Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	9/7/2012
File #	2012-05691

In re:

PETITION FOR DECLARATORY
STATEMENT BEFORE THE
DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION,
DIVISION OF PARI-MUTUEL WAGERING

SUMMER JAI ALAI PARTNERS,

Petitioner.

DS 2012-043

GULFSTREAM PARK RACING ASSOCIATION, Inc.
d/b/a GULFSTREAM PARK RACING AND CASINO, and
HARTMAN AND TYNER, INC.,

Intervenors.

AMENDED DECLARATORY STATEMENT

This Declaratory Statement is rendered by the Director of the Division of Pari-Mutuel Wagering, (Division) pursuant to § 120.565, Florida Statutes.

ISSUE

1. Summer Jai Alai Partners (SUMMER PARTNERS) has filed a Petition for Declaratory Statement from the Division pertaining to the applicability of §§ 550.615(2) and 849.086(5)(b), Fla. Stat., to summer jai alai permits. Specifically, the Petition asks (1) whether those statutes require a full schedule of live pari-mutuel wagering performances for cardroom and intertrack wagering authorization; and (2) what the number of live pari-mutuel performances a summer jai alai permitholder must conduct in

order to satisfy the full schedule requirement imposed by §§ 550.615(2) and 849.086(5)(b), Fla. Stat.

FACTS

2. On May 18, 2012, the Division received an Amended Petition for Declaratory Statement (amended only to correct a scrivener's error) filed by Summer Jai Alai Partners (the "SUMMER PARTNERS"), a licensed pari-mutuel permit holder authorized by Chapter 550, Florida Statutes, to conduct summer jai alai pari-mutuel wagering performances at the Miami Jai Alai facility located at 3500 Northwest 37th Avenue, Miami, Florida 33142. There are two pari-mutuel permits, including the SUMMER PARTNERS' permit, which currently operate at the Miami Jai Alai facility.

3. The SUMMER PARTNERS own pari-mutuel permit number 280 (the "Permit"). The Permit was originally a greyhound permit but was converted to a summer jai alai permit in 1980 immediately after passage of House Bill 595 (1980). The Permit has annually operated at Miami Jai Alai since the Permit was converted in 1980.

4. The SUMMER PARTNERS operate the Permit at Miami Jai Alai in conformance with § 550.0745, Fla. Stat. The Permit is authorized to receive an annual license to conduct jai alai games during the summer season (May 1 through November 30). *See* § 550.0745(1), Fla. Stat. (2011). The Permit is prohibited from operation during the winter season. *See* § 550.0745(3), Fla. Stat. (2011).

5. Florida law requires SUMMER PARTNERS to conduct live performances under the Permit in order to retain eligibility to conduct intertrack wagering and cardroom operations. The Petition states that SUMMER PARTNERS are in doubt as to the specific number of live performances required to satisfy the full schedule requirement.

6. SUMMER PARTNERS have submitted a request for a declaratory statement pursuant to Section 120.656(2), Florida Statutes, in the form of two (2) specific questions presented to the Division as set forth below:

Question 1: Assuming that a summer jai alai permit is operated at a facility by lease where another pari-mutuel permit is located, do Sections 550.615(2) and 849.086(5)(b), Florida Statutes, apply to summer jai alai permits and require a full schedule of live pari-mutuel wagering performances for cardroom and intertrack wagering authorization?

Question 2: Assuming that a summer jai alai permit is operated at a facility by lease where another pari-mutuel permit is located, how many live pari-mutuel performances must the summer jai alai permit conduct in order to satisfy the full schedule requirement imposed by Sections 550.615(2) and 849.086(5)(b), Florida Statutes?

GULFSTREAM'S PETITION TO INTERVENE

7. On June 6, 2012, a Petition to Intervene was filed by Gulfstream Park Racing Association, d/b/a/ Gulfstream Park racing and Casino ("GULFSTREAM"), asserting that it is a licensed pari-mutuel permitholder authorized by Chapter 550, Florida Statutes, to conduct pari-mutuel wagering on thoroughbred horse races, in addition to cardroom, slot machine and intertrack wagering operations, in Broward and Miami-Dade Counties.

8. GULFSTREAM's petition asserts as a basis for intervention that SUMMER PARTNERS' facilities are located within the market area of GULFSTREAM, and should the outcome of this declaratory statement result in an increase in the number of eligible guest tracks in GULFSTREAM'S market area that are eligible to conduct intertrack wagering, GULFSTREAM may be required (by statute) to engage in intertrack wagering with such guest tracks. Therefore, GULFSTREAM argues, it is substantially affected by the outcome of this proceeding and should be accorded Intervenor status.

9. On June 13, 2012, SUMMER PARTNERS filed its Response in Opposition to Gulfstream Park's Petition to Intervene, stating that GULFSTREAM's basis for intervention is legally insufficient because it does not demonstrate that it will suffer injury *in fact* of sufficient immediacy, and that the substantial injury asserted is not of a type or nature which this proceeding is designed to protect.

HARTMAN AND TYNER, INC.'S
PETITION TO INTERVENE AND
MEMORANDUM OF LAW IN OPPOSITION TO
SUMMER PARTNERS' PETITION FOR DECLARATORY STATEMENT

10. On June 8, 2012, a Petition to Intervene and Memorandum in Opposition to SUMMER PARTNERS' Petition for Declaratory Statement was filed by Hartman and Tyner, Inc. (HARTMAN and TYNER), a licensed pari-mutuel permitholder authorized by Chapter 550, Fla. Stat., to conduct pari-mutuel wagering on greyhound racing in addition to cardroom operations and intertrack wagering in Broward County.

11. The HARTMAN and TYNER petition in general asserts as a basis for intervention that SUMMER PARTNERS' facilities are located within the market area of HARTMAN and TYNER, and the outcome of this proceeding may result in the relocation of one or more summer jai alai permits. Therefore, HARTMAN and TYNER argues it has a substantial interest in such relocations which could result in the loss of certain protections provided to HARTMAN and TYNER under § 550.615, Fla. Stat.

12. The HARTMAN and TYNER Memorandum in Opposition to Declaratory Statement argues that the questions SUMMER PARTNERS

submitted in their Petition fail to provide a particular set of circumstances and therefore do not fall within the scope of § 120.565, Fla. Stat.; it is further argued that in the event SUMMER PARTNERS are granted a declaratory statement, the Division's response to the questions SUMMER PARTNERS have posed should be in the negative.

13. On June 13, 2012, SUMMER PARTNERS filed their Response in Opposition to HARTMAN and TYNER's Petition to Intervene, stating essentially that HARTMAN and TYNER's basis for intervention is legally insufficient because it raises issues which are not relevant to summer jai-alai permits and are beyond the scope of the original Petition.

ANALYSIS

14. § 550.615(2), Fla. Stat., establishes intertrack wagering eligibility as follows:

Any track or fronton licensed under this chapter which in the preceding year conducted a full schedule of live racing is qualified to, at any time, receive broadcasts of any class of pari-mutuel race or game and accept wagers on such races or games conducted by any class of permitholders licensed under this chapter [Chapter 550].

15. In essence, the Permit is required to conduct a full schedule of live performances in the preceding year in order to retain its intertrack wagering authorization. *See id.*

16. § 849.086(5)(b), Florida Statutes, states that in order for a cardroom license to be renewed, the applicant must have requested to conduct at least 90 percent of the total number of live performances conducted by such permitholder during either the state fiscal year in which the license was issued or the state fiscal year immediately prior thereto. *See* § 849.086(5)(b), Fla. Stat. (2011). The statute also provides that if "more

than one permitholder is operating at a facility, each permitholder must have applied for a license to conduct a full schedule of live racing.” *Id.*

17. A full schedule is defined by § 550.002(11), Fla. Stat., as follows:

“Full schedule of live racing or games” means, for a greyhound or jai alai permitholder, the conduct of a combination of at least 100 live evening or matinee performances during the preceding year; for a permitholder who has a converted permit or filed an application on or before June 1, 1990, for a converted permit, the conduct of a combination of at least 100 live evening and matinee wagering performances during either of the 2 preceding years; for a jai alai permitholder who does not operate slot machines in its pari-mutuel facility, who has conducted at least 100 live performances per year for at least 10 years after December 31, 1992, and whose handle on live jai alai games conducted at its pari-mutuel facility has been less than \$4 million per state fiscal year for at least 2 consecutive years after June 30, 1992, the conduct of a combination of at least 40 live evening or matinee performances during the preceding year; for a jai alai permitholder who operates slot machines in its pari-mutuel facility, the conduct of a combination of at least 150 performances during the preceding year; for a harness permitholder, the conduct of at least 100 live regular wagering performances during the preceding year; ... For a permitholder which is restricted by statute to certain operating periods within the year when other members of its same class of permit are authorized to operate throughout the year, the specified number of live performances which constitute a full schedule of live racing or games shall be adjusted pro rata in accordance with the relationship between its authorized operating period and the full calendar year and the resulting specified number of live performances shall constitute the full schedule of live games for such permitholder and all other permitholders of the same class within 100 air miles of such permitholder.

(Emphasis added.)

18. § 550.002(11), Fla. Stat., subject to certain exceptions, requires a jai alai permitholder to conduct at least 100 live performances to constitute a full schedule. As it relates to the Permit, there are two provisions of § 550.002(11), Fla. Stat., that may be applicable:

[F]or a jai alai permitholder who does not operate slot machines in its pari-mutuel facility, who has conducted at least 100 live performances per year for at least 10 years after December 31, 1992, and whose handle on live jai alai games conducted at its pari-mutuel facility has been less than \$4

million per state fiscal year for at least 2 consecutive years after June 30, 1992, the conduct of a combination of at least 40 live evening or matinee performances during the preceding year;

* * *

For a permit holder which is restricted by statute to certain operating periods within the year when other members of its same class of permit are authorized to operate throughout the year, the specified number of live performances which constitute a full schedule of live racing or games shall be adjusted pro rata in accordance with the relationship between its authorized operating period and the full calendar year and the resulting specified number of live performances shall constitute the full schedule of live games for such permit holder and all other permit holders of the same class within 100 air miles of such permit holder.

§ 550.002(11), Fla. Stat. (2011).

19. The Petition asserts that the Division has previously opined that §§ 550.002(11), 550.0745(1), and 849.086(5)(b), Fla. Stat., are applicable to the Permit and together prorate the minimum annual number of performances to 42 live performances because multiple permits operate at Miami Jai Alai.

20. The Permit is authorized to operate seven (7) months out of the year and is statutorily restricted from operating during the remaining five (5) months. *See* § 550.0745(1), Fla. Stat. (2011). The SUMMER PARTNERS are unsure if 42 performances equal a full schedule under the pro rata analysis because 7/12 of 100 performances equals 58.33 performances.

21. The Permit conducted at least 100 live performances each year for 10 years after December 31, 1992. In addition, the Permit's live handle has been less than \$4,000,000 for two consecutive fiscal years after June 30, 1992.

22. The Petition states that SUMMER PARTNERS are in doubt as to whether the Permit qualifies to conduct 40 live performances per year, as a full schedule, due to

the Permit's live handle being less than \$4,000,000 for the previous two fiscal years. *See* § 550.002(11), Fla. Stat. (2011).

23. Petitioner's questions are asked in the context of a summer jai alai permitholder that operates pursuant to a lease. § 550.0745, Fla. Stat., governs the conditions of issuance of summer jai alai permits. § 550.0745(2), Fla. Stat., provides that a summer jai alai permit can operated at "any jai alai permitholder's plant it may lease or build" within the county. Similarly, a pari-mutuel permit issued under § 550.054, Fla. Stat., may be issued to a location which is either owned or leased by the permitholder. *See*, Sect. 550.054(3)(e), Fla. Stat. However, there is no provision of Sect. 550.615, Fla. Stat., or Sect. 849.086, Fla. Stat., which draws any operational distinction between a permitholder that owns the permitted property from one that leases the permitted property. Thus, the answer to the questions presented would be the same regardless of whether the permit was issued for a location that is owned or leased by the summer jai alai permitholder.

24. Question 1 is answered in the affirmative. §§ 550.615(2) and 849.086(5)(b), Florida Statutes, apply to summer jai alai permits and require a full schedule of live pari-mutuel wagering performances for cardroom and intertrack wagering authorization.

25. The requirement for a full schedule of live races or games to receive broadcasts under § 550.615(2), Fla. Stat., applies to "[a]ny track or fronton licensed under this chapter." This requirement has existed in the statute since it was first adopted in 1992. A summer jai alai permit under § 550.0745, Fla. Stat., is the only type of permit that is completely restricted from operating during certain months of the year. The fact that the definition of full schedule of games provided by the legislature in § 550.002(11),

Fla. Stat., in contains a provision for proration of the number of performances required for a date restricted permit is a clear indication that the term applies to a summer jai alai permit.

26. § 849.086(5)(b), Fla. Stat., provides that if “more than one permitholder is operating at a facility, each permitholder must have applied for a license to conduct a full schedule of live racing” in order to receive a cardroom license. The summer jai alai permit owned by SUMMER PARTNERS operates at the Miami Jai Alai facility where two permits operate. Therefore, the clear language of § 849.086(5)(b), Fla. Stat., requires SUMMER PARTNERS to conduct a full schedule of live games.

27. Question 2 asks how many performances are required to constitute a full schedule of live racing. SUMMER PARTNERS presents the correct calculation in its Petition. Prorating the number of performances as provided in § 550.002(11), Fla. Stat., for a summer jai alai permit results in 58 performance being required (7/12 of 100 is 58.33, which is rounded to the nearest whole number). However, there are no provisions within that section which would prohibit a summer jai alai permit from also qualifying for the reduction of performances to 40 if the permit’s live handle has been less than \$4,000,000 for two consecutive fiscal years after June 30, 1992.

CONCLUSION

The Division makes the following declarations:

1. §§ 550.615(2) and 849.086(5)(b), Fla. Stat. apply to summer jai alai permits and require a full schedule of live pari-mutuel wagering performances for cardroom and intertrack wagering authorization.

2. The number of performances required under § 550.002(11), Fla. Stat., to constitute a full schedule of live games for a summer jai alai permit is 58 performances.

However, a summer jai alai is also eligible to reduce the number of performances to 40 if its live handle has been less than \$4,000,000 for two consecutive fiscal years after June 30, 1992.

3. Having taken the arguments for and against the intervention of GULFSTREAM and HARTMAN AND TYNER, those Petitions to Intervene are Granted.

DONE AND ORDERED this 7th day of September, 2012.



Leon M. Biegalski, Director
Division of Pari-Mutuel Wagering
Northwood Centre
1940 North Monroe Street
Tallahassee, Florida 32399-1035
(850) 488-9130

RIGHT TO APPEAL

This Declaratory Statement constitutes final agency action and may be appealed pursuant to section. 120.68, Florida Statutes, and Rule 9.110, Florida Rules of Appellate Procedure, by filing a Notice of Appeal conforming to the requirements of Rule 9.110(d), Florida Rules of Appellate Procedure, both with the appropriate District Court of Appeal and with this agency at the Office of the Agency Clerk, 1940 North Monroe Street, Tallahassee, FL 32399, within 30 days of rendition of this Order, accompanied by the appropriate filing fees.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail on this the 10th day of September (one), 2012 to the following: (1) John M. Lockwood, Esquire; JOHN M. LOCKWOOD, P.A.; 200 West College Avenue, Suite 307; Tallahassee, Florida 32301; (2) J. Stephen Menton, Esquire; RUTLEDGE, ECENIA, & PURNELL, P.A.; P.O. Box 551; Tallahassee, Florida 32302-0551; and (3) Marc W. Dunbar, Esquire, PENNINGTON, MOORE, WILKINSON, BELL, & DUNBAR, P.A., Post Office Box 10095, Tallahassee, Florida 32302-2095.



Agency Clerk's Office

**STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
DIVISION OF PARI-MUTUEL WAGERING**

FILED	
<small>Department of Business and Professional Regulation Deputy Agency Clerk</small>	
CLERK	Brandon Nichols
Date	8/21/2012
File #	2012-05214

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order to satisfy the full schedule requirement imposed by §§ 550.615(2) and 849.086(5)(b), Fla. Stat.

FACTS

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3. The SUMMER PARTNERS own pari-mutuel permit number 280 (the "Permit"). The Permit was originally a greyhound permit but was converted to a summer jai alai permit in 1980 immediately after passage of House Bill 595 (1980). The Permit has annually operated at Miami Jai Alai since the Permit was converted in 1980.

4. The SUMMER PARTNERS operate the Permit at Miami Jai Alai in conformance with § 550.0745, Fla. Stat. The Permit is authorized to receive an annual license to conduct jai alai games during the summer season (May 1 through November 30). *See* § 550.0745(1), Fla. Stat. (2011). The Permit is prohibited from operation during the winter season. *See* § 550.0745(3), Fla. Stat. (2011).

5. Florida law requires SUMMER PARTNERS to conduct live performances under the Permit in order to retain eligibility to conduct intertrack wagering and cardroom operations. The Petition states that SUMMER PARTNERS are in doubt as to the specific number of live performances required to satisfy the full schedule requirement.

6. SUMMER PARTNERS have submitted a request for a declaratory statement pursuant to Section 120.656(2), Florida Statutes, in the form of two (2) specific questions presented to the Division as set forth below:

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8. GULFSTREAM's petition asserts as a basis for intervention that SUMMER PARTNERS' facilities are located within the market area of GULFSTREAM, and should the outcome of this declaratory statement result in an increase in the number of eligible guest tracks in GULFSTREAM'S market area that are eligible to conduct intertrack wagering, GULFSTREAM may be required (by statute) to engage in intertrack wagering with such guest tracks. Therefore, GULFSTREAM argues, it is substantially affected by the outcome of this proceeding and should be accorded Intervenor status.

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11. The HARTMAN and TYNER petition in general asserts as a basis for intervention that SUMMER PARTNERS' facilities are located within the market area of HARTMAN and TYNER, and the outcome of this proceeding may result in the relocation of one or more summer jai alai permits. Therefore, HARTMAN and TYNER argues it has a substantial interest in such relocations which could result in the loss of certain protections provided to HARTMAN and TYNER under § 550.615, Fla. Stat.

12. The HARTMAN and TYNER Memorandum in Opposition to Declaratory Statement argues that the questions SUMMER PARTNERS

submitted in their Petition fail to provide a particular set of circumstances and therefore do not fall within the scope of § 120.565, Fla. Stat.; it is further argued that in the event SUMMER PARTNERS are granted a declaratory statement, the Division's response to the questions SUMMER PARTNERS have posed should be in the negative.

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ANALYSIS

14. § 550.615(2), Fla. Stat., establishes intertrack wagering eligibility as follows:

Any track or fronton licensed under this chapter which in the preceding year conducted a full schedule of live racing is qualified to, at any time, receive broadcasts of any class of pari-mutuel race or game and accept wagers on such races or games conducted by any class of permitholders licensed under this chapter [Chapter 550].

15. In essence, the Permit is required to conduct a full schedule of live performances in the preceding year in order to retain its intertrack wagering authorization. *See id.*

16. § 849.086(5)(b), Florida Statutes, states that in order for a cardroom license to be renewed, the applicant must have requested to conduct at least 90 percent of the total number of live performances conducted by such permitholder during either the state fiscal year in which the license was issued or the state fiscal year immediately prior thereto. *See* § 849.086(5)(b), Fla. Stat. (2011). The statute also provides that if "more -

than one permitholder is operating at a facility, each permitholder must have applied for a license to conduct a full schedule of live racing.” *Id.*

17. A full schedule is defined by § 550.002(11), Fla. Stat., as follows:

“Full schedule of live racing or games” means, for a greyhound or jai alai permitholder, the conduct of a combination of at least 100 live evening or matinee performances during the preceding year; for a permitholder who has a converted permit or filed an application on or before June 1, 1990, for a converted permit, the conduct of a combination of at least 100 live evening and matinee wagering performances during either of the 2 preceding years; for a jai alai permitholder who does not operate slot machines in its pari-mutuel facility, who has conducted at least 100 live performances per year for at least 10 years after December 31, 1992, and whose handle on live jai alai games conducted at its pari-mutuel facility has been less than \$4 million per state fiscal year for at least 2 consecutive years after June 30, 1992, the conduct of a combination of at least 40 live evening or matinee performances during the preceding year; for a jai alai permitholder who operates slot machines in its pari-mutuel facility, the conduct of a combination of at least 150 performances during the preceding year; for a harness permitholder, the conduct of at least 100 live regular wagering performances during the preceding year; ... For a permitholder which is restricted by statute to certain operating periods within the year when other members of its same class of permit are authorized to operate throughout the year, the specified number of live performances which constitute a full schedule of live racing or games shall be adjusted pro rata in accordance with the relationship between its authorized operating period and the full calendar year and the resulting specified number of live performances shall constitute the full schedule of live games for such permitholder and all other permitholders of the same class within 100 air miles of such permitholder.

(Emphasis added.)

18. § 550.002(11), Fla. Stat., subject to certain exceptions, requires a jai alai permitholder to conduct at least 100 live performances to constitute a full schedule. As it relates to the Permit, there are two provisions of § 550.002(11), Fla. Stat., that may be applicable:

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million per state fiscal year for at least 2 consecutive years after June 30, 1992, the conduct of a combination of at least 40 live evening or matinee performances during the preceding year;

* * *

For a permitholder which is restricted by statute to certain operating periods within the year when other members of its same class of permit are authorized to operate throughout the year, the specified number of live performances which constitute a full schedule of live racing or games shall be adjusted pro rata in accordance with the relationship between its authorized operating period and the full calendar year and the resulting specified number of live performances shall constitute the full schedule of live games for such permitholder and all other permitholders of the same class within 100 air miles of such permitholder.

§ 550.002(11), Fla. Stat. (2011).

19. The Petition asserts that the Division has previously opined that §§ 550.002(11), 550.0745(1), and 849.086(5)(b), Fla. Stat., are applicable to the Permit and together prorate the minimum annual number of performances to 42 live performances because multiple permits operate at Miami Jai Alai.

20. The Permit is authorized to operate seven (7) months out of the year and is statutorily restricted from operating during the remaining five (5) months. *See* § 550.0745(1), Fla. Stat. (2011). The SUMMER PARTNERS are unsure if 42 performances equal a full schedule under the pro rata analysis because 7/12 of 100 performances equals 58.33 performances.

21. The Permit conducted at least 100 live performances each year for 10 years after December 31, 1992. In addition, the Permit's live handle has been less than \$4,000,000 for two consecutive fiscal years after June 30, 1992.

22. The Petition states that SUMMER PARTNERS are in doubt as to whether the Permit qualifies to conduct 40 live performances per year, as a full schedule, due to

the Permit's live handle being less than \$4,000,000 for the previous two fiscal years. *See* § 550.002(11), Fla. Stat. (2011).

23. Petitioner's questions are asked in the context of a summer jai alai permitholder that operates pursuant to a lease. § 550.0745, Fla. Stat., governs the conditions of issuance of summer jai alai permits. § 550.0745(2), Fla. Stat., provides that a summer jai alai permit can operated at "any jai alai permitholder's plant it may lease or build" within the county. Similarly, a pari-mutuel permit issued under § 550.054, Fla. Stat., may be issued to a location which is either owned or leased by the permitholder. *See*, Sect. 550.054(3)(e), Fla. Stat. However, there is no provision of Sect. 550.615, Fla. Stat., or Sect. 849.086, Fla. Stat., which draws any operational distinction between a permitholder that owns the permitted property from one that leases the permitted property. Thus, the answer to the questions presented would be the same regardless of whether the permit was issued for a location that is owned or leased by the summer jai alai permitholder.

24. Question 1 is answered in the affirmative. §§ 550.615(2) and 849.086(5)(b), Florida Statutes, apply to summer jai alai permits and require a full schedule of live pari-mutuel wagering performances for cardroom and intertrack wagering authorization.

25. The requirement for a full schedule of live races or games to receive broadcasts under § 550.615(2), Fla. Stat., applies to "[a]ny track or fronton licensed under this chapter." This requirement has existed in the statute since it was first adopted in 1992. A summer jai alai permit under § 550.0745, Fla. Stat., is the only type of permit that is completely restricted from operating during certain months of the year. The fact that the definition of full schedule of games provided by the legislature in § 550.002(11),

Fla. Stat., in contains a provision for proration of the number of performances required for a date restricted permit is a clear indication that the term applies to a summer jai alai permit.

26. § 849.086(5)(b), Fla. Stat., provides that if “more than one permitholder is operating at a facility, each permitholder must have applied for a license to conduct a full schedule of live racing” in order to receive a cardroom license. The summer jai alai permit owned by SUMMER PARTNERS operates at the Miami Jai Alai facility where two permits operate. Therefore, the clear language of § 849.086(5)(b), Fla. Stat., requires SUMMER PARTNERS to conduct a full schedule of live games.

27. Question 2 asks how many performances are required to constitute a full schedule of live racing. SUMMER PARTNERS presents the correct calculation in its Petition. Prorating the number of performances as provided in § 550.002(11), Fla. Stat., for a summer jai alai permit results in 58 performance being required (7/12 of 100 is 58.33, which is rounded to the nearest whole number). However, there are no provisions within that section which would prohibit a summer jai alai permit from also qualifying for the reduction of performances to 40 if the permit’s live handle has been less than \$4,000,000 for two consecutive fiscal years after June 30, 1992.

CONCLUSION


The Division makes the following declarations:

1. §§ 550.615(2) and 849.086(5)(b), Fla. Stat. apply to summer jai alai permits and require a full schedule of live pari-mutuel wagering performances for cardroom and intertrack wagering authorization.
2. The number of performances required under § 550.002(11), Fla. Stat., to constitute a full schedule of live games for a summer jai alai permit is 58 performances.

However, a summer jai alai is also eligible to reduce the number of performances to 40 if its live handle has been less than \$4,000,000 for two consecutive fiscal years after June 30, 1992.

3. Having taken the arguments for and against the intervention of GULFSTREAM and HARTMAN AND TYNER, those Petitions to Intervene are Granted.

DONE AND ORDERED this 21st day of August, 2012.


Leon M. Biegalski, Director
Division of Pari-Mutuel Wagering
Northwood Centre
1940 North Monroe Street
Tallahassee, Florida 32399-1035
(850) 488-9130

RIGHT TO APPEAL

This Declaratory Statement constitutes final agency action and may be appealed pursuant to section. 120.68, Florida Statutes, and Rule 9.110, Florida Rules of Appellate Procedure, by filing a Notice of Appeal conforming to the requirements of Rule 9.110(d), Florida Rules of Appellate Procedure, both with the appropriate District Court of Appeal and with this agency at the Office of the Agency Clerk, 1940 North Monroe Street, Tallahassee, FL 32399, within 30 days of rendition of this Order, accompanied by the appropriate filing fees.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail on this the 21st day of August, 2012 to the following: (1) John M. Lockwood, Esquire; JOHN M. LOCKWOOD, P.A.; 200 West College Avenue, Suite 307; Tallahassee, Florida 32301; (2) J. Stephen Menton, Esquire; RUTLEDGE, ECENIA, & PURNELL, P.A.; P.O. Box 551; Tallahassee, Florida 32302-0551; and (3) Marc W. Dunbar, Esquire, PENNINGTON, MOORE, WILKINSON, BELL, & DUNBAR, P.A., Post Office Box 10095, Tallahassee, Florida 32302-2095.



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STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
DIVISION OF PARI-MUTUEL WAGERING

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Department of Business and Professional Regulation Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	5/8/2012
File #	

In re: Petition for Declaratory Statement Case No.

SUMMER JAI ALAI PARTNERS,

Petitioners.

DS 2012-043

PETITION FOR DECLARATORY STATEMENT

COMES NOW, Summer Jai Alai Partners (the "SUMMER PARTNERS"), and hereby move pursuant to Section 120.565, Florida Statutes (2011),¹ and Rule 28-105, Florida Administrative Code (2011), and request the issuance of a declaratory statement by the Department of Business and Professional Regulation, Division of Pari-Mutuel Wagering (the "Division") regarding the application of certain statutes to their particular set of circumstances.

In support of the Petition, the SUMMER PARTNERS state the following:

Introduction

1. The affected agency is the Department of Business and Professional Regulation, Division of Pari-Mutuel Wagering (the "Division"), located at Northwood Centre, 1940 North Monroe Street, Tallahassee, Florida 32399. The Division is the state agency authorized to administer Chapter 550 and Sections 849.086, Florida Statutes, including the conduct of pari-mutuel and cardroom gaming operations. *See* § 550.0251, Fla. Stat. (2011); *see also* § 849.086(4), Fla. Stat. (2011).

¹ All references herein to "Chapter" or "Section" are to the applicable chapter or section of the official 2011 version of the Florida Statutes.

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2. The SUMMER PARTNERS are formally known as the Summer Jai Alai Partners, and their corporate offices are located in Miami-Dade County. For purposes of this Petition, the SUMMER PARTNERS' address is that of its undersigned counsel.

3. The SUMMER PARTNERS are a licensed pari-mutuel permit holder authorized by Chapter 550, Florida Statutes, to conduct summer jai alai pari-mutuel wagering performances at the Miami Jai Alai facility located at 3500 Northwest 37th Avenue, Miami, Florida 33142. There are two pari-mutuel permits, including the SUMMER PARTNERS' permit, which currently operate at the Miami Jai Alai facility.

4. The SUMMER PARTNERS seek the Division's interpretation of certain provisions of Chapter 550 and Section 849.086, Florida Statutes, as applied to the facts presented herein.

Applicable Facts and Law

5. The SUMMER PARTNERS own pari-mutuel permit number 280 (the "Permit"). The Permit was originally a greyhound permit but was converted to a summer jai alai permit in 1980 immediately after passage of House Bill 595 (1980). The Permit has annually operated at Miami Jai Alai since the Permit was converted in 1980 under a lease authorized by Section 550.475, Florida Statutes.

6. The SUMMER PARTNERS operate the Permit at Miami Jai Alai in conformance with Section 550.0745, Florida Statutes. The Permit is authorized to receive an annual license to conduct jai alai games during the summer season (May 1 through November 30). *See* § 550.0745(1), Fla. Stat. (2011). The Permit is prohibited from operation during the winter season. *See* § 550.0745(3), Fla. Stat. (2011).

7. Florida law requires the SUMMER PARTNERS to conduct live performances under the Permit in order to retain eligibility to conduct intertrack wagering and cardroom operations. As set forth below, the SUMMER PARTNERS are in doubt as to the specific number of live performances required to satisfy the full schedule requirement.

8. Chapter 550, Florida Statutes, establishes intertrack wagering eligibility as follows:

Any track or fronton licensed under this chapter which in the preceding year conducted a full schedule of live racing is qualified to, at any time, receive broadcasts of any class of pari-mutuel race or game and accept wagers on such races or games conducted by any class of permitholders licensed under this chapter.

§ 550.615(2), Fla. Stat. (2011). In essence, the Permit is required to conduct a full schedule of live performances in the preceding year in order to retain its intertrack wagering authorization.

See id.

9. Section 849.086(5)(b), Florida Statutes, states that in order for a cardroom license to be renewed, the applicant must have requested to conduct at least 90 percent of the total number of live performances conducted by such permitholder during either the state fiscal year in which the license was issued or the state fiscal year immediately prior thereto. *See* § 849.086(5)(b), Fla. Stat. (2011). The statute also provides that if “more than one permitholder is operating at a facility, each permitholder must have applied for a license to conduct a full schedule of live racing.” *Id.*

10. A full schedule is defined as follows:

“Full schedule of live racing or games” means, for a greyhound or jai alai permitholder, the conduct of a combination of at least 100 live evening or matinee performances during the preceding year; for a permitholder who has a converted permit or filed an application on or before June 1, 1990, for a converted permit, the conduct of a combination of at least 100 live evening and matinee wagering performances during either of the 2 preceding years; for a jai alai permitholder

who does not operate slot machines in its pari-mutuel facility, who has conducted at least 100 live performances per year for at least 10 years after December 31, 1992, and whose handle on live jai alai games conducted at its pari-mutuel facility has been less than \$4 million per state fiscal year for at least 2 consecutive years after June 30, 1992, the conduct of a combination of at least 40 live evening or matinee performances during the preceding year; for a jai alai permitholder who operates slot machines in its pari-mutuel facility, the conduct of a combination of at least 150 performances during the preceding year; for a harness permitholder, the conduct of at least 100 live regular wagering performances during the preceding year; ... For a permitholder which is restricted by statute to certain operating periods within the year when other members of its same class of permit are authorized to operate throughout the year, the specified number of live performances which constitute a full schedule of live racing or games shall be adjusted pro rata in accordance with the relationship between its authorized operating period and the full calendar year and the resulting specified number of live performances shall constitute the full schedule of live games for such permitholder and all other permitholders of the same class within 100 air miles of such permitholder.

§ 550.002(11), Fla. Stat. (2011) (emphasis applied).

11. Section 550.002(11), Florida Statutes, subject to certain exceptions, requires a jai alai permitholder to conduct at least 100 live performances to constitute a full schedule. As it relates to the Permit, there are two provisions of Section 550.002(11), Florida Statutes, that may be applicable:

[F]or a jai alai permitholder who does not operate slot machines in its pari-mutuel facility, who has conducted at least 100 live performances per year for at least 10 years after December 31, 1992, and whose handle on live jai alai games conducted at its pari-mutuel facility has been less than \$4 million per state fiscal year for at least 2 consecutive years after June 30, 1992, the conduct of a combination of at least 40 live evening or matinee performances during the preceding year;

* * *

For a permitholder which is restricted by statute to certain operating periods within the year when other members of its same class of permit are authorized to operate throughout the year, the specified number of live performances which constitute a full schedule of live racing or games shall be adjusted pro rata in accordance with the relationship between its authorized operating period and the full calendar year and the resulting specified number of live performances shall

constitute the full schedule of live games for such permitholder and all other permitholders of the same class within 100 air miles of such permitholder.

§ 550.002(11), Fla. Stat. (2011).

12. The Division has previously opined that Sections 550.002(11), 550.0745(1), and 849.086(5)(b), Florida Statutes, are applicable to the Permit and together prorate the minimum annual number of performances to 42 live performances because multiple permits operate at Miami Jai Alai. *See* Attachment A.

13. The Permit is authorized to operate seven (7) months out of the year and is statutorily restricted from operating during the remaining five (5) months. *See* § 550.0745(1), Fla. Stat. (2011). The SUMMER PARTNERS are unsure if 42 performances equal a full schedule under the pro rata analysis because $7/12$ of 100 performances equals 58.33 performances.

14. The Permit conducted at least 100 live performances each year for 10 years after December 31, 1992. In addition, the Permit's live handle has been less than \$4,000,000 for two consecutive fiscal years after June 30, 1992.

15. The SUMMER PARTNERS are in doubt as to whether the Permit qualifies to conduct 40 live performances per year, as a full schedule, due to the Permit's live handle being less than \$4,000,000 for the previous two fiscal years. *See* § 550.002(11), Fla. Stat. (2011).

16. The SUMMER PARTNERS are in doubt as to the precise number of live performances required to satisfy their live performance requirement based upon the various possibilities set forth above. This Petition is filed to clarify the apparent ambiguity concerning certain provisions of Chapter 550 and Section 849.086, Florida Statutes, as applied to the facts presented herein.

Questions Presented

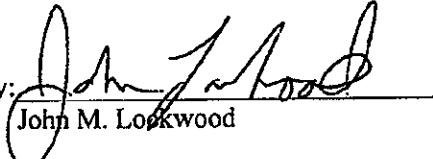
Question 1: Assuming that a summer jai alai permit is operated by lease at a facility where another pari-mutuel permit is located, do Sections 550.615(2) and 849.086(5)(b), Florida Statutes, apply to summer jai alai permits and require a full schedule of live pari-mutuel wagering performances for cardroom and intertrack wagering authorization?

Question 2: Assuming that a summer jai alai permit is operated at a facility by lease where another pari-mutuel permit is located, how many live pari-mutuel performances must the summer jai alai permit conduct in order to satisfy the full schedule requirement imposed by Sections 550.615(2) and 849.086(5)(b), Florida Statutes?

WHEREFORE, the SUMMER PARTNERS request that the Division issue a Declaratory Statement answering the above-stated questions.

Respectfully submitted this 8th day of May 2012.

JOHN M. LOCKWOOD, P.A.
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Facsimile: (850) 270-2610
Email: john@lockwoodlawfirm.com

By: 
John M. Lockwood

Counsel for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing document was filed via hand delivery with the Agency Clerk of the Department of Business and Professional Regulation at 1940 North Monroe Street, Tallahassee, Florida 32399-1035 on this 8th day of May 2012.


John M. Lockwood

**Division of Pari-Mutuel Wagering
Cardroom Facility 90% Rule Requirement**

Greyhound Facilities	Initial Year Licensed	# Perf Year prior to	# Perf First Year	Minimum Number Performances Required: 90% of Full Schedule
Bayard Raceways *2	03/04	94	95	100
Bet Miami (H & T Gaming) *2	96/97	0	161	100
Daytona Beach Kennel Club *2	96/97	456	454	100
Jacksonville Kennel Club *2	08/09	115	114	100
Jefferson County Kennel Club *2	03/04	281	241	217
Mardi Gras *2	96/97	167	151	100
Melbourne Greyhound Park *2	04/05	103	156	93
Naples-Ft. Myers Greyhound *2	97/98	442	437	394
Orange Park Kennel Club *2	07/08	201	112	100
Palm Beach Kennel Club *2	96/97	440	455	100
Palm Beach Racing *2	10/11	0	117	160
Pensacola Greyhound *2	09/10	198	177	160
Sarasota Kennel Club *2	06/07	208	292	188
St. Petersburg Kennel Club *2	96/97	222	221	100
Tampa Greyhound *2	96/97	222	224	100
Washington Co. Kennel Club *2	96/97	185	242	167
West Flagler *2	96/97	256	181	163
West Volusia *2	10/11	0	110	100

Jai Alai Facilities	Initial Year Licensed	# Perf Year prior to	# Perf First Year	Minimum Number Performances Required: 90% of Full Schedule
Dama Jai Alai *2	96/97	282	269	100
Ft. Pierce Jai Alai	07/08	40	44	36
Hamilton Jai Alai	05/06	0	249	225
Miami Jai Alai *2	96/97	183	397	100
Ocala Jai Alai	07/08	51	40	36
Summer Jai Alai *3	96/97	259	50	42
Summersport Jai Alai *3	96/97	104	117	42

Horse Facilities	Initial Year Licensed	# Perf Year prior to	# Perf First Year	Minimum Number Performances Required: 90% of Full Schedule
Calder Race Course *2	09/10	109	100	40
Gulfstream Park	05/06	85	87	77
Pompano Park *1	96/97	176	187	140
Tampa Bay Downs	03/04	92	90	81
Tropical Park @ Calder *2	09/10	51	47	44
Creek Entertainment Gretna	11/12	0	42	38

*1 - Harness permit holders are statutorily required to conduct 140 live performances to operate a cardroom (Sec 849 086(5)(b), F.S.)
 *2 - Several permit holders operate dual permits at a facility and therefore are only required to operate a full schedule of live racing for each permit rather than the 90% (Sec 849 086(5)(b), F.S.)
 *3 - The application of Sections 550 002(1), 550 0745(1), and 849 086(5)(b), F.S., jointly allow these two permit holders' "full schedule" to be prorated
 Revised 01/31/12