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OFFICIAL OPINION 2004-7

Senator James Merritt, Jr.
Assistant Majority Caucus Chair
State House
200 West Washington Street
Indianapolis, Indiana 46204-2785

Re: Gambling tax revenues and historic preservation

Dear Senator Merritt:

This letter is in response to your correspondence of November 25, 2003, wherein you requested that our office issue an opinion addressing the following issue:

When gambling tax revenues, which have been disbursed to local communities, are used to fund projects that result in the demolition, alteration or removal of a historic structure, as defined in Indiana's Historic Preservation and Archeology Act, must the project obtain the approval of the Historic Preservation Review Board?

The Indiana Historic Preservation and Archeology Act states that "a historic site . . . may not be altered, demolished, or removed by a project funded, in whole or in part, by the state unless the Review Board has granted a certificate of approval." Ind. Code § 14-21-1-18. The issue at hand becomes whether or not gambling tax revenues constitute being "funded, in whole or in part, by the state." *Id.*

Gambling taxes are levied by the state, collected by the state and disbursed under formulas established by state law. A portion of the revenues collected as a result of those taxes is distributed to local units of government. Therefore, we conclude that such gambling revenues

are state funds and that their expenditure to alter, demolish, or remove a historic structure requires a certificate of approval from the Historic Preservation Review Board.¹

BACKGROUND

Pari-mutuel wagering on horse races and riverboat gambling generate tax revenues that ultimately make their way to local governments. Under the pari-mutuel statute, admission taxes are collected for individuals "who paid an admission charge for the privilege of entering the racetrack grounds or satellite facility." Ind. Code § 4-31-9-5(a). The tax is collected by the department of state revenue. Ultimately, half of the admission tax revenue is deposited in the state general fund and half of it is distributed to the city, town or county "in which the racetrack is located." Ind. Code § 4-31-9-5(b).

Under the riverboat gambling statute, "[a] tax is imposed on admissions." Ind. Code § 4-33-12-1. The admission tax goes into the state general fund and from there, a portion of the revenues makes its way to local governments under formulas contained in Indiana Code section 4-33-12-6. The state also imposes a tax on adjusted gross receipts from gambling games on riverboats. Ind. Code § 4-33-13-1. Those tax revenues are deposited in the state gaming account and eventually some of that money is paid to units of local government. Ind. Code § 4-33-13-5.

ANALYSIS

"A: (1) historic site or historic structure owned by the state; or (2) historic site or historic structure listed on the state or national register; may not be altered, demolished, or removed by a project *funded, in whole or in part, by the state* unless the review board has granted a certificate of approval." Ind. Code § 14-21-1-18(a) (emphasis added). The common definition of the verb "fund" is to provide or place resources in a fund. Webster's Third New International Dictionary (1993). Under the mechanism established by the gambling statutes, the state is providing money to local units of government. Because the state is the ultimate source of the gambling tax revenues, a project making use of that money is funded, at least in part, by the state.

This conclusion is reinforced by the legislature's purpose for enacting the Historic Preservation and Archeology Act. That purpose is "to further our understanding of the state's heritage and historical culture by preserving and studying what has been left behind." *Whitacre v. State of Indiana*, 619 N.E.2d 605, 608 (Ind. App. 1993), *aff'd*, 629 N.E.2d 1236 (Ind. 1994). This broad legislative purpose militates against interpreting section 18 narrowly. In other words, section 18's requirement that the Historic Preservation Review Board approve specified projects would be frustrated by a narrow interpretation of "funded, in whole or in part, by the state." Accordingly, the better interpretation is that a project is state funded, whether the General Assembly has approved the disbursement of funds for a specific project directly or approved the expenditure indirectly by allocating state tax revenues for disbursement to local governments.

¹ In great part, this letter adopts the reasoning and conclusion of a prior Attorney General advisory letter to you dated November 9, 1998.

CONCLUSION

If a local unit of government undertakes a project to alter, demolish or remove a historic structure, using money obtained from gambling taxes, the project is "funded, in whole or in part, by the state," as that term is used in the Historic Preservation and Archeology Act. As a consequence, that project must obtain a certificate of approval from the Historic Preservation Review Board.

Sincerely,

A handwritten signature in cursive script that reads "Stephen Carter". The signature is written in black ink and is positioned above the printed name and title.

Stephen Carter
Attorney General

Gordon White
Deputy Attorney General