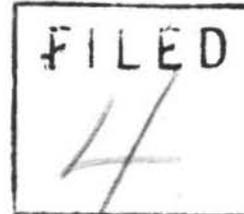


DOG RACES:) American Animal Auction--Violation of Section 4286.
POOL MAKING:)

June 14, 1937

6-14



Mr. Joseph E. Babka
Assistant Prosecuting Attorney
St. Louis County
Clayton, Missouri

Dear Sir:

We have your letter of June 10, 1937, requesting an opinion as to our construction of the "American Animal Auction" for the racing of horses and dogs.

The law deals only with realities and not appearances. The mere use of the terms "sale, mortgage, bill of sale, board of appraisers, options, liens, etc.", does not in any way add to the respectability of a scheme. The outward form and terms used will be disregarded and we shall look beyond the phraseology. We analyze "American Animal Auction", briefly as follows:

(1) The owner of a dog authorizes the racetrack operators to sell it at a price fixed by the owner. This price may be any arbitrary sum, and undoubtedly will be high enough to prevent an honest sale of the animal.

(2) The dog entered in the race is to be sold not more than thirty minutes, and not less than five minutes prior to the race. At first the whole dog is offered for sale; and if there are no buyers then the half dog; and if there are no buyers for the half dog then the quarter dog; and if there are no buyers for the quarter dog then smaller portions.

(3) Within one hour after the auction the owner of any portion of the dog may sell his interest back to

the racetrack operators at the appraised value of the dog which is its value immediately after the race.

(4) Charges are made by the racetrack operators against the owner's interest for furnishing housing facilities.

Stripped of the above phraseology and peering behind the curtain we find in substance that the operation of this plan would be about as follows:

(1) The owner fixes a price for his dog at One thousand dollars, which may be far in excess of his value and so exorbitant that no one would buy the whole dog.

(2) The sale of a fractional interest in the dog from five minutes to thirty minutes prior to the race means that a purchaser may purchase a ticket representing a small interest, say a one five-hundredth interest in a Thousand dollar dog for Two Dollars.

(3) It takes only a few minutes to run a dog race and giving the holders of these tickets one hour in which to resell his interest back to the operators merely affords between thirty and fifty-five minutes in which to run the race and pay off the winners.

(4) The charge made by the racetrack operators is merely "the take".

Suppose five dogs entered a race--each valued at One thousand dollars, and five hundred tickets on each dog were sold at Two dollars each, making a total of Five thousand dollars bet on the race. Suppose the winning dog received a prize of Three thousand dollars, the dog finishing second received One thousand dollars and the dog finishing third received a Five hundred dollar prize.

Therefore, the five hundred ticket holders who theoretically owned one hundred per cent of the winning dog which they purchased for the collective sum of One thousand dollars, would within less than one hour after the purchase of this dog find that his value had gone to Three thousand dollars, making the tickets held on the dog worth

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Six thousand dollars. Reduced to ordinary racetrack language a Two dollar ticket representing a one five-hundredth interest in the dog before the race, becomes worth Six dollars after the race; the holders of a similar interest in the second place dog get their money back; the owners of the third place dog get half their money back and the theoretical owners of the other two dogs get nothing.

Similar subterfuges have heretofore been presented to the Missouri Courts and held to be in violation of Section 4286 R. S. Missouri 1929, which in part provides:

"* * *selling any pools upon the result of any trial or contest of skill, speed or power of endurance of man or beast,* * *"

The above statute applies to dog races. State ex inf. Gentry, Attorney General, vs. Ramona Kennel Club Inc., (1928) 8 S. W. (2) 1.

"Pool Selling", as pertaining to dog racing, is a scheme of facilitating betting on races; the event of a race determining the winner. The term "bet" within the gambling statute, means the risking of a certain thing or sum against another specified thing or sum on an uncertain event. The term "wager" in the gambling statute means a contract by which two or more agree that money or a thing shall be paid or delivered to one on the happening or not happening of a certain event. Wellston Kennel Club vs. Castlen (1932) 55 S.W. (2) 288.

It is therefore the opinion of this office that the plan "American Animal Auction" is a violation of Section 4286, supra, as construed in the Wellston Kennel Club opinion.

Respectfully submitted,

APPROVED:

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FER:MM