

Final Order No. BPR-2008-10049 Date: **11-21-08**  
FILED

Department of Business and Professional Regulation  
AGENCY CLERK

Sarah Wachman, Agency Clerk

By: Brandon M. Nichol

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

IN RE: PETITION FOR DECLARATORY STATEMENT  
JACKSONVILLE KENNEL CLUB, INC.,

**DS 2008-038**

Petitioner,

DBPR No. 2008036447

ASSOCIATED OUTDOOR CLUBS, INC. d/b/a  
TAMPA GREYHOUND TRACK,

Intervenor.

DECLARATORY STATEMENT

Petitioner, Jacksonville Kennel Club, Inc., (Jacksonville or JKC) filed a Petition for Declaratory Statement (Petition) pursuant to Section 120.565, Florida Statutes, with the Division of Pari-Mutuel Wagering (the Division) on June 11, 2008. The Petition is hereby incorporated by reference.

1. Jacksonville is a licensed greyhound pari-mutuel permitholder authorized under chapter 550, Florida Statutes, to conduct pari-mutuel wagering at its facility in Duval County, located at 1440 North McDuff Avenue, Jacksonville, Florida, 32254.
2. Associated Outdoor Clubs, Inc. d/b/a Tampa Greyhound Track (Tampa), is a licensed greyhound pari-mutuel permitholder authorized under Chapter 550, Florida Statutes, to conduct pari-mutuel wagering at its facility in Hillsborough County, located at 8300 Nebraska Avenue, Tampa, Florida, 33604.

3. Jacksonville is contemplating a transfer of some or all of the property comprising its existing pari-mutuel facility and the possible relocation of its pari-mutuel wagering permit to a new facility. Jacksonville thus seeks a declaratory statement from the Division concerning how the operative provisions of Chapter 550 and Section 849.086, including any applicable administrative rules, would impact such a move and JKC's conduct of intertrack wagering and cardroom operations at a new facility.

4. The Petition indicates that Jacksonville is seeking a determination of the application of Chapter 550 and Section 849.086, Florida Statutes, to Jacksonville's particular set of circumstances. Specifically, the Petition presents questions as to the applicability of Sections 550.475, 550.615(8), 550.0555, and 849.086(5)(b), Florida Statutes (2007),<sup>1</sup> to the potential relocation of Jacksonville's greyhound racing pari-mutuel wagering permit and the prospective operation of intertrack pari-mutuel wagering and a licensed cardroom at the new location. The Petition asks the four following questions:

- a. Assuming that appropriate zoning for any new facility is demonstrated to the Division, if JKC petitions to relocate its pari-mutuel wagering permit to a new facility located in Duval County within a 30-mile radius of its existing facility, would the Division's decision on this request rest solely on whether the relocation is necessary to maintain or enhance the capability of JKC to produce tax revenues for the state from wagering activities without deteriorating the capability of Orange Park Kennel Club and St. Johns Greyhound Park to produce such tax revenues?
- b. If JKC successfully petitions to relocate its pari-mutuel wagering permit to a new facility located in Duval County within a 30-mile radius of its existing facility, would JKC be able to: (a) continue to conduct pari-mutuel wagering on live greyhound races at the leased Orange Park facility pursuant to an annual license issued by

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<sup>1</sup> All references herein to a "chapter" or "section" are to the applicable chapter or section of the official 2007 version of the Florida Statutes unless expressly noted otherwise.

the Division; and (b) conduct intertrack pari-mutuel wagering at its new facility in Duval County?

- c. Would the Division's answers to the questions posed in Paragraph 15.b. be the same if a greyhound racing oval will not be constructed at the new facility?
- d. Under the same scenario described in Paragraph 15.b., assume further that JKC submits a properly completed application for a cardroom license for its new facility in Duval County, the required license fee, and adequate evidence of local government approval under Section 849.086, and that both Orange Park Kennel Club and JKC have each consistently applied for and received licenses to conduct a "full schedule" of live greyhound racing at the Orange Park facility in compliance with Section 849.086(5)(b). Under these circumstances, would JKC qualify to conduct cardroom operations at its new facility in Duval County pursuant to an annual license issued by the Division?

5. On July 2, 2008, a Petition to Intervene was filed by Tampa. The Petition to Intervene alleges that Tampa's substantial interests are affected by the outcome of this proceeding. While supporting the petition of Jacksonville, Tampa contends that Section 550.615(8), Florida Statutes, as cited in Jacksonville's petition, is not necessary to the conclusion that intertrack wagering or licensed cardroom activity are authorized at a pari-mutuel facility leased for operation of racing under Section 550.475, Florida Statutes. Tampa contends that Section 550.615(2), Florida Statutes, provides for the continued conduct of intertrack wagering at its original permitted facility even though it is not located in one of "three contiguous counties of the state where there are only three permitholders" as described by Section 550.615(8), Florida Statutes. Further, Tampa's Petition to Intervene cites to Sections 849.086(5)(b) and (7)(a), Florida Statutes, in support of its contention that it would also be authorized to continue cardroom operations, if it were to lease St. Petersburg Kennel Club (St. Petersburg) for the conduct of its races. Therefore, Tampa contends that it is identically situated to Jacksonville and

that neither facility requires its greyhound racing oval in order to remain eligible to conduct intertrack wagering or licensed cardroom operations.

6. The Division is the state agency authorized to administer and regulate the pari-mutuel industry pursuant to Chapter 550, Florida Statutes. Section 550.0251, Florida Statutes. The Division is also the state agency authorized to administer Section 849.086 and regulate the operation of cardrooms under that section. Sections 550.0251(12) and 849.086(4), Florida Statutes.

7. The Division's issuance of a declaratory statement is governed by the provisions of Section 120.565, Florida Statutes, which provides in relevant part:

(1) Any substantially affected person may seek a declaratory statement regarding an agency's opinion as to the applicability of a statutory provision, or of any rule or order of the agency, as it applies to the petitioner's set of circumstances.

(2) The petition seeking a declaratory statement shall state with particularity the petitioner's set of circumstances and shall specify the statutory provision, rule, or order that the petitioner believes may apply to the set of circumstances.

8. The purpose of a declaratory statement is to allow a petitioner to select a proper course of action in advance. *Novick v. Dep't of Health, Bd. of Medicine*, 816 So. 2d 1237, 1240 (Fla. 5th DCA 2002). The Supreme Court of Florida in *Florida Department of Business and Professional Regulation, Division of Pari-Mutuel Wagering v. Investment Corp. of Palm Beach*, 747 So. 2d 374 (Fla. 1999), recognized that, in enacting Section 120.565, Florida Statutes, the Legislature gave citizens a right to get a clear, binding answer from the agency on how the agency's statute and rules apply. In that case the Court also recognized the unique nature of this industry with limited participants who would almost invariably have an interest in a declaratory statement. The

Court further found that changes to that section made by the 1996 amendments to the Administrative Procedure Act authorize the issuance of declaratory statements even though the interest of persons who are not a party may be affected. *Id.* 747 So. 2d at 378-385.

9. Jacksonville is a substantially affected person that may seek the Division's opinion as to the applicability of Chapter 550, Section 849.086, and the Division rules adopted thereunder, and JKC's Petition complies with the requirements of Section 120.565(2). Further, Tampa may intervene because it is located in a county where there is only one greyhound pari-mutuel permitholder as described in Section 550.0555, Florida Statutes.

#### QUESTION A

10. The first question presented by Jacksonville in its Petition is in regard to the standard by which the Division would evaluate a petition to relocate a pari-mutuel permit under the provision of Section 550.0555, Florida Statutes. Specifically, Jacksonville asks if "the Division's decision on this request rest solely on whether the relocation is necessary to maintain or enhance the capability of JKC to produce tax revenues for the state from wagering activities without deteriorating the capability of Orange Park Kennel Club and St. Johns Greyhound Park to produce such tax revenues."

11. Because Jacksonville and Tampa are the only greyhound pari-mutuel permits in their respective counties, each is eligible to relocate its facility pursuant to Section 550.0555, Florida Statutes.

12. The legislative intent and approval criteria found in Section 550.0555, Florida Statutes, indicate the importance of maintaining the revenue producing ability of

greyhound dogracing. The requirements for approval of a pari-mutuel permit transfer are found in Section 550.0555(2), Florida Statutes, which provides as follows:

(2) Any holder of a valid outstanding permit for greyhound dogracing in a county in which there is only one dogracing permit issued, as well as any holder of a valid outstanding permit for jai alai in a county where only one jai alai permit is issued, is authorized, without the necessity of an additional county referendum required under s. 550.0651, to move the location for which the permit has been issued to another location within a 30-mile radius of the location fixed in the permit issued in that county, provided the move does not cross the county boundary, that such relocation is approved under the zoning regulations of the county or municipality in which the permit is to be located as a planned development use, consistent with the comprehensive plan, and that such move is approved by the department after it is determined at a proceeding pursuant to chapter 120 in the county affected that the move is necessary to ensure the revenue-producing capability of the permittee without deteriorating the revenue-producing capability of any other pari-mutuel permittee within 50 miles; the distance shall be measured on a straight line from the nearest property line of one racing plant or jai alai fronton to the nearest property line of the other.

13. Section 550.0555(2), Florida Statutes, does make revenue earning capacity is the factor the Division would consider in a proceeding under Chapter 120, within the county affected. However, there are five criteria that must be met prior to the approval of permit relocation. Those five factors are:

1. The relocation must be within 30 miles of the current location of the permit,
2. The relocation of the permit does not cross the county boundary,
3. The relocation is approved under the zoning regulations of the county or municipality in which the permit is to be located as a planned development use,
4. The relocation is consistent with the comprehensive plan, and
5. The relocation of the permit is approved by the department after it is determined at a proceeding pursuant to chapter 120 in the county affected that the move is necessary to

ensure the revenue-producing capability of the permittee without deteriorating the revenue-producing capability of any other pari-mutuel permittee within 50 miles.

14. The first four criteria provided by Section 550.0555(2), Florida Statutes, are specific to the site of the proposed new location for the permit and whether the zoning and comprehensive plan are appropriate. These four issues are either easily determined by survey or are more properly within the jurisdiction of the local government where the relocation of the permit is proposed. Thus, the Division considers satisfaction of the first four criteria as a condition precedent to the filing of a relocation petition.

15. The Division is only authorized to consider the criteria of revenue earning capacity of the relocated permit without deteriorating the revenue producing capacity of any other permit within 50 miles in a relocation proceeding pursuant to Chapter 120, Florida Statutes.

#### QUESTION B

16. In its second question Jacksonville asks if it successfully petitions to relocate its pari-mutuel wagering permit to a new facility located in Duval County within a 30-mile radius of its existing facility, would Jacksonville “be able to: (a) continue to conduct pari-mutuel wagering on live greyhound races at the leased Orange Park Kennel Club (Orange Park) facility pursuant to an annual license issued by the Division; and (b) conduct intertrack pari-mutuel wagering at its new facility in Duval County?”

17. The answers to these questions are contained in the plain language of Sections 550.475 and 550.615(8), Florida Statutes, respectively.

18. Section 550.475, Florida Statutes, states:

Holders of valid pari-mutuel permits for the conduct of any jai alai games, dogracing, or thoroughbred and standardbred horse racing

in this state are entitled to lease any and all of their facilities to any other holder of a same class valid pari-mutuel permit for jai alai games, dogracing, or thoroughbred or standardbred horse racing, when located within a 35-mile radius of each other; and such lessee is entitled to a permit and license to operate its race meet or jai alai games at the leased premises.

19. Section 550.615(8), Florida Statutes, states:

In any three contiguous counties of the state where there are only three permitholders, all of which are greyhound permitholders, if any permitholder leases the facility of another permitholder for all or any portion of the conduct of its live race meet pursuant to s. 550.475, such lessee may conduct intertrack wagering at its pre-lease permitted facility throughout the entire year, including while its live meet is being conducted at the leased facility, if such permitholder has conducted a full schedule of live racing during the preceding fiscal year at its pre-lease permitted facility or at a leased facility, or combination thereof.

20. The plain language of Sections 550.475 and 550.615(8), Florida Statutes, clearly indicates that if Jacksonville were to relocate its permit within Duval County under the provisions of Section 550.0555, Florida Statutes, it would be eligible to obtain an annual racing license to conduct pari-mutuel wagering on live greyhound races at the leased Orange Park facility and conduct intertrack pari-mutuel wagering at its new permit location in Duval County.

21. Tampa has also expressed its position that Section 550.615(8), Florida Statutes, is not necessary to the determination that Jacksonville and Tampa would be authorized to conduct intertrack wagering at their facilities and that continued intertrack wagering is authorized by Section 550.615(2), Florida Statutes.

22. Section 550.615(2), Florida Statutes, reads as follows:

(2) 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.

23. Jacksonville and Tampa assert in their proposed Declaratory Statement that Section 550.615(8), Florida Statutes, was enacted “in 2000 to make clear that the Division’s prevailing interpretation of section 550.615(2) applied equally to situations in which there might be two permitholders leasing a third permitholder’s facility.” They cite *Ocala Breeder Sales Co., Inc. v. Division of Pari-Mutuels Wagering, Dept. of Business Regulation*, 464 So.2d 1272, 1274 (Fla. 1<sup>st</sup> DCA 1985) (citation omitted), to support their contention that the adoption of Section 550.615(8), Florida Statutes, was a mere clarification of existing law:

24. The points made are well taken as Jacksonville and Tampa have correctly pointed out that St. Johns Kennel Club (St. Johns) operated its meet at Orange Park under a lease and conducted intertack wagering at its facility for several years prior to the passage of Section 550.615(8), Florida Statutes. The legislature is presumed to know and adopt the construction of the statute by the agency responsible for its administration unless a contrary intention is expressed in the new version. *Cole Vision Corp. v. Department of Business & Professional Regulation, Bd. of Optometry*, 688 So. 2d 404, 408 (Fla. 1<sup>st</sup> DCA 1997); see *Brannon v. Tampa Tribune*, 711 So. 2d 97, 100 (Fla. 1<sup>st</sup> DCA 1998).

25. Further, the leasing authorization contained in Section 550.475, Florida Statutes, could be read narrowly because the specific language of that section allows a permitholder to “lease any and all of their facilities to any other holder of a same class valid pari-mutuel permit for jai alai games, dogracing, or thoroughbred or standardbred horse racing, when located within a 35-mile radius of each other; and such lessee is

entitled to a permit and license to operate its race meet or jai alai games at the leased premises.” The use of the singular terms “holder” and “lessee” rather than the plural form of those words could lead to a very strict interpretation that a pari-mutuel permitholder could lease to only one holder of the same class of pari-mutuel permit at its facility. It is not unreasonable to view Section 550.615(8), Florida Statutes, as clarifying the Division’s prevailing interpretation of Section 550.615(2) applied equally to situations in which there might be two permitholders leasing a third permitholder’s facility.

26. Therefore, while the question presented by Jacksonville’s petition, which was noticed in the Florida Administrative Weekly for publication, solely focused on Section 550.615(8), Florida Statutes, Tampa has correctly demonstrated that such intertrack authorization could also be found in the history of the Division’s allowing intertrack at St. Johns pursuant to Section 550.615(2), Florida Statutes. The question is answered in the affirmative, Jacksonville and Tampa would be authorized to conduct intertrack wagering at a new Duval or Hillsborough County location were either to relocate its permit under the provisions of Section 550.0555, Florida Statutes.

#### QUESTION C

27. Jacksonville’s third question, which is joined by Tampa, is whether the Division’s answers to the questions posed in Question B would be the same if a greyhound racing oval will not be constructed at the new facility?

28. Section 550.475, Florida Statutes, contains no reference to the existence or non-existence of an actual track at the permitted location. Therefore, there is no requirement that Jacksonville or Tampa construct a race oval in order to operate a

greyhound permit at a leased location as authorized under Section 550.475, Florida Statutes.

29. The question also presumes that the permit would be transferred as authorized by Section 550.0555, Florida Statutes. The only approval criteria for the transfer of a permit under Section 550.0555, Florida Statutes, are the five criteria listed in the answer to Question A above. While Section 550.054(10), Florida Statutes, requires 50 percent of the facilities necessary to conduct pari-mutuel operations within 12 months of “approval by the voters of the permit,” there is no specific reference to such a construction requirement within Section 550.0555, Florida Statutes, nor is there a cross reference to any requirements contained in Section 550.054, Florida Statutes. Therefore, there is no requirement that Jacksonville or Tampa actually construct a racing oval to relocate their permits under Section 550.0555, Florida Statutes.

#### QUESTION D

30. Jacksonville’s final question asks if it were to relocate to another location in Duval County and it “properly completed application for a cardroom license for its new facility in Duval County, the required license fee, and adequate evidence of local government approval under Section 849.086, and that both Orange Park and JKC have each consistently applied for and received licenses to conduct a ‘full schedule’ of live greyhound racing at the Orange Park facility in compliance with Section 849.086(5)(b). Under these circumstances, would JKC qualify to conduct cardroom operations at its new facility in Duval County pursuant to an annual license issued by the Division?”

31. The operative sections in reaching the answer to Jacksonville’s fourth question are Section 849.086(5)(b), Florida Statutes, which is referenced in the petition,

and Section 849.086(7), Florida Statutes, which contains a specific cross reference to subsection (5)(b), to determine authorization to operate a cardroom.

32. Section 849.086(5)(b), Florida Statutes, states as follows:

(b) After the initial cardroom license is granted, the application for the annual license renewal shall be made in conjunction with the applicant's annual application for its pari-mutuel license. If a permitholder has operated a cardroom during any of the 3 previous fiscal years and fails to include a renewal request for the operation of the cardroom in its annual application for license renewal, the permitholder may amend its annual application to include operation of the cardroom. In order for a cardroom license to be renewed the applicant must have requested, as part of its pari-mutuel annual license application, 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 its initial cardroom license was issued or the state fiscal year immediately prior thereto. If the application is for a harness permitholder cardroom, the applicant must have requested authorization to conduct a minimum of 140 live performances during the state fiscal year immediately prior thereto. 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.

33. The pertinent provisions of Section 849.086(7), Florida Statutes, are as follows:

(7) CONDITIONS FOR OPERATING A CARDROOM.--

(a) A cardroom may be operated only at the location specified on the cardroom license issued by the division, and such location may only be the location at which the pari-mutuel permitholder is authorized to conduct pari-mutuel wagering activities pursuant to such permitholder's valid pari-mutuel permit or as otherwise authorized by law.

(b) Any horserace, greyhound race, or jai alai permitholder licensed under this section may operate a cardroom at the pari-mutuel facility on any day for a cumulative amount of 12 hours if the permitholder meets the requirements under paragraph (5)(b).

[Emphasis added.]

34. Section 849.086(7)(a), Florida Statutes, allows for a cardroom to be operated at “the location at which the pari-mutuel permitholder is authorized to conduct pari-mutuel wagering activities pursuant to such permitholder's valid pari-mutuel permit or as otherwise authorized by law.”

35. Intertrack wagering is a specifically authorized form of pari-mutuel wagering under Chapter 550, Florida Statutes. As indicated in response to Question B above, the Sections 550.615(2) and 550.615(8), Florida Statutes, would authorize Jacksonville and Tampa to conduct intertrack wagering a relocated facility in Duval or Hillsborough County, if it were to conduct a full schedule of live races under a lease arrangement at Orange Park or St. Petersburg respectively. Thus, Jacksonville or Tampa could operate a cardroom at a relocated permit location while leasing another permitholder facility under Section 550.475, Florida Statutes, because the relocated permit would constitute a “location at which the pari-mutuel permitholder is authorized to conduct pari-mutuel wagering activities pursuant to such permitholder's valid pari-mutuel permit or as otherwise authorized by law.”

36. The fourth question is answered in the affirmative and both Jacksonville and Tampa could operate a cardroom at their original or relocated permit location while leasing another facility for the conduct of their race meet, if they continue to qualify for and conduct intertrack wagering at the original or relocated permit location.

DONE AND ORDERED this 21<sup>st</sup> day of NOVEMBER 2008.



David J. Roberts, Director  
Division of Pari-Mutuel Wagering  
Northwood Centre  
1940 North Monroe Street  
Tallahassee, Florida 32399-1035

NOTICE OF RIGHT TO APPEAL UNLESS WAIVED

Unless expressly waived, any party substantially affected by this final order may seek judicial review by filing an original Notice of Appeal with the Clerk of the Department of Business and Professional Regulation, and a copy of the notice, accompanied by the filing fees prescribed by law, with the clerk of the appropriate District Court of Appeal within thirty (30) days rendition of this order, in accordance with Rule 9.110, Fla. R. App. P., and Section 120.68, Florida Statutes.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Declaratory Statement, has been provided by U.S. Certified Mail to Warren H. Husband, Attorney for Petitioner Jacksonville Kennel Club, Inc., Post Office Box 10909, Tallahassee, Florida 32302-2909, to Harold F. X. Purnell, Attorney for Intervenor Associated Outdoor Clubs, Inc., d/b/a Tampa Greyhound Track, Post Office Box 551, Tallahassee, Florida 32302-0551 and to this 21<sup>st</sup> day of November, 2008.

  
Sarah Wachman, Agency Clerk

Copy to:

Joseph M. Helton, Jr., Chief Attorney for PMW

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

RECEIVED  
2008 JUN 25  
DIVISION OF  
PARI-MUTUEL WAGERING

IN RE: PETITION FOR DECLARATORY  
STATEMENT

JACKSONVILLE KENNEL CLUB, INC.,

Petitioner.

Case No **DS 2008-038**  
DBPR - 2008036447

PETITION FOR DECLARATORY STATEMENT  
BEFORE THE DIVISION OF PARI-MUTUEL WAGERING

Petitioner, JACKSONVILLE KENNEL CLUB, INC. ("JKC"), pursuant to Section 120.565, Florida Statutes, and Rule Chapter 28-105, Florida Administrative Code, hereby requests the issuance of a declaratory statement by the DIVISION OF PARI-MUTUEL WAGERING ("the Division"), regarding the application of Chapter 550 and Section 849.086, Florida Statutes, and of any relevant Division rules, to JKC's particular set of circumstances, as described below. In support of its Petition, JKC states:

1. The name and address of the agency affected by this Petition are:

Division of Pari-Mutuel Wagering  
Northwood Centre  
1940 North Monroe Street  
Tallahassee, Florida 32399-1035

2. The name, address, and telephone number of Petitioner are:

Jacksonville Kennel Club, Inc.  
1440 North McDuff Avenue  
Jacksonville, Florida 32254  
Telephone No. - (904) 646-0001

**FILED**  
Department of Business and Professional Regulation  
DEPUTY CLERK

CLERK *Brandon M. Nichols*  
DATE 6-11-2008



3. The name, address, telephone number, and facsimile number of Petitioner's attorney, which shall be Petitioner's address for service purposes during the course of this proceeding, are:

Warren H. Husband  
Metz, Husband & Daughton, P.A.  
P.O. Box 10909  
Tallahassee, Florida 32302-2909  
Telephone No. (850) 205-9000  
Facsimile No. (850) 205-9001

4. JKC is the holder of a valid permit authorizing JKC to conduct pari-mutuel wagering under Chapter 550<sup>1</sup> at its facility located at 1440 North McDuff Avenue in Duval County, Florida. Among other activities, this permit authorizes JKC to conduct pari-mutuel wagering on its own live greyhound races and to conduct intertrack pari-mutuel wagering on races conducted at other locations.

5. Due to changes in the neighborhood surrounding JKC's facility over the past few years, JKC has determined that its economic interests and those of the state would best be served by conducting JKC's live greyhound racing meet at another location.

6. The Florida Legislature contemplated that such circumstances might arise and provided pari-mutuel permitholders with the flexibility to conduct their live racing meets at other locations pursuant to Section 550.475, which states:

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<sup>1</sup> All references herein to "Chapter" or "Section" are to the applicable chapter or section of the official 2007 version of the Florida Statutes.

Holders of valid pari-mutuel permits for the conduct of any jai alai games, dogracing, or thoroughbred and standardbred horse racing in this state are entitled to lease any and all of their facilities to any other holder of a same class valid pari-mutuel permit for jai alai games, dogracing, or thoroughbred or standardbred horse racing, when located within a 35-mile radius of each other; and such lessee is entitled to a permit and license to operate its race meet or jai alai games at the leased premises.

7. For the past two years, JKC has received from the Division a pari-mutuel wagering license to conduct JKC's live greyhound racing meet at a pari-mutuel facility owned by Orange Park Kennel Club, Inc. ("Orange Park"), which is leased by JKC for this purpose. Orange Park is the holder of a valid permit under Chapter 550 authorizing it to conduct pari-mutuel wagering on greyhound races at its facility located in adjoining Clay County, Florida, approximately 12 miles from JKC's existing pari-mutuel facility.

8. With its live greyhound racing meet conducted at the Orange Park facility over the past two years, JKC has continued to operate intertrack pari-mutuel wagering at its existing pari-mutuel facility in Duval County pursuant to Section 550.615(8), which states:

In any three contiguous counties of the state where there are only three permitholders, all of which are greyhound permitholders, if any permitholder leases the facility of another permitholder for all or any portion of the conduct of its live race meet pursuant to s. 550.475, such lessee may conduct intertrack wagering at its pre-lease permitted facility throughout the entire year, including while its live meet is being conducted at the leased facility, if such permitholder has conducted a full schedule of live racing during the preceding fiscal year at its pre-lease permitted facility or at a leased facility, or combination thereof.

9. The criteria for operation of this statute are satisfied in that the three contiguous counties of Duval, Clay, and St. Johns are each home to only a single pari-mutuel wagering permit, each of which is for greyhound racing. In addition, JKC has operated and continues to operate a “full schedule” of live greyhound racing at the leased Orange Park facility.

10. JKC intends to continue conducting its live greyhound racing meet at the Orange Park facility. Because JKC and Orange Park are under common ownership and control, the continuation of a mutually satisfactory lease arrangement between the two entities is assured.

11. As a result, JKC finds itself in a situation where the remaining pari-mutuel wagering operations at its existing facility in Duval County no longer require the use of a significant portion of the property, e.g., the greyhound racing oval.

12. JKC is therefore contemplating a transfer of the property comprising its existing pari-mutuel facility to another entity for an unrelated use. Due to its location and size, one possibility that JKC is exploring is a donation of this property for the operation of a charter school.

13. To allow for this transfer, JKC would first need to petition the Division for approval to move the location of its pari-mutuel wagering permit pursuant to Section 550.0555, which states as follows:

(1) It is the finding of the Legislature that pari-mutuel wagering on greyhound dogracing provides substantial revenues to the state. It is the further finding that, in some cases, this revenue-producing ability is hindered due to the

lack of provisions allowing the relocation of existing dogracing operations. It is therefore declared that state revenues derived from greyhound dogracing will continue to be jeopardized if provisions allowing the relocation of such greyhound racing permits are not implemented. This enactment is made pursuant to, and for the purpose of, implementing such provisions.

(2) Any holder of a valid outstanding permit for greyhound dogracing in a county in which there is only one dogracing permit issued, as well as any holder of a valid outstanding permit for jai alai in a county where only one jai alai permit is issued, is authorized, without the necessity of an additional county referendum required under s. 550.0651, to move the location for which the permit has been issued to another location within a 30-mile radius of the location fixed in the permit issued in that county, provided the move does not cross the county boundary, that such relocation is approved under the zoning regulations of the county or municipality in which the permit is to be located as a planned development use, consistent with the comprehensive plan, and that such move is approved by the department after it is determined at a proceeding pursuant to chapter 120 in the county affected that the move is necessary to ensure the revenue-producing capability of the permittee without deteriorating the revenue-producing capability of any other pari-mutuel permittee within 50 miles; the distance shall be measured on a straight line from the nearest property line of one racing plant or jai alai fronton to the nearest property line of the other.

14. For purposes of the Division's analysis, there are only two other pari-mutuel permitholders within 50 miles of JKC's existing pari-mutuel facility in Duval County: (a) Orange Park Kennel Club located in Clay County, Florida, approximately 12 miles from JKC's existing pari-mutuel facility; and (b) Bayard Raceway d/b/a/ St. Johns Greyhound Park located in St. Johns County, Florida, approximately 22 miles from JKC's existing pari-mutuel facility.

15. JKC therefore seeks a declaratory statement from the Division in response to the following questions, clarifying how the operative provisions of Chapter 550, Section 849.086, and any applicable Division rules would impact JKC's relocation and disposition of its existing pari-mutuel facility in Duval County:

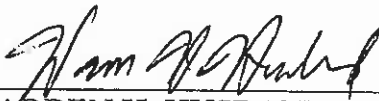
- a. Assuming that appropriate zoning for any new facility is demonstrated to the Division, if JKC petitions to relocate its pari-mutuel wagering permit to a new facility located in Duval County within a 30-mile radius of its existing facility, would the Division's decision on this request rest solely on whether the relocation is necessary to maintain or enhance the capability of JKC to produce tax revenues for the state from wagering activities without deteriorating the capability of Orange Park Kennel Club and St. Johns Greyhound Park to produce such tax revenues?
- b. If JKC successfully petitions to relocate its pari-mutuel wagering permit to a new facility located in Duval County within a 30-mile radius of its existing facility, would JKC be able to: (a) continue to conduct pari-mutuel wagering on live greyhound races at the leased Orange Park facility pursuant to an annual license issued by the Division; and (b) conduct intertrack pari-mutuel wagering at its new facility in Duval County?
- c. Would the Division's answers to the questions posed in Paragraph 15.b. be the same if a greyhound racing oval will not be constructed at the new facility?
- d. Under the same scenario described in Paragraph 15.b., assume further that JKC submits a properly completed application for a cardroom license for its new facility in Duval County, the required license fee, and adequate evidence of local government approval under Section 849.086, and that both Orange Park Kennel Club and JKC have each consistently applied for and received licenses to conduct a "full schedule" of live greyhound racing at the Orange Park facility in compliance with Section 849.086(5)(b). Under these circumstances, would JKC qualify to conduct cardroom operations at its new facility in Duval County pursuant to an annual license issued by the Division?

16. If the Division needs additional information from JKC in order to respond to any of the questions set forth in this Petition, please contact the undersigned and JKC will provide the required information as soon as possible.

WHEREFORE, Petitioner, Jacksonville Kennel Club, Inc., requests that:

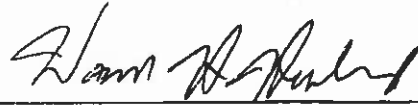
- a. The Division of Pari-Mutuel Wagering issue a declaratory statement responding to the questions set forth above pursuant to Section 120.565, Florida Statutes; and
- b. The Division grant such other and further relief as may be deemed just and proper.

Respectfully submitted on this 11th day of June, 2008.

  
\_\_\_\_\_  
WARREN H. HUSBAND  
FL BAR No. 0979899  
Metz, Husband & Daughton, P.A.  
P.O. Box 10909  
Tallahassee, Florida 32302-2909  
850/205-9000  
850/205-9001 (Fax)  
Attorneys for Petitioner

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that the original of the foregoing document was filed via hand-delivery with the **AGENCY CLERK**, Division of Pari-Mutuel Wagering, Northwood Centre, 1940 North Monroe Street, Tallahassee, Florida 32399-1035, on this 11th day of June, 2008.

A handwritten signature in cursive script, appearing to read "Hamm H. [unclear]", written over a horizontal line.

Attorney