OPINION NO. 75-060

Syllabus:

Where a parking lot for horse trailers and stable employees' cars is located in one municipality and the race track itself is located in another municipality, both are entitled to an equal share of revenues derived from the additional tax on pari-mutuel wagering for all race meetings taking place entirely during such use of the parking lot.

To: Edgar L. Lindley, Tax Commissioner, Dept. of Taxation, Columbus, Ohio
By: William J. Brown, Attorney General, September 12, 1975

Your letter of September 5, 1975 requesting my opinion reads as follows:

> "Revised Code sec. 3769.081 imposes a duty upon the Tax Commissioner to collect and distribute the tax levied therein in accordance with the provisions of said section. In connection with the distribution of such monies, questions have arisen concerning the meaning of that portion of said section which deals with such distribution.
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> "The City of Warrensville Heights has requested to participate in the distribution of revenues arising from the operations of Thistledown Race Track pursuant to Revised Code sec. 3769.081. Warrensville Heights bases its claim on the fact that it has granted Raceway Properties, Inc., the owner of Thistledown Race Track and the adjoining property, a special use permit to build a 5.9 acre parking area for horse trailers and stable employees' cars. An examination of the premises by agents of the Department of

Taxation reveals that the parking area is in existence and is being used for the stated purposes, and the affidavit of Michael G. Mackey, General Manager of the Summit, Thistledown, Randall and Cranwood Racing meets, indicates that the area has been so used since May 1, 1975. (See correspondence from Nick A. Mandanici, Law Director, City of Warrensville Heights, and related affidavits, attached).

"Your opinion is respectfully requested as to whether the City of Warrensville Heights is entitled to share in the tax revenues collected under Revised Code sec. 3769.081, and if so, whether the City of Warrensville Heights is entitled to a full share of the tax revenues collected during the Summit Racing Meet, February 28, 1975, through May 10, 1975; said revenues having already been distributed in total to the Village of North Randall."

My understanding of the facts in this matter, as described in your letter and accompanying materials, is as follows. Raceway Properties, Inc. ("Raceway"), the owner of Thistledown Race Track, leased to four racing clubs conducting meets at Thistledown a 5.9-acre parcel to the north of the track itself for use as a parking lot for horse trailers and stable employees' cars. Raceway secured a special use permit from the Warrensville Heights City Council for the property to be used in such manner. Since May 1, 1975, the parking lot has been used as described. The subject parking lot is located entirely within the City of Warrensville Heights, while Thistledown Race Track itself is located entirely within the Village of North Randall.

The applicable statute is R.C. 3769.081 which states:

"The tax commissioner shall collect from each permit holder who conducts a pari-mutuel or certificate system of wagering where the wagering is less than five million dollars a sum of money equal to one tenth of one per cent of the total amount wagered and where the wagering is five million dollars or more a sum of money equal to fifteen hundredths of one per cent of the total amount wagered during any horse-racing meeting for the purpose of providing operating revenue for the political subdivisions wherein such meetings are held. Such moneys shall be collected by the commissioner within ten days after the close of such meeting and shall be forwarded immediately to the chief fiscal officers of the municipal corporations or townships in which such horse-racing meeting took place and in which any such facilities or accessory uses therefor were located. Such moneys shall be divided equally between the municipal corporations or townships in which such horse-racing meeting took place and in which any facilities or accessory uses therefor

were located. Such municipal corporations or townships may distribute a portion of the moneys so received to any adjoining political subdivision which incurs increased expenses because of such horse-racing meeting.

"This section shall not apply to any agricultural society which holds a horse-racing permit.

"The amount collected under this section from any one permit holder shall not exceed fifteen thousand dollars from any one horse-racing meeting in any calendar year."
(Emphases added)

There has been an informal opinion of the Attorney General [No. 137, March 3, 1960] and one case [Warrensville Heights v. Bowers (1961), 90 Ohio L. Abs. 116 (Com. Pleas Franklin)] which have construed and applied R.C. 3769.081. Both the opinion and the case were occasioned by similar circumstances, and involved the same municipalities in the present matter. In both the opinion and the case, Warrensville Heights was denied a share of the additional pari-mutuel tax because the parking lot at issue at that time, although located within that city, was not intended to be used regularly as a parking lot for customers of the track. Hence, no "facilities or accessory uses" were located within that city. However, the court made clear that where such "facilities or accessory uses" to the track were shown, the municipality making such a showing would be entitled to a share of the tax. The court also determined that "facilities or accessory uses" are not words of art, but are used in their common and everyday meaning. 90 Ohio L. Abs. at 124.

The issue in the present matter is the same as that in the informal opinion and case, viz., is the parking lot a facility or accessory use for horse racing meets? If it is, then the above-cited statute mandates equal allocation of the tax collected to Warrensville Heights. The instant matter differs perceptively from the earlier situations existent when the informal opinion issued and the case hereinbefore cited was decided. The parking lot has been used since May 1, 1975, for horse trailers and stable employees' cars. Your letter indicates that there are no other present uses of the lot. Further, there is no indication in your letter or accompanying materials that the parking lot is specially constructed to handle the horse trailers. It appears from the facts given that the lot is suitable for use by any organization desiring parking space.

The facts show that the parking lot is not a "facility" as that term is commonly understood. The noun "facility" is defined in Webster's Third New International Dictionary (Unabridged 1961) in the following manner:

"* * * 5 * * * b: something * * * that is built, constructed, installed or established to perform some particular function or to serve or facilitate some particular end."
(Emphasis added)

Since the lot in the present matter is adaptable to many

uses, and is not specially constructed to accommodate horse trailers, it is not a "facility" as that word is commonly understood.

However, the parking lot is an "accessory use" to horse race meetings. The facts indicate the lot is used exclusively for the parking of horse trailers and stable employees' cars. Webster's Third New International Dictionary (Unabridged 1961) defines the adjective "accessory" in the following manner:

> "adj. 1 of a thing a: aiding or contributing in a secondary or subordinate way * * *: supplementary or secondary to something of greater or primary importance * * *: ADDITIONAL < sidewalks lead to ~ buildings > * * *."

Since the use of the parking lot in the present matter aids or contributes to the horse race meetings in furnishing parking for stable employees and for the horse trailers, such use is "accessory" to the horse race meetings, as that word is commonly understood. That point is all the more clear when consideration is given to the fact that the lessees of the lot are the racing clubs conducting the horse race meetings at Thistledown Race Track and the lessor of the lot is the corporation owning the race track itself.

R.C. 1.42(F) provides:

> "(F) 'And' may be read 'or,' and 'or' may be read 'and' if the sense requires it."

From the discussion of the common and everyday meaning of "facility" and "accessory use," it is clear that the sense requires the intervening "or" in the statute be read in its disjunctive sense. Therefore, since there is an "accessory use" for the horse race meetings occurring on property located within Warrensville Heights, that city is entitled to an equal share of the additiional pari-mutuel tax, there being no proportional provision in the statute.

There remains the question of "accessory use" of the parking lot for only part of a horse race meeting. The statute explicitly states that only those municipalities wherein a "horse race meeting" takes place (or in which a facility exists or an accessory use occurs) are entitled to the equal share of the tax. Since the parking lot at issue in the instant matter was only used for part of the February 28 - May 10, 1975, meeting, Warrensville Heights is not entitled to a share of the tax for that meeting. The manifest intent of the statute is that the entire meeting take place while the "accessory use" is being made in order for a municipality to share in the distribution of the tax.

Therefore, it is my opinion, and you are hereby advised that Warrensville Heights is entitled to an equal share of the additional pari-mutuel tax levied by R.C. 3769.081 for all race meetings during which the parking lot is used for horse trailers and stable employees' cars, which race meetings take place in their entirety during such use of the property.