

Opinion No. 51-5424

September 12, 1951

BY: JOE L. MARTINEZ, Attorney General

TO: Mr. Thomas C. Closson, Chairman New Mexico Racing Commission Santa Fe, New Mexico

{*127} In your letter of September 5, 1951, you asked whether it is permissible for the New Mexico State Racing Commission to employ a husband and wife to carry on the duties of the Commission.

The New Mexico Racing Commission is a creature of the statute and owes its origin to § 62-602, N.M.S.A. In that section the Commission is authorized to employ a secretary and fix the duties and compensation therefor. The act contains language directing the Commission to employ other people in the discharge of the duties imposed upon it, one such instance being specifically the employment of representatives to oversee the races.

It is evident that the legislature contemplated that the Commission would of necessity have employees by virtue of the language found in § 62-610 authorizing it to withhold at the end of each fiscal year from the funds received an amount available to meet the requirements and provisions of the Act. Clearly this contemplates an amount needed for such employees as may be required.

It therefore appears that the Legislature contemplated the employment of people by the Commission other than the secretary and those specifically referred to in Chapter 62. The fact that any two people who may be hired may be husband and wife is of no materiality unless the question of nepotism arises. § 10-110, N.M.S.A., prohibiting nepotism reads as follows:

"Nepotism prohibited -- Exceptions. It shall hereafter be unlawful for any person elected or appointed to any public office or position under the laws of this state or by virtue of any ordinance of any municipality thereof, to employ as clerk, deputy or assistant, in such office or position, whose compensation is to be paid out of public funds, any person related by consanguinity or affinity within the third degree to the person giving such employment, unless such employment shall first be approved by the officer, board, council or commission, whose duty it is to approve the bond of the person giving such employment: Provided, that this act (§§ 10-110, 10-111) shall not apply where the compensation of such clerk, deputy or assistant shall be at the rate of \$ 600 or less a year, nor shall it apply to persons employed as teachers in the public schools."

The members of the Commission are not required by law to give bond for the discharge of their duties. Therefore, since there is no authority which could approve any bond filed by the members, no person could be appointed as clerk, assistant or deputy, who is

related to the Commission within the third degree of consanguinity unless the compensation was less than \$ 600 per year.

Chapter 62 provides for the appointment of a secretary. It does not appear that he is required by law to give any bond for the faithful performance of his duties. Therefore, this officer could not hire as a clerk, assistant or deputy anyone related to him within the prohibited degree of consanguinity. The Commission, however, would have the power to hire anyone as a clerk, assistant or deputy to such secretary, not related to the Commissioners within the prohibited degree of consanguinity without violation of § 10-110 since it would be the Commission, not the person prohibited, who would be doing the employing.

It is, therefore, my opinion that the New Mexico State Racing Commission {**128*} can hire husband and wife to carry on the duties of the Racing Commission so long as no such employee is related to the Commission within the degree of consanguinity prohibited by § 10-110 of the New Mexico Statutes.

I trust that this fully answers your inquiry.