

## Opinion No. 52-5552

June 26, 1952

**BY:** JOE L. MARTINEZ, Attorney General

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

{\*264} Recently you inquired of this office whether it would be legal for the State Racing Commission to issue a license to hold horse racing in New Mexico under an arrangement whereby the licensee would obtain credit towards the license fees otherwise payable, to be measured by the number of racing days authorized by the commission in former years which were not used by the licensee.

It appears that the particular licensee obtained licenses from the commission in former years; that licenses were issued in these years authorizing 331 days of racing for which the licensee paid \$ 16,500., in the aggregate, at the rate fixed by statute, \$ 50 per day.

It appears further that for different reasons, some beyond the control of the licensee, none of the racing days were used and that the question to be determined is whether it is permissible to issue a new license to the applicant allowing it to conduct racing for 211 days by virtue of the former payments, thus in effect assessing a penalty of 120 days against the applicant for the non-use of the licenses issued, but actually allowing the licensee to use the former licenses issued as a credit upon the new license to be issued.

Your attention is respectfully called to Chapter 62-604 NMSA which sets forth the license fees to be paid by applicants for such licenses. The appropriate section reads as follows:

"The license fee to be paid shall be the sum of fifty dollars (\$ 50.00) for each racing day authorized by the commission; . . .

It is to be noted also that the preceding section of 62-604 NMSA

reads as follows:

"Such application shall be filed not less than sixty (60) days prior to the first day the proposed races or meetings are to be held and at the time of filing such application the applicant or applicants shall pay to the state racing commission the license fees as hereinafter provided."

I am not able to find anything in the statutes authorizing the commission to give credit to any licensee to utilize unused authorized racing days at times other than for the dates

authorized by the license issued. I am not able to find anything {265} in the statutes authorizing the commission to adopt such a rule.

Conversely, it appears to be quite clear that the statute contemplates that the applicant for a license at the time of making such application shall pay to the commission the sum of \$ 50. per day for each racing day sought, and it follows that the fee paid is to be considered as the fee due for each of the racing days sought in the application and approved by the commission.

The situation is comparable to that in which an owner of an automobile obtains a license for a calendar year and fails to use the automobile during that year. When he seeks a license for the ensuing year he must pay the fees required and he can claim no credit, nor could he obtain credit by virtue of the fact that he might not have operated the automobile during the year for which the license was issued. Whether the automobile owner uses his license, or the race track operator uses his license is of no consequence. Both had authority to use the licenses issued and their failure to use them does not preclude the state from insisting that appropriate license fees be paid for particular authorities sought.

This office recognizes that the revenue which may accrue to the state from the license fees charged in connection with racing applications may constitute an insignificant part of the ultimate revenues which the state will obtain out of horse race meetings. Nevertheless the Legislature has established the conditions under which licenses may be issued and no departure is allowed therefrom. It is my thought that if any relief is to be obtained in the situation it rests with the Legislature which has paramount authority in the matter.

I trust this fully answers your inquiry.