

Opinion No. 54-5914

March 8, 1954

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. Edward M. Hartman State Comptroller State Capitol Building Santa Fe, New Mexico

{*355} In your letter dated February 23, 1954, you refer to Section 62-610 of the 1941 Compilation, authorizing the State Racing Commission at the end of each fiscal year to estimate the amount of funds necessary to pay the costs of administration of the Act for the succeeding year, and withholding that amount from the balance reverting to the General Fund. You state that the Racing Commission expects to have a cash surplus at the end of the present fiscal year and would like to use \$ 10,000 of the surplus to maintain the State Fair Race Track for the ensuing year. You inquire whether maintenance of the State Fair Race Track would be classified as an expenditure for administration purposes which could be placed in the next year's budget as an estimate for administrative purposes.

The State Fair Board is created by law to perform certain functions relative to the State Fair and in Section 48-2114 this Board, which is given corporate powers, is specifically empowered to build, construct, improve, repair, maintain, buildings, structures, improvements, grounds and equipment, which may be required by or convenient for the purpose of operating a State Fair.

Section 62-602 of the 1941 Compilation, pocket supplement, gives specific powers to the New Mexico Racing Commission pertaining to the licensing and regulation of horse racing and control of pari mutuel betting at horse racing. This Section does not empower the Racing Commission to expend its funds for the maintenance of the State Fair Race Track, and such a purpose would not be within the purposes included under the administration of the Racing Commission Act. Since the State Fair Board is specifically empowered to maintain the Race Track at the State Fair, use of Racing Commission funds for that purpose would violate the constitutional provision prohibiting donation to a public corporation. It is therefore our opinion that the \$ 10,000 could not be set aside and used in the ensuing year's budget of the Racing Commission for the purpose of maintaining the State Fair Race Track.

You also request an opinion upon the question of the power of the Racing Commission to erect a building for its permanent quarters. Section 62-602 of the 1941 Compilation, pocket supplement, does not grant to the Racing Commission the power to acquire and hold real estate, nor to erect public buildings. Since the Racing Commission is a State Agency, permanent quarters for it would be considered as part of the State Capitol and the power to construct capitol buildings and acquire sites therefor is vested in the Capitol Buildings Improvement Commission under the provisions of Section 6-231 of the 1941 Compilation, pocket supplement. If adequate permanent quarters are necessary

for the Racing Commission, and the same are not available and cannot be provided by the Capitol Buildings Improvement Commission, the Racing Commission would have the implied authority in administering the Racing Commission Laws, to rent necessary quarters, but there is no implied authority to acquire real estate and erect capitol buildings on the part of the Racing Commission.

You also inquire whether the surplus {*356} can be used for erecting permanent quarters. Since the Racing Commission is not authorized to erect capitol buildings for permanent quarters, your third question needs no answer.

By: C. C. McCulloh

Assist. Attorney General