

## **Opinion No. 57-177**

July 23, 1957

**BY:** OPINION OF FRED M. STANDLEY, Attorney General Fred M. Calkins, Jr.,  
Assistant Attorney General

**TO:** J. M. Phillips, Secretary, State Racing Commission, P. O. Box 1693, Albuquerque,  
New Mexico

### **QUESTIONS**

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Does a track veterinarian have the authority to withdraw an entry from a stake race without recourse on the part of the owner where the entry fee has been paid in a series of payments during the year or more preceding the race when the veterinarian is of the opinion that the horse is physically unfit to produce a satisfactory effort in the race?

#### CONCLUSION

Yes.

### **OPINION**

#### ANALYSIS

It is our understanding that each year a number of stake races are run at various race tracks in New Mexico whereby horse owners nominate a horse for a race and the entry fee is paid in a series of payments during the year or more preceding the race. The contract is silent as to any provision for a refund if a horse is scratched by the track veterinarian. Assuming that for some reason a track veterinarian found it necessary to remove a horse from a race, the question then arises as to whether the entry fee should be returned.

We are of the opinion that if the track veterinarian should find it necessary to disallow the running of a horse, that such could be done without refunding the entry fee. It has been held in 12 Am. Jur., page 769, that existing statutes and the settled law of the land at the time a contract is made becomes a part of it and must be read into the contract just as if an express provision to that effect was inserted therein. Turning to the New Mexico statutes, we find that the New Mexico State Racing Commission by virtue of § 60-6-2, N.M.S.A., 1953 Compilation, is authorized to make all necessary rules and regulations pertaining to the conducting of horse racing in the State of New Mexico. Pursuant thereto, Rules 269 and 122 were promulgated, which state as follows:

"269. The track Veterinarian shall examine each horse as he enters the paddock and shall have the authority to order scratched any horse that he deems to be unsafe to be raced, or a horse that it would be inhumane to allow to race, or a horse that he deems to be physically unfit to produce a satisfactory effort in a race. The Track Veterinarian may place any horse which is unsafe, unsound or unfit on a suspension list and entries on those horses will not be accepted until removed therefrom by the Track Veterinarian."

"122. The death of a horse, or a mistake in its entry when eligible, does not release the subscriber or transferee from liability for stake, and the entrance money to a purse that is run off shall not be returned on the death of a horse or its failure **to start for any cause whatsoever.**" (Emphasis supplied).

It necessarily follows that all owners who enter horses in stake races are aware of the above rules and that they exist so as to allow a track veterinarian to rule a horse off the track without recourse on the part of the owner to secure the entry fee which he has paid.