

## Opinion No. 59-08

February 10, 1959

**BY:** FRANK B. ZINN, Attorney General

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

{\*13} The following is submitted in answer to your recent opinion request in which your inquiry is in substance:

Must the state racing commission grant a hearing to persons reapplying for licenses who have been indefinitely suspended by the commission?

It is my opinion that the law does not require you to grant a hearing for a person whom you have indefinitely suspended. The Commission, by virtue of § 60-6-2, New Mexico Statutes Annotated, 1953 Compilation, has the power to grant and/or to refuse and revoke licenses. The section provides in part:

"It is [the Commission] empowered to exclude or compel the exclusion from any and all race courses any person who the Commission shall deem detrimental to the best interests of racing or any person who shall willfully violate the racing laws or any ruling, regulation or order of the Commission or any law of the {\*14} United States or of this state."

My examination of the act fails to reveal any specific or implied requirement that the racing commission must grant a hearing upon an application for reinstatement or re-licensing.

Although the foregoing fully answers your question, it should be pointed out that this opinion does not intend to indicate to the commission that an applicant is without a remedy to compel the issuance of a license if the commission has arbitrarily or capriciously withheld reinstatement. As to whether the commission has acted arbitrarily or capriciously will depend upon the facts in each given case. See **Ross-Witt v. State Racing Commission**, 64 N.M. 478, 330 P. 2d 701; **City of Albuquerque v. Burrell**, 64 N.M. 478, 326 P. 2d 1088. The **Ross-Witt** case, supra, clearly indicates, that the New Mexico legislature has conferred broad discretionary powers of licensing upon the commission as an expert body. This discretionary authority, coupled with the power to expel any person who the commission has deemed detrimental to the best interests of racing, gives the commission broad licensing authority.

By way of summary, it is my opinion that the State Racing Commission is not legally required to give a person seeking a license or requesting reinstatement of a license a hearing before refusing to grant or reissue the said license. In refusing the license, the commission must, however, not be arbitrary or capricious.

Fred M. Calkins, Jr.