

Opinion No. 64-128

October 15, 1964

BY: OPINION OF EARL E. HARTLEY, Attorney General Oliver E Payne, Assistant Attorney General

TO: Mr. Alex Armijo, State Auditor, State Capitol Santa Fe, New Mexico

QUESTION

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1. Does the State Racing Commission have jurisdiction over race track audits covering pari-mutuel operations and admission receipts?
2. Are contracts for the parimutuel audit subject to approval by the State Auditor?
3. Is an audit by a private accountant under contract with the State Racing Commission subject to review by the State Auditor once the audit is completed?
4. Does the State Auditor have jurisdiction to assign members of his staff to conduct pari-mutuel audits?

CONCLUSIONS

1. Yes.
2. Yes.
3. Yes.
4. Yes, if designated by the State Racing Commission as its representative to conduct such audits.

OPINION

ANALYSIS

The audits to which you refer, namely pari-mutuel audits, are audits of an operation which is conducted by a private corporation or company.

Section 4-4-2.2, N.M.S.A., 1953 Compilation (P.S.) provides that "The financial affairs of every state agency and every public body shall be thoroughly examined and audited annually."

Section 4-4-2.1, N.M.S.A., 1953 Compilation (P.S.) defines the terms state agency and local public body as follows:

"'State agency' means any department, institution, board, bureau, commission, district or committee of the government of the state and means every office or officer of any of the above.

'Local public body' means every political subdivision of the state which expends public money from whatever source derived, including but not limited to counties, county institutions, boards, bureaus or commissions, incorporated cities, towns or villages; drainage, conservancy, irrigation or other districts; charitable institutions for which appropriations are made by the legislature, county, municipal, consolidated, union or rural school districts; and every office or officer of any of the above."

Section 60-6-9, N.M.S.A., 1953 Compilation, sets forth certain taxes which are to be paid by licensed race tracks, namely the admission tax and the pari-mutuel tax. It goes on to provide that

"Accurate records shall be kept and preserved by the licensee that will fully and truthfully show the facts as to all admission tickets sold and commissions retained, which records shall at all reasonable times be **open to inspection and audit by the state racing commission or any of its authorized representatives.**" (Emphasis added)

Since the race tracks in question are not state agencies or local public bodies, and since the statutes specifically grant to the State Racing Commission the authority to audit the books of the tracks or to name a representative to do so, it is the Racing Commission which has jurisdiction over these particular audits.

In answer to your second question, contracts for pari-mutuel audits are subject to approval by the State Auditor. Section 4-4-2.7, N.M.S.A., 1953 Compilation (P.S.) provides in pertinent part as follows:

"The state auditor shall have the power to approve or disapprove any and all contracts for auditing entered into between any officer of any state agency or local public body, and any private accountant or auditor or firm or accountants or auditors. No such contract shall be binding or of any effect whatever unless and until it shall have been approved in writing by the state auditor."

The pari-mutuel audit contracts are agreements between the State Racing Commission and private accountants. Consequently, these contracts are subject to the approval of the State Auditor under the above-quoted statute.

In your third question you ask whether audits conducted by private accountants under contract with the State Racing Commission are subject to review by the State Auditor. The answer is Yes.

Section 4-4-2.7, supra, provides that

"It shall further be the duty of the state auditor or personnel of his office designated by him, to examine all audits made pursuant to such contracts and payment for services rendered by any accountant or auditor or firm of accountants or auditors pursuant to any such contract shall not be made unless and until such examination has first been made and the state auditor shall have determined and made a written finding that such audit has been made in a competent manner, in accordance with the rules and regulations of the state auditor, and in accordance with the terms of such contract."

Lastly, you inquire whether the State Auditor has jurisdiction to assign members of his staff to conduct pari-mutuel audits. Our answer is Yes, if the State Auditor is designated by the State Racing Commission as its authorized representative to make such audits.

While the race track operation is privately owned, the State has a considerable interest in the parimutuel audit. There is a five percent tax on the "aggregate amount retained as commissions on the proceeds from the sale of parimutuel tickets and certificates." Thus, it is our opinion that if the State Racing Commission designated the State Auditor as its authorized representative to conduct pari-mutuel audits, the State Auditor would have jurisdiction to do so.