Opinion No. 72-15

March 24, 1972

BY: OPINION OF DAVID L. NORVELL, Attorney General Thomas L. Dunigan, Assistant Attorney General

TO: New Mexico State Racing Commission, State Fair Grounds, Albuquerque, New Mexico

QUESTIONS

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What are the responsibilities and obligations of the New Mexico State Racing Commission pursuant to Chapter 4, N.M. Laws 1972?

CONCLUSION

See analysis.

OPINION

*{*17}* ANALYSIS

Chapter 4, Section 1, N.M. Laws 1972, enacted by the recent session of the New Mexico Legislature, imposes a tax equal to ten cents for each race day patron of any New Mexico race track and requires that an accurate record be kept by the licensee (race track) to reflect the amount of admission taxes as well as any other information the State Racing Commission may require. In Section 60-6-11, NMSA, 1953 Comp. the Commission is designated the tax collecting agency of the State with respect to the various fees and taxes imposed upon the operation and revenue of a New Mexico race track. In performing this responsibility, the State Racing Commission is expressly authorized to inspect and audit the records required by law or Commission order to be prepared and preserved by a licensee with respect to admission taxes, commissions, total gross amounts wagered, uncollected winnings and breakage and other business operations. Section 60-6-9(C), NMSA, 1953 Comp.; Chapter 4, Section 1, N.M. Laws 1972. Accordingly, with respect to the ten cent admission tax imposed on the licensee for each of its race day patrons, the Commission has the responsibility to review the method, procedures and facilities to be employed by the licensee in maintaining and reporting an accurate account of the number of its race day patrons. Should the Commission be dissatisfied with the accuracy of this account or the reliability of the method, procedures and facilities used in producing it, the Commission may prescribe for the licensee the system to be used. Section 60-6-9(C), **supra.**

Chapter 4, Section 1, N.M. Laws 1972 levies, in addition, a tax upon the licensee equal to one hundred percent of the accumulated uncollected winnings of a race meeting. The term "uncollected winnings" is defined as "all money resulting from the failure of patrons who purchased winning parimutuel tickets during the meeting to redeem their winning tickets before the end of the sixty-day period immediately succeeding the closing day of the meeting." Accordingly, at the close of the sixtieth day immediately following the completion of any race *{*18}* meeting, the licensee is to remit to the State Racing Commission, in order to satisfy this assessment, an amount equal to the sum represented by the number of winning pari-mutuel tickets which have not been presented for payment within the allotted time.

In connection with this tax assessment, the licensee is required to maintain an accurate and intelligible account of the number of winning parimutuel tickets which have not been presented for payment as well as a record of the total monetary value of these outstanding tickets and such other information as the Commission may direct. These records are necessary in order to provide a reliable account of the fund by which the tax liability based on uncollected winnings is to be measured. As in the case of the other taxes collected by the State Racing Commission, the Commission is responsible for auditing and inspecting the records related to uncollected winnings and may, if necessary, prescribe a method or procedure for their preparation and maintenance. Section 60-6-9 (C), **supra.**

Finally, Section 60-6-9 (B), as amended, Chapter 4, Section 1, N.M. Laws 1972 recites that the State Racing Commission is "responsible for . . . administering" the tax measured by the uncollected winnings. This directive was curiously omitted with respect to the taxes imposed in Section 6-6-9(A), as amended, Chapter 4, Section 1, N.M. Laws 1972. The intent of this unique recital, in the absence of any enlightening legislative history, must be determined with the aid of the principles of statutory construction.

Statutory words are presumed to be used in their ordinary and usual sense and with the meaning commonly attributable to them unless the contrary is clearly made to appear. **State v. Reinhart,** 79 N.M. 36, 439 P.2d 544 (1968); **Valley Country Club v. Mender,** 64 N.M. 59, 323 P.2d 1099 (1968); **State v. Martinez,** 48 N.M. 232, 149 P.2d 124 (1944). In its ordinary and usual sense the term "administer" commonly means:

"5. Law. To manage or dispose of . . . ." Random House Dictionary of the English language (College Edition 1968).

And see **In re Fleischer,** 151 F. 81 (So. D.N.Y. 1907); **Glocksen v. Holmes,** 299 Ky. 626, 186 S.W.2d 634 (1945); **Christgau v. Fine,** 27 N.W.2d 193 (Minn. 1947); **Wisconsin Department of Taxation v. Pabst,** 15 Wis.2d 195, 112 N.W.2d 161 (1961). In turn, the phrase "to manage" has been construed to mean "to control and direct . . . to take charge of . . . ." **Fluet v. McCable,** 12 N.E.2d 89 (Mass. 1938).

Accordingly, by the use of the term "administering" in Section 60-6-9(B), **supra,** it may seem as though the legislature intended to give the State Racing Commission custody,

control and dominion over the tax revenue measured by the uncollected winnings. Such a construction of this provision would, however, cause it to be in conflict with other provisions of the law. Section 11-2-3, NMSA, 1953 Comp. provides that:

". . . All public moneys in the custody or under the control of any state official or agency obtained or received by any such official or agency from any source . . . shall be paid into the state treasury.

It shall be the duty of every official, or person in charge of any state agency, receiving any moneys, in cash or by check, draft or otherwise, for or on behalf of the state or any agency thereof from any source . . . to forthwith and before the close of the next succeeding business day after the receipt of such moneys to deliver or remit the same to the state treasurer . . . ."

The State Treasurer is directed by Section 11-2-3.1, NMSA, 1953 Comp. to place all such revenues in the general fund unless they have been "otherwise allocated by law."

As a rule, a statutory term should not be construed in a manner which would conflict with existing law.

"In interpreting a statute this court may presume that the legislature was informed as to existing law, and that the legislature did not intend to enact *{*19}* a law inconsistent with any existing law or not in accord with common sense and sound reasoning." **City Commission of Albuquerque v. State ex rel. Nichols,** 75 N.M. 438, 405 P.2d 924 (1965).

And see **State ex rel. Clinton Realty Co. v. Scarborough,** 78 N.M. 132, 429 P.2d 330 (1967). Rather, statutes are to be construed so that, as far as practicable, each provision may be given substance and effect and any apparent differences may be reconciled so that the law will be consistent, harmonious and sensible. **State ex rel. Clinton Realty Co. v. Scarborough, supra; Reed v. Styron,** 69 N.M. 262, 365 P.2d 912 (1961); **El Paso Electric Co. v. Milkman,** 66 N.M. 335, 347 P.2d 1002 (1960). If the term "administering," as used in Chapter 4, Section 1, N.M. Laws 1972, is to be construed in a manner which is both consistent and harmonious with existing law and distinct in its meaning from "the plain signification of other language found in the act," **Cromer v. J. W. Jones Construction Co.,** 79 N.M. 179, 441 P.2d 219 (Ct. App. 1968), the most that can be inferred from the recital is that the legislature may have intended to allocate the tax revenue measured by the uncollected winnings to a fund other than the general fund. See Section 11-2-3.1, **supra.** The legislature failed however to designate a different or separate fund into which this revenue might be placed. Nor can it be argued that the legislature, by implication, specified a purpose or use to which this revenue is to be applied. Indeed, to specify a purpose or use for public funds, the legislature is required by the Constitution to prescribe the amount appropriated and the object to which it is to be applied. N.M. Const. Art. IV, Section 30.

The legislature having evidenced an intent that the tax revenue measured by the accumulated uncollected winnings be allocated in a different manner than the other tax revenues collected by the State Racing Commission, but it remaining unclear as to which fund or to what purpose this revenue is to be applied, it is the advice of the Office of the Attorney General that the Commission remit this revenue to the State Treasurer as provided by law, Section 11-2-3, **supra,** with the instruction that it be credited to the New Mexico State Racing Commission until such time as the legislature has an opportunity to clarify its intent with respect to the use of the term "administering" in Section 60-6-9(B), **supra.**