

Opinion No. 45-4810

October 25, 1945

BY: C. C. McCULLOH, Attorney General

TO: Mr. Robert W. Reidy Assistant District Attorney Albuquerque, New Mexico

{*148} In your letter dated October 22, 1945, you state that a group of businessmen are contemplating the erection of a horse racing track, and desire to know the amount of discretionary powers vested in the State Racing Commission. Specifically, you inquire whether or not, if this association meets all the requirements set out in Section 62-601 to 62-611, inclusive, of the N.M. 1941 Compilation, the State Racing Commission could arbitrarily deny them a license to conduct race meetings.

Under Section 62-605 of the N.M. 1941 Compilation provision is made for a hearing by the Commission of applications for horse racing meets, and the last two paragraphs in said section provide as follows:

"If after such hearing the state racing commission upon considering the application, shall find that the applicant is not eligible under the provisions of this act to receive a license or does not tender upon request a good and sufficient bond as required herein, then said license shall be refused. If there shall be more than one (1) application pending at the same time, and if there shall be conflicting dates for the holding of any such races or meetings then such state racing commission, hearing the same may determine the racing days that will be allotted to each applicant; provided, further, that the state racing commission may require as a condition precedent to the issuance of a license hereunder a bond in not to exceed the sum of five thousand dollars (\$ 5,000) with corporate surety, qualified to do business within the State of New Mexico, and to be approved by said commission and conditioned for the payment by the applicant of all fees and taxes levied and to be paid hereunder, and that the applicant shall pay the penalties, if any, which are provided herein for violation of any of the provisions of this act.

"The determination by the state racing commission of any of the foregoing matters to be determined shall be final and conclusive and not subject to any appeal. In the event any application for a license is refused or rejected, the license fees tendered with the application shall be returned to the applicant."

It is apparent that the Commission has discretion in the issuing of licenses, and that there is no appeal allowed from their decision. However, if it can be established {*149} that the applicant meets all the requirements of the statute, and that the denial of a license by the Commission is arbitrary, capricious and unreasonable, then, in a proper proceeding, the Courts undoubtedly would require the Commission to use reasonable discretion, and perhaps require them to issue the license, as contemplated by the statute. In this connection see 38 C. J., Mandamus, Section 353.