

Opinion No. 46-4867

February 27, 1946

BY: C. C. McCULLOH, Attorney General

TO: Mr. Herman Lindauer, Chairman State Racing Commission Santa Fe, New Mexico

{*197} Your letter to Mr. Thomas Closson, Santa Fe, New Mexico, has been referred to this office for answer. In this letter you request an opinion of the Attorney General concerning the issuance of a proposed license for holding horse races at Gateway Park, and you request this office to give an opinion concerning the various questions raised by this application.

Concerning the length of time that the State Racing Commission may issue a license for horse racing, and concerning the nature of the application for such license, I refer you to Section 62-604 of the N.M. 1941 Compilation. This section requires that the application be accompanied by a fee of \$ 50.00 for each day that authority is asked for holding horse races. This application must be filed not less than 60 days prior to the first day of the holding of any horse race.

Section 62-605 of the N.M. 1941 Compilation, as originally enacted by the Laws of 1933, Chapter 55, Section 5, originally provided that no licensee shall be entitled to a license for more than 60 racing days in any county or city within a twelve months' period. This section was amended by Chapter 203, Section 5, of the Laws of 1937, and therefore the only present limitation concerning the authority of the racing commission to license the holding of horse races or meetings is the requirement that \$ 50.00 must be paid at the time of the filing of the application for every day which the applicant wishes to obtain authorization, which is the fee required in the event the application requests authority to use the pari mutual system in connection with such races.

It is further provided, in Section 62-605, previously referred to, that 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.

In view of the foregoing, it is my opinion that so long as the fee of \$ 50.00 is paid for each day in which authorization is given for the holding of a race, that the State Racing Commission may grant authority for as many racing days within a year as they see fit, and as many different racing periods to be held on specified authorized dates over a period of years, as they see fit to authorize. The statute, however, does not authorize the giving of a license for holding races over an unlimited period of time, and definite dates must be authorized by the Commission before the license can be given covering such periods.

Section 62-609 provides that taxes levied in addition to the license fee heretofore discussed, which is further {*198} provided, shall be in lieu of all other and further excise

or occupational taxes levied by the State, or any county or municipality, or other political subdivision thereof.

It is noted that the proposed application, concerning Gateway Park, involves an offer to pay a greater amount of taxes than is specified in this section. Since this is a tax levied upon the licensee, the licensee may waive the provisions of this section, and agree to pay additional taxes. However, the application should contain a specific waiver of the limitation of taxes provided in Section 62-609 of the N.M. 1941 Compilation, and should clearly specify the amount of taxes that such applicant proposes and agrees to pay to the State Racing Commission, in consideration of obtaining the proposed license.

By HARRY L. BIGBEE,

Asst. Atty. General