

## Opinion No. 54-5931

April 1, 1954

**BY:** RICHARD H. ROBINSON, Attorney General

**TO:** Mr. Thomas C. Closson Chairman New Mexico State Racing Commission State Fair Administration Building Albuquerque, New Mexico

{\*379} On March 18th your Commission addressed an inquiry to this office concerning whether or not the Commission may revoke and cancel the permit issued to Gateway Park in Dona Ana County for racing. With that letter there were enclosures showing that the Commission met September 30, 1953, and that a deadline was set for the beginning of a construction program at Gateway Park. It further states that the deadline was February 1st, 1954. You ask whether or not by reason of this deadline the permit of Gateway Park may be cancelled.

Section 62-607, N.M.S.A., 1941 Comp., as amended, reads in part as follows:

"In the event of any violation of the provisions hereof or of any of the rules and regulations promulgated by the state racing commission the license of the offending applicant may be cancelled or revoked at any time by the commission, provided, however, that the licensee shall have reasonable notice and opportunity to be heard before such cancellation or revocation, and provided, further, that the cancellation or revocation of any such license shall not relieve the licensee from prosecution for any of the violations hereof or from payment of fines and penalties herein provided for."

The parties interested in Gateway Park acknowledged receipt of the information concerning the Order of the Commission by a letter dated October 1, 1953 to the Commission, and also a letter dated February 15, 1954, stating that the Commission had been very indulgent in their treatment.

The record discloses however, that the Commission has not given any notice and opportunity to be heard, to the owners of Gateway Park. All administrative rules and practices require reasonable notice to be given. The statute above quoted requires such notice also. We believe that it would be necessary to give a formal notice to the participants prior to the revocation and that until such notice and opportunity to be heard is given, that the revocation of such permit would be in violation of the statutes.

Therefore, it is the opinion of this office that until a formal notice is given and opportunity for the interested parties to be heard that the Racing Commission would be in violation of the statutes in regard to the revocation of the license.

{\*380} We sincerely hope that this answers your inquiry.

By: Fred M. Standley

Assist. Attorney General