

## Opinion No. 55-6252

August 11, 1955

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

**TO:** Mr. C. C. Chase, Jr., District Attorney, Third Judicial District, Las Cruces, New Mexico

We have your request of July 14 for an opinion as to whether stable employees, track employees and owners of horses at Ruidoso Downs come within the provisions of § 64-6-1 (d), N.M.S.A., 1953.

Section 64-6-1 (d) reads as follows:

"Every nonresident owner of a foreign vehicle operated within this state or owner of a house trailer within this state, who or which accepts any employment or engages in any trade, profession or occupation in this state shall register such vehicle and pay the same fees therefor as it required with reference to like vehicles owned by residents of this state."

It is the opinion of this office that clearly nonresidents accepting work in the stables caring for the horses at the track have accepted employment within the State of New Mexico so that they would be required to comply with this section of the statute. This employment does not have to be permanent and the fact that it is only for the racing season does not have any bearing on the matter. The same reasoning would apply to all nonresidents who work for the track in its operation of its races.

The question as to whether the owners of the horses which race at the track come within the provisions of this statute presents an interesting question. This depends upon the answer to the question as to whether the racing of horses is "engaging in a trade, profession or occupation". It is apparent that horse racing is not a trade or profession. However, "occupation is a general term and includes the vocation, calling, trade, business which one principally engages in to secure a living or obtain wealth." *Joliff v. State*, 109 S. W. 176, 177, 53 Tex. Cr. R. 61. See also 29 Words and Phrases, page 152 et seq. The fact that the only income is derived from the successful running of a race would not be conclusive in determining whether this is an occupation so far as the owners were concerned. It seems that you would have to prove that each owner of the horse was using horse racing as his occupation before you could force him to comply with this statute. If the owners of the horses were running their horses as a means of securing a living, they would by the terms of the statute be required to comply with this statute.

We would call your attention to *State v. Pate*, 47 N.M. 288. The case would seem to cast doubt on the constitutionality of § 64-6-1 (d). The New Mexico Court declared a provision almost identical to the one under consideration an unreasonable classification.

Trusting we have answered your question, we remain

By Paul L. Billhymer

Assistant Attorney General