

Opinion No. 59-29

March 26, 1959

BY: FRANK B. ZINN, Attorney General

TO: State Racing Commission P. O. Box 1693 Albuquerque, New Mexico. Attention: Paul Woofter, Chairman

The State Racing Commission may review the action of a former commission to determine the regularity and validity of a license issued by the former commission.

The State Racing Commission can revoke a license obtained by fraud from a former commission.

The State Racing Commission cannot revoke a license issued by a former commission for nonuse of racing dates granted by the former commission unless a condition as to when racing shall be commenced, subject to forfeiture of a license has been imposed by the commission issuing the license.

OPINION

{*43} We have your opinion request received in this office on March 20, 1959, in which you ask the following questions:

1. "Under the broad authority of the Commission can the presently constituted State Racing Commission look into the proceedings and previous action of the former Commission which granted the Fortuna Corporation a racing license and review the regularity of the issuance of the license?"
2. "Does the State Racing Commission have the authority to revoke a license heretofore granted by a previous Commission for any cause other than those particularly listed in the racing laws?"
3. "Would failure to utilize racing dates granted by the former Commission constitute grounds for revocation by the present Commission?"

In answer to your first question, it is my opinion that the presently constituted State Racing Commission may look into the proceedings and previous action of the former commission.

In answer to your second question, it is my opinion that the present commission could revoke a license granted by a previous commission for reasons other than those particularly listed in the racing laws, but only if it can be established as a matter of fact that reasons existed which would have justified a refusal in the first instance or if fraud or deceit existed in obtaining the license in the first instance.

It is my opinion, in answer to your third question, that the present commission cannot revoke the Fortuna Corporation's racing license for failure to utilize racing dates granted by the former commission.

In support of my first conclusion, it has generally been held that a license may be revoked for any reason that would have justified a refusal to issue it in the first instance, particularly where fraud or deceit in obtaining the license may have been practiced upon the old commission. 53 C.J.S. 650.

Notwithstanding the foregoing, however, I think I should point out to you that, generally speaking, administrative agencies such as the State Racing Commission are continuing in nature and are unaffected by a change in personnel. Thus, ordinarily, final actions of administrative officers or bodies within the scope of their authority are binding on their successors. In this instance, a former commission granted a racing license to the Fortuna Corporation following a hearing and it must be assumed that the issuance of the license on its face was regular and in accordance with the state racing laws. Although it is my view that this does not preclude the State Racing Commission from reviewing the previous action of a former commission, there is a presumption of regularity in the original issuance of the license. This would require existence of a solid basis for a re-examination of the previous action taken by the former commission before such step should be undertaken by the present commission.

Your second question asks whether the present State Racing Commission has the authority to revoke a license heretofore granted by a previous commission for any cause other than those particularly {*44} listed in the racing laws. As I have indicated, the present commission could revoke the license if sufficient reasons now exist for refusal of the license in the first instance or if fraud or deceit in obtaining the license originally was practiced upon the former commission. You are further advised that prior to any revocation the Racing Commission must give notice and an opportunity to be heard to the Fortuna Corporation before taking action upon the license. Section 60-6-2, N.M.S.A., 1953 Comp. (1957 P.S.) states in part:

"The New Mexico State Racing Commission shall have the power to grant and/or refuse and revoke licenses."

As pointed out by the New Mexico Supreme Court in **Ross v. State Racing Commission**, 330 P. 2d 701, in construing this section, the State Racing Commission has generally been vested with broad discretionary powers with respect to the granting of a license, and it is my opinion that such broad discretionary powers could be exercised by the board in revoking a license. Possible revocation, however, necessarily would have to be based on sound reasons and not upon the arbitrary or capricious whim of the commission.

In answer to your third question, your attention is directed to the fact that there is nothing in the racing law which specifically requires the Fortuna Corporation to operate on all dates granted. Further, there is no limit upon the number of racing dates that the

commission may grant if it so desires. When the old commission granted Fortuna a license for 135 racing dates covering a period of three years on January 10, 1958, they failed to attach any conditions to the license specifying the date on which racing should commence. In addition, they accepted from the Fortuna Corporation the statutory fee for each racing date requested. Inasmuch as the old commission saw fit to issue the racing dates for a period of three years without stating a commencement date on which racing would have to begin, I do not believe you could revoke the license for failure to utilize the racing dates on the grounds that the dates had been abandoned.

Fred M. Calkins, Jr.

Assistant Attorney General