

Opinion No. 65-186

September 23, 1965

BY: OPINION OF BOSTON E. WITT, Attorney General Oliver E. Payne, Deputy Attorney General

TO: Harvey Foster, Executive Director, State Racing Commission, P.O. Box 8576, Station C, Albuquerque, New Mexico

QUESTION

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Are films of horse races run on New Mexico tracks public records?

CONCLUSION

No.

OPINION

{*304} ANALYSIS

Section 71-5-1, N.M.S.A., 1953 Compilation provides that "every citizen of this state has a right to inspect any public records of this state except records pertaining to physical or mental examinations and medical treatment of persons confined to any institutions and except as otherwise provided by law."

Since the statute does not define what a "public record" is, this office has been called upon from time to time to define the phrase. Opinion Nos. 61-137 and 64-19. 76 J.S., "Records," Section 1, states as follows:

"All records which the law requires public officers to keep, as such officers, are public records; and whenever a written record of the transactions of a public officer in {*305} his office is a convenient and appropriate mode of discharging the duties of his office, and is kept by him as such, it is a public record."

Rule 59 of the State Racing Commission's rules and regulations provides that:

"Stands and/or towers for Judges, Timers, Stewards and Film Patrol Operators shall be maintained and protected from the elements, in positions commanding an uninterrupted view of the entire racing strip, which shall be subject to the approval of the State Racing Commission."

Rule 66 provides as follows:

"Licensee shall, at all times during races, furnish and maintain at its tract the necessary cameras and equipment to produce motion pictures of every race from start to finish. The films of all races shall be retained by the Licensee for a period of not less than one year and shall at all times be available to the State Racing Commission.

(a) No movies of any race shall be shown during the Meeting without permission of the Stewards nor shall any film of any race be sold or distributed without written approval of the Commission.

(b) Licensee shall provide an approved type of photo finish device which shall be used as an aid to the Placing Judges."

Rule 97 provides as follows:

"In any instance where the photo finish picture furnished the Placing Judges is not adequate or usable, the decision of the Placing Judges shall be final and need not be governed in any manner by the photofinish equipment."

However, there is nothing in the state statutes which requires the Commission to photograph horse races. Accordingly such photographs, when made, are not a public record. See **Mathews v. Pyle**, Ariz., 251 P. 2d 893.

While the Commission could make copies of the films and sell them, that is a policy decision which it is free to make.