

Opinion No. 65-94

June 8, 1965

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

TO: Mrs. Margaret Foster, Administrative Assistant, State Racing Commission, P.O. Box 8576, Station C, Albuquerque, New Mexico

QUESTION

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1. Under Section 60-6-10, N.M.S.A., 1953 Compilation, as amended by the 1965 legislative session, when are the moneys to be paid by management to the State Racing Commission for deposit with the State Treasurer into a special "breeders' fund"?
2. When are breeders' awards to be paid?
3. Who certifies that breeders are entitled to awards?
4. When does Chapter 270, Laws 1965, the horse breeders' bill, become effective?
5. Does the horse breeders' bill apply to the State Fair?

CONCLUSIONS

1. At least sixty days prior to the race meet.
2. During the first ten days in July.
3. The owner and the State Racing Commission.
4. June 18, 1965, at 12:01 A.M.
5. No.

OPINION

{*158} ANALYSIS

Section 60-6-10, N.M.S.A., 1953 Compilation, as amended in 1965, provides in part as follows:

"Every licensee shall pay, at the time and in the manner **other fees are paid**, a sum of money equal to ten percent of the first money of every purse won by a horse registered with the New Mexico horse breeders' association as New Mexico bred, except stake-race purses, in which case an amount equal to ten percent of the added money will be paid . . ." (Emphasis added.)

We believe the other fees referred to are track license fees as provided in Section 60-6-4, N.M.S.A., 1953 Compilation. Thus, these moneys are to be paid to the State Racing Commission not less than sixty days prior to the first day of the race meet.

In answer to your second question, it is to be noted that the last sentence of Section 60-6-10.1, N.M.S.A., 1953 Compilation, as enacted in 1965, provides that "breeders' awards shall be paid during the first ten days in July of each year for purses won during the calendar year immediately preceding." "Calendar year" is almost universally held to mean January 1 to December 31, inclusive. **Byrne v. Bearden**, Ga., 107 S.E. 782; **Earl Ranch Limited v. Industrial Accident Commission**, Cal., 53 P.2d 153; **People v. Milan**, Colo., 5 P.2d 249; **Bell v. Mackey**, S.C., 3 S.E.2d 816; **Newman v. Borough of Fair Lawn, Bergen County**, N.J., 157 A.2d 314. Thus, the awards to be made during the first ten days in July are for purses won during the preceding January 1 through December 31 period.

In your third question you ask who is to certify that breeders are entitled to awards. In the first instance you should require a certification from the person who was the owner of the dam at the time of foaling. The State Racing {*159} Commission then certifies to the State Treasurer that awards are to be paid from the breeders' fund by the State Treasurer to the owner of the dam of the animal at the time the animal was foaled. Disputes shall be determined by the State Racing Commission, subject to review by the New Mexico horse breeders' association.

Since Chapter 270, Laws 1965, does not contain an emergency clause, it become effective June 18 at 12:01 A.M.

Section 3 of the horse breeders' bill, compiled as Section 60-6-10.1, N.M.S.A., 1953 Compilation (P.S.) provides that breeders' awards are to be paid on certain moneys "won at a commercial meet." Thus, you ask whether the State Fair is a commercial meet.

Irrespective of whether or not the State Fair is a commercial meet, it is our opinion that the Fair is not to be included in the operation of the breeders' bill.

If the State Fair paid the ten percent figure set forth in the Act into the breeders' fund, it would violate Article IX, Section 14, the anti-donation provision of the Constitution. This is so because these moneys are public funds which would ultimately be given to certain breeders.

In our judgment this program, from a legal standpoint, would be analogous to the hay roughage program. The disbursement of state funds under that program was held to violate the state constitution, the court stating as follows (State v. Hannah, 63 N.M. 110, 314 P.2d 714):

"The hay roughage program put in effect by the federal government and aided by New Mexico was a wonderful thing for the livestock industry, and no doubt was the cause of larger numbers of livestock staying on their range in New Mexico for future production of their kind, thus benefitting the economy of the state, but if the appropriation now before us be upheld where will it stop? . . ."

The court then mentioned that other industries in the state were also in a depressed status but had to conclude that the hay roughage program "gives public money to private individuals in violation of Article IX, Section 14, of our Constitution."

The program in question, worth-while though it may be, would also result in a donation of public moneys to private individuals if the State Fair was included within its scope.