

Opinion No. 66-125

November 17, 1966

BY: OPINION OF BOSTON E. WITT, Attorney General Roy G. Hill, Assistant Attorney General

TO: Floyd R. Rigdon, Chairman, State Racing Commission, P. O. Box 8576, Station C, Albuquerque, New Mexico

QUESTION

FACTS

Section 60-6-10A, N.M.S.A., 1953 Compilation (P.S.) authorizes the State Racing Commission to create a special suspense fund with the State Treasurer in the amount of \$ 3000. Following are some questions relating to that fund.

QUESTIONS

1. Is this fund limited to \$ 3000 in any fiscal period?
2. Is this to be considered as a revolving fund to be kept at a total of \$ 3000 with the fund to be reimbursed the amount of any claim paid at the time of payment?
3. Will any balance in the fund at the close of the fiscal period revert to the General Fund and a new deposit of \$ 3000 be made at the beginning of the next fiscal period?
4. What are legal claims for refunds?
5. A Stable Name License was issued in 1965 for a fee of \$ 50. This name was never used and there is now a claim for a refund, can we pay this?

CONCLUSION

1. No.
2. Yes.
3. No.
4. See Analysis.
5. No.

OPINION

{*168} We will consider your first three questions together. Section 60-6-10A, supra, reads as follows:

"The state racing commission is authorized to create a special suspense fund with the treasurer of the state in an amount not to exceed three thousand dollars (\$ 3,000) to pay all legal claims for refunds, from the funds derived from license fees and taxes. Any surplus over and above the maximum suspense fund amount shall be covered into the general fund of the state."

We have concluded that the fund is not limited to a total of \$ 3000 in any fiscal period because of the language which says that any surplus over and above the maximum amount will be covered into the State General Fund. Also, we reach this conclusion because of the nature of the funds used to create this fund. These funds are derived from license fees and taxes and the fund is clearly to be used for legal refunds involving these receipts. We know as a matter of fact that horse racing goes on in New Mexico almost all year long so we therefore know that claims may occur at any time. We therefore feel that the Legislature intended for the full amount of the fund to be available at all times to make legal refunds.

For the same reasons noted above we do not believe the fund should revert to the General Fund at the end of the fiscal year. Everything over the maximum fund is placed in the General Fund throughout the fiscal year. There is no reason to require the fund to revert one day and then deposit of \$ 3000 the next day to recreate it.

In summary, you may maintain the fund at \$ 3000 throughout the year and the fund does not revert to the General Fund at the end of the fiscal year.

What is or what is not a legal claim is something that will have to be determined on a case by case basis. We can say, however, that any refunds will have to be for legal claims based on payments of license fees or taxes. These types of payments furnish the funds for the suspense fund and we believe any refunds must be in these two areas.

We have concluded that the refund described in question five is not a legal one. The owner of the Stable Name License applied for, paid for and received his license. Unless there was an error in the amount paid for this license, the owner has no legal claim for refund. The owner had a license to race under a stable name during the year 1965. If he chose not to race under the stable name, that was his business. The important thing is that he was licensed by the state to do so and the state in no way prevented him from exercising the privileges granted by his license.