

## Opinion No. 67-92

July 26, 1967

**BY:** OPINION OF BOSTON E. WITT, Attorney General

**TO:** Mr. Finlay MacGillivray, Manager New Mexico State Fair P. O. Box 8546  
Albuquerque, New Mexico

### QUESTION

#### FACTS

The New Mexico Horse men's Association is a nonprofit corporation incorporated in New Mexico. Under the terms of the Association's by-laws, the members of the Association consist " . . . of all horse owners racing horses in New Mexico and all trainers of race horses actively engaged in racing in New Mexico." In pertinent part, the purposes and objectives of the Association are, ". . . to collect and receive in any manner authorized by law money, stock, bonds, leasehold interests and real and personal property of every kind and nature whatsoever, for the welfare and health of persons connected with horse racing in the State of New Mexico . . ." The Association is partially funded by the payment of 1% of the winning purse received by any owner or owner-trainer out of any race run in the State of New Mexico and the payment of \$ 5.00 by any owner or owner-trainer sending a horse to the gate with a pony horse. Under the provisions of Article IV (c) of the by-laws "any owner or owner-trainer racing in the State of New Mexico not desiring to pay said 1% out of the winning purse shall so notify the Horsemen's bookkeeper before the opening of a race meet." Therefore, the result is that the Association receives the 1% of the winning purse and a \$ 5.00 fee by deduction made by the Horseman's bookkeeper at the race meet. Under the terms of Article V of the Association's by-laws, the Directors of the Association are authorized to make disbursements, in their discretion, for accident or illness of owners or trainers or owner-trainers and their wives in the event of illness or accident suffered or incurred during a race meet, provided that the amount shall not exceed. \$ 500.00 Disbursements may also be made to grooms or exercise boys in the maximum amount of \$ 300.00 for accidents suffered in the stable area or illnesses as a result of being in the stable area. The Directors may also give assistance of a charitable character to any person connected with racing in the State of New Mexico. Finally, the Directors are authorized to compensate officers of the Association for services and expenses incurred in connection with business of the Association and other expenses of the Association.

#### QUESTIONS

1. May the New Mexico State Fair authorize its Horseman's bookkeeper to withhold 1% of all winning purses at its race meet to be paid to the New Mexico Horsemen's Association?

2. May the New Mexico State Fair authorize its Horseman's bookkeeper to deduct \$ 5.00 for each horse going to the gate with a pony horse from owners accounts during its race meets, with the understanding that said money is to be paid to the New Mexico Horsemen's Association?

## CONCLUSIONS

1. See Analysis.
2. See Analysis.

## OPINION

### {\*135} ANALYSIS

The Horseman's Bookkeeper is an employee of the race track who is in charge of keeping the accounts of owners who have entered horses at a race meet. The primary duties of the Horseman's Bookkeeper are to collect money due the track from horsemen and to pay the horsemen their winnings from the race meet.

For the convenience of the horsemen at the meet, the Horseman's Bookkeeper will also pay certain of the horsemen's bills at the request of the individual horseman. For instance, the Horseman's Bookkeeper will pay a horse owner's bills for feed or veterinary services incurred during a race meet and then charge the sum against that owner's account. **In all such instances this is done merely to accommodate the owner and is done with his knowledge and consent.** In other words, it can be said that the owner has **authorized** the payment of these fees.

As the facts above indicate, the New Mexico Horsemen's Association assumes that all owners and trainers who race horses in New Mexico are members of the Association. Because of this we understand that no list of membership in the Association is available. Because owners of horses entered in race meets in New Mexico do not have to in some manner "sign up" in order to become a member of the New Mexico Horsemen's Association it cannot be presumed that every horse owner who races horses in New Mexico knows that he is considered to be a member of the Association nor could it be presumed that the owner who races horses in New Mexico intends to be a member of the Association. An agent is defined as a person who is authorized by another to act for him, one who undertakes to transact some business or to manage some affair for another by the authority and on the account of the latter, **Downs v. Delco-Light Company**, 175 La. 242, 143 So. 227; **Fowler v. Cobb**, (Mo. App.) 232 S.W. 1084; **Thomas B. Jeffrey Company v. Lockridge**, 173 Ky. 282, 190 S.W. 1103, 1105. Since we may not presume that every owner who races horses in New Mexico either knows he is a member or desires to be a member in the Association, we must therefore conclude that not every horse owner who races horses in New Mexico has authorized the New Mexico Horsemen's Association to act as his agent in authorizing deductions from his account during a race meet.

We conclude that in order for the New Mexico State Fair to be certain that an owner desires to have the Horseman's Bookkeeper deduct the 1% from any winning purse he may win during the race meet and the \$ 5.00 fee for each horse he sends to the gate with a pony horse should require specific authorization from the owner to do so. The authorization for such deductions may also be made on behalf of the owner by an agent whom he has specifically given the authority to speak for him in requesting that these kinds of deductions be made.

By: Paul J. Lacy

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