

## Opinion No. 79-15

April 12, 1979

**OPINION OF:** Jeff Bingaman, Attorney General

**BY:** Jeff Bingaman, Attorney General

**TO:** Senator John E. Conway, 1507 Crescent Blvd., N.E., Alamogordo, New Mexico 88310

### CONFLICT OF INTEREST

The Racing Commission is not authorized to issue free passes to race tracks, and the practice of issuing such passes is in violation of the Conflict of Interest Act.

The New Mexico State Racing Commission maintains a practice of issuing admission passes each of which allows free admission for two persons to any horse race track in the State during the entire racing season. The passes are distributed by the Commission members to the general public and all New Mexico race tracks are required to honor the passes presented by those persons.

### QUESTIONS

Does the New Mexico Racing Commission have the legal authority to issue free passes for admission to the race tracks which it licenses and regulates?

### CONCLUSIONS

No.

### ANALYSIS

The Horse Racing Act, Sections 60-1-1 to 60-1-23 NMSA 1978 (hereinafter referred to as the "Act"), governs and controls all significant aspects of the horse racing industry in the State of New Mexico. The Act creates the State Racing Commission and delegates to it broad regulatory authority including the power to "regulate rates charged by the licensee for admission to races, or for performance of any service, or for the sale of any article on the premises of such licensee. . . ." Section 60-1-3(F)(10), *supra*. The Act does not, however, specifically authorize the Commission to issue free passes.

The Commission is an administrative body and, as such, is a creature of statute. It has no common law or inherent powers and can act only as to those matters which are within the scope of its delegated authority. **Public Service Company of New Mexico v. New Mexico Environmental Improvement Board**, 89 N.M. 223, 549 P.2d 638 (Ct. App. 1976); **Vermejo Club v. French**, 43 N.M. 45, 85 P.2d 90 (1938).

Nevertheless, an administrative body is not necessarily limited to those powers expressly granted by statute, but may also exercise all powers that may fairly be implied therefrom. **Wimberly v. New Mexico State Police Board**, 83 N.M. 757, 497 P.2d 968 (1972). The Commission's authority with respect to public admission to licensed tracks is defined in terms of the power to regulate admission fees. Section 60-1-3(F) (10), **supra**. Although pursuant to that power, and in order to promote horse racing, the Commission might require that licensed tracks charge no admission fee, or that they charge no admission fee for certain groups or at certain times, or that {36} they offer some other kind of promotional program, it cannot be fairly inferred that the Commission itself is authorized to issue free passes. It is not necessary that the Commission be allowed to do so in order "to carry out legislative purposes and objectives." **Wimberly v. New Mexico State Police Board**, 83 N.M. at 759.

It may be noted here that the legislative history of the Act indicates that Section 60-6-2(B) NMSA 1953 (being Section 60-1-3(B) NMSA 1978) was amended in 1973 to add a sentence prohibiting the Commission and its members from authorizing and issuing free admission passes to race tracks. Laws 1973, Chapter 323, Section 2. That section was amended again in 1975 to delete the prohibition. Laws 1975, Chapter 95, Section 1. Although adoption of a statutory amendment is evidence of intention to change provisions of the original law, **Martinez v. Research Park, Inc.**, 75 N.M. 672, 410 P.2d 200 (1965), an amendment deleting the prohibition against the issuance of free passes does not clearly evidence intent to authorize such action. An amended provision must be read in the context of the unamended sections of the statute, **Frkovich v. Petranovich**, 48 N.M. 382, 151 P.2d 337 (1944), and the statute in question here, Section 60-1-3, **supra**, as now enacted, does not by any of its terms authorize the Commission to issue free passes.

In any event, if in the absence of specific statutory language to the contrary, the members of the Commission were to continue to issue free passes, they would be in violation of the Conflict of Interest Act, Sections 10-16-1 to 10-16-15 NMSA 1978. Section 10-16-2(D) of that act was amended in 1979 to include within the definition of "employee" any person who receives compensation in the form of "per diem and mileage." Laws 1979, Chapter 350, Section 1. This amendment brings the members of the Commission within the purview of the conflict laws as employees.

Section 10-16-3 of the Conflict of Interest Act provides, in part, that:

"A. No employee or legislator shall request or receive and accept a gift or loan for himself or another if:

(1) it tends to influence him in the discharge of his official acts; or

(2) he, within two years, has been involved in any official act directly affecting the donor or lender or knows that he will be involved in any official act directly affecting the donor or lender.

B. This section does not apply in the case of:

(1) an occasional nonpecuniary gift, insignificant in value;"

In essence, when a member of the Commission distributes free passes which the tracks must honor, the Commission is requesting the track to make a gift of the admission fee to certain selected persons. The members of the Commission are thus requesting a benefit for themselves, or for those upon whom they wish to confer a benefit, from persons who are directly affected by their official acts. This is the kind of activity the Conflict of Interest Act is intended to prevent.

**ATTORNEY GENERAL**

Jeff Bingaman, Attorney General