

Opinion No. 39-3267

September 5, 1939

BY: FILO M. SEDILLO, Attorney General

TO: Major E. G. Cullum, Secretary, State Racing Commission, Santa Fe, New Mexico.

{*102} In your letter of September 1 you state and request as follows:

"The question has arisen in connection with the coming State Fair which Board has requested a license to conduct a race meet for fourteen days, eight days of which a regular state fair will be under way and the purpose is, if the meet is a success to continue it some six or eight days after the State Fair is closed.

It is the opinion of some that due to the fact that the State Fair has asked for the permit which amount is \$ 10.00 per day and this should be charged irrespective of how many days they run.

It is the opinion of others that the purpose and intent of the law is to allow them the advantage of \$ 10.00 per day only for the days during the State Fair and that any additional days would need come under the \$ 50.00 per day rule.

You will please advise us your interpretation of the law."

Section 4 of Chapter 203, New Mexico Session Laws of 1939 (State Racing Law), provides as follows:

"The license fee to be paid shall be the sum of Fifty Dollars for each racing day authorized by the Commission; providing, however, that the license fee for any state fair association designated by law, which in good faith conducts a public fair and exhibition of stock and farming products, shall be the sum of Ten Dollars per day for each racing day authorized, and, provided, however, in the event the use of the pari mutuel system in connection with such races is not desired or authorized, such fee shall not exceed the sum of Ten Dollars per day for each racing day authorized and in such case State Fair Associations may be licensed without the payment of any fees."

I assume from your letter that the use {*103} of the pari mutuel system is desired in connection with the races involved, and it is on this assumption that we base our opinion.

Where the pari mutuel system is used the fee provided by law is \$ 50.00 per racing day in the ordinary case. Where a State Fair Association is involved the fee may be \$ 10.00 per racing day. However, as I construe the Act the test is not merely whether the applicant is a State Fair Association. The Act sets out two qualifications insofar as the \$ 10.00 fee is concerned; first, the applicant must be a State Fair Association designated

by law, and, secondly, said association must in good faith be conducting a public fair **and** exhibition of stock and farming products.

In so long as such State Fair Association conducts in good faith a public fair and exhibits stock and farming products in connection therewith the fee for racing purposes would be \$ 10.00 per racing day while the above conditions continue to exist.

However, as soon as the enterprise ceases to be a public fair, or as soon as the exhibition of stock and farming products ceases, then the fair association places itself in the same position as any other association or corporation holding a public horse race or race meeting for profit or gain and must thereafter pay the \$ 50.00 fee per racing day.

In other words, after the Fair has closed or after the exhibition of stock and farming products has ceased, the remainder of the enterprise is simply a public horse race or race meeting for profit or gain and the \$ 50.00 per diem fee applies irrespective of the fact that the applicant is a State Fair Association and irrespective of the fact that the race meet is a mere continuation of what originally was a public State Fair exhibiting stock and farming products.

Trusting the foregoing sufficiently answers your inquiry, I am,

By: FRED J. FEDERICI