

MAINE STATE LEGISLATURE

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STATE OF MAINE

R E P O R T

OF THE

ATTORNEY GENERAL

for the calendar years

1949 - 1950

When a prisoner is taken to the county jail at night without a lawful process, the jailer is not required by law to accept such prisoner; and if he does accept him, he lays himself liable for false imprisonment. Similarly, the sheriff or the turnkey at the county jail is not obliged to accept a prisoner unless a warrant or mittimus accompanies the incarceration, which warrant or mittimus he must hold in his office to show his legal authority for holding anyone a prisoner in the county jail. If he has no such authority, the remedy of a writ of habeas corpus would be available at once.

When a State trooper places a person under arrest for having committed a misdemeanor or even a felony, such person is in the arresting officer's custody until he has secured a warrant or mittimus to incarcerate the prisoner in one of the county jails.

In the case of a city lock-up, where a prisoner is arrested for intoxication, he must be held until the municipal court convenes the next morning, when a warrant can issue and a hearing be held. During the night, technically the prisoner is in the custody of the arresting officer and not in the custody of the city jailer or chief of police, whichever the case may be.

Of course if a person arrested for operating under the influence offers to give bond and calls a bail commissioner, he must be released after proper bail has been furnished to appear at a certain date to answer to a warrant.

RALPH W. FARRIS
Attorney General

January 29, 1949

To Carl L. Treworgy, Secretary, Racing Commission
Re: Section 9, Chapter 77, R. S. 1944

I have your memo of December 30, 1948, concerning the interpretation of Section 9 of Chapter 77, R. S., as amended by Chapter 358, P. L. 1947, which provides that no meeting shall be allowed for more than six days in any 28-day period, except that between the 1st day of July and the first Monday of August a meeting may be allowed not exceeding 18 days on mile tracks. I presume the Commission's request for an interpretation is in regard to what constitutes a 28-day period.

It is my opinion that meets can be held in periods of 28 days, the first day of the six days allowed beginning on the first day of the 28-day period. For example, if races were started on September 1st and ended on September 6th, you might start another period of 28 days on September 29th and allow six days in that period. In other words, the six days allowed begin on the first day, and in each succeeding period of 28 days you may allow six days of that period, either the first part of it or the last part of it.

My reason for construing the statute in this manner is that the statute does not state that racing periods shall be 28 days apart. It clearly states, "6 days in any 28-day period," so that the starting point must be at the beginning of the period and not at the end of it.

RALPH W. FARRIS
Attorney General