

MAINE STATE LEGISLATURE

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No
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July 23, 1951

To Rosaire L. Halle, Commissioner, Harness Racing Commission
Re: "Shall"

Your memo of July 23, 1951, in which you request an opinion regarding paragraph 6, Section 12, Chapter 77, R.S. 1944, amended by Chapter 388, P.L. 1949, has been received by this office.

Specifically, you inquire whether the word "shall" as used in that paragraph is mandatory or permissive.

This paragraph reads in part as follows:

"Notwithstanding anything in this chapter to the contrary, the commission shall issue a license, where pari mutuel betting is permitted, to hold night harness races or meets for a period of 8 weeks and no more between June 15th and October 15th of each year, daily except Sundays, between the hours of 6 P.M. and midnight. . ."

The various meanings of the word "shall" range under two general classes according as it is used as implying futurity or implying a mandate, and it is familiar law that when the meaning of a word, phrase, or sentence, in a contract, may be fairly said to be in any doubt, its true meaning as expressing the understanding of the parties should be ascertained by an examination of the entire contract." Cunningham v. Long, 125 Me. 500.

Generally, when used in statutes, the word "shall" is mandatory, but it will not be so regarded if legislative intention appears otherwise. If the use of the word "shall" is doubtful, then an examination of the related paragraph would be as helpful in resolving the difficulty whether the word is used in a statute or a private contract.

Therefore we turn to the first paragraph of Section 12 of Chapter 77, R.S. 1944, as amended. This first paragraph reads as follows:

"If the commission is satisfied that all the provisions of this chapter and the rules and regulations prescribed by the commission have been and will be complied with by the person, association, or corporation applying for a license, it may issue a licence which shall expire on the 31st day of December; but between the dates of the 1st Monday in August and October 20, no license shall be issued to anyone but an agricultural fair association, except night harness racing as hereinafter defined."

Comparing the two paragraphs, - the first uses the word "may", thereby giving to the Commission a discretion in granting the licenses for the periods authorized by that paragraph. Continuing on to the sixth paragraph we see the word "shall" used, thereby stating that

the Commission shall issue a license, where pari-mutuel betting is permitted.

In view of the use of the two words, "may" and "shall", each being used in the same section of our laws, it is our opinion that the Legislature intended the words to have their general meaning, in which case the word "shall" is of a mandatory nature.

James G. Frost
Assistant Attorney General

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