

# MAINE STATE LEGISLATURE

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STATE OF MAINE



REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1955 - 1956

"Section 237 of Chapter 41 states in part—'Notwithstanding the provisions of this paragraph no town shall be required to increase the salary of any teacher more than \$300 in any 1 school year.' Does the above limitation on the amount of increase that a town shall be required to give a teacher in any one school year apply to teachers who may become eligible for a higher salary by securing a degree, if the degree is secured since the law became effective?"

We are of the opinion that the limitation on the amount of increase that the town shall be required to give a teacher in any one school year *does* apply to teachers who may become eligible for higher salaries by securing degrees.

JAMES GLYNN FROST  
Deputy Attorney General

February 9, 1956

To Donald K. Maxim, Chairman, Harness Racing Commission

Re: Race Meeting Dates

We have your memo of February 2nd in which you ask two questions.

Question 1. "Section 8 of Chapter 86, R. S. 1954, states that no race meeting shall be allowed for more than 6 days in any 28-day period except night harness racing etc. This now applies only before June 15th and after October 15th of each year."

"Can any one track be permitted to hold a two week race meeting, one week before June 15th and one week after that date? For instance, the first week might be June 11 to 16 and the second week might be June 18th to 23rd, one week under the 6 day clause and the other week under the night harness racing section. We have had such an application."

*Answer.* Yes.

Question 2. "The last paragraph of Section 11 of Chapter 86, R. S. 1954, states that the commission shall issue a license, where pari-mutuel betting is permitted to Gorham Raceways to hold day or night harness races or meets in Gorham each year for a period of 4 weeks, and no more, beginning in June on the Monday of the last full week therein which has 7 calendar days; etc."

"Can Gorham Raceways be granted a license by the Commission to hold a race meeting the week before the 4 week period begins? We have had such an application."

*Answer.* No.

An examination of the growth of Sections 9 and 12 is necessary to see the legislative intent clearly, in relation to the permissible racing dates to which a track might be eligible.

As seen in the 1944 Revised Statutes, racing periods were comparatively simple to determine. Section 9 of Chapter 77 provided that there should be no race or meet on Sunday; that no meeting shall be allowed for more than 6 days in any 30-day period, except that between the 1st day of July and the 1st Monday of August a meeting may be allowed for not exceeding 18 days on mile tracks. In the latter event (an 18-day meeting) no further meetings where pari mutuel betting is permitted shall be allowed during the same calendar year.

At that time Section 12 contained no provisions giving cause for substantial question, merely setting forth prohibitions against racing, other than agricultural fair associations, in certain periods, and generally prohibiting meets or races between November 30th and May 1st.

In 1947 the 30-day period above referred to, in Section 9, was changed to 28 days.

In 1949 both Section 9 and Section 12 were amended. Section 9 was amended to include the following exception to the 6-day meet:

*"No meeting shall be allowed for more than 6 days in any 28-day period except night harness racing as hereinafter defined and except day harness racing as provided in the last paragraph of section 12 and"*

Logically following the above amendment of Section 9, Section 12 was amended to include the definition of night harness racing:

*"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 commission shall grant such licenses for night harness racing to such applicants only, who shall have and maintain adequate pari mutuel facilities, which facilities shall include a totalizator or its equivalent where odds will change at least once every 2 minutes, adequate stable facilities for not less than 400 horses, and shall have and maintain a track adequate in width to start 8 horses abreast. Said licensees shall also pay purses at least equal to minimum purses paid at any other New England harness racing track."*

and to add paragraph 6, referred to in the Section 9 amendment as the last paragraph of Section 12:

*"During the remaining time of the period, if any, between June 15th and October 15th, the commission may grant to a track or tracks a license to operate day or night harness racing for no more than 2 weeks in any 4-week period without necessarily meeting the specifications set forth in the preceding paragraph."*

At this point in the history of the harness horse legislation we can see that, by the amendments of 1949, an added benefit had been granted to the licensee. In addition to the 6-day meet in any 28-day period, a properly qualified track might, within the period of June 15 and October 15 of each year, have night races or meets for a period of 8 weeks and no more. At this point Gorham Raceway had not yet been mentioned by name.

That this section was intended to benefit the licensee with additional time can be seen in the Legislative Record, April 30, 1949, pages 1157-58. A House Amendment was accepted whereby a track having an 18-day meet under the provisions of Section 9 could still qualify for 8 weeks of night racing under the new amendment to Section 12. It was thought by one gentleman to be an unnecessary amendment because of the use of the words, "notwithstanding anything in this chapter to the contrary. . ."

Stopping at this point we see that Gorham, or any other track duly qualifying with the provisions of paragraph 5 of Section 9, could hold an 8-week night meet and also hold the races or meets authorized by Section 9.

The last paragraph of Section 12, as seen in the law after the 1949 amendments, was a further exception, granting to tracks the privilege of having day or night meets for a period not to exceed 2 weeks in any 4-week period between June 15 and October 15 without necessarily meeting the specifications set forth in paragraph 5 of Section 12.

The amendments of the 1951 Legislature in no way touched the problems with which we are concerned.

The 1953 Legislature, however, enacted further laws which relate to the present problem. Paragraph 6 of Section 12 was so amended that it now applies to both day and night races or meets:

"Notwithstanding anything in this chapter to the contrary, the commission shall issue a license, where pari mutuel betting is permitted, to hold *day or 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."

A new paragraph was passed by the Legislature, seen as the last paragraph of Section 12 and enacted by Chapter 423, Section 2, P. L. 1953, directly bearing upon the right of Gorham to conduct races or meets:

"Notwithstanding anything in this chapter to the contrary, the commission shall issue a license where pari mutuel betting is permitted to Gorham Raceways to hold day or night harness races or meets in Gorham each year for a period of 4 weeks, and no more, beginning in June on the Monday of the last full week therein which has 7 calendar days; provided, however, that if no running racing is held at Scarborough Downs after Labor Day each year, Gorham Raceways may be permitted to hold harness races or meets at Gorham. Except that for the year 1953, the commission shall issue such a license to Gorham Raceways to hold harness racing or meets in Gorham from June 15th to July 11th, both days inclusive."

As noted above, before this amendment became effective, Gorham, like other similarly qualified tracks, could, in addition to the early spring meets, race for not exceeding 8 weeks between June 15 and October 15 of each year.

The 1953 amendment removes Gorham from paragraph 6 of Section 12 and particularly provides that Gorham may begin its races or meets on a day certain (beginning in June on Monday of the last full week therein that has 7 calendar days) and continue for a period of 4 weeks, and no more. The only exception to the 4-week period is that set out in paragraph 8 and, excluding the year 1953, it would permit Gorham to hold harness races or meets at Gorham after Labor Day if no running racing is held at Scarborough.

Clearly, in our opinion, Gorham is no longer eligible to race between the dates of June 15 and October 15, except as authorized under paragraph 8 for a 4-week period beginning on a date easily ascertainable and established by statute.

We would further point out that the amendment we are here considering relating to Gorham Raceway was part of a compromise bill intended to settle differences between Gorham Raceways and Scarborough Downs. The bill was finally passed by the Legislature with the understanding that racing would be permitted at Gorham for a period of 4 weeks, and that such racing would produce a

certain sum of money because of the simultaneous amendment of the "stipend" fund. See Legislative Record, 1953, p. 2531.

This Legislative intent can be seen even more clearly in the Record at pp. 2533-2535, where the intent of Mr. Childs' offer of House Amendment "A" is discussed. Upon being questioned by Mr. Center, it appears that no amendment was intended to permit Gorham to hold races longer than the 4-week period, except after Labor Day.

It would thereby appear that the Legislative intent, as set forth in the Legislative Record, is consistent with the words of the statute, and with our conclusion.

JAMES GLYNN FROST  
Deputy Attorney General

February 15, 1956

To David H. Stevens, Chairman, State Highway Commission

Re: Acceptance of Second Lowest Bid on Shovels

You have requested my opinion as to whether or not the Commission can accept the bid of the second lowest bidder under the following facts:

1. that certain specifications were set up to furnish a basis for competitive bids,
2. that the lowest bidder was only a small amount lower than the next lowest bidder,
3. that the shovel of the second bidder was considerably superior in grade and quality (far beyond the price differential),
4. that the second shovel was much better adapted for the uses required by the Commission, and
5. that the date of delivery of the shovel of the second bidder was a week or two in advance of the delivery by the first bidder.

My answer is, Yes. The intent of the competitive bid statute was to achieve economy and not to compel the purchase of the cheapest priced item. It is not of necessity economy to buy the cheapest product.

The statutes applicable to this problem are section 36 and section 42 of chapter 16 of the Revised Statutes of 1954. Section 36 of said chapter says in part:

"It being the intent and purpose of this statute that the State Purchasing Agent shall purchase collectively all supplies for the state or for any department or agency thereof *in the manner that will best secure the greatest possible economy consistent with the grade or quality of supplies best adapted for the purposes for which they are needed.*"

You will note the words,

"consistent with the grade or quality of supplies best adapted for the purposes for which they are needed."

The facts in this case plainly come within the purview of this language. It is apparent that the grade or quality of the product can be considered as well as the