

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1957 - 1958

or other activities required of the State Liquor Commission by Chapter 61 of the Revised Statutes.

An exactly similar Act was passed under Chapter 174 of the Private and Special Laws of 1957 containing allocations the same as in the Act of 1955, and also setting out the legislative intent clearly as the same is cited in relation to the 1955 Act.

It is impossible to conclude from all of the foregoing that the \$3,000,000 limitation on stock of merchandise as the same is set forth in Sec. 13 of the Revised Statutes of Maine 1954, as amended, can be anything other than a specified limitation of inventory. To charge against this limitation any items of expenditures by the Liquor Commission whether capital expenditures or other administrative expenditures so as to lower the total available inventory of wines and spirits seems entirely out of line with the intention of the legislature, and particularly with the legislative intent as it is specifically set forth in the Acts of 1955 and 1957 above cited.

FRANK F. HARDING
Attorney General

March 6, 1958

To: Julian W. Davis, Chairman of Harness Racing Commission

Re: Legislative power to grant special privileges to Gorham Raceway and Scarborough Downs

We have your memorandum of February 25, 1958, in which you ask the following questions:

Question No. 1

“Where did the legislature get power to grant special privileges to Gorham Raceway and Scarborough Downs for specific dates?”

Answer:

The tenor of this question is such that we believe you desire more than the academic answer: “The Legislature gets power to grant special privileges to Gorham Raceway and Scarborough Downs for specific dates from the Constitution.” Certainly your other questions, read in conjunction with this question, call for us to make the following observations.

Each public officer of this State, before entering upon the performance of his duties, takes an oath of office as set forth in our Constitution. One portion of the oath requires that the officer swear to faithfully discharge, to the best of his abilities, the duties incumbent on him as such officer “. . . according to the Constitution and laws of this State.”

Compliance with this oath requires an officer to administer the laws within his jurisdiction according to the word of the law. It is not his duty to question the wisdom of the Legislature in passing the law, nor to avoid the directions contained in the law. Each of such laws is to be considered as a valid law, and administered as such, until that law has been declared invalid by a Court of competent jurisdiction. Following the usual course of procedure, that Court would be the Supreme Court of the State of Maine.

Question No. 2

(a) "Is it possible for the Harness Racing Commission to issue dates to Gorham Raceway after Labor Day, as the law now stands?"

Answer:

Yes, if Scarborough Downs does not race after Labor Day.

Question No. 2

(b) "Can we run on the assumption, in February, that Scarborough Downs will not run after Labor Day?"

Answer:

We do not believe that in February you can assume that Scarborough Downs will not run after Labor Day. This question embraces the question of administration rather than a question of law. Somewhere between February and Labor Day there comes a point when it should be known that Scarborough Downs is not racing after Labor Day. At this time it would be proper to issue a license to Gorham to race after Labor Day. As we have indicated, this determination is to be arrived at by your Commission.

"Notwithstanding anything in this chapter to the contrary, the commission shall issue a license where parimutuel 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." (Ch. 86, Sec. 11, par. 7, R. S. 1954, as amended.)

Question No. 3

"Is it a duty of the Harness Racing Commission to solicit consent from an Agricultural Fair, whereby an extended meet may run in an adjoining county at the same time?"

Answer:

No. Such solicitation by the Harness Racing Commission might be misunderstood and tagged as pressure.

". . . and between the dates of the 1st Monday in August and October 20, it may issue a license to an agricultural fair association for a pari-mutuel harness meet in connection with its annual fair, but no other person, association or corporation shall be licensed to operate either a day or night pari-mutuel harness meet, within the same or any adjoining county, when an agricultural fair association is operating a pari-mutuel harness meet at the time of its annual fair, without the consent of said fair association."

Question No. 4

"What is the opinion of the Attorney General's Department regarding the changing of dates of an Agricultural Fair that might impose hardships?"

Answer:

Such a change would be in direct conflict with the law.

“The commission is directed to assign such dates for holding harness horse races or meets for public exhibition, with pari-mutuel pools, as will best serve the interests of the agricultural associations of Maine and may accordingly refuse to issue a permit if the issuance of the permit would in the opinion of the racing commission be detrimental to the interests of said agricultural associations or any of them.” (Ch. 86, Sec. 11, par. 4, R. S. 1954, as amended).

Having reference to a letter dated February 28, 1958, from counsel for Gorham Raceway in which letter the question is asked if dates for racing as set by your Commission are legal dates, we believe the answer above will help you in determining the answers posed in the referred-to letter.

Once you administratively determine racing dates in compliance with your laws, giving full consideration to the direction in such laws, then the dates so established will be legal dates.

JAMES GLYNN FROST
Deputy Attorney General

March 6, 1958

To Niran C. Bates, Director, Public Improvements

Re: Contracts in Anticipation of Available Funds

We are returning herewith agreements between the Department of Institutional Service and Bunker & Savage and between the Department of Education and Cooper Milliken, for architectural services, payment for which services is to be made after July 1, 1958, without our approval.

The legality of encumbering in the present fiscal year funds for work, payment for which is to come out of the next fiscal year, has caused us to scrutinize carefully the statutes relating to the administration of such matters. We are of the opinion that it is not proper for us to approve such contracts.

Some question as to the legality of such contracts arises as the result of the statutory provisions relating to the approval of allotments. Funds will be available for expenditure in the next fiscal year only after allotments have been made by the Governor and Council, and the ultimate allotment may be disastrously reduced by the Governor and Council, if circumstances are such as require such reduction. An obligation incurred in the present fiscal year would more or less impose upon the Governor and Council the moral obligation to pay such sum where their consideration at a later date might be to the contrary.

However, Chapter 401 of the Public Laws of 1957 seems to specifically consider such contracts as we are returning to you. Section 34-A, subsection IV, as enacted by said Chapter 401, reads as follows:

“Funds appropriated by the legislature to the construction reserve fund may be allotted by the governor, with the advice and consent of the council, whenever:

“IV. It appears to be in the best interests of the State to acquire real estate or to have estimates, *plans or specifications prepared for a*