

# MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT  
OF THE  
ATTORNEY GENERAL

for the calender years

1961 - 1962

such a description are to carry the land to the pond at all stages of the water, which is equivalent to saying that it extends to low water mark; and if the line between these two points is run along the shore, it must be along the low water side of it; and the land will be bounded at low water mark."

For a determination as to just what the mark is insofar as title in the State is concerned, then as stated above we know of no case where the procedure for such proof has been established. I suppose one could refer to histories of the local area; testimony of the elder inhabitants; bench marks if any there be. There is no rule of thumb for the determination of natural low water level of a great pond.

JAMES GLYNN FROST

Deputy Attorney General

March 13, 1961

To: John F. Weston, Chairman of Harness Racing Commission

Re: Gorham Raceways

We have your memo of March 3, 1961 in which you ask five questions relating to Gorham Raceways.

1. Can the Bankruptcy Court run Gorham Raceways as a track and under what organization?

Answer: We are of the opinion that the duly appointed Bankruptcy Court Receiver of the owner, or debtor in possession, of Gorham Raceways is eligible to apply for a license to conduct harness racing meets at Gorham Raceways. The application for license should reveal the Court's approval of the activity.

2. We have a law that protects Gorham Raceways. We have an application from Gorham Raceway, Inc. Would this be termed the same as Gorham Raceway?

Answer: We understand that as a result of a conference held in your office recently that a new application will be filed so we are not at this time answering this question No. 2.

3. Can the Bankruptcy Court lease Gorham Raceways and have it run legally as far as the commission is concerned?

Answer: With the approval of the Bankruptcy Court the present owner may lease the raceways. Such lessee would be eligible to apply for a license. See Section 10 V of Chapter 86.

4. Does Gorham Raceway, which is now in bankruptcy, control the four weeks that are now provided by law?

Answer: If your question runs to whether or not you should still recognize the law governing racing at Gorham Raceways, the answer is "Yes."

5. Can any other track buy just the name "Gorham Raceway", rename their track, and qualify for dates as spelled out by the law?

Answer: The laws relating to Gorham Raceways are public laws and as such relate to the Gorham Raceways installation and are not intended for the benefit of specific persons. The law contemplates the possible change of ownership of such

plant. Thus, in the event the track is operated by a corporation, then that portion of Section 11, Chapter 86, relating to ownership by a corporation would apply.

“The license of any corporation shall automatically cease upon the change in ownership, legal or equitable, of 50% or more of the voting stock of the corporation and the corporation shall not hold a harness horse race or meet for public exhibition without a new license.”

JAMES GLYNN FROST

Deputy Attorney General

March 22, 1961

To: Honorable Norman Minsky  
Committee on Industrial and Recreational Development  
House of Representatives  
State House  
Augusta, Maine

Dear Mr. Minsky:

In reply to your request for an opinion with regard to the proposed legislation directing funds received from the gasoline tax paid by non-commercial pleasure boats into the general fund, and in response to our conversation of this morning, we have come to the following conclusions:

1. Funds received from the gasoline tax paid by non-commercial pleasure boats are not covered under the provisions of the Constitution of the State of Maine, Article IX, Section 19. For this reason, the funds collected from these non-commercial pleasure boat owners would go into the general fund could they be ascertained, and the legislature would therefore have the power to provide by specific legislation if clarification were thought necessary.

2. The problem with regard to this proposed legislation concerns the determination as to what part of the total amount of gasoline tax revenue is paid in by the users of non-commercial pleasure boats. We have been informed by Mr. Ernest Johnson, State Tax Assessor, that such a determination would be impossible from records which are now or which could be kept by his office. We understand that it has been proposed that the average figures supplied by the Petroleum Institute of America be used to make this determination. The Constitutional provision referred to above clearly indicates that all revenues derived from the use of vehicles on public highways shall be turned over to the Highway Commission and that none of these revenues shall be diverted for any other purpose. This section of the Constitution was given a very strict construction by the Supreme Judicial Court. In its opinion of May 6, 1957 (152 Me. 453) the Court said that —

“The language of the Constitution shall not, in our view, be extended beyond its plain and ordinary meaning.” (At p. 456)

If average figures are used in determining questions such as the one involved here, the possibility exists that revenues properly dedicated to the Highway fund would be diverted into the general fund in violation of the Constitution.