

MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date April 12, 1967

To John F. Weston, Chairman

Dept. Harness Racing Commission

From Emery O. Beane, Jr., Assistant

Dept. Attorney General

Subject Financial accounts of license applicants.

FACTS:

You have asked if the Commission is granted authority to ask for financial information from banking institutions concerning license applicants without formal court order procedure.

QUESTION:

May the Commission require financial information from banking institutions concerning harness racing applicants without formal court order procedure?

ANSWER:

No.

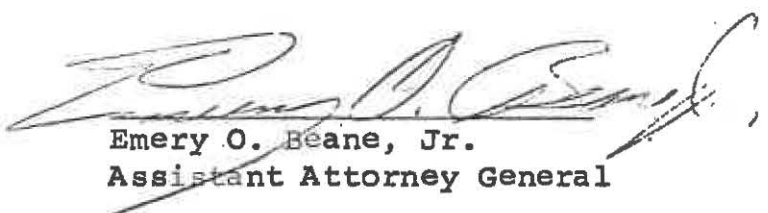
OPINION:

I have taken the liberty of rephrasing the question to pose one for which a legal answer may be given, since I suppose we both assume nobody can be prevented from merely asking a question, but that the right to receive an answer is another matter.

I answer on the assumption that your question concerns the legality of your requesting and receiving from a banking institution's officers or employees specific information as to the existence or non-existence, amount or type of deposits of particular individual applicants held by the particular bank.

I answer in the negative for the simple reason that bank deposits are private property of individuals held in a fiduciary capacity by the banking institutions. Accordingly, no banking institution should be compelled to divulge information as to the contents of individual depositors' accounts to any other person without the consent of the owner, except by due process of law. The mere fact that the inquirer is a state official, even though one having disciplinary functions, makes no difference, unless the statutes expressly authorize him to investigate or receive reports on such things. (I find no such authority in the Commission.) In my opinion, to decide otherwise would destroy confidence in banks and in state agencies contrary to public policy and any compulsion or intimidation, directly or indirectly, by virtue of non-relevant official capacity might well amount to illegal search. Banking employees are under statutory jeopardy if they wrongly divulge information. The Department of Banks and Banking itself is strictly limited in the scope of agencies to which it may release information collected by it.

I assume you are able to require sworn statements in your applications, which may or may not be truthful, and that investigation of possible perjury or fraud may be sometimes necessary. I am not sure that the applications might not be so arranged as to allow voluntary consent to such inquiries should they become necessary, provided no compulsory self-incrimination is involved in the application, but I am certain that in a case where reasonable cause to suspect a crime exists, your proper course would be to obtain a court order or at least to let a proper official investigating agency investigate.



Emery O. Beane, Jr.
Assistant Attorney General

EOB/slf