

MAINE STATE LEGISLATURE

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April 16, 1968

Paul A. Dundas, Chairman

Running Horse Race Comm.

George C. West, Deputy

Attorney General

SYLLABUS:

The statute restricting dates of racing at Scarborough Downs is presumed to be constitutional. If Gorham Raceways gives up its June-July harness race meet, then Scarborough may run. Otherwise, legislation is the only remedy.

FACTS:

The first two sentences of the second paragraph of 8 M.R.S.A. § 329 reads:

"Racing shall be permitted at Scarborough Downs until the hour of midnight each day from May 15th to November 30th each year, except that no racing shall be permitted each year for a period of 4 weeks, beginning in June on the Monday of the last full week therein which has 7 calendar days. If Gorham Raceways does not hold harness races or meets during said 4-week period, racing under this chapter may be permitted at Scarborough Downs until the hour of midnight of each day during said 4-week period."

Interested persons, including at least one member of the Running Horse Racing Commission, believe the above law is unconstitutional.

QUESTION NO. 1:

Are the first two sentences of the second paragraph of 8 M.R.S.A. § 329 unconstitutional?

ANSWER NO. 1:

See Reason No. 1.

REASON NO. 1:

We must start with the presumption that a legislative act is presumed to be constitutional. Baxter v. Waterville Sewerage Dist. 146 Me. 211. Also, a person assailing constitutionality of a statute has the burden of demonstrating the statute offends constitutional guaranties. Tuttle v. State, 158 Me. 150.

In short, this office will rely upon the presumption as set forth by the Court. If anyone believes the statute is unconstitutional, he may proceed by appropriate court action. Until the proper court has ruled the law to be unconstitutional, it is constitutional.

QUESTION NO. 2:

Is there any way that racing meets may be held at Scarborough Downs during the latter part of June and the first of July?

ANSWER NO. 2:

See Reason No. 2.

REASON NO. 2:

The statute as quoted above states that if Gorham Raceways does not hold harness races at meets during the 4-week period described, then Scarborough Downs may run. The only way that racing may be held at Scarborough this year in June and early July is for Gorham to forego harness racing in that 4-week period.

There can be a change of the law by the legislature. However, this could not be helpful this year. The 104th Legislature could enact emergency legislation next winter to effect such a change for 1969.

GCW:H

George C. West
Deputy Attorney General