

MAINE STATE LEGISLATURE

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93
John W. Benoit
May 4, 1971

Maynard C. Dolloff, Commissioner

Agriculture

John W. Benoit, Jr., Deputy

Attorney General

Stipend Payments on Premiums Paid for Pony Racing.

SYLLABUS:

The Commissioner of Agriculture can legally allow stipend payments on premiums paid for pony racing in Maine.

FACTS:

Members of the Maine Harness Pony Breeders Association have requested you to allow stipend payments for premiums paid for pony racing in Maine. The Association contends that stipend payments should be recognized in much the same fashion that such payments are recognized for pony pulling. Allowance of such stipend payments would be a departure from the present distribution of the stipend. The stipend payments are administered pursuant to the provisions in Chapter 3 of Title 7 of the Maine Revised Statutes.

QUESTION:

Can the Commissioner of Agriculture legally allow stipend payments on premiums paid for pony racing in Maine?

ANSWER:

Yes..

REASONS:

The provisions of 7 M.R.S.A. § 62 create a "stipend" to be administered by the Commissioner of Agriculture for the purpose of aiding and encouraging agricultural societies. The reference section contains the term "horses" (and other classifications of animals) when specifying the reasons for which "stipend" is to be paid. That term, "horses" appears several times in § 62.

Apparently, an administrative determination has been made that the words: "pulling contests by horses" includes pony pulling contests.

The real question is whether "horse racing" includes pony racing. If it does, then the Commissioner of Agriculture is permitted to allow stipend payments for premiums paid for pony racing.

Nothing in Chapter 3 of Title 7 of the Maine Revised Statutes excludes ponies from the application of the statute. That legislation utilizes classifications of animals, i.e., horses, cattle, sheep, swine.

Webster's New Collegiate Dictionary defines "pony" as follows:

"1. a small horse; esp. a horse of any of certain very small but stocky breeds, usually not over 14 hands (polo 14½ hands) in height. The broncos, mustangs and cayuses of the western United States are sometimes called ponies regardless of size. * * * "

The dictionary definition of "horse" includes the breed of Shetland pony. "Horse" is sometimes used as a generic name for all animals of the horse kind. Taylor v. State, 44 Ga. 263. By way of analogy, an Ohio court has reviewed an indictment in a criminal case alleging the willful and malicious administering of poison to a certain "pony", and ruled the indictment valid, although the statutory word "horse" was not used. The court reasoned that the term "horse" was used in the statute in the generic sense and thereby embraced the term "pony". State v. Miller, 21 Ohio Dec. 643, 9 Ohio S.P.N.S. 247. Only one case has been discovered wherein the terms "horse" and "pony" were not deemed synonymous or convertible terms. However, that case involved a description in a chattel mortgage of 'one pair of Claybank horses', the court deciding that such language was not sufficient to describe 'a yellow pony with some white about him'. Golden v. Cockrill, 1 Kan. 259, 266, 81 Am. Dec. 510. That case can be explained as one turning more upon the sufficiency of a description in a chattel mortgage than upon the common usage and acceptance of the definition of "horse".

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