

MAINE STATE LEGISLATURE

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October 7, 1975

Thomas Webster, Executive Secretary

Harness Racing Commission

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Attorney General

Betting Delivery Service

In the absence of a statutory prohibition against the charging of service fees for the delivery of wagers, such a delivery service is not illegal per se, provided that all sums collected by the agent are actually deposited at duly licensed pari-mutual windows.

In State v. Kachadoorian, 104 N.H. 29, 177 A.2d 398 (1962) the New Hampshire Court held that a person who accepted \$5.00 from another, in order to deposit \$4.00 at Rockingham Park, while keeping \$1.00 for his "troubles," was in violation of no gambling law where he actually wagered the \$4.00 at the duly licensed pari-mutual windows at the above-designated race track. The Kachadoorian case is representative of many similar decisions which have negated the allegation of illegal conduct such as bookmaking or unlicensed off-track betting, where the evidence indicates actual delivery and placement of monies collected at the pari-mutual window.

To prohibit persons from engaging in betting delivery services, whereby a fee or service charge is levied which makes the ultimate cost of such tickets to the owner greater than the legal price of such tickets when purchased at licensed premises, is, of course, a valid exercise of the police power, and many such statutes have recently been enacted in the several states. The prohibition of such activity must be by legislation, however, and cannot be accomplished by the adoption of a rule or regulation by the Harness Racing Commission.

It should be pointed out that under the new Criminal Code adopted by the Legislature which will become effective as law as of March 1, 1976, the above-described activity will probably be enforceable as criminal conduct under the terms of 17-A (subsec. 9), which reads as follows:

"Profit from gambling activity." A person profits from gambling activity if, other than as a player, he accepts or receives money or other property pursuant to an agreement or understanding with any person whereby he participates or is to participate in the proceeds of gambling activity."


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