

1969

RACING MEETS—EXEMPTION IN FINAL PARAGRAPH, SECTION 1079-4 G. C., OF COUNTY FAIR RACING MEETS—HAS LEGAL EFFECT OF EXEMPTION FROM ALL OF PROVISIONS OF THE SECTION EXCEPT FIRST PARAGRAPH OF SECTION AS AMENDED.

SYLLABUS:

The exemption in the final paragraph of Section 1079-4, General Code, of county fair racing meets has the legal effect of exempting such meets from all of the provisions of such section except the first paragraph of such section as amended, Am. H. B. 456, 98th General Assembly.

Columbus, Ohio, June 29, 1950

Mr. O. C. Belt, Chairman
Ohio State Racing Commission
Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“Referring to Amended House Bill No. 456 an Act to amend Section 1079-4, General Code, relative to applications for permits for horse racing meets. You will note that the amendment provides:

“Provided further, that if the said application requests a permit for a horse racing meet at a location at which a horse racing meet has not previously been conducted by permission of the state racing commission, then, in addition to the other requirements for said application, there shall accompany the application a petition signed by at least fifty-one per centum of the qualified electors voting for governor

at the next preceding general election in the township or townships in which the racing meet is proposed to be conducted, together with a certificate of the board of elections of the county or counties in which such township or townships are situated that the signatures on said petition are valid and meet the requirements set forth in this section'.

"The question we want to ask is this: We have a number of county fairs in Ohio and racing is conducted at all of them. We have certain counties that have had fairs for years and have never had mutuel betting under section 1079-4 of the General Code. Does this amended section mean that this Commission dare not issue a permit to a county fair that has not previously been granted by this Commission a permit to conduct pari-mutuel betting in connection with their race meeting?"

"Will you give this matter as prompt attention as possible for the reason that we will have this question before us within the next couple of weeks."

In addition to the paragraph quoted in your request, Amended House Bill No. 456, 98th General Assembly, effective September 16, 1949, contained two additional paragraphs which read as follows:

"Such petition shall be in the following form:

"We, the undersigned, electors of township, county, Ohio, request the granting of the application of for a horse racing meet to be conducted in whole or in part in township, county, Ohio in the year 19...."

Name	Address	Voting Precinct	Township
.....			

"Such petition shall be sworn to in the manner provided in section 4785-91 of the General Code. None of the provisions of this section shall apply to small horse racing meets or horse shows as are not required to secure permits under the provisions of 1079-1 of the General Code, nor shall the provisions of this section, other than the first paragraph hereof, apply to county fair horse racing meets."

It would appear that your doubt regarding the applicability of the express exemption found in the final paragraph above quoted is concerned with the question of whether such exemption refers to the "first paragraph" of the new material added to Section 1079-4, General Code, or to the "first paragraph" of the entire *section* as amended. In this connection you will note that prior to the effective date of Amended House

Bill No. 456, this section consisted of only one paragraph, relative to the application for and issuance of permits generally; and that the amendment added the three paragraphs quoted above.

There is no doubt, of course, that if the exemption of county fair racing meets from the provisions of all of this section excepting the first paragraph, refers to the first paragraph of the *section as amended*, the new requirements of Amended House Bill No. 456 would not apply to such county fair racing meets. This is true since it is a proper situation for the application of the legal maxim "Expressum facit cessare tacitum"—that which is expressed renders ineffectual that which is implied. See *Taylor v. Michigan Public Utilities Commission*, 217 Mich. 400.

The legislative intent in this situation is readily ascertained, I think, by an examination of the mechanical practice of the legislature in the adoption of amendments to existing statutes. The practice of the legislature is governed in this respect by the provisions of Article II, Section 16, Ohio Constitution, which reads in part as follows:

"* * * No bill shall contain more than one subject, which shall be clearly expressed in its title, and no law shall be revived, or amended unless the new act contains the entire act revived, or the section or sections amended, and the section or sections so amended shall be repealed. * * *"

Because, in following the practice thus enjoined upon them, the legislative draftsmen must incorporate into the amending act the whole section as amended, it is to be presumed that they will harmonize the whole thereof and that a reference in the new material to a particular paragraph by order of precedence will refer to the order of precedence in the whole section as amended.

For these reasons, and in specific answer to your question, it is my opinion that the exemption in the final paragraph of Section 1079-4, General Code, of county fair racing meets has the legal effect of exempting such meets from all of the provisions of such section except the first paragraph of such section as amended.

Respectfully,

HERBERT S. DUFFY,
Attorney General.