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RACE TRACK—TO DETERMINE IF ONE RACE TRACK, PLACE OR ENCLOSURE, IS WITHIN THIRTY MILES OF ANOTHER TRACK, SECTION 1079-7 G. C., THE “THIRTY MILES” SHOULD BE MEASURED IN A STRAIGHT LINE ON A HORIZONTAL PLANE.

SYLLABUS:

In determining whether one race track, place or enclosure is within thirty miles of another track, the “thirty miles” referred to in Section 1079-7, General Code, are to be measured in a straight line on a horizontal plane.

Columbus, Ohio, December 31, 1947

Ohio State Racing Commission  
Columbus, Ohio

Gentlemen:

Your request for my opinion reads:

“Your opinion is requested relative to the interpretation of

Section Seven of the 'Horse Racing Act' with respect to the provision 'thirty miles of each other' mentioned therein.

How shall the Commission determine whether tracks are operating within thirty miles of each other? Shall the measurement be made by following the nearest highways; shall the measurement be taken from race track to race track or shall the measurement be taken from enclosure to enclosure. By enclosure is meant the tract of land which is owned or used incident to the operation of the race track.

There are several track operations in Ohio which give rise to this question and it is necessary that the Commission be informed as to the correct method of measurement."

"The Horse Racing Act" of this state is contained in Sections 1079-1 to 1079-15, both inclusive, of the General Code. The provision thereof to which you have directed attention was codified as Section 1079-7, General Code. That section provides inter alia:

"No permit shall be issued under this act authorizing horse racing at *any place, track or enclosure* except on successive week days, excluding Sundays, and except between the hours of 12:00 o'clock noon and 7:00 o'clock in the afternoon, for running horse racing meetings, and between the hours of 12:00 o'clock noon and 12:00 o'clock midnight for light harness horse racing meetings nor shall any permit be granted for the holding or conducting of a horse racing meeting at any place in this state prior to the first day of April in any calendar year or after the last day of October in any calendar year, nor for more than an aggregate of forty-four racing dates in any one calendar year or any *one race track, place or enclosure*, nor so as to permit horse racing on the same date or dates at more than one track in one county *or on tracks within thirty miles of each other*, nor shall any license be granted to the same person, association, trust or corporation for the holding or conducting of a horse racing meeting except at one race track, place or enclosure in this state."

(Emphasis added.)

Your inquiry suggests the possibility that the word "track," which incidentally is not defined in the act here under consideration, could be regarded as having reference to the strip of ground upon which horses actually engage in racing. But in this connection it is noteworthy that at the very outset of Section 1079-7 said word appears in the phrase "any place, track or enclosure." At a later point in said section is found a somewhat similar phrase, viz., "one race track, place or enclosure." It

seems to me that when the section in question is viewed in its entirety the conclusion must be reached that the word "track" was not intended to denote merely the racing strip but instead has a more comprehensive meaning. Moreover I have been informed it has been your practice, when issuing a permit, to authorize racing at a specified "enclosure." Your thought as to the significance of this word, as stated in your request for my opinion, is consistent with my own views on the subject. Hence, for the purposes of this opinion, the "thirty miles" provision in said Section 1079-7 will be treated as having reference to distance from enclosure to enclosure.

As a general proposition distance is computed on a straight line on a horizontal plane. However, there are instances when the method of computation is based on the ordinarily used, usual and shortest route of public travel. An example wherein the second method was adopted and the reasons therefor are made plain in the case of Board of Education v. Board of Education, 58 O. S. 390 wherein the syllabus reads:

"The distance of its residence from the school of its district, which under Section 4022a, Revised Statutes, entitles a child of school age to attend the school of another district, is one and a half miles by the most direct public highway from the school to the nearest part of the curtilage of its residence."

The argument was made in this case that distance should be computed "as the crow flies." In rejecting this contention the court said:

"\* \* \* The legislation provides for the convenience of children in attending school and the distance is to be taken as they travel along the most direct public highway from the schoolhouse to the nearest portion of the curtilage of their residence."

"The Horse Racing Act" does not specify the manner in which distance from enclosure to enclosure shall be measured. However, for the reasons now set forth, the opinion has been arrived at that distance should be measured on a straight line on a horizontal plane.

In discussing the mode of measurement and computation of distance the following statement of the annotator is found in 96 A. L. R. 778, to-wit:

"The proposition appears to be established as a rule of law that, except as may be otherwise specifically provided, the distance contemplated by a statute or regulation prohibiting the

granting of a license for the sale of intoxicating liquors, or traffic therein, within a certain distance of a named institution or place (e. g., church, school, hospital, soldiers' home, training camp), must be measured in a straight line, rather than in some other manner, such as by the usually traveled route or the street lines." (Citing cases from various jurisdictions.)

In *Evans v. United States*, 261 Fed. 902 the court sustained a conviction for selling intoxicating liquor in a restricted zone and made this pertinent statement in the opinion :

"Distance is to be measured in a straight line in a horizontal plane, unless there is a clear indication that another mode of measurement is to be adopted. 9 Am. & Eng. Encyc. of Law, p. 614. Distance is a straight line along the horizontal plane from point to point. It is measured from the nearest point of the one place to the nearest point of the other. 18 C. J. 1287."

In *Board of Trustees of Leland Stanford Junior University v. State Board of Equalization*, 1 Cal. (2d) 784, 37 P. (2d) 84 the court sustained a conviction under a statute which provided that every person shall be guilty of a misdemeanor who, upon or within one and one-half miles of the university grounds or campus, sells, gives away, or exposes for sale, any vinous or alcoholic liquors. After discussing this statute the court said :

"\* \* \* We are of the view that the distance is to be measured from the campus limits, and by a direct and straight line. The authorities support that view, and commend it to our consideration and acceptance." (Citing cases.)

It might be noted that by virtue of Section 13206, General Code, the sale of intoxicating liquor is prohibited "within two miles of the boundary line of the boys' industrial school, \* \* \* or within two miles of the place where an agricultural fair is being held." The tenor of this statute is similar to the California provision of law to which reference has just been made. However, it would appear that in construing Section 13206, General Code, the court has never been called upon to decide in precisely what manner distance should be computed.

Attention might also be called to Section 50, General Code, which provides for the payment to members of the General Assembly of compensation and a travel allowance. The portion of the section to be here noted is as follows :

“Each member shall receive a travel allowance of five cents a mile each way for mileage once a week during the session from and to his place of residence, *by the most direct highway route of public travel* to and from the seat of government, to be paid at the end of each regular or special session.”

(Emphasis added.)

Under the general rule hereinbefore set forth, if the words above emphasized had not been included in said section, the distance of travel would be subject to measurement in a straight line. It seems quite apparent that their insertion in said Section 50 was to evidence a clear indication to the contrary.

In view of the subject matter that is dealt with it may reasonably be concluded that the rule for measuring distance as set forth in the cases dealing with the sale of intoxicating liquors should be applied in construing Section 1079-7 of “The Horse Racing Act.” Therefore, in specific answer to your question, it is my opinion that, in determining whether one race track, place or enclosure is within thirty miles of another track, the “thirty miles” referred to in Section 1079-7, General Code, are to be measured in a straight line on a horizontal plane.

Respectfully,

HUGH S. JENKINS,  
Attorney General.