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RACING COMMISSION, OHIO STATE—PERMIT ISSUED TO ANY PERSON, ASSOCIATION, CORPORATION OR TRUST—TO HOLD OR CONDUCT HARNESS HORSE RACING MEETING UPON DATES SPECIFIED FOR MAXIMUM NUMBER OF RACING DATES LEGALLY AUTHORIZED—WHERE FULL DAYS' RACING DECLARED OFF BECAUSE OF INCLEMENT WEATHER OR MUDDY TRACK—COMMISSION WITHOUT AUTHORITY TO ISSUE SECOND PERMIT TO CARRY ON HARNESS RACING BEYOND DATES SPECIFIED IN FIRST PERMIT.

SYLLABUS:

When the Ohio State Racing Commission has issued a permit to any person, association, corporation or trust to hold or conduct a harness horse racing meeting upon the dates specified therein for the maximum number of racing dates that are authorized by law and on certain of said dates a full day's racing is declared off by the judges on account of inclement weather or a muddy track said commission is without legal authority to issue a second permit to such person, association, corporation or trust to carry on harness racing beyond the dates specified in such first permit in order to compensate said permit holder for the number of days that harness horse racing was theretofore declared off.

Columbus, Ohio, October 28, 1947

Ohio State Racing Commission
Columbus, Ohio

Gentlemen:

I am in receipt of your request for my opinion. You state therein:

“The question is squarely this: the commission grants to a racing association racing dates for a specified period of time, it then develops during the meeting inclement weather prevents the use of several of those dates for racing purposes; does the commission have the power to compensate the particular racing association by diminishing the original number of days through the process of subtracting the so-called bad weather days and then grant a new application for additional days equal to the bad weather days?”

It might be noted preliminarily that on March 28, 1933 the 90th General Assembly passed an act to provide for, regulate and license horse racing in this state (115 O. L. 171). Said act was codified as Sections 1079-1 through 1079-14 of the General Code. However, on June 22, 1933 this same General Assembly repealed this act and passed a new act which was approved by the governor on June 28, 1933. This second act contained an emergency clause so that it took effect immediately (115 O. L. 367). It has continued in force and effect without any change whatever except in this respect. Effective August 9, 1945 said act was supplemented by Section 1079-15 (121 O. L. 104).

Attention will first be directed to Section 1079-1, General Code, which provides in part as follows:

“From and after the passage of this act, which shall be known as ‘The Horse Racing Act’, no person, association, corporation or trust shall hold, conduct, assist or aid and abet in holding or conducting any meetings within the state of Ohio, whereat horse racing shall be permitted for any stake, purse or award except and unless such person, association, corporation or trust shall secure a permit to conduct a horse racing meeting and comply with all other provisions of this act.”

Section 1079-2, General Code, might also be noted. In so far as pertinent it reads:

“A state racing commission is hereby established to consist of four members, not more than two of whom shall be members of the same political party.”

By virtue of Section 1079-3, General Code, the commission is authorized to prescribe rules and regulations governing horse racing. In so far as pertinent that section provides:

“Said commission shall have the power to prescribe the rules, regulations and conditions under which horse racing shall be conducted in this state, and to issue, suspend, diminish or revoke permits to conduct horse racing as authorized by this act.”

Section 1079-4, General Code, provides that a permit must be obtained to hold or conduct a horse racing meeting whereat a certain system of wagering is allowed. Said section provides in part as follows:

“Any person, association, corporation or trust desiring to hold or conduct a horse racing meeting, wherein the pari-mutuel

or certificate system of wagering is allowed, within the state of Ohio shall make application to the state racing commission of the state for a permit so to do. * * * The state racing commission shall prescribe forms to be used in making such applications. Such application shall specify the name of person or persons, association, trust or corporation making such application * * * the *dates* it is intended to conduct or hold such horse racing meeting (which dates shall be successive week days, excluding Sundays), the hours of each racing day between which it is intended to hold or conduct horse racing at such meeting which shall be between the hours of 12:00 o'clock noon and 7:00 o'clock in the afternoon for running horse racing meetings, and which shall be between the hours of 12:00 o'clock noon and 12:00 o'clock midnight for light harness horse racing meetings, and the location of the place, track or enclosure where it is proposed to hold or conduct such horse racing meeting and such further information as the commission shall prescribe." (Emphasis added.)

It will be seen from the just quoted section that an application may be made to conduct (1) a running horse racing meeting or (2) a light harness horse racing meeting. Either type of meeting would, of course, involve "horse racing" as those words are used throughout the act here under consideration.

Section 1079-5, General Code, relates to the deposit to be made when a permit is sought and is governing with respect to the refunding of any moneys that are deposited in order to obtain the permit which is authorized by the next succeeding section. Said Section 1079-5 provides:

"At the time of making application for a permit the applicant shall deposit with the state racing commission a cash bond, certified check or bank draft payable to the order of the state racing commission, in an amount equal to one hundred dollars for each day, excluding Sundays, petitioned for in said application. At the close of the last day of the horse racing meeting for which a permit is issued, as provided for in section six (6) of this act, the state racing commission shall refund to such permit holder the sum of one hundred dollars for each racing day the permit holder paid the state racing commission the tax due for said day as provided for and at the rate stipulated in Section 8 of this act; * * * *In harness horse racing meetings in event any full day's racing is declared off by the judges on account of inclement weather or a muddy track, the state racing commission shall refund to the permit holders the sum of one hundred (\$100.00) dollars of their deposit for each such day.*" (Emphasis added.)

It is to be observed that said section makes no provision for the calling off of a day of racing unless the meeting is one involving harness horse racing.

Section 1079-6, General Code, which deals with the contents of the permit to be issued to conduct horse racing, reads in part as follows:

“Upon the proper filing of an application * * * the state racing commission of Ohio may issue a permit to such applicant to hold or conduct a horse racing meeting as authorized in this act. Such permit shall specify the person, association, trust, or corporation to whom the same is issued, the *dates* upon which such horse racing meeting is to be held or conducted, the hours of such *dates* between which such horse racing will be permitted, the location of the place, track or enclosure where such horse racing meeting is to be held or conducted, and shall receipt the payment of the permit fee and deposit of the cash bond, certified check or bank draft, by the applicant. Every such permit shall contain a condition that all horse races or racing meetings conducted thereunder shall be subject to the *rules, and regulations and conditions from time to time prescribed and promulgated by the commission*. The commission may refuse to award *dates* or to issue a permit to any applicant if a permit previously issued to said applicant has been revoked under the authority of this act.”

(Emphasis added.)

Section 1079-7, General Code, concerns permit restrictions and 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 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 for 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 * * *. No permit shall be issued for courses or race tracks having racing strips of three-fourths of a mile or less for more than thirty-eight racing *dates* in the aggregate in any one calendar year, to be divided into two sections of not more than nineteen days each, with not less than thirty days transpiring between the close of the first meeting of the year and the commencement of

the second meeting. Distribution of *dates* shall not apply to fairs or horse shows not required to secure a permit under this act.”
(Emphasis added.)

It will be noted that when quoting from the sections of the General Code hereinbefore set forth particular emphasis has been placed upon the word “day” and “dates.” The thought may be advanced that these words can be employed synonymously and therefore it was the legislative intent that, in providing in Section 1079-7 of the General Code for an aggregate of forty-four racing *dates*, an applicant should not be prejudiced by the calling off of any full day’s racing and should be permitted to conduct racing on forty-four *days*. In other words if a full day’s racing is called off by the judges because of inclement weather or a muddy track it may be thought that since racing is not actually conducted on the racing *date* specified in the application for a permit additional racing dates should be granted the applicant. Proper appreciation of the difference in meaning between the words ‘date’ and ‘day’ will demonstrate that the legislative intent was not as above noted.

Attention is directed to *In re Irvine*, 114 Mont. 577, 139 P. (2d) 489, wherein the court stated:

“The word ‘date’ when spoken may sound somewhat similar to the word ‘day’ but the words are certainly not synonymous nor do they have a common source of derivation * * *.”

Further touching on the proposition here under consideration is *Mutual Life Insurance Co. v. Hurni Packing Co.*, 263 U. S. 167, wherein Mr. Justice Sutherland said:

“The word ‘date’ is used frequently to designate the actual time when an event takes place; but, as applied to written instruments, its primary signification is the time specified therein. Indeed, this is the meaning which its derivation (*datus*—given) most naturally suggests. In *Bement v. Trenton Locomotive & Mach. Mfg. Co.*, 32 N. J. L. 513, 515, 516, it is said: ‘The primary signification of the word “date” is not time in the abstract, nor time taken absolutely, but, as its derivation plainly indicates, time “given” or specified,—time in some way ascertained and fixed; this is the sense in which the word is commonly used.’”

See also *Cantrell v. Prudential Ins. Co.*, 189 Wash. 99, 63 P. (2d) 509; *Travia v. Metropolitan Life Ins. Co.*, 186 La. 934, 173 So. 721.

In connection with your inquiry I am assuming for the purpose of this opinion that you have in mind your authority to grant a second permit for additional racing dates when the first permit covers forty-four racing dates or the maximum number authorized by law. As will be noted Section 1079-7 also provides that horse racing may not be conducted after the last day of October in any calendar year. Moreover it further provides that horse racing may not be conducted on the same date or dates on tracks within thirty miles of each other. These provisions are to be kept in mind in view of what now follows.

It is entirely probable that a particular permit for racing dates would cover the period ending with the last day of October. Let it be supposed that during the permit period harness horse racing had to be called off for five days during such period because of inclement weather. It is beyond dispute that a second permit could not legally be issued to conduct racing *after* the last day of October. Under such circumstances it would be impossible to compensate an applicant for said five days. What would be the situation in the case of a permit covering a period ending with the *last day of September*? Consequently, if additional dates could lawfully be given to an applicant whose permit expired with the last day of September the applicant whose permit ended with the last day of October would be at a disadvantage in not being able to obtain compensation in the form of additional dates. Certainly no such situation was contemplated by the law.

It can further be pointed out that if two tracks viz., A and B, were located within thirty miles of each other, and harness horse racing was to be held at said last mentioned track immediately following the expiration of racing at track A, any attempt to compensate the holder of a permit to conduct racing at track A for lost dates because of inclement weather would result in complications. In addition to the foregoing it is to be noted that the concluding sentence of Section 1079-5, General Code, provides, in the case of harness horse racing, for a refund of \$100 to the permit holder for each full day's racing that is declared off by the judges. If it had been the legislative intent to compensate a permit holder for lost racing days by the issuance of another permit to cover additional racing dates the General Assembly might well have said so. Certainly the last sentence of Section 1079-5, General Code, would be meaningless if the conclusion were to be reached that the law contemplates the allowance of

additional dates. Consequently my conclusion as hereinafter stated is buttressed by the express language of the section.

At the outset of this opinion attention has been directed to the fact that by virtue of Section 1079-3, General Code, you have been granted power to prescribe the rules, regulations and conditions under which horse racing shall be conducted in this state. While your power in this connection is quite broad it is clear, of course, that no rule may be enacted which would in effect increase your statutory powers. Said Section 1079-3, specifically authorizes the commission to "*diminish* or revoke permits." But no language can be found in said section which would authorize you to *increase* permits to conduct horse racing by granting additional dates.

I am compelled to conclude, and it is therefore my opinion that when the Ohio State Racing Commission has issued a permit to any person, association, corporation or trust to hold or conduct a harness horse racing meeting upon the dates specified therein for the maximum number of racing dates that are authorized by law and on certain of said dates a full day's racing is declared off by the judges on account of inclement weather or a muddy track said commission is without legal authority to issue a second permit to such person, association, corporation or trust to carry on harness racing beyond the dates specified in such first permit in order to compensate said permit holder for the number of days that harness horse racing was theretofore declared off.

Respectfully,

HUGH S. JENKINS,
Attorney General.