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HORSE RACING PERMIT—WHERE HOLDER MADE DEPOSIT OF CASH BOND TO COVER TAXES WHICH MAY BECOME DUE—NO TAXES DUE—HOLDER ENTITLED TO PROPORTIONATE REFUND OF BOND—SECTIONS 1079-5, 1079-8 G. C.

SYLLABUS:

Where a holder of a horse racing permit has made a deposit of a cash bond in accordance with Section 1079-5, General Code, to cover taxes which may become due by authority of Section 1079-8, General Code, and no taxes have become due, he is entitled to a proportionate refund of that bond.

Columbus, Ohio, January 24, 1950

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

Dear Sir:

Your request for my opinion reads as follows:

“Enclosed is a letter received from Mr. C. D. L., Attorney of Warren, Ohio.

“To refresh the memory of your office, the Warren Jockey Club applied and were granted a permit to conduct a race meeting for nineteen days and deposited with the state of Ohio a cash bond in the amount of \$1900.00. They operated only two days and folded up. They had paid the state of Ohio by check certain sums of money representing the state’s share of the tax for the two days they operated. These checks were returned for lack of funds. The Commission then paid this tax to the state of Ohio out of the \$1900.00 which leaves a balance of \$1502.15 of this deposited fund. This balance is being held in our depository trust account.

“I would like to refer to your predecessor’s letter dated June 6, 1947 wherein an opinion was issued. The Commission would like to get this matter settled. I am sure the Commission feels that the balance of this original deposit of \$1900.00 should be returned to these people if it can be done legally.

“The Commission would like to ask your office if it is possible to return this money without a suit being filed and if it is in order to return it who is the rightful owner and to whom shall it be returned.”

Section 1079-5, General Code, states in part as follows:

“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 (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; provided, however, if such permit holder has not paid to the state racing commission the compensation and expenses of the representative assigned to his or its track, as provided for in section 9, the commission is authorized and directed to withhold such refund until the same has been paid. * * *”

The obvious purpose of the statute is to make certain that the permit holder pays the taxes due under Section 1079-8, General Code. This deposit is not to be considered a fee but is intended to be refunded if due taxes are paid.

In this situation there are no taxes due from the permit holder to the state. This is due to the fact that under Section 1079-8, General Code, the taxes are computed on a percentage which is based on the money taken in by the permit holder each day. Since no money was taken in for the days the track did not operate, there are no taxes due from the permit holder and he is not under any obligation to the state.

In 37 O. Jur. 508, Section 275, it states as follows:

“A construction adopted should not be such as to defeat the obvious intention of the legislature or do violence thereto, wholly or partially, but rather one which would carry such intention into effect.”

In 37 O. Jur. 656, Section 361, it states in part as follows:

“The presumption is that the general assembly had a definite purpose in each and every enactment and all its provisions. * * *”

There is no evidence in the statute of any intention on the part of the Legislature to force the forfeiture of this money in any situation other than where a tax is not paid when due or when the representatives

of the Racing Commission are not paid. Nothing of this nature is mentioned in your request.

In 37 O. Jur. 633, Section 347, it states in part :

“* * * The law is presumed to be equitable, and inequitable results should, if possible, be avoided, so that where the statute is doubtful, the court will decide it in favor of advancing the equity of the case. Accordingly, where one construction of a statute would produce equitable results and another inequitable results, the former will generally be adopted if the language of the statute does not preclude such interpretation. * * *”

In the same volume of Ohio Jurisprudence at page 637, Section 350, it states as follows :

“It is not to be supposed that the framers of a statute contemplated a violation of rules of natural justice. Accordingly, it should not be presumed to have been within the legislative intent to enact a law having an unjust result. To the contrary, it is to be presumed that the legislature did not intend a law to work a hardship or injustice, but that it intended the law to operate justly. Hence, the courts, to support their construction of a statute, frequently refer to the justice or absence of hardship thereof, or to the injustice or hardship, which would result from a different construction of the law. Moreover, it is considered a reasonable and safe rule of construction to resolve any ambiguity in a statute in favor of a just or fair interpretation thereof. A construction should be avoided which will render the statute iniquitous in its operation, or unfair, or productive of hardship or harsh or harmful consequences. Indeed, there is even authority to the effect that courts of law are not warranted in giving such a construction to the acts of a legislature as must necessarily work injustice unless the intent of the legislature that they shall be so understood is manifest and clear beyond any rational doubt.”

From this, it is my opinion that the Legislature intended that this bond be refunded unless taxes were unpaid or if the Racing Commission's representatives were not paid.

Therefore, it is my opinion that the Ohio State Racing Commission should refund the money in question to the permit holder.

Respectfully,

HERBERT S. DUFFY,
Attorney General.