

*Bartlett's
Birmingham*

December 9, 1953
Letter Opinion
No. 53-161-L

Mr. Thad Mullen, Executive Sec'y
Arizona Racing Commission
707½ W. Thomas Road
Phoenix, Arizona

**LAW LIBRARY
ARIZONA ATTORNEY GENERAL**

Re: (1) Moving of Racing Track
(2) Allocation of Racing Days

Dear Mr. Mullen:

In response to your oral request of today, we wish to answer the following two questions:

- (1) May the owner of a racing track move his track within the county?
- (2) May the Racing Commission allocate to various tracks a greater or lesser number of days of racing on the basis of facilities, location and convenience to the public, etc.?

As to the first question, it is the opinion of this office that the owner of a race track may for any good reason abandon one location and move his track to another location within the county. An Arizona statute directly answers this question. It is 73-1614(f), A.C.A. 1939, as amended, which reads as follows:

"(f) In the event the owner of any place, enclosure or track used for racing purposes pursuant to permits issued as authorized by law on or before May 15, 1949, is obliged for any reason to abandon the use of such place, enclosure or track for such purposes, he may transfer the use and rights to use such premises for racing purposes to another location in the same county."

We wish to emphasize that this statute refers only to tracks which had been issued permits for racing on or before May 15, 1949.

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So that there can be no misunderstanding as to the meaning of this statute, we wish to state that it is the opinion of this office that the term "owner" refers to the person, association or corporation which holds legal title to the property upon which the race track is located. This interpretation is based not only upon the use of the word "owner" but also upon the use of the words in the above quoted statute "he may transfer the use and rights to use such premises for racing purposes." It is the opinion of this office that this "right to use such premises" is a right which the legal title holder of the property holds and enjoys. A lessee of such premises merely enjoys such right at a particular location through his leasing of the premises and because he has leased certain premises where racing is allowed by the above quoted statute. The lessee himself could not transfer such a use to another location, for the reason that by his lease he has acquired only the temporary right to use such premises for racing, subject to the approval of the Racing Commission, and by his lease he obtains no interest in the right to use such premises except for the limited period of his lease.

Thus, it seems evident that the owner of the property, where he is "obliged for any reason to abandon the use of such place," has the statutory right to transfer his rights to use such premises for racing purposes to another location in the same county. The use of the words "obliged for any reason" would, in the opinion of this office, include a decision on the part of the owner of the premises that the track and facilities were inadequate to meet the reasonable needs and demands of the public, and would thus include the right to transfer to a larger and better equipped track elsewhere within the county.

As to Question No. 2, it is the opinion of this office that from a reading of the whole statute one of the primary functions of the Arizona Racing Commission is to allocate days of racing to the various tracks in such way that the best interests of the public will be served. If one track is much superior to another in convenience of location, equipment, and other facilities, quality of racing stock and other such considerations, it is not only permissible, but proper and mandatory, that the Commission consider these matters in allocating days of racing. The total number of days of racing is strictly limited by a statute, and is based partly upon the population of the

various counties. Since more than one track exists in several counties, and competition may logically develop between these tracks as to how many days of racing each shall be permitted, some method of allocating these days of racing had to be formulated by the legislature. From a reading of all the Arizona law concerning racing, it becomes apparent that the Commission has been given much authority and considerable leeway in dealing with the many problems involved in racing. One example of such broad powers is found in 73-1612(a), A.C.A. 1939, as amended in 1953, which reads as follows:

"73-1612. Powers and duties of the commission.---
(a) The commission shall have jurisdiction and supervision of all horse, harness and dog races held or conducted in the state on which there is wagering, and all powers necessary to fully and effectually carry out the purpose of this act, including the adoption of rules and regulations not in conflict with this act."
(Emphasis supplied)

This statute alone, even if it were not bolstered by other racing laws giving great authority to the Commission, would be sufficient basis for this decision. Therefore, it is the opinion of this office that it is the duty of the Racing Commission to allocate days of racing in whatever manner will best serve the needs of the public. From a reading of the whole statute, we wish to point out that the owner of a race track must secure approval of his new location from the Racing Commission before he moves his race track, and that, in addition, he must secure a new permit at his new location before any races are held.

Yours very truly,

RONALD M. BOND
Assistant to the
Attorney General

RMB:DP