

660805.1

RACING COMMISSIONER: Removal of employees and officials of licensees "for cause."

WORDS & PHRASES: "Removal for cause."

Discussion of the meaning of the phrase "removal for cause" and the procedure to be employed by the commissioner.

No. 4545

August 5, 1966.

Mr. Berry N. Beaman
Racing Commissioner
Cadillac Square Building
Detroit, Michigan

You have asked my opinion on the following question:

1. What is the meaning of the phrase "for cause" in Section 6 of the racing law of 1959?
2. By what procedure should that determination be made?

Section 6 of Act 27, P.A. 1959, as amended, C.L.S. 1961 § 431.36; M.S.A. 1965 Cum. Supp. § 18.966(6), provides:

"The commissioner shall prescribe rules, regulations and conditions, in accordance with the provisions of Act No. 88 of the Public Acts of 1943, as amended, being sections 24.71 to 24.82 of the Compiled Laws of 1948, and subject to Act No. 197 of the Public Acts of 1952, as amended, being sections 24.101 to 24.110 of the Compiled Laws of 1948, under which all horse racing shall be conducted within the state, and may assess penalties, including fines up to \$300.00, for violations thereof by licensees under this act. The commissioner shall make rules governing restricting or regulating betting on races.

* * * *The commissioner at any time may require the removal of any employee or official employed by any licensee for cause. The commissioner may visit, investigate and place expert accountants and such other persons as he deems necessary in the offices, tracks or places of business of any licensee to insure compliance with the rules and regulations. The commissioner may summon witnesses and administer oaths or affirmations whenever, in his judgment, it is necessary for the effective discharge of his duties. Any person failing to appear before the commissioner at the time and place specified, without just cause, in answer to a summons, or refusing to testify, or testifying falsely, is guilty of a misdemeanor, and shall be punished by a fine of not more than \$5,000.00 or by imprisonment for not more than 6 months, or by both such fine and imprisonment.*"
(Emphasis supplied)

Pursuant to this authority the following rule was promulgated:

R 431.67(g), Michigan Administrative Code, 1960 Annual Supplement, p. 1522.

"(339) In granting a license to any new or existing racing associa-

tion to conduct race meetings the commissioner will consider especially the following matters:

- “(a) Opportunity for the sport to properly develop.
- “(b) Avoidance of competition with established tracks.
- “(c) Extent of community support for the promotion and continuance of the tracks.
- “(d) The character and reputation of the men identified with the undertaking.”

1. The Rhode Island Supreme Court in 1937 in the case of *Narragansett Racing Ass'n. v. Kiernan*, 194 A 49, 50-51 construed a statute with almost identical language:

“The commission may at any time for cause require the removal of any employee or official employed by any licensee hereunder.”

The court said that the words “for cause” or similar words in contemplation of law, mean for legally sufficient cause; and that when used in a regulatory statute, such words require some judicial or quasi-judicial action by the body exercising powers under the statute. The court further said:

“The presence of the words ‘for cause’ indicates clearly to us that the Legislature intended that action taken under the provisions of this section requires the division to act in a judicial, or at least in a quasi-judicial capacity. It is our opinion that the words ‘for cause’ in this section limit the power of the division to order removal of an employee and official of a licensee and require the presence of substantial grounds, established by legally sufficient evidence, in order to support such action.”

This case is cited with approval in *Aniello v. Marcello*, 162 A 2d 270, 274 (R.I. 1960).

The *Kiernan* case was also cited with approval in *Mellor v. Leidman*, 211 A 2d 633, 637 (R.I. 1965), and in *Hardman v. Personnel Appeal Board*, 211 A 2d 660, 664 (R.I. 1965).

In the case of *Thompson v. Civil Service Commission*, 134 P 2d 188, 194 and 195 (Utah 1943), the court said, in construing a statute providing for removal of an official or employee for cause:

“The words ‘removed for cause’ means for reasons which the law and sound public policy recognize as sufficient warrant for removal; that is, ‘legal cause’ and not merely a cause which the appointive power in the exercise of discretion may deem sufficient. *State, ex rel Matson v. O’Hern*, 104 Mont. 126, 65 P 2d 619; *State, ex rel Holt v. District Court*, 103 Mont. 438, 63, P 2d 1026. * * *. The term ‘removed for cause’ means some cause concerning the fitness or ability of the incumbent to perform the duty imposed upon him. It means insufficiency, incompetency or other kindred disqualifications. *Street Commissioners of Hagerstown v. Williams*, 96 Md 232, 53 A 923, 925. Power to remove a person from office for cause means that a reason must exist which is personal to the individual sought to be

removed, which the law and sound public opinion will recognize as a good reason for another occupying the place (citations). Where removal is for cause, notice and opportunity to be heard are necessary (citations). * * * The courts have uniformly held that a removal for cause requires charges, notice and a hearing; that without such procedure there can be no removal for cause (citations)."

In the case of *Smith v. Cole*, 62 N.Y.S. 2d 226, 227 (1946), which involved the dismissal of a licensee by a jockey club "for cause," the court construed the language "for cause" as meaning that a revocation must be for an occurrence which it is reasonably consistent with sound public policy to find offensive. The determination must not be arbitrary or capricious.

In *Battipaglia v. Executive Committee, Etc.*, 191 N.Y.S. 2d 288, 294 (1959), the court said:

"It is enough to note that the words 'for cause' have a well understood legal meaning which excludes arbitrary action. As Governor Tilden stated in 1875, 'The principle on which the whole system rests is, that a removal in such cases must be for a substantial, reasonable and just cause.' (citation) That principle and the words 'for cause' have been more explicitly defined, with respect to the removal of a City Magistrate, to require the showing of 'corruption, general neglect of duty, delinquency affecting general character and fitness for office; acts violative of law inspired by interest; oppressive and arbitrary conduct, reckless disregard of litigants' rights, and acts justifying "the finding that his future retention of office is inconsistent with the fair and proper administration of justice."', * * * 'the cause assigned for removal must not be a mere whim or subterfuge, but must be of substance relating to the character, neglect of duty, or fitness of the person removed' to properly discharge the duties of his position (citations); with respect to an employer-employee relationship, to require 'a "cause" which would justify the employer in terminating the contract for a breach thereof by plaintiff and not arbitrarily' (citation), and with respect to the license of a trainer of race horses, to require that 'revocation must be for an occurrence which it is reasonably consistent with sound public policy to find offensive. The determination must not be arbitrary or capricious.'"

In *McGuire v. Viking Tool & Die Co.*, 104 N.W. 2d 519, 525 (Minn. 1960), in construing a statute which provided that the Industrial Commission could set aside an award "for cause," quoted with approval from *Elsenpeter v. Potvin*, 5 N.W. 2d 499, 501 (Minn. 1942) as follows:

"[The words] 'for cause' mean 'good cause'; that is, some such cause as fraud or surprise so that, in the exercise of sound judicial discretion, the award should be vacated and a new hearing had. * * *"

In *Salway v. Secretary of State*, 321 Mich. 211, 221, in construing a statute providing for a suspension of an auto dealer's license for "good cause," the court said that engaging in the business of selling new motor vehicles at retail without having authority of a contract with the manu-

facturer or distributor therefor was regarded as sufficient cause to justify a suspension of a license and that "whatever constituted a reason, or reasons, for denying his license in the first instance should be considered 'good cause' for the revocation of a license."

Based upon the cases cited, supra, it is my opinion that "for cause" as used in the racing law of 1959 means for reasons which the law and sound public policy recognize as sufficient warrant for removal; some cause concerning the fitness or ability of the incumbent to perform the duty imposed upon him; that a reason must exist which is personal to the individual sought to be removed, which the law and sound public opinion will recognize as a good reason for another occupying his place; delinquency affecting general character and fitness for office.

You can take into consideration the character and reputation of the employees and officials if that would have constituted good cause for denying a license to the licensee in the first instance. *Salway v. Secretary of State*, 321 Mich. 211, 221. I refer you again to Rule 339(d) above quoted.

The Michigan Supreme Court in *Hazel Park Racing Association, Inc. v. Racing Commissioner*, 336 Mich. 508, construed the following language in the former racing act, Section 9 of Act 199, P.A. 1933, as amended:

"The commissioner shall have the power to reject any application for a racing meet license for *any cause* which he may deem sufficient, which rejection may be appealed to the circuit and supreme court."
(Emphasis supplied)¹

2. The authority of the commissioner to require the removal of any employee or official employed by any licensee for cause under Sec. 6 of the act is directed to the licensee. The statute contemplates that the commissioner may order the removal of any employee or official employed by any licensee for cause after notice to the licensee and hearing in the event that the licensee does not comply with the request of the commissioner that any employee or official be removed for cause. If the licensee will not comply with the request and the commissioner determines to convene a hearing for the purpose of deciding if he should exercise his powers to order the removal of an employee or official, then it is clear that any employee or official sought to be removed may appear before the commissioner in any such proceeding.

Notice to the licensee and an opportunity for the licensee to be heard would be in accordance with Act 197, P.A. 1952, as amended, being C.L.S.

¹ "Refusal of state racing commissioner to grant plaintiff corporate applicant a license to conduct horse racing meets in this State unless certain minority stockholders disposed of their stock and voting rights because 'through family relationships or adverse police records (they) were unacceptable to the racing commission as part owners of a licensed racing association' held, to constitute a condition which the commissioner was without statutory authority to impose, especially in view of the lack of evidence that any such stockholders were presently participating in any way in criminal activities, that such stockholders are active in the management of the corporation or that they, or any of them, are directing its policies or activities and corporation itself is not accused of improper conduct that is inimical to the welfare of the people of this state. * * * (Syllabus 3)

1961, § 24.101, et seq.; M.S.A. 1961 Rev. Vol. § 3.560(21.1) et seq. This hearing would have to establish by legally sufficient evidence the presence of substantial grounds in order to support removal "for cause."

FRANK J. KELLEY,
Attorney General.

660808.1

MUNICIPAL FINANCE COMMISSION: Membership service by representative.

DEPUTIES IN PRINCIPAL DEPARTMENTS: Serving as member of Municipal Finance Commission.

STATE TREASURER: Designation of representative to serve on Municipal Finance Commission.

The State Treasurer as head of the Department of Treasury and as an ex officio member of the Municipal Finance Commission may designate as his representative to serve on such Commission his chief deputy or any one of the other three deputies in his Department. Such appointment shall be in writing and may be made for a specific meeting or meetings or for a specific period of time or until revoked.

No. 4505

August 8, 1966.

Mr. E. Boomie Mikrut, Director
Municipal Finance Commission
Box 448
Lansing, Michigan

You have requested my opinion in response to a question stated by you as follows:

"May the State Treasurer act through his chief deputy state treasurer and any of the other three deputies as a member of the Municipal Finance Commission or is he limited to act only through his chief deputy?"

Act 202 P.A. 1943 is known as the Municipal Finance Act, being C.L. 1948 § 131.1, M.S.A. 1958 Rev. Vol. § 5.3188(1). Section 1 of Chapter II of the Municipal Finance Act creates the Municipal Finance Commission and prescribes that the membership shall be composed of State Treasurer, the Attorney General, the Auditor General, and the Superintendent of Public Instruction.¹ Said Section 1 in part provides:

"Each member of the commission for the purposes of this act, may act under any and all circumstances through his deputy."

In the case of *Chemical Bank & Trust Co. v. County of Oakland*, 264

¹ The office of elected Auditor General has now been abolished. See Act 380 P.A. 1965.