

It is my opinion that a member of a downtown development authority board may not simultaneously serve as a member of the county board of commissioners of the county wherein the district is located, a member of the governing body of the municipality wherein the district is located, or a member of a school board of a school district which extends into the development area.

FRANK J. KELLEY,
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RACES AND RACING: Allocation of harness racing dates.

CONSTITUTION OF MICHIGAN: Art 4, § 25.

A provision in an appropriation act describing the method by which the state racing commissioner is to allocate harness racing dates is in violation of Const 1963, art 4, § 25, which provides that no law may be revised, altered or amended unless the section or sections of the act altered or amended are re-enacted and published at length.

Opinion No. 5146

December 7, 1976.

Honorable George Cushingberry, Jr.
State House of Representatives
Capitol Building
Lansing, Michigan

You have requested my opinion on the validity of section 21 of 1976 PA 243.¹ This section provides:

"The state racing commissioner in allocating harness racing dates as authorized under Act No. 27 of the public acts of 1959 as amended, being sections 431.31 to 431.56 of the Michigan Compiled Laws, shall allocate racing dates to licensees whose average daily pari-mutual handle has exceeded \$500,000.00 consecutively within 6 calendar days preceding or following a race meet which meets these requirements."

Horse racing in Michigan is controlled by the provisions of the Racing Law of 1959, 1959 PA 27 (as amended by 1974 PA 136), MCLA 431.31 *et seq*; MSA 18.966(1) *et seq*. Section 9 of the Racing Law of 1959, *supra*, provides:

"(1) A person desiring to conduct a race meeting shall apply to the commissioner for a license to do so. The application shall be filed with the secretary on or before September 1 of the year preceding the year in which it is proposed to conduct racing. The application shall specify the location and the days on which racing is desired to be held. Racing dates shall not be allocated to permit more than 6 days

¹ This is an act appropriating money to the Department of Agriculture.

of racing in a week at any 1 track. Where Sunday racing is permitted, the first race track shall not start before 2:00 p.m.

"(2) The commissioner shall grant or deny applications for thoroughbred race meeting licenses and shall allocate or deny racing dates to license applicants before October 1 of the year preceding the year for which the applications are made.

"(3) The commissioner shall grant or deny applications for harness race meeting licenses and shall allocate or deny racing dates to license applicants before October 15 of the year preceding the year for which the applications are made, but harness racing dates shall not be allocated before the allocation of thorough bred racing dates.

"(4) The commissioner shall not issue a race meeting license to an organization for a charitable purpose or organized for the purpose of distributing its profits or income to charitable organizations.

"(5) The denial of a race meeting license may be reviewed by the circuit court, and either party may appeal to the supreme court." 1959 PA 27, § 9; MCLA 431.39; MSA 18.966(9).

It is apparent from a comparison of section 21 of 1976 PA 243, the appropriation act, and section 9 of the Racing Law of 1959, *supra*, that the legislature has attempted to modify sub-paragraph 3 of section 9 of the Racing Law. This attempt is in conflict with the provisions of Const 1963, art 4, § 25 as interpreted by the Michigan Supreme Court in *Alan v Wayne County*, 388 Mich 210; 200 NW2d 628 (1972) and OAG 1975-1976, No 4896, p . . . (September 9, 1975). These opinions exhaustively review the constitutional mandate that no law be revised, altered or amended by reference in another act. This is clearly what section 21 of the appropriation act has attempted to do and it is therefore my opinion that it is unconstitutional. Since 1976 PA 243 does make other appropriations for the Department of Agriculture, it is clear that this bill would have been enacted without the inclusion of section 21. I conclude, therefore, that the remaining provisions of the bill are severable from the unconstitutional infirmity of section 21.

Thus, if the legislature wishes to alter the discretion vested in the racing commissioner by the provisions of the Racing Law of 1959, *supra*, it must do so directly by amending the act itself, not indirectly by reference in an appropriations act.

FRANK J. KELLEY,
Attorney General.