

MASSACHUSETTS SUPREME JUDICIAL COURT

**Bay State Harness Horse Racing & Breeding Ass'n v. State Racing  
Commission**

340 Mass. 776 (1960) · Decided May 2, 1960

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OPINION

CUTTER, J.

Cutter, J. The petitioner (Bay State) filed in the Superior Court a petition for review (see G. L. c. 30A, § 14) of the action of the State racing commission in granting a license to Eastern Racing Association, Inc. (Eastern), for twenty-three nights of harness horse racing in 1959.

The commission's action, if valid, precluded Bay State from obtaining more than sixty-seven nights of harness racing in 1959 in view of the statutory maximum of ninety nights of such racing for all applicants. See G. L. c. 128A, § 3 (j), as appearing in St. 1946, c. 575, § 4. Bay State prayed that Eastern's license be set aside and that the commission be ordered to consider issuing a license to Bay State for an additional twenty-three days in 1959.

The commission's demurrer (on the grounds that Bay State did not state a case and was not "aggrieved") was sustained by interlocutory decree. A final decree was entered dismissing the petition. Bay State has appealed from each decree. 1. This case has now become moot, for we can grant no relief concerning 1959 harness races which have already been run.

Licenses for harness horse racing are granted annually. G. L. c. 128A, § 2 (as amended through St. 1950, c. 716 2). The parties, however, inform us that a similar case relating to 1960 harness racing, now pending in the Superior Court, raises one question of law presented by the 1959 case and that this question is likely to arise also in future shears unless now decided.

They urge us to indicate our views on several issues to guide administrative action under the applicable statutes. See *Cumberland Farms, Inc. v. Milk Control Commn.*, ante, 672, 674-675, and cases cited. There are, of course, substantial, practical, time obstacles (see *Ward v. Selectmen of Scituate*, 334 Mass. 1, 2-4; *Zelman v. Alcoholic Beverages Control Commn.*

335 Mass. 515, 519) to obtaining before the racing season in any year a decision of the Superior Court and, on appeal, of this court after action by the commission on an annual license. See *Mullholland v. State Racing Commn.* 295 Mass. 286, 288-289. These time obstacles, and the possibility that some future litigation may be avoided, lead us to state briefly our views on the one question of substantive law which has arisen both in 1959 and in 1960.

Two other substantive questions, presented in 1959, did not arise in 1960 and need not now be stated. We make no intimation whether Bay State is a “person... aggrieved” under G. L. c. 30A, § 14. 2. It is alleged in the petition that when pari-mutuel horse racing was authorized in 1934, “Eastern obtained the approval of the... [appropriate authorities] of Boston and Revere... for daytime racing... at Suffolk Downs....

Night... harness horse racing... was not authorized until... 1946, and Eastern never has obtained the approval of the... [authorities]... of Boston and Revere to conduct... night harness horse racing at Suffolk Downs.” Bay State contends that, under G. L. c. 128A, § 13A (as amended through St. 1951, c. 777, § 2), and c. 271, \*779§ 33,3 a separate approval of the appropriate authorities of Boston and Revere was required after 1946 before Eastern could conduct night harness horse racing.

When G. L. c. 128A was inserted by St. 1934, c. 374, § 3, G. L. c. 271, § 33, had long been on the statute books. Chapter 128A gave to the commission general jurisdiction over pari-mutuel racing. Section 13A, added by St. 1935, c. 454, § 8, tended to minimize any possible conflict between c. 128A and § 33, with respect to the control of local communities over racing under c. 128A, by limiting local authorities to approval of “the location of the race track.” When “the location... has been ‘once approved’ by the local authorities their jurisdiction is exhausted.” *North Shore Corp. v. Selectmen of Topsfield*, 322 Mass. 413, 416-418.

Chapter 128A, § 3, in its original form (St. 1934, c. 374, § 3) permitted harness racing. See c. 128A, § 3 (j). Section 2 (5) of the original act, however, permitted “horse racing” only between the hours of noon and 7 p.m. By St. 1946, c. 575, §§ 1, 2 (see for recent amendments St. 1958, c. 229, §§ 1, 2), harness racing hours were altered so as to permit such racing either between noon and 7 p.m. or between 7 p.m. and midnight.

This statutory change in no way affected, or related to, local approval of the location of a track. The allegations of the petition show that the location of Suffolk Downs was approved once by the local authorities for horse racing prior to 1946.

The 1946 amendment imposed no new requirement of any further local approval merely because of the provision permitting harness racing at night thereafter. No statutory provision brought to our attention tends to cut \*780down, by any requirement of more than one local approval of the site of a track, the broad discretion of the commission to select licensees or to refuse licenses.

See G. L. c. 128A, § 11, inserted by St. 1934, c. 374, § 3. 3. There is no occasion to consider the appeal from the interlocutory decree sustaining the demurrer. The final decree dismissing the petition is affirmed, not on the merits, but because this case has become moot. So ordered. Section 2 has also been amended by St. 1958, c. 229, § 1, and by St. 1959, c. 295, § 1.

General Laws c. 271, § 33, provides, “No land within a town shall be... used as a race ground or trotting park without the previous consent of and location by the mayor and aldermen... who may regulate and alter the terms and conditions under which the same shall be... used... and may discontinue the same when in their judgment the public good so requires....” General Laws c. 128A, § 13A, now reads in part, “The provisions... of... [§3 thirty-three... of chapter two hundred and seventy-one... shall not apply to race tracks or racing meetings... conducted by licensees under this chapter,... except that no license shall be granted by the commission for a racing meeting in any city... unless the location of the race track where such meeting is to be held... has been once approved by the mayor and aldermen... as provided by said section thirty-three.’.. after a public hearing...” (emphasis supplied).

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