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LOTTERY LEGISLATION**

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# **PURSE SUPPLEMENTS IN NEW HAMPSHIRE LOTTERY LEGISLATION**

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## Purse Supplements in New Hampshire Lottery Legislation

We throw this out for what it's worth in terms of the New York legislation on the validity of video lottery terminals which provide purse supplements for pari-mutuel racing. New Hampshire was the first state in the nation with a modern lottery. It is clear that the New York lottery provisions in the State Constitution were based on the New Hampshire legislation and experience.

New Hampshire passed legislation establishing a sweepstakes commission in 1963, and the first drawing was held in 1964. The drawing was modeled on the Irish Sweepstakes with the winners selected based on the results of a major race. That race was the New Hampshire Sweepstakes which had a purse of \$144,000 in 1964. In the years from 1965–1967 the purse for this race was \$250,000. The funds for this came from the New Hampshire Sweepstakes Commission. The original lottery legislation (Chapter 52, L. 1963, RSA 284:21-i.) had a provision allotting \$250,000 per annum for purses for horses racing in sweepstakes races.

While the race was discontinued after 1967, Rockingham brought back the race in 1984, and it continued until Rockingham discontinued its thoroughbred operation in 2002. Currently, however, the \$100,000 New Hampshire Sweepstakes is the centerpiece of Rockingham's harness meet. Under current New Hampshire law, the Lottery Commission is authorized to set "the purses, not to exceed an aggregate sum of \$325,000 for a single calendar year, to be awarded horses, or dogs, or both in sweepstakes races." RSA 284:21-i.II.(b). Additionally, New Hampshire has long had a statutory provision under which lottery funds after expenses are to be deposited in the State's education trust fund. See RSA28:21-j.

Finally, since 1990, New Hampshire has had a Constitutional provision which states, "All moneys received from a state-run lottery and all the interest received on such moneys shall, after deducting the necessary costs of administration, be appropriated and used exclusively for the school districts of the state. Such moneys shall be used exclusively for the purpose of state aid to education and shall not be transferred or diverted to any other purpose." RSA Const. Pt. II, Art. 6-b.

In short, New Hampshire, the state whose lottery New York's was modeled on, has throughout its 40 year life provided purse supplements to racetracks. It has done so despite a longstanding statutory provision requiring its funds to go to education, and for the last 14 years, a specific Constitutional provision requiring all lottery funds - after deducting for administration - to be used exclusively for the state's school districts. In fact, in 2000, the New Hampshire legislature failed to pass a bill that would have ended the authority of the then Sweepstakes Commission to supplement purses at racetracks. See Warren Hastings, "Sweepstakes Race Promos Mulled," Manchester Union Leader, March 16, 2000. If purse supplements from the lottery are not a problem in New Hampshire, why are they a problem in New York?

We would also note that at the time the lottery legislation was passed in New

York there was an expectation of a purse supplement. Reginald Webster, then head of the organization representing owners and trainers at the New York Racing Association's thoroughbred tracks said, "Naturally, we expect to participate in this program." He added that the horsemen were prepared to race elsewhere if they were denied a share of the lottery revenue. Steve Cady, "Form of Lottery Remains to Be Settled, but Sweepstakes System Based on Horse Races Is Expected," New York Times, November 10, 1966, p. 35.

In announcing an agreement on legislation implementing the lottery in January of 1967, the New York Times wrote, "Part of the operational costs, if the lottery were based on horse races, would be the money given to the track to enhance the purse on lottery races. Sources here indicated that this purse subsidy might be \$100,000 a race; in New Hampshire it is \$200,000." Sydney Schanberg, "Albany Favors \$2 Tickets Sold at Banks in Lottery," New York Times, January 19, 1967, p. 22. Again, there was apparently a belief that the new lottery would be authorized to supplement horse racing purses in New York.

We doubt that this quick look at the history of purse supplements from the lottery in New Hampshire will be decisive, but a reviewing court should look harder at the legislative history of purse supplements before it renders its decision in this area.