

Harness Racing and New York's Ethics Laws

To the public officers and employees of New York State, the major contribution of the sport of harness racing does not come in the form of gambling, entertainment, or even tax revenues. Rather, harness racing is directly responsible for most of the provisions of the State's ethic laws. The main portions of the New York ethics laws come directly from an unprecedented harness racing scandal that broke in 1953.

The scandal involved no race fixing, drug use, or any activity on-track. Instead, it all involved the establishment, development, and the ownership of the various harness tracks around the state. Quite simply, how did the tracks become a money making scheme for many of the State's most significant politicians in both the Republican and Democratic parties?

As the New York Times summarized, "Influential politicians acquired substantial blocks of stock in tracks and racing associations, generally just before an association received a license, or existing associations obtained extended racing dates. Public pressure to increase the state share of the betting revenue was ignored by the Legislature. Stock was obtained by the politicians at bargain prices. Shares were held secretly in the names of friends and relatives and sold at fabulous gains."¹ The scandal, for a time, introduced the term "tracketeer" to the English language.²

The Origins of the Scandal

Even before 1953, it should have been obvious that something was amiss in the ownership of the harness tracks Commercial harness racing started in New York in 1940. It had been preceded by the passage of a constitutional amendment authorizing pari-mutuel racing in 1939 followed by the enactment of enabling legislation in 1940.

Buffalo Raceway which started operations in 1942 was owned entirely by the family of John J. Dunnigan.³ Initially, former Democratic State Senator Thomas Sheridan also held an interest in Buffalo, but he relinquished his holdings to the Dunnigan interests.⁴ Dunnigan was the Democratic State Minority Leader of the Senate in the late 1930's. He had been one of the co-sponsors of the bill legalizing pari-mutuel racing.⁵ He had sponsored the Constitutional amendment which legalized pari-mutuel wagering in New York, and he, in fact, had been termed the "father" of pari-mutuel racing in New

¹ "Politicians and Raceways: Fortunes for Insiders," New York Times, March 14, 1954.

² "Note to Mr. Webster," Albany Knickerbocker News, February 8, 1954.

³ Senator Dunnigan's son James actually ran the racetrack, but for a number of years former Senator Dunnigan remained on the payroll. James Dunnigan employed his father from 1945 – 1955 paying him in excess of \$182,000.

⁴ New York (State) Commission to Study, Examine and Investigate State Agencies in Relation to Pari-Mutuel Harness Racing, Hearings, [hereinafter referred to as Moreland Act Hearings] March 5, 1954 at pg. 1019. AP, "Commission Invites Balch to Testify if He Has Evidence," Buffalo Evening News, March 6, 1954; William Rudy, "Demands Trot Quiz Call Dewey to Stand," New York Post, March 7, 1954.

⁵ L. 1949, Ch. 254.

York.⁶ Republican State Senator Walter Mahoney had placed some of the insurance on the Buffalo facility and had been the counsel to the racetrack.⁷

At the onset of racing, the Democratic Minority Leader of the Assembly at the time of the passage of the pari-mutuel enabling legislation, Irwin Steingut, initially through his attorney had obtained three-quarters of the ownership of Batavia Downs.⁸ Steingut remained the Assembly Minority Leader until his death in 1952 before the harness scandals broke open.

In the 1951 federal Kefauver hearings, it had been brought out that the Old Country Trotting Association - which owned Roosevelt Raceway on Westbury, Long Island, and had run a harness meeting at Roosevelt since 1940 – had paid racketeer Frank Costello \$60,000 over a four year period allegedly to keep bookmakers away from the harness track. Additionally, the head of Old Country, George Morton Levy, admitted to playing golf with Costello and notorious mob bookmaker Frank Erickson on about one hundred occasions.

Harness racing was the fastest growing spectator sport in the early 1950's. Betting on harness racing in New York in 1952 was 132 times more than it had been in 1940. New York attendance was up 34 times more than 1940.⁹ Back then, ownership of a New York harness track was akin to owning a casino in 2006. It was a virtual license to print money.

The Lewis Murder and Its Aftermath

What brought this situation in New York harness racing into the open was the gangland killing of Thomas Lewis on August 28, 1953. Lewis was a Bronx union official who allegedly controlled jobs at Yonkers Raceway which was operated by Yonkers Trotting. Lewis allegedly controlled approximately 1,000 of the 1,800 jobs at the racetrack. While Lewis' actual killer was soon caught, the subsequent investigations showed considerable mob and political influences at the harness tracks. It was soon revealed that Yonkers Trotting officials had paid considerable amounts of money (\$167,000) to "labor consultants" and union officials to preserve the peace.¹⁰ The raceway was also employing a number of ex-convicts. There were charges that politicians were working with mobsters to insure continued operations of the harness tracks and that there were large undisclosed interests in the tracks. The State Harness Racing

⁶ "John J. Dunnigan Is Dead at 82; 'Father of Pari-Mutuel Betting,'" New York Times, December 12, 1965 Pg. 86; "Todd to Question Political Chiefs," New York Times, November 17, 1944 Pg. 14.

⁷ Judith Crist, "Trosk Gets Track Union Probe Post," Herald Tribune, November 7, 1953; Leo Egan, "Wicks Resigns Post as Senate Leader in Compromise Step," New York Times, November 19, 1953 Pg. 1

⁸ "Television and Radio Broadcast over State-Wide Network from New York City," October 15, 1954 Public Papers of Thomas E. Dewey 1954 Pgs. 945, 946.

⁹ Charles Grutzner, "Upsurge of Harness Racing Spreads Scandals Over U.S.," New York Times, October 25, 1953 Pg. 1.

¹⁰ Id.

Commission, at the behest of Governor Dewey, indefinitely suspended the license of Yonkers Trotting.

The investigation proceeded to Roosevelt Raceway in Nassau County. Nassau County union boss William De Koning, a longtime associate of convicted union boss and extortionist Joseph Fay, former vice-president of the International Operating Engineers union, - and twelve others - were charged with extorting money from employees of Roosevelt Raceway in September of 1953. De Koning took a guilty plea on these charges in 1954.

As the investigation into Lewis' murder and De Koning's activities proceeded, it also produced more and more contacts between politicians, harness racing, and mob influences. Lewis was also involved with Joseph Fay. Fay was held in the state penitentiary at Sing Sing. A review of Fay's penal records showed that he had received visits from Arthur Wicks, the Senate Majority Leader and the acting Lieutenant Governor, (Frank Moore, the elected Lieutenant Governor had resigned on September 30, 1953.), Senator William Condon of Yonkers, and William Bleakley, the counsel to Yonkers Raceway (and 1936 Republican candidate for Governor who was generally considered the de facto head of the Republican Party in Westchester County).

The outcry over Wicks' involvement with Fay forced Wicks in November of 1953 to resign from his position as Senate Majority Leader and acting Lieutenant Governor. His place as majority leader and acting Lieutenant Governor was taken by Walter Mahoney who had to give up his position as a counsel to Buffalo Raceway and as the owner of the business that placed Buffalo Raceway's insurance business.¹¹

Soon after the scandal broke, Governor Thomas Dewey's political opponents claimed that there was a need to find out the actual ownership of the harness tracks. Dewey initially appointed a special counsel to the State Harness Racing Commission to prepare questionnaires to determine actual ownership of the tracks. The Harness Racing Commission determined that it lacked the authority to pursue this investigation,¹² and Governor Dewey quickly appointed a Moreland Act commission to investigate harness racing in New York.¹³ Efforts to block the probe by the Moreland Act Commission were ultimately unsuccessful.¹⁴ The commission headed by former Court of Appeals judge Bruce Bromley eventually held hearings, issued reports on the actual ownership of the racetracks, and issued recommendations on which racetracks were fit for licensure.

¹¹ See Leo Egan at note 7 supra.

¹² "In the Matter of the Investigation of Harness Racing in New York State," Public Papers of Thomas E. Dewey (1953) Pg. 507.

¹³ "Order of Appointment of Bruce Bromley, John F. Brosnan, and George Trosk as Commissioners in New York State," Public Papers of Thomas E. Dewey (1953) Pg. 511.

¹⁴ Alexander v. New York State Com., etc., 306 N.Y. 421 (1954); Weil v. New York State Com. to Investigate Harness Racing, 205 Misc. 614 (Sup. Ct. Sp. Term Nassau County 1954), modified by 283 App. Div. 808 (2nd Dept. 1954).

The commission found that – besides the Buffalo interests of the Dunnigan family, there was considerable political control over the State’s racetracks. 35% of the harness track stock in 1953 was held by politicians. 19% of the stock was held by Republicans and 16% by Democrats.¹⁵

The Upstate Tracks

Batavia Downs, over which Assemblyman Steingut initially had control, was now controlled by Pat Provenzano. Provenzano was a former Republican Assemblyman who had been active in passing the original pari-mutuel legislation. As of 1953, Provenzano was president of Batavia Downs and was also serving as Assistant Secretary to the State Senate and a Republican County Committeeman from Monroe County.¹⁶ Provenzano left his Senate position in 1953 when the scandal broke. In 1953, Provenzano owned 41.5% of Batavia stock and a similar percentage of the corporation which owned the land on which Batavia was situated. Provenzano had obtained his interest in Batavia Downs by buying out William Weisman, who was Irwin Steingut’s attorney.¹⁷ In turn, Weisman had acquired most of the stock in Batavia Downs from funds he held on behalf of a deceased bookmaker named Max Kalik for Irwin Steingut.¹⁸ Provenzano had acquired his interest in the track by taking out loans from a variety of individuals, some of whom were involved in gambling operations.¹⁹ Provenzano had invested \$5,000 and ended up with an interest valued at \$415,000.²⁰ Half of the insurance coverage of Batavia Downs was handled through the insurance company of State Senator George Manning.

Vernon Downs – which is between Utica and Syracuse – was first developed by a number of people who were very prominent Republicans. They had started development of the track just after the legislature authorized an additional eighth harness license in 1950 presumably for Vernon Downs.²¹ The four most prominent politicians at Vernon were Senator Wicks, Congressman and Republican State Chairman Dean Taylor, former Congressman and former Republican State Chairman William Pfeiffer, and Alger Chapman, former president of the State Tax Commission who had managed Governor Dewey’s election campaigns in 1946 and 1950.²² The four had sold out their interests in

¹⁵ “35% of Track Stock Held by Politicians,” New York Times, March 14, 1954 Pg. 1.

¹⁶ Moreland Act Hearings, March 5, 1954 pg. 908.

¹⁷ Moreland Act Hearings, March 5, 1954 p. 896.

¹⁸ Moreland Act Hearings, March 5, 1954 pp 962-965. See also United Press, “Testifies J.J. Dunnigan Controlled Buffalo Oval,” Morning Telegraph, March 6, 1954; William Rudy, “Bookie Set Up GOP Haul,” New York Post, March 5, 1954. Weisman’s involvement with the Kalick estate had been disclosed previously by special prosecutor Hiram C. Todd in 1944. See “State Bar Starts Own Albany Study,” New York Times, Decembwe 12, 1944 Pg. 25. See also Steingut v. Imrie, 270 A.D. 34 (3rd Dept. 1945).

¹⁹ Kermit Hill, “\$327,500 Track Deals Revealed by Provenzano,” Rochester Democrat and Chronicle, March 6, 1954; Jack Meddoff, “Dunnigan Says Family Drew \$700,00 in Track Salaries,” Jerome Edelberg and Harry Corren, “Track Exec Names Top Dewey Aides,” New York Daily Mirror, March 7, 1954.

²⁰ “Track License Ready if Marra Is Ousted,” Batavia Daily News, March 8, 1954.

²¹ L. 1959, Ch. 657.

²² James Desmond, “3 Dewey Favorite and Wicks Named as Trot Track Backers,” New York Daily News, March 7, 1954; Jerome Edelberg and Harry Corren, note 19 supra.

1952 before the track opened.²³ There was no indication that they had profited from their dealings. Also involved initially and maintaining their interests in the venture were former Republican State Chairman Melvin Eaton and former Assemblyman Elmer Kellam. In 1953, Eaton sold 5,000 shares and \$10,000 worth of bonds to his brother and a friend. Kellam, who was also serving as a steward at Roosevelt Raceway, owned 9,500 shares of Vernon. Kellam had placed his stock in Vernon in the name of another person when he was appointed a racing steward in 1953.²⁴ Former State Senate Majority Leader George Fearon was the vice-president and director of Vernon and the owner of 10,000 shares and \$20,000 face value of debentures,²⁵ and Fearon was also the purchaser of \$2,000 worth of Old Country stock in 1950.²⁶

Frank Wiswall, a former State Senator, was the president of Saratoga Raceway. In 1942, while serving as Secretary to the State Harness Racing Commission, he obtained 3,200 shares of stock in the track.²⁷ They were initially not registered in his name. He did not pay for his stock which was worth \$250,000 in 1954. Wiswall further testified that Senator Majority Leader Wicks and Speaker of the Assembly Oswald D. Heck had tried to influence him – when he was with the Harness Racing Commission – in the selection of track officials.²⁸ He claimed to have lost his job for failing to be responsive to these political requests.²⁹ Additionally, the police chief of Saratoga Springs was on the payroll of the harness track. (The police chief of Batavia was similarly on the payroll of Batavia Downs.) Also owning 3,990 shares of Saratoga Raceway was Ernest Morris who had served as a Deputy Attorney General and as the district attorney for Albany County.³⁰

The Downstate Tracks

The downstate tracks were all interrelated and deserve special treatment. Old Country which was the first track licensed in 1940 owned Roosevelt Raceway. It also had voting control over Algam Corporation which owned the Yonkers Raceway property. The Yonkers Trotting Association conducted racing at Yonkers as a tenant of Algam. Yonkers, Algam, and Old Country had an arrangement under which Old Country controlled the dates at Yonkers. 60% of Yonkers' profits went to Algam. Additionally,

²³ Moreland Act Hearings, March 6, 1954 at pg. 1124.

²⁴ Emanuel Perlmutter, "Hidden Ownership of Raceway Stock Bared at Hearing," New York Times, March 2, 1954 pg. 1.

²⁵ Moreland Act Hearings, March 2, 1954 at pg. 272

²⁶ Id. at pg. 273. Other politically connected early stockholders at Vernon Downs included Harvey Pitt, an Albany insurance broker whose brother was a county judge, Frank Costello, a former mayor of Syracuse, Louis Gross, a banker from Troy who had been associated with Dean Taylor, and William Kiley, the secretary at Vernon Downs, who had been a special deputy attorney general, the Madison County attorney, and who was active in the New York State Young Republican organization. See Judith Crist, "\$6,000,000 Rise Asked in State's Raceway's Tax," New York World Telegram, March 7, 1954; Russell Porter, "Raceway Inquiry Asks Rise of 33% in State's Share," New York Times, March 7, 1954 pg. 1.

²⁷ United Press, "Fabulous Gains Reported by Harness Stockholder," Morning Telegraph, March 5, 1954.

²⁸ "NTTA Prisoner of OCTA, Probers Told as Trot Group Bares Feud," Newsday, March 5, 1954; Jerome Edelberg and Harry Corren, "Crews Kenna Tied to Sweepstakes," New York Daily Mirror, March 5, 1954.

²⁹ Associated Press, "Sprague Wiswall Reveal Harness Race Holdings," Albany Knickerbocker News, March 5, 1954.

³⁰ Moreland Act Hearings, March 2, 1954 at pg. 363.

there was Nassau Trotting which conducted racing at Roosevelt Raceway as a tenant of Old Country.

40% of Cedar Point (the predecessor of Nassau Trotting) was owned by J. Russel Sprague who was the Nassau County Republican leader and the Nassau County Executive from 1938 - 1953. Sprague invested \$2,000. Ten months later he sold his shares for \$195,000. When Nassau Trotting was formed, Sprague received \$1,000 worth of stock which he paid for out of future dividends. This stock was sold in 1953 for \$64,000.³¹ Another 8,000 shares of Nassau Trotting were owned by Irving T. Bergman, the son-in-law of Benjamin Feinberg, who was the chairman of the Public Service Commission and the former majority leader of the State Senate. Bergman eventually testified that the stock which was worth \$100,000 in March of 1954 was also owned by the wife, son and daughter of Mr. Feinberg. Mr. Bergman did not put up any money to obtain the stock.

In almost all ways, the predecessor of Yonkers Trotting was William Cane's Goshen Association. The Goshen Association moved from Goshen, New York in Orange County and started running at Roosevelt in 1948. When the Goshen Association began racing at Roosevelt, Mr. Cane issued 25,000 shares of stock. He kept the voting stock for himself and sold 17,500 shares to former Republican Assemblyman Norman Penny at a price of 20 cents per share. Penny had been instrumental in passing the original pari-mutuel legislation and was closely associated with J. Russel Sprague. Penny in turn sold 14,000 shares to (basically) Republican politicians and friends for 50 cents each. These shares were worth \$100 in 1954. For example, Pat Provenzano ended up owning 3,000 shares in Yonkers Trotting (the successor to the Goshen Association). Irwin Steingut's daughter held 200 shares of Yonkers Trotting. Penny was also the insurance underwriter for three tracks.³²

The Yonkers Raceway site was formerly Empire City Race Track and was until 1942 a thoroughbred track owned by the Butler family. In order to make Empire a suitable harness track eligible for licensure, the Butler interest was bought out in 1949 by the Algam Corporation. Algam was organized by Tammany Hall politicians especially Arthur Lynch who was the Deputy Treasurer during the New York City mayoral administration of William O'Dwyer from 1946 -1950.³³ Lynch's initial \$12,000 investment paid him \$400,000 in salary and stock holdings over seven years including a \$50,000 finders' fee.³⁴ Algam's management also included a number of garment manufacturers and fronts for racketeers, most notably one Irving Sherman, who was considered the contact man for Frank Costello during the course of the O'Dwyer

³¹ See generally Dick Aurelio, "Sprague Kin Hid \$147G Stock: Levy," Newsday, March 4, 1954; Dick Aurelio, "Probe Trot Fortunes of Sprague, GOPers," Newsday, March 5, 1954; "Track Quiz Turns Next to Sprague," Yonkers Herald Statesman, March 4, 1954; James Desmond, "How Sprague Struck It Rich," New York Daily News, March 2, 1954.

³² See note 27 supra.

³³ Moreland Act Hearings, March 1, 1954. See testimony of Nathan Herzfeld and Arthur Lynch..

³⁴ Id. at pg. 299.

administration.³⁵ Sherman allegedly invested \$60,000 and received \$336,000.³⁶ In purchasing the Yonkers property, Algam used Secretary of State (and Manhattan County Republican leader) William Curran as its co-counsel. Curran was paid \$10,000 and his wife received 500 shares of Algam.³⁷

In 1949, the legislature passed a bill which prevented the transfer of a harness racing license to a location other than the one at which racing was currently being conducted.³⁸ As a result of this legislation, the Goshen Association – with the same stockholders - reformed itself and was licensed as the Yonkers Trotting Association. When Yonkers Trotting was formed, it signed an agreement with Old Country, and Algam under which Old Country controlled the dates of operation for Yonkers Trotting. Additionally, the two track licensees established an interlocking directorate, and Old Country established voting control over Algam. In short, Old Country controlled the race track operator and the owner of the land at Yonkers.

There were many other political figures besides Pat Provenzano, William Curran, Irwin Steingut, and Benjamin Feinberg involved with the operation of Yonkers Trotting and Algam. For example, J. Russel Sprague held the largest block of non-voting stock in Yonkers Trotting. He held 4,000 shares which he had bought on the installment plan for \$20 per share. He used the subsequent accumulated dividends from Yonkers Trotting (which amounted to \$88,000 from 1950 -1953 to pay for the stock.) Mallory Stephens, the Republican leader of Putnam County, had a hidden ownership of 2,200 shares of Yonkers Trotting. The shares that he bought for \$45,000 in 1951 were worth \$220,000 in 1953. Stephens also maintained hidden ownership of 4,500 shares of Nassau Trotting.³⁹

Besides her ownership of 200 shares in Yonkers Trotting, Irwin Steingut's daughter owned 10,000 shares in Nassau Trotting.⁴⁰ William Bleakley was a director of Algam and owned 12,290 shares in that corporation. The son-in-law of Frank Erickson owned 1,600 shares in Old Country. Irwin Steingut's former attorney, William Weisman, owned a significant amount of Old Country stock. John Crews, the Republican leader of Kings County, owned 400 shares of Yonkers Trotting for which he paid \$200 in 1946. Frank Kenna, the Queens County Republican leader, also held 400 shares of Yonkers Trotting in the name of someone else.⁴¹ Former Assemblyman Penny also was the insurance underwriter for three harness racing associations as well as a track concessionaire. Mr. Penny's father-in-law owned 500 shares of Yonkers Trotting.

³⁵ Emanuel Perlmutter, "Hidden Ownership of Raceway Stock Bared at Hearing," *New York Times*, March 2, 1954 pg. 1. Sherman was also described as a "mysterious underworld contact man." Dick Aurelio, "Probe Sees Hidden Trot Stock Pattern" *Newsday*, March 2, 1954.

³⁶ William Rudy, "Trot Probers Told How Mystery Man Parlayed \$60,000 into \$336,000," *New York Post*, March 1, 1954.

³⁷ Dick Aurelio, "Dewey Aide Got 10G in Trot Track," *Newsday*, March 3, 1954.

³⁸ L. 1949, Ch. 661.

³⁹ Emanuel Perlmutter, "Putnam GOP Chief Bares Ownership of Raceway Stock," *New York Times*, March 6, 1954 Pg. 1.

⁴⁰ *Id.*

⁴¹ See note 29 supra. See also *New York Daily Mirror*, note 28 supra.

The wife of Nicholas Ratteni, a former associate of Frank Costello, owned \$179,000 of Old Country stock.⁴² Harry Stevens, the concessionaire at Old Country, improperly shared 10% of its revenue with Albert De Meo, an executive at Old Country, and William De Koning.⁴³ “Doc” Robins, the individual who held the program concession at Roosevelt Raceway was directed by George Morton Levy to add specific additional partners so that Robins ended up with only 35% of the concession profits.⁴⁴

The Political Effects of the Scandal

Governor Dewey’s future as nationally important Republican figure was seriously threatened by the harness racing scandal. Many of his prominent political supporters were involved with the harness tracks, and the mess threatened his reputation as an effective government administrator. As a result, he attacked this threat on two fronts. He supported general ethics legislation and major reform of the regulation of harness racing in New York. In his State of the State message in 1954, the Governor called for legislation to raise the moral and ethical standards of government officers, employees and legislators.⁴⁵ The legislature quickly voted to establish a joint committee to draft the ethics guidelines.⁴⁶

Under the leadership of State Supreme Court justice Charles Lockwood , the Special Legislative Committee on Integrity and Ethical Standards in Government was formed on January 14, 1954. It held two hearings, investigated the ethics issue, and issued a report with legislative recommendations on March 9, 1954. The Lockwood Committee found few precedents on overall ethics laws in the nation. It found that the only significant report on ethics in government had been conducted by United State Senator Paul Douglas in 1951. While there was a wide disparity of views on ethics in government, the Committee took its cue from Governor Dewey’s State of the State message. It recommended a package of laws which would establish some specific activities which would clearly be illegal for government and party officers. Violation of these laws would be a criminal offense. Secondly, the governor suggested a general code of ethics which would apply “under a variety of circumstances that it would be either foolish or unjust to attempt to establish a set of statutory rules.”⁴⁷

The Committee unanimously recommended four specific ethics bills. One bill made it a misdemeanor for public officials to commit certain specified actions. For example, former State officials were banned for two years from appearing before their former State agency on matters in which they were directly concerned. Similarly, party officers were banned from serving as judges, and district attorneys. The second bill established a code of ethics for public officers and employees. The third bill required

⁴² “Costello Is Heard on Raceway Links,” New York Times, February 4, 1954 Pg. 26.

⁴³ “Raceway Caterer Accused of Lying,” New York Times, March 19, 1954 Pg. 17.

⁴⁴ Anthony Marino and Henry Lee, “Tells How Freeloaders Cut Raceway Program Pie,” New York Daily News, October 29, 1953; Moreland Act Hearings, October 28, 1953 Pg. 23.

⁴⁵ “Annual Message,” Public Papers of Thomas E. Dewey 1954 Pg. 9.

⁴⁶ “Statement Issued in Connection with the Appointment of the Special Committee on Integrity and Ethical Standards in Government,” Public Papers of Thomas E. Dewey 1954 Pg. 576.

⁴⁷ See note 45 supra at pg. 11.

disclosure of appearances before regulatory agencies. The fourth bill established an advisory committee on ethical standards in the department of law. The committee also recommended a legislative resolution which would establish committees in the legislature to review ethics issues.

Two members of the committee (Richard H. Amberg the publisher of the Syracuse Post-Standard and Franklin R. Brown, a former president of the State Bar Association) submitted a supplementary memorandum recommending greater penalties and more comprehensive legislation. Chairman Lockwood, however, would not include their recommendations in the full report of the Committee.⁴⁸

The Buffalo Evening News found that the ethics report “will do much to offset one of the most noisome scandals that has afflicted an administration in state history... It’s too bad it took a scandal to bring us this far – for if there had been such a code before there might have been no scandal.”⁴⁹

The four bills (as well as the resolution) were quickly passed by the legislature. They were submitted to the legislature on March 10 with the endorsement of all the leaders and passed by March 20. Governor Dewey signed the legislation as chapters 695 - 698 on March 25.⁵⁰

The one significant dissenting voice in the legislature from the ethics bill was Republican Senator Thomas Desmond of Newburgh. He believed that the proposed code did not go far enough and should have banned legislators from any appearances before state agencies.⁵¹

The Harness Racing Legislation

Governor Dewey initially recommended one major change in the harness racing laws early in 1954.⁵² His recommendation was to change the ineffectual three member harness racing commission into a one person harness racing commissioner. It was passed early in the 1954 session,⁵³ and New York City Police Commissioner George Monaghan became the harness racing commissioner. (Monaghan had been an assistant district attorney when Dewey was the New York County district attorney.) In late February, the Moreland Act Commission, after consulting with the Governor’s office, issued additional recommendations for harness racing. The Commission recommended higher taxes for

⁴⁸ Associated Press, “Ethics Code Asked: Penalty Is Ignored in Recommendation,” Batavia Daily News, March 10, 1954; Leo Egan, “Code of Ethics Goes to the Legislature,” New York Times, March 11, 1954 Pg. 1.

⁴⁹ “Locking the Stable,” Buffalo Evening News, March 10, 1954

⁵⁰ “Four Bills Establishing a Code of Ethical Standards Relating to the Conduct of Public Office,” Public Papers of Thomas E. Dewey 1954, Pg. 304.

⁵¹ “Diluted Ethics Code Draws GOP Criticism,” Newsday, March 11, 1954; “Straw Man Demolished by ‘Purity’ Committee,” Albany Knickerbocker News, March 13, 1954.

⁵² See note 45 supra at pg. 12.

⁵³ L. 1954, Chapter 5.

harness racetracks, the grant of significantly greater powers to the commissioner to bar people from racing, and a strict separation blocking government employees and political leaders from involvement with harness tracks.

Governor Dewey issued two special messages to the legislature on March 12 and March 15th in order to put pressure on the legislature to enact the harness racing legislation.⁵⁴ Six bills were introduced in the last week of the session to enact the recommendations of the Moreland Act Commission, and on the last day of the session, all six bills were passed.

They were signed by Governor Dewey as Chapters 510-515. Chapters 510, 511, and 512 added to the powers of the harness racing commissioner over stock transfers at harness tracks and over licensees. Chapter 513 increased the taxes paid by harness tracks. Chapters 514 -515 made it extremely difficult for political leaders and government employees from obtaining licenses at harness tracks. (As was later said, “It was the plain intent of the statute, among other things, to effect a complete divorce between all public officials and all proprietors of race tracks.”)⁵⁵

Aftermath of the 1954 Racing Legislation

Perhaps not surprisingly, the 1954 legislation has retained much of its significance. Much of the 1954 ethics language and the harness racing language remain on the books.

The restrictions on public employees and party leaders from participating in racing have been modified slightly but remain on the books today.⁵⁶ It remains difficult for many public officers and party officers to participate in racing. For example, Kings County Democratic leader Meade Esposito was removed from his party position for maintaining an interest in a racetrack.⁵⁷

The added powers granted to the harness racing commissioner are all intact and belong now to the State Racing and Wagering Board.⁵⁸

What has not remained are the higher taxes at the harness tracks. With decreasing attendance and handle at the harness tracks, the taxes at these tracks have been reduced to such an extent that they are a tiny fraction of what they were in 1954.⁵⁹ Also gone is the single member harness racing commission. Commissioner Monaghan was given a six year term in 1954. In 1959, however, during the administration of Nelson Rockefeller,

⁵⁴ “Message Recommending Legislation for the Regulation of Harness Racing in New York State,” and “Message Concerning the Ownership and Participation by Public and Party Officers in Racing Associations,” *Public Papers of Thomas E. Dewey* 1954 Pgs. 120 and 124.

⁵⁵ *Maguire v. Monaghan*, 206 Misc. 550, 556 (Sup. Ct. Special Tern, NY County, 1954).

⁵⁶ Racing, Pari-Mutuel Wagering and Breeding Law, Section 107.

⁵⁷ See *Abrams v. Esposito*, 75 A.D.2d 528 (1st Dept. 1980), affirmed 54 N.Y. 2d 886 (1981), app. dismissed 455 U.S. 996 (1982).

⁵⁸ See, for example, Sections 303 and 307 of the Racing, Pari-Mutuel Wagering and Breeding Law.

⁵⁹ See Racing, Pari-Mutuel Wagering and Breeding Law, Section 318.

Monaghan was the subject of an unflattering report by the State Commission of Investigation.⁶⁰ Rockefeller was unsuccessful in asking Monaghan to resign from office. Instead, at Rockefeller's urgings,⁶¹ the legislature in a special session in 1959 changed the harness racing commission back into a three member commission and de facto obtained the removal of Commissioner Monaghan.⁶²

Aftermath of the 1954 Ethics Legislation

The ethics provisions enacted in 1954 are even more alive. For example, the regulatory appearance disclosure requirement⁶³ remains in Section 166 of the Executive Law and has been strengthened over the years.

The advisory commission on ethical standards⁶⁴ has been terminated, and its place has been taken by the State Ethics Commission established by the Ethics in Government Act of 1987.⁶⁵

The criminal provisions for public officers established by L. 1954, Ch. 695 largely remain in current Section 73 of the Public Officers Law. As enacted in 1954, this provision: (a) banned public officers from obtaining contingent fees in appearances before state agencies, (b) required competitive bidding whenever a public officer sought to sell goods to a state agency, (c) banned political party officers from holding prosecutorial or judicial positions, and (d) created a "revolving door" provision under which a person leaving government could not participate before his or her former agency for two years on any "case, proceeding, or application" where the person had been directly concerned and personally participated.

The contingent fee language is the basis for current Section 73.2 of the Public Officer Law. The competitive bidding language is the basis of current Section 73.4, and the ban on political party leaders holding prosecutorial or judicial positions is in Section 73.9 of the law.

The "revolving door" provision was strengthened greatly by the 1987 Ethics in Government Act. The revolving door now bans most every appearance by a former officer or employee before his or her former agency within two years after the

⁶⁰ Temporary State Commission of Investigation, "Report of an Investigation into the conduct in office of New York State Harness Racing Commissioner George P. Monaghan, and certain members of the staff of the Harness Racing Commission and certain aspects of the administration of that office," 1959; Richard J.H. Johnston, "Monaghan Bolts Track Hearings, Café Tabs Listed," New York Times, May 29, 1959 Pg. 1.

⁶¹ "Extraordinary Session – Convened and Adjourned on July 1 Message Outlining Items to Be Considered at the Special Session," Public Papers of Nelson A. Rockefeller, 1959 Pg. 141.

⁶² L. 1959, Ch. 881; "The Special Session," New York Times, July 1, 1959 Pg. 30; Leo Egan, "Rockefeller Seeks Farley for Post," New York Times, July 29, 1959 Pg. 16.

⁶³ L. 1954, Ch. 697.

⁶⁴ L. 1954, Ch. 698.

⁶⁵ L. 1987, Ch. 813.

termination of employment. Yet, the language of current Section 73.8 has proven almost impossible to decipher. The language of Section 73.8 has been the basis of numerous advisory opinions,⁶⁶ considerable amendatory legislation,⁶⁷ and several lawsuits.⁶⁸ Part of the inexorable uncertainty of the “revolving door” is due to the 1954 language applying to appearances by former officers and employees before their former agencies in “cases, proceedings, or applications.”

Most significantly, the State code of ethics in Section 74 of the Public Officer Law is largely intact since 1954. While minor changes were made after a legislative ethics scandal in 1964,⁶⁹ Section 74 was not touched by the 1987 Ethics in Government Act. The basic language governing the overall ethical conduct of State employees is unchanged since 1954.

State employees, officers, employers, and the general public – when trying to make sense of the code of ethics – can only scratch their heads and blame harness racing for the conundrum of the State’s ethics laws.

⁶⁶ See <http://www.dos.state.ny.us/ethc/opinions.html>.

⁶⁷ L. 2004, Chs. 523 and 540; L. 2002, Ch. 514; L. 2001 Ch. 357; L. 1998, Ch. 218; L. 1995 Ch. 299.

⁶⁸ See e.g. Forti v. New York State Ethics Com., 75 N.Y.2d 596 (N.Y. 1990); McCulloch v. State Ethics Comm'n, 285 A.D.2d 236 (3rd Dept, 2001); Kelly v. New York State Ethics Comm'n, 161 Misc. 2d 706 (Sup. Ct. Albany Co., 1994).

⁶⁹ See L. 1964, Ch. 941 and L. 1965, Ch. 1012.