

2011 DRAFTING REQUEST

Bill

Received: 12/14/2011

Received By: mglass

Wanted: As time permits

Companion to LRB:

For: Dale Kooyenga (608) 266-9180

By/Representing: Bill Neville

May Contact:

Drafter: rnelson

Subject: Gambling - miscellaneous

Addl. Drafters:

Extra Copies:

Submit via email: YES

Requester's email: Rep.Kooyenga@legis.wi.gov

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Payment of moneys from state licensed raffle

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mglass 01/10/2012			_____			
/P1	rnelson 01/11/2012	mduchek 01/30/2012	phenry 01/31/2012	_____	sbasford 01/31/2012		
/1	mglass 02/02/2012	mduchek 02/03/2012	jfrantze 02/03/2012	_____	sbasford 02/03/2012	sbasford 02/03/2012	

FE Sent For: None

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/?	mglass 01/10/2012			_____		JACKET IMMED.	
/P1	rnelson 01/11/2012	mduchek 01/30/2012	phenry 01/31/2012	_____	sbasford 01/31/2012		

FE Sent For:


//
2/3/12

 2/3
<END>

2011 DRAFTING REQUEST

Bill

Received: 12/14/2011

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Companion to LRB:

For: **Dale Kooyenga (608) 266-9180**

By/Representing: **Bill Neville**

May Contact:

Drafter: **mglass**

Subject: **Gambling - miscellaneous**

Addl. Drafters:

Extra Copies: *Melissa Schmidt*
LC

Submit via email: **YES**

Requester's email: **Rep.Kooyenga@legis.wi.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

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Payment of moneys from state licensed raffle

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1/?

mglass

[Handwritten initials]
1/30/12
1P1
[Handwritten initials]
[Handwritten initials]
<END>

FE Sent For:

Gibson-Glass, Mary

From: Rep. Kooyenga
Sent: Wednesday, December 07, 2011 3:09 PM
To: Gibson-Glass, Mary
Subject: FW: Memorandum for Rep. Kooyenga

Attachments: 02kooyenga_mls.pdf

Mary,

Our office is requesting a preliminary draft at the request of the Brookfield Rotary Club.

Bill Neville
Legislative Assistant
Office of State Representative Dale Kooyenga
14th Assembly District
17 North, State Capitol
608-266-9180

From: Schmidt, Melissa
Sent: Friday, December 02, 2011 11:01 AM
To: Neville, William
Subject: Memorandum for Rep. Kooyenga

Bill,

As promised, here is the memorandum addressing raffles. I am available to meet with Representative Kooyenga anytime today. I'm wondering if he wants to read this over and then meet with me to discuss the issues regarding the Rotary raffle. Also, I have the signed hard copy on my desk to bring over to him when we meet. Either way, just let me know what he would like to do.

Thanks,

Melissa Schmidt
Staff Attorney
Wisconsin Legislative Council
Ph: (608) 266-2298
Fax: (608) 266-3830



02kooyenga_mls.
pdf (61 KB)

Gibson-Glass, Mary

From: Rep. Kooyenga
Sent: Wednesday, December 07, 2011 3:10 PM
To: Gibson-Glass, Mary

Attachments: rotaryclub.pdf

This is the original document that our office received regarding this matter.



rotaryclub.pdf
(343 KB)

Bill Neville
Legislative Assistant
Office of State Representative Dale Kooyenga
14th Assembly District
17 North, State Capitol
608-266-9180

ROTARY DISTRICT 6270

Rotary District 6270 conducts a raffle annually. It is called the **LONG JOURNEY TO THE SUPER BOWL**. All Rotary clubs in the district are eligible to participate. Tickets are priced at \$10.00. Currently, the clubs that participate submit to the District their sold ticket stubs and the \$10.00 fee they collected.

Prizes and raffle expenses are paid by the District from these funds. The District then returns \$8.00 to the participating clubs for each ticket they sold.

Randall Bansley's letter of 1-12-2011 (see attached) states that the above procedure is a violation of the rules.

Also, attached is Dennis McNally's letter to Mr. Brian Whittow, Director of the Office of Charitable Gaming, and a 3-8-2011 copy of PSC answers to some of our questions.

Joseph Gilsinger
Rotary Club of Brookfield



WISCONSIN DEPARTMENT OF
ADMINISTRATION

JIM DOYLE
GOVERNOR
DANIEL J. SCHOOFF
SECRETARY
ROBERT W. SLOEY
ADMINISTRATOR
DIVISION OF GAMING
3319 W Beltline Hwy., 1st Floor
Post Office Box 8979
Madison, WI 53708-8979
Voice (608) 270-2555 - Fax (608) 270-2564

January 12, 2011

Rotary District 6270
ATTN: Joseph Gilsinger
10405 W Manor Park DR.
West Allis WI 53227

Re: Audit R-16487A

Dear Mr. Gilsinger:

On December 6, 2010, the Office of Charitable Gaming for the Wisconsin Department of Administration - Division of Gaming conducted a review of your organization's raffle records. This letter is to inform you of the results of the review. A copy of this audit letter should be retained by your organization to ensure that your successors are aware of the results.

The following findings were noted:

S.563.94 Profits. All profits from raffles shall be used by the organization conducting the raffles to further the organization's purpose for existence and no salaries, fees or profit shall be paid to any other organization or individual in connection with the operation of a raffle. This section does not prohibit the printing of raffle tickets or calendars or the purchase of equipment or prizes for a raffle.

During the review of your organization raffle profit disbursement policies, it was determined that your group allows organizations to be directly compensated for the sale of raffle tickets. Your organization currently pays organizations who sell your raffle tickets \$8 per ticket sold, this payment was in the form of a donation. This practice is in direct violation of s.563.935 and must be immediately discontinued. Remember in the future, commission, compensation or prizes cannot be directed toward any individual or entity in connection with the operation of a raffle.

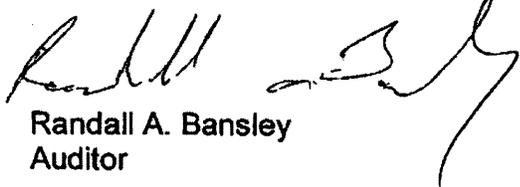
January 12, 2011

Page 2 of 2

Thank you for taking the time to meet with me. Please remember to retain this audit reply with your raffle records. Should you have any questions, please do not hesitate to contact me at (608) 270-2536.

Sincerely,

OFFICE OF CHARITABLE GAMING

A handwritten signature in black ink, appearing to read "Randall A. Bansley". The signature is stylized and written over the printed name and title.

Randall A. Bansley
Auditor

75 Op. Atfy Gen. 273,278 ()

Your third question is whether section 163.94 prohibits all payments to organizations or individuals in connection with the conduct of a or whether the statute merely prohibits such payments if their source is the profit made from fles .

| 75 Op. Atfy Gen, 273,278 ()

I conclude, based upon the statutory language involved and the clear and specific statement of the legislative policy and purpose underlying chapter 163, that the statute prohibits all such payments regardless of their source.

75 Op. Atfy Gen 273, 278 (:)

Section 163.02(1) states in part that "[a]ll phases of the conduct of bingo and ... should be closely controlled by appropriate laws and rules which should be strictly and uniformly enforced throughout this state."

; 75 Op. Atfy Gen 273, 278 ()

Subsection (2) of that statute states in part that "[t]he conduct of bingo, and all attendant] activities... should be so regulated as to discourage commercialization of bingo and ; in all I forms..."

"75 Op. Atfy Gen. 273, 278 (• ;)

I believe it to be patently clear that to allow payment of fees or salaries to any person or organization in return for services rendered in conducting or promoting a would result in commercialization in clear violation of the expressed legislative purpose and policy. The statute demands this conclusion

f"75 Op. Atfy Gen 273, 278 ()

\n 163.94 requires in pertinent part that "[a]ll profits from shall be used by the organization | conducting the to further the organization's purpose for existence and no salaries, fees or profit shall be paid to any other organization or individual in connection with the operation of a ."

75 Op. Atfy Gen 273,278 ()

It is a maxim of statutory construction "that a law should be so construed that no word or clause shall be rendered surplusage." *Mulvaney v. Tri State Truck &Auto Body, Inc.*, 70 Wis. 2d 760, 764, 235 N.W.2d 460 (1975).

DENNIS J. McNALLY

2600 N. Mayfair Road, Suite 1080

Milwaukee, WI 53226-1376

dmcnally@mmlaw.com

Phone: 414-257-3399

Fax: 414-257-3223

January 20, 2011

Mr. Brian Whittow, Director
Office of Charitable Gaming Staff
State of Wisconsin
3319 W. Beltline Hwy., 1st Floor
PO Box 8979
Madison WI 53708-8979

Re: Rotary District 6270 -- Long Journey to the Super Bowl Raffle

Dear Mr. Whittow:

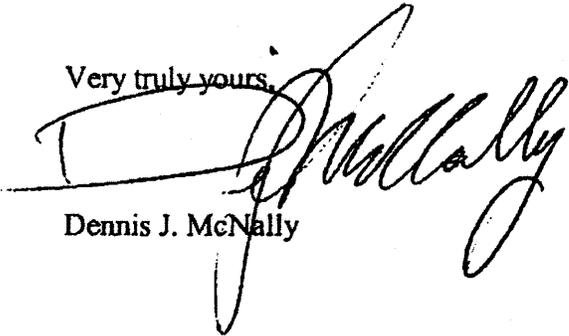
I appreciate the time that you spent with me on the phone this morning to discuss issues that have arisen relating to the procedure for conducting the Super Bowl Raffle under the Rotary District 6270 Class B State of Wisconsin License as indicated in the January 12, 2011 letter from Randall Bansley.

Based upon our telephone discussion, I will obtain a copy of Wisconsin Attorney General's Opinion OAG 13.86 dated May 7, 1986, in order to further understand the position of the Division of Gaming. Thereafter, Rotary District 6270 will seek further discussion with you in an effort to see if there is a way to run the raffle that will be acceptable to both the Office of Charitable Gaming and District 6270, with its sixty included Rotary clubs, for future raffles beginning with the 2011 raffle.

We understand that the Office of Charitable Gaming has allowed Rotary District 6270 to proceed to pay all of the expenses relating to the 2010 Raffle, deliver the prizes won December 28, 2010 by ticket purchasers and distribute the net proceeds of the Raffle to the Rotary clubs in District 6270 in proportion to the participation of each club in the ticket sales.

I look forward to further discussion with you during the latter part of February 2011 regarding possible formats of the raffle that would meet the existing interpretation of the OAG 13.86 opinion.

Very truly yours,


Dennis J. McNally

DJM:mlp
enclosures

cc: Rotary Club of Brookfield, Inc.
Rotary District 6270



WISCONSIN LEGISLATIVE COUNCIL

Terry C. Anderson, Director
Laura D. Rose, Deputy Director

TO: REPRESENTATIVE DALE KOOYENGA

FROM: Melissa Schmidt, Staff Attorney

RE: Payment of Fees, Salaries, or Profit From a State-Licensed Raffle

DATE: December 2, 2011

You have asked for information regarding the constitutionality of amending state statutes to allow organizations or individuals, other than the raffle licensee, to be paid moneys from a state-licensed raffle. This memorandum is prepared in response to your request. Included is background information on the raffle statutes and the constitutional power given to the Legislature to authorize raffles, found in Wis. Const. art. IV, s. 24, cl. 4 along with the constitutional analysis a court may use when analyzing a constitutional challenge.

LAWS GOVERNING RAFFLE PROFIT

Wisconsin Constitution

In Wisconsin, a raffle refers to a “game of chance in which tickets or calendars are sold and a drawing for prizes is held.” [s. 563.03 (12m), Stats.] The Wisconsin Constitution originally prohibited raffles until 1977, when an amendment was ratified to allow them. The Legislature now has the power to authorize certain entities to conduct state-licensed raffles, within the parameters set forth by Wis. Const. art. IV, s. 24, cl. 4. One of these parameters includes who may receive “fees, salaries or profit” from the raffle.

Wisconsin Constitution, Article IV, Section 24, Clause 4, confers power upon the Legislature to authorize raffle games as follows:

The legislature may authorize the following raffle games licensed by the state, but all profits shall accrue to the licensed local organization and ***no salaries, fees or profits may be paid to any other organization or person:*** raffle games operated by local religious, charitable, service, fraternal or veterans’ organizations or those to which contributions are deductible for

federal or state income tax purposes. The legislature shall limit the number of raffles conducted by any such organization. [Emphasis added.]

Wisconsin Statutes

Chapter 563, Stats., Bingo and Raffle Control, implements the constitutional provisions regarding both bingo and raffles. In doing so, the Legislature declared that the purpose of this chapter is as follows:

(1) All phases of the conduct of bingo and raffles, except bingo games using free cards and donated prizes for which no payment of consideration is made by participants, should be ***closely controlled*** by appropriate laws and rules which should be strictly and uniformly enforced throughout this state.

(2) The conduct of bingo, raffles and all attendant activities, except bingo games using free cards and donated prizes for which no payment of consideration is made by participants, should be so regulated as to ***discourage commercialization of bingo and raffles*** in all forms and to ensure the maximum use of the profits of bingo exclusively for proper and legitimate expenditures.

(3) It is a matter of statewide concern to foster and ***support proper and legitimate expenditures*** and to ***prevent commercialized gambling, participation by criminal and other undesirable elements and diversion of funds from usage for proper and legitimate expenses.***

[s. 563.02 (1) to (3), Stats.; emphasis added.]

In s. 563.94, Stats., the Legislature interpreted art. IV, s. 24, cl. 4, to specifically direct the treatment of raffle fees, salaries, and profits as follows:

All profits from raffles shall be used by the organization conducting the raffles to further the organization's purpose for existence and ***no salaries, fees or profit shall be paid to any other organization*** or individual in connection with the operation of a raffle. This section does not prohibit the printing of raffle tickets or calendars or the purchase of equipment or prizes for a raffle. [Emphasis added.]

The phrase emphasized above, “no salaries, fees or profit shall be paid to any other organization” was taken from art. IV, s. 24, cl. 4, almost verbatim.¹ The rest of the language in s. 563.94, Stats., is

¹ Article IV, s. 24, cl. 4, states: “no salaries, fees or profits *may*...” and s. 563.94, Stats., states, “no salaries, fees or profits *shall*....”

very similar to the Constitution, as well as the statute as first codified in 1977, immediately after the Legislature was given the power to authorize raffles.²

CONSTITUTIONAL INTERPRETATION OF AMENDING RAFFLE LAWS

First and foremost, underlying any analysis of a challenge to the constitutionality of a statute is the presumption of constitutionality. As the Wisconsin Supreme Court stated:

To succeed in a challenge to the constitutionality of [a statute], the petitioners must show that the act is unconstitutional beyond a reasonable doubt. When a court reviews the constitutionality of a statute, it scrutinizes an exercise of power by a separate branch of government. Our review is independent, but deferential. Our duty is to uphold a legislative act, if at all possible.

[*Professional Police Assoc., Inc. v. George Lightbourn, Sec. of the Dept. of Admin.*, 2001 WI 59, 243 Wis. 2d 512 (2001) (citations omitted).]

However, any amendment to raffle statutes directing who may be paid fees, salaries, or profits from state-licensed raffles must take into consideration whether it is allowed under art. IV, s. 24, cl. 4. The courts use the following analysis when determining the constitutionality of a statute:

In construing the constitution, Wisconsin courts rely on the same rules that govern statutory construction. Where there is no ambiguity, there is no room for judicial construction. The courts in interpreting constitutional provisions will examine:

- (1) The plain meaning of the words in the context used;
- (2) The historical analysis of the constitutional debates...; and
- (3) The earliest interpretation of this section by the legislature as manifested in the first law passed following the adoption of the constitution....

[Wisconsin Attorney General (AG), OAG 10-91, p. 3, citing *Ripley v. Brown*, 141 Wis. 2d 447 (Ct. App. 1987), *State v. Beno*, 116 Wis. 2d 122, 136-37 (1984); and *Jacobs v. Major*, 139 Wis. 492, 502 (1987).]

It is unclear how s. 563.94, Stats., could be amended to allow organizations or individuals other than the raffle licensee to be paid moneys from a state-licensed raffle. This is because there is little case law interpreting either this statute or art. IV, s. 24, cl. 4. There is, however, an AG opinion responding

² The 1977 version stated: "All profits from raffles shall inure the organization conducting the raffles and no salaries, fees or profit shall be paid to any other organization or individual in connection with a raffle. This section does not prohibit the printing of raffle tickets or the purchase of equipment or prizes for a raffle." [s. 163.94, 1977 Stats.]

to a similar issue, which courts will find as persuasive authority.³ When considering an amendment, it might help to refer to this opinion.

In 75 Op. Att'y Gen. 273 (1986), the AG was asked a question as to whether s. 563.94, Stats., prohibits either: (1) all payments to organizations or individuals in connection with the conduct of the raffle; or (2) whether the statute merely prohibits such payments if their source is the profit made from the raffles. The AG concluded the former was correct. He based this conclusion "upon the statutory language involved and the clear and specific statement of the legislative policy and purpose underlying [ch. 563, Stats.] that the statute prohibits all such payments regardless of their source."

In support of this conclusion, the opinion discussed the definitions of fees, salaries, and profit and cited a common maxim of statutory construction, "that a law should be so construed that no word or clause should be rendered surplusage." [75 Op. Att'y Gen. 273, p. 12, citation omitted.] The opinion concluded that these three terms were not synonymous and that by including terms other than "profit," any payment of fees or salaries were completely prohibited. It is important to note that the following definitions of fees, salaries, and profit were referenced:

- Profit is defined as meaning "most commonly, the gross proceeds of a business transaction less the costs of the transaction; i.e., net proceeds. Excess of revenues over expenses for a transaction; sometimes used synonymously with net income for the period. Gain realized from business or investment over and above expenditures."
- Fee is defined: "a reward, wage or compensation given to a person for performance of services or something done."
- Salary is defined: "a reward or recompense for services performed."

[75 Op. Att'y Gen. 273, 13-14, citing *Black's Law Dictionary*, 1090 (5th ed. 1979).]

If you have any questions, please feel free to contact me directly at the Legislative Council staff offices.

MLS:jb;wu

³ A well-reasoned AG's opinion interpreting a statute is, according to the rules of statutory interpretation, of persuasive value. [*Karen Schill v. Wis. Rapids School Dist.*, 2010 WI 86, ¶ 126, 327 Wis. 2d. 572, 626 (2010) (citations omitted).]



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-3634/P1

RPN: /:....

Tus.
(cmh)

med
LMS

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

D-Note

Gren

1

AN ACT ... relating to: organization that may receive proceeds from a raffle.

Analysis by the Legislative Reference Bureau

Current law prohibits an organization that conducts a raffle from using any proceeds of the raffle to pay any salary, fee, or profit to any other organization or individual. This bill allows the organization that conducts a raffle to pay some of the net proceeds of the profit to an organization affiliated with and having the same goals, by laws, and national affiliation as the organization conducting the raffle in proportion to the number of tickets or calendars sold by that organization.

raffle

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

2 SECTION 1. 563.94 of the statutes is amended to read:
3 **563.94 Profits.** All profits from raffles shall be used by the organization
4 conducting the raffles to further the organization's purpose for existence and no
5 salaries, fees or profit shall be paid to any other organization or individual in
6 connection with the operation of a raffle. This section does not prohibit the printing
7 of raffle tickets or calendars or, the purchase of equipment or prizes for a raffle, or

1 the distribution of some of the net proceeds of the raffle to organizations affiliated
2 with and having the same goals, bylaws, and national affiliation as the organization
3 conducting the raffle, in proportion to the number of tickets or calendars sold by that
4 organization.

5 **History:** 1977 c. 426; 1983 a. 222; 1989 a. 147; 1991 a. 269 s. 782nh; Stats. 1991 s. 563.94.

(END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3634/P1dn

RPN:.....

med

Dante

This language may be in violation of Article IV, Section 24, Clause 4, of the Wisconsin constitution, which reads as follows:

“ The legislature may authorize the following raffle games licensed by the state, but all profits shall accrue to the licensed local organization and no salaries, fees or profits may be paid to any other organization or person: raffle games operated by local religious, charitable, service, fraternal or veterans’ organizations or those to which contributions are deductible for federal or state income tax purposes. The legislature shall limit the number of raffles conducted by any such organization. ”

*If you have any questions, please contact Mary Gibson -
Glass or myself
to me*

Robert Nelson
Senior Legislative Attorney
Phone: (608) 266-9739
E-mail: robert.nelson@legis.wisconsin.gov

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3634/P1dn
RPN:med:ph

January 31, 2012

This language may be in violation of Article IV, Section 24, Clause 4, of the Wisconsin constitution, which reads as follows:

“The legislature may authorize the following raffle games licensed by the state, but all profits shall accrue to the licensed local organization and no salaries, fees or profits may be paid to any other organization or person: raffle games operated by local religious, charitable, service, fraternal or veterans’ organizations or those to which contributions are deductible for federal or state income tax purposes. The legislature shall limit the number of raffles conducted by any such organization.”

If you have any questions, please contact Mary Gibson-Glass or me.

Robert Nelson
Senior Legislative Attorney
Phone: (608) 266-9739
E-mail: robert.nelson@legis.wisconsin.gov



State of Wisconsin
2011 - 2012 LEGISLATURE



RMP

LRB-3634/PT 1

RPN&MGG:med:ph

no changes kri

!stays

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

SA

- 1 AN ACT to amend 563.94 of the statutes; relating to: organizations that may
- 2 receive proceeds from a raffle.

Analysis by the Legislative Reference Bureau

Current law prohibits an organization that conducts a raffle from using any proceeds of the raffle to pay any salary, fee, or profit to any other organization or individual. This bill allows the organization that conducts a raffle to pay some of the net proceeds of the raffle to an organization affiliated with and having the same goals, bylaws, and national affiliation as the organization conducting the raffle in proportion to the number of tickets or calendars sold by that organization.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

- 3 SECTION 1. 563.94 of the statutes is amended to read:
- 4 **563.94 Profits.** All profits from raffles shall be used by the organization
- 5 conducting the raffles to further the organization's purpose for existence and no
- 6 salaries, fees or profit shall be paid to any other organization or individual in
- 7 connection with the operation of a raffle. This section does not prohibit the printing

SECTION 1

1 of raffle tickets or calendars or, the purchase of equipment or prizes for a raffle, or
2 the distribution of some of the net proceeds of the raffle to organizations affiliated
3 with and having the same goals, bylaws, and national affiliation as the organization
4 conducting the raffle, in proportion to the number of tickets or calendars sold by that
5 organization.

6 (END)