

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0541/P1dn
JEO & RAC:jlj:jf

January 4, 1999

Dan Rossmiller:

This is a preliminary attempt to treat so-called "office pools" as misdemeanor gambling offenses instead of felony commercial gambling offenses. Please note the following when reviewing the draft:

1. The draft creates a definition of "office pool" in proposed s. 945.01 (5m). Please review the definition carefully. Note that it treats an office pool as a "lottery", as that is defined in s. 945.01 (5), stats.

The definition incorporates several of the ideas you proposed in your drafting instructions. Specifically, it requires that all of the participants be coworkers, that the prizes be awarded from the consideration put up by the participants, that the award of prizes be based on the results of sporting events, and that the person "conducting" it be a participant and not profit from conducting the pool (other than collecting a prize he or she wins as a participant).

The definition also puts a dollar limit of \$10 on the consideration (stake or bet or wager) that a participant must put up in order to play. This is a completely arbitrary figure that we supplied for purposes of a preliminary draft, and you may of course decide on a different amount. The definition does *not* put a limit on the value of the prizes, though it could do that as well. (Note that putting a cap on the prizes without a cap on the bet of each individual participant will mean that participants in the office pool of a small business will apparently be able to place bigger bets than participants in the office pool of a large business.)

The draft does not incorporate the concept of an "occasional" office pool because that is too vague. The draft would have to define how often such pools could be conducted (for example, not more than six times each calendar year).

2. The draft provides an affirmative defense to prosecution under s. 945.03 (4), stats., as that appears to be the only commercial gambling prohibition under which a person conducting an office pool, as defined in the draft, would be prosecuted. This is because s. 945.03 (1), (2), (3), (6) and (7), stats., all have the requirement that the activity be conducted "for gain" (while an office pool cannot be conducted for gain) and s. 945.03 (5), stats., applies only to gambling machines (which office pools do not involve).

The affirmative defense in this draft operates like the one under s. 940.01 (2), stats. Once there is any evidence that raises the office pool issue, the state must prove beyond

a reasonable doubt that the lottery being operated was not an office pool. If the state cannot satisfy that burden of proof, the defendant is guilty of conducting a lottery under s. 945.02 (3), stats., which is a misdemeanor rather than a felony. Does this approach effect your intent?

Please let us know if you have any questions or changes.

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