

S B

484

MEMORANDUM

To: Senator Jan Faiks, Chairrnan
Senate Judiciary Committee

From: Senator Mike Szymanski

Re: CSSB 484 (C&RA)

The Senate C&RA Committee passed out a CS for SB 484 with an error that will require correcting in Senate Judiciary. The committee mistakenly omitted language which would prevent multiple-beneficiary permit holders from working in conjunction with each other without using an operator. This language needs to be added back into the bill.

John Gaguine has been the drafter working on this legislation and he will be able to assist you

April 5, 1990

Offered by Senator Zharoff

Proposed amendment for inclusion in CSSB 484 (C&R)

AMENDMENT NO. 1: Add the following sentence to AS 05.15.060

(8) the number of activities that may be held, operated, or conducted under a permit during a specified period; however, the department may not allow more than 14 bingo sessions a month and 35 bingo games a session to be conducted under a permit. The holders of a multiple-beneficiary permit under AS 05.15.100 (d) may hold, operate, or conduct the number of sessions and games per month equal to the number allowed an individual permittee multiplied by the number of holders of the multiple-beneficiary permit.

AMENDMENT NO. 2: Add the following sentence to Line (2) of Page (2) of the Committee substitute:

(b) The member in charge is responsible for preparation, maintenance, and transmittal of all records and reports required of the permittee. The member in charge shall be a member of the qualified organization or the board of directors of the qualified organization or an employee of the municipality. In the case of a multiple-beneficiary permit, the member in charge shall be a member of one of the qualified organizations or the board of directors of one of the qualified organizations or an employee of one of the municipalities.

(c) The department will, in its discretion, review the conduct and management of gaming activities on an individual basis and make a determination, in accordance with this section, whether a person is required to be licensed as an operator under AS 05.15.

Zharoff's Bill

(d) A group of not more than four permittees may join together to conduct gaming activities at a single facility on their own behalf without the use of an operator only if

2-6 permittees

(1) each permittee is actively involved in the day to day gaming activities being conducted, including management oversight, policy setting, and authorization of expenditures;

(2) the person managing or supervising the gaming activity is the primary member in charge or is an employee of the permittee, as defined in (b) of this section, on those days that gaming activities are being conducted for the benefit of that permittee;

(3) each permittee individually accounts for its own expenses and receipts associated with gaming activity conducted under its own permit;

same (d)(1)

(4) the door prize limitations of AS 05.15.180(e) are not exceeded by that single facility; and

(5) each permittee reports an adjusted gross income of at least 15 percent of gross income for two consecutive quarters based on the total operation of the permittee.

(Eff. / / , Register)

Authority: AS 05.15.060
AS 05.15.122
AS 05.15.130
AS 05.15.180
AS 05.15.210

ARTICLE 2.

PULL-TAB MANUFACTURING AND DISTRIBUTION.

12 AAC 34.300. STANDARDS FOR CONSTRUCTION OF PULL-TABS. (a)
Unless approved under (d) of this section, a pull-tab must

(1) be constructed so that it is impossible to identify whether it is a winning or losing pull-tab, either by revealing the numbers or symbols or by the size and shape of the pull-tab, until it has been played by the purchaser;

BY SEN. ZHAROFF

1 IN THE SENATE

2

SENATE BILL NO. 484

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6

For an Act entitled: "An Act authorizing charitable gaming permittees to
7 work in conjunction with one another; specifying that
8 a charitable gaming permittee does not have to con-
9 tract with an operator; and providing for an effec-
10 tive date."

10

11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

12 * Section 1. AS 05.15.100 is amended by adding a new subsection to
13 read:

14 (d) Two to six permittees may work in conjunction in the same
15 location to conduct activities authorized by this section if each
16 permittee

17 (3) (1) complies with the reporting requirements imposed on
18 operators under AS 05.15.083, provided that each permittee is required
19 to report information for its permit only; and

20 (2) has its financial records reviewed annually by a cer-
21 tified public accountant, and submits the results of the review to the
22 department no later than February 28 of the year following the year
23 for which the review is conducted.

24 * Sec. 2. AS 05.15.115(a) is amended to read:

25 (a) A municipality or qualified organization holding a permit to
26 conduct an activity under this chapter may enter into a contract with
27 an operator licensed under this chapter to conduct on behalf of the
28 municipality or qualified organization those activities permitted
29 under the authority of the permit. This section may not be construed

1 to require a permittee to enter into a contract with an operator to
2 conduct authorized activities.

3 * Sec. 3. AS 05.15.180(g) is amended to read:

4 (g) A municipality or a qualified organization may award a
5 maximum of \$1,000,000 in prizes each year in activities authorized
6 under this chapter; however, if a municipality or a qualified orga-
7 nization contracts with an operator to conduct on its behalf activ-
8 ities authorized under this chapter, the municipality or qualified
9 organization may award a maximum of \$500,000 in prizes each year. If
10 two or more permittees work in conjunction under AS 05.15.100(d), each
11 permittee may award the maximum of \$1,000,000 in prizes each year. In
12 this subsection "activities authorized under this chapter" means all
13 activities subject to this chapter other than bingo.

14 * Sec. 4. This Act takes effect immediately under AS 01.10.070(c).

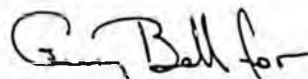
ORDER ADOPTING AND REPEALING REGULATIONS OF THE
DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

The attached 20 pages of regulations dealing with games of chance and skill, including operators, pull-tab manufacturing and distribution, state identification stamps, reporting requirements, sale of pull-tabs, bingo, prize award limitations, definitions, and repeal of regulations in Title 15 are hereby certified to be correct copies of the regulations which the Department of Commerce and Economic Development, adopts and repeals under the authority of AS 05.15.060 and AS 05.15.130 and after compliance with the Administrative Procedure Act (AS 44.62), specifically including notice under AS 44.62.190 and AS 44.62.200 and opportunity for public comment under AS 44.62.210.

This action is not expected to require an increased appropriation.

This order takes effect on the 30th day after it has been filed by the Lieutenant Governor as provided in AS 44.62.180.

DATE: 2/26/90
Juneau, Alaska



Larry Merculieff, Commissioner
Department of Commerce and Economic
Development

FILING CERTIFICATION

I, Stephen McAlpine, Lieutenant Governor for the State of Alaska, certify that on _____, 1990, at _____ .m., I filed the attached regulations according to the provisions of AS 44.62.040 - AS 44.62.120.

Stephen McAlpine, Lieutenant Governor

Effective: _____)

Register: _____)

12 AAC is amended by adding a new chapter to read:

CHAPTER 34.

GAMES OF CHANCE AND SKILL

Article

- 1. Operators (12 AAC 34.200 -- 12 AAC 34.220)
- 2. Pull-tab manufacturing and distribution (12 AAC 34.300 --
12 AAC 34.390)
- 3. Pull-tab games (12 AAC 34.400)
- 4. Bingo games (12 AAC 34.500)
- 5. General provisions (12 AAC 34.900 -- 12 AAC 34.990)

ARTICLE 1.

OPERATORS.

12 AAC 34.200. OPERATOR LICENSE REQUIRED. (a) The department will consider a person to be independently conducting gaming activities and, therefore, required to hold an operator's license under AS 05.15.122, if any one of the following conditions are present:

- (1) the person conducting the gaming activity

(A) is not an employee of the permittee, as defined in (b) of this section;

(B) directly supervises a person who is not an employee of the permittee, as defined in (b) of this section, or who is not paid out of funds over which the permittee does not have sole control;

(C) has made an investment of any kind, including property or equipment used on behalf of the permittee's gaming activity;

(D) is responsible for the tendering of receipts from gaming activity that are first deposited into a bank account over which the permittee does not have sole control;

(E) is responsible for accounting for game related expenses; or

(F) authorizes and pays game related expenses from funds which are not under the control of the permittee; or

(2) the permittee

(A) has minimal or no control over when or where gaming activity is conducted on its behalf; or

(B) the permittee does not have a member present at all times when gaming activity is being conducted under its permit.

(b) In this section, a person is considered an employee of a permittee and not required to hold an operator's license when

(1) that person's wages are paid, taxes are withheld, or contributions are made by the permittee for the purposes of FICA, federal income tax, state unemployment insurance, or worker's compensation;

(2) the wages, salary, or any indirect compensation or gift received by that person has no direct relationship to the income or profit of a specific gaming activity; and

(3) except as provided in (b)(2) of this section, that person has no other financial interest, including ownership of any property sold, leased, or rented to the permittee, involved in the operation of the gaming activity being conducted.

(c) The department will, in its discretion, review the conduct and management of gaming activities on an individual basis and make a determination, in accordance with this section, whether a person is required to be licensed as an operator under AS 05.15.

(d) A group of not more than four permittees may join together to conduct gaming activities at a single facility on their own behalf without the use of an operator only if

(1) each permittee is actively involved in the day to day gaming activities being conducted, including management oversight, policy setting, and authorization of expenditures;

(2) the person managing or supervising the gaming activity is the primary member in charge or is an employee of the permittee, as defined in (b) of this section, on those days that gaming activities are being conducted for the benefit of that permittee;

(3) each permittee individually accounts for its own expenses and receipts associated with gaming activity conducted under its own permit;

(4) the door prize limitations of AS 05.15.180(e) are not exceeded by that single facility; and

(5) each permittee reports an adjusted gross income of at least 15 percent of gross income for two consecutive quarters based on the total operation of the permittee.

(Eff. / / , Register)

Authority: AS 05.15.060
AS 05.15.122
AS 05.15.130
AS 05.15.180
AS 05.15.210

ARTICLE 2.

PULL-TAB MANUFACTURING AND DISTRIBUTION.

12 AAC 34.300. STANDARDS FOR CONSTRUCTION OF PULL-TABS. (a)
Unless approved under (d) of this section, a pull-tab must

(1) be constructed so that it is impossible to identify whether it is a winning or losing pull-tab, either by revealing the numbers or symbols or by the size and shape of the pull-tab, until it has been played by the purchaser;

(2) be constructed using at least a two-ply paper stock construction so that it is virtually opaque;

(3) have conspicuously printed on the face or cover, the series number and the name of the manufacturer;

(4) show the consumer how to open the pull-tab to determine the winning symbols or numbers.

(b) Pull-tabs within a pull-tab series must be

(1) of the same length, width, and thickness, not varying by more than $3/64$ of an inch at any dimension;

(2) color coded when individual series numbers are repeated.

(c) A manufacturer shall establish its own method of game protection which allows the manufacturer or the department to determine, after the pull-tab has been played, the difference between an authentic winning pull-tab and a nonwinning, altered or forged pull-tab. The manufacturer shall submit to the department a letter explaining the method of game protection used and shall inform the department of any changes in its method of game protection.

(d) The department will, in its discretion, approve or disapprove all pull-tab designs or construction techniques.

(Eff. / / , Register)

Authority: AS 05.15.060

AS 05.15.130

AS 05.15.181

12 AAC 34.310. PULL-TAB SERIES ASSEMBLY AND PACKAGING. (a) A pull-tab manufacturer shall manufacture, assemble, and package a pull-tab series so that a winning pull-tab, or the approximate location of a winning pull-tab, cannot be determined in advance of actually opening the pull-tab.

(b) Winning pull-tabs must be distributed randomly among all other pull-tabs in the series.

(c) Each pull-tab series must be packaged and clearly marked on the outside with the name of the manufacturer, the pull-tab series number, and the name of the pull-tab game enclosed.

(d) When a pull-tab series is packaged in more than one container, the entire series of individual pull-tabs must be thoroughly mixed and distributed evenly among the containers so that the location or approximate location of a winning pull-tab or concentration of winning pull-tabs cannot be determined.

Authority: AS 05.15.060
AS 05.15.130
AS 05.15.181
AS 05.15.187

12 AAC 34.320. STATE IDENTIFICATION STAMPS. (a) The department will sell all authorized pull-tab manufacturers a set of state identification stamps imprinted with the same unique state identification number or combination of letters and numbers, to be used for identifying and tracking the sale and distribution of pull-tabs present in the state.

(b) Beginning October 1, 1990, a pull-tab series may not be sold, distributed, or shipped to a licensed distributor, unless the manufacturer has

(1) affixed the state identification stamp onto the face of the flare card accompanying that series of pull-tabs; and

(2) recorded the state identification number in accordance with 12 AAC 34.330 and 12 AAC 34.340.

(c) The remaining state identification stamps must be included with the pull-tab series shipped for use by the distributor, operator, or permittee in accordance with other provision of this chapter.

(d) When a pull-tab series is out for play, the accompanying flare card containing the state identification stamp must be displayed so that it is clearly visible to the purchaser. The flare must be displayed at all times while that series is being played and must be removed when that series has been played out or removed from play for any reason. (Eff. / / , Register)

Authority: AS 05.15.060
AS 05.15.130
AS 05.15.181
AS 05.15.185

12 AAC 34.330. MANUFACTURER DISTRIBUTION. (a) A pull-tab manufacturer may only distribute those pull-tabs which it designed, constructed, assembled and packaged. A manufacturer may not sell pull-tabs in Alaska that were purchased from another pull-tab manufacturer.

(b) A pull-tab series may not be sold or distributed in Alaska unless the manufacturer has met the state identification stamp requirements of 12 AAC 34.320.

(c) Beginning October 1, 1990, a packing slip must be affixed to the outside of a shipment of pull-tabs, that shows the

(1) name of the manufacturer;

(2) series number;

(3) date the series was packaged;

(4) name or identification of the person who packaged the shipment; and

(5) state identification number. (Eff. / / ,

Register)

Authority: AS 05.15.060

AS 05.15.130

AS 05.15.181

AS 05.15.185

12 AAC 34.340. MANUFACTURER'S MONTHLY REPORT. Beginning October 1, 1990, the monthly report required under AS 05.15.181(e) must be submitted in a form approved by the department and must identify the following information for each pull-tab series shipped since the last report filed under this section:

- (1) name and game number of the game;
- (2) series number;
- (3) state identification number;
- (4) name of the distributor to which the series was sold.

(Eff. / / , Register)

Authority: AS 05.15.060
AS 05.15.130
AS 05.15.181

12 AAC 34.350. PULL-TAB DISTRIBUTOR LICENSE APPLICATION REQUIREMENTS. An applicant for a pull-tab distributor license under AS 05.15.183 shall submit to the department

(1) a completed application on the forms provided by the department;

(2) the fees as required by AS 05.15.183(b); and

(3) all other information or documentation requested by the department at the time of application.

(Eff. / / , Register)

Authority: AS 05.15.060

AS 05.15.130

AS 05.15.183

12 AAC 34.360. DISTRIBUTOR'S MONTHLY REPORT. (a) Beginning January 1, 1991, the monthly report required under AS 05.15.183(d), must include the following information for each pull-tab series distributed since the last report filed under this section:

- (1) name and number of the game;
- (2) series number;
- (3) state identification number;
- (4) date distributed;
- (5) manufacturer;
- (6) price per ticket;
- (7) ticket count;
- (8) gross pay out;
- (9) ideal net;

(10) name of the permittee or operator to which the pull-tab series was sold; and

(11) any other information the department may require.

(b) A distributor shall remit with the monthly report the pull-tab tax required under AS 05.15.184 and 12 AAC 34.390 for each pull-tab series included in the monthly report. (Eff. / / , Register)

Authority: AS 05.15.060
AS 05.15.130
AS 05.15.183
AS 05.15.185

12 AAC 34.380. SALE OF PULL-TABS BY A LICENSED DISTRIBUTOR.

(a) Beginning January 1, 1991, each pull-tab series sold by a licensed distributor must be documented by a written invoice delivered to the permittee or operator that identifies the

- (1) name and number of the game;
- (2) series number;
- (3) state identification number;
- (4) date of the sale;

(5) name and permit number of the permittee who purchased the pull-tabs;

(6) name and license number of the operator, if applicable;

(7) dollar amount charged for that series; and

(8) amount of pull-tab tax charged to the purchaser.

(b) The state identification stamps provided by the manufacturer for a pull-tab series must be included in the distributor's shipment of that pull-tab series to the operator or permittee for the operator or permittee's use in meeting other recordkeeping requirements of this chapter.

(c) When a distributor sells pull-tabs to another distributor, the distributor making the original sale shall remit the pull-tab tax to the department, in accordance with AS 05.15.184 and 12 AAC 34.390. (Eff. / / , Register)

Authority: AS 05.15.060

AS 05.15.130

AS 05.15.183

12 AAC 34.390. PULL-TAB TAX. (a) A permittee, or operator conducting gaming activities on behalf of the permittee, shall pay to the distributor, a pull-tab tax of 3 percent of the ideal net of the pull-tab series. Payment of the pull-tab tax is due to the

distributor at the time the pull-tab series is distributed to the permittee or operator. The pull-tab tax must be paid to the department by the distributor, whether actually collected or not, at the time of filing the monthly report required under AS 05.15.183(d) and 12 AAC 34.360.

(b) In this section, "ideal net" means the total amount of receipts that would be received if every individual pull-tab ticket in the series was sold at its face value less the total predetermined prizes available to be paid out in the series exclusive of any additional prize for the last pull-tab sold.
(Eff. / / , Register)

Authority: AS 05.15.060
AS 05.15.130
AS 05.15.183
AS 05.15.184

ARTICLE 3.

FULL-TABE GAMES.

12 AAC 34.400. LIMITATION ON PULL-TAB SALES. (a) In accordance with AS 05.15.187, a pull-tab may be sold only when

(1) all pull-tabs in the series being played have the same series number;

(2) the entire pull-tab series is available for play at only one location;

(3) a pull-tab series contains the entire prize structure for that series.

(b) A pull-tab game may not be sold in this state if the prize structure for that game is spread across more than one pull-tab series within that game. (Eff. / / , Register)

- Authority: AS 05.15.060
- AS 05.15.130
- AS 05.15.187
- AS 05.15.210

ARTICLE 4.

BINGO GAMES.

12 AAC 34.500. BINGO SESSIONS. (a) A permittee who conducts bingo games on its own behalf without the services of an operator may hold up to 14 bingo sessions per month. A permittee which uses an operator to conduct bingo games on its behalf is limited to 11 sessions per month.

(b) A bingo card or sheet may not be sold at a discount, provided free, or sold on credit to a participant in any bingo session. (Eff. / / , Register)

Authority: AS 05.15.060
AS 05.15.130
AS 05.15.187
AS 05.15.210

ARTICLE 5.

GENERAL PROVISIONS.

12 AAC 34.900. PRIZE AWARD LIMITATIONS. (a) In accordance with AS 05.15.180 and 15 AAC 105.110(b), a permittee conducting authorized games on its own behalf is limited to the following prize award limitations per calendar year:

(1) bingo, \$840,000; and

(2) the aggregate of all other authorized gaming activities \$1,000,000.

(b) An operator conducting authorized games on behalf of a permittee is limited to the following prize award limitations per permittee per calendar year:

(1) bingo, \$660,000; and

(2) the aggregate of all other authorized gaming activities, \$500,000. (Eff. / / , Register)

Authority: AS 05.15.060
AS 05.15.130
AS 05.15.180

12 AAC 34.990. DEFINITIONS. In this chapter

(1) "permittee" means a municipality or qualified organization who has a current and valid permit issued by the department to conduct authorized games of chance and skill provided for under AS 05.15.

(2) "pull-tab" means a card or a single folded or banded ticket, the face of which is covered to conceal a number, symbol, or set of numbers and symbols. A person who has purchased a pull tab compares the numbers, symbols, or combinations of numbers and symbols revealed and compares them with the numbers, symbols, or combinations of numbers or symbols which have been designated in advance and shown on the flare card as prize winners.

Authority: AS 05.15.060
AS 05.15.130

15 AAC 105.110(5) is repealed:

(5) Repealed / / . (Eff. 9/7/60, Register 2; am 11/6/76, Register 60; am 10/1/88, Register 107; am / / , Register)

Authority: AS 05.15.060

Register ,

1990 PROFESSIONAL AND
VOCATIONAL REGULATIONS

15 AAC 105.330
15 AAC 105.350

15 AAC 105.330 is repealed:

15 AAC 105.330. PULL-TAB DISTRIBUTOR'S LICENSE; DISTRIBUTION
RESTRICTION. Repealed / / .

15 AAC 105.350 is repealed:

15 AAC 105.350. ADDITIONAL PRIZE LIMITATION. Repealed / / .



SENATOR FRED F. ZHAROFF
ALASKA STATE LEGISLATURE

P. O. BOX 405, KODIAK, ALASKA 99615 (907) 486-5259

DURING SESSION:

P. O. BOX V, JUNEAU, ALASKA 99811 • (907) 485-3473 • 465-3474

DISTRICT N

ALASKA PENINSULA • ALEUTIAN CHAIN • BRISTOL BAY • KODIAK ISLAND • LAKE CLARK/LAKE ILIAMNA • PRIBILOF ISLANDS • SHUMAGIN ISLANDS

17 March, 1990

MEMORANDUM

TO: Mary McBurney, Aide
Senate C&RA Committee

FROM: Michael Thill *M.T.*
Sen Zharoff's staff

Attached is some backup material relating to SB 484 which includes the following:

- 1) "Transmittal" memo from Sen Zharoff to Sen Szymanski
- 2) Two pieces of correspondence from the attorneys representing the four non-profits and describing the need for the measure;
- 3) Zero Fiscal note provided by DCED
- 4) Relevant Statutes (AS 05.15)

I appreciate your having set up the teleconference for this measure; we anticipate that Ms Jill De La Hunt, staff attorney for the nonprofits, will be available to answer any technical questions the committee may have. Thank you.



SENATOR FRED F. ZHAROFF
ALASKA STATE LEGISLATURE

P. O. BOX 405, KODIAK, ALASKA 99615 (907) 486-5259

DURING SESSION:

P. O. BOX V, JUNEAU, ALASKA 99811 • (907) 485-3473 • 485-3474

DISTRICT N

ALASKA PENINSULA • ALEUTIAN CHAIN • BRISTOL BAY • KODIAK ISLAND • LAKE CLARK/LAKE ILIAMNA • PRIBILOF ISLANDS • SHUMAGIN ISLANDS

17 March, 1990

MEMORANDUM

TO: Senator Mike Szymanski, Chairman
Senate C&RA Committee

FROM: Senator Fred Zharoff *F.Z.*

RE: SB 484 "An act authorizing charitable gaming permittees to work in conjunction with one another; specifying that a charitable gaming permittee does not have to contract with an operator; and providing for an effective date."

I appreciate your having scheduled SB 484 for a hearing in the Senate C&RA Committee. This measure was introduced at the request of four non-profit entities who conduct games of chance to help support their health and social services activities in rural Alaska. The four nonprofits are: The Alaska Native Health Board, the Aleutian/Pribilof Islands Association, the Aleutian Housing Authority, and the Kodiak Area Native Association.

This measure makes clarifying amendments to the Gaming Reform Act of 1988 and includes four statutory changes to AS 05.15. It allows two to six permittees to work in conjunction with one another, without the requirement of an operator, thus maximizing the earnings of non-profit health and social service providers. The bill also provides that each permittee would have a yearly prize limit of \$1,000,000, and that permittees have the same reporting requirements as those imposed upon operators.

Your staff has arranged to have this hearing teleconferenced and we will have representatives of the non-profit permittees available to testify and respond to specific questions the committee may have.

Thank you.

RECEIVED FEB 23 1990

LAW OFFICES
SONOSKY, CHAMBERS, SACHSE & MILLER

SUITE 700
900 WEST FIFTH AVENUE
ANCHORAGE, ALASKA 99501

(907) 258-6377

TELECOPIER (907) 272-8332

MARVIN J. SONOSKY
HARRY R. SACHSE
REID PEYTON CHAMBERS
WILLIAM R. PERRY
LLOYD BENTON MILLER*
DONALD J. SIMON
DOUGLAS B. L. ENDRESON**
MARY V. BARNEY
ANNE D. NOTO
JILL A. DE LA HUNT*

OF COUNSEL
LOFTUS E. BECKER, JR.
ROGER W. DUBROCK

February 21, 1990

WASHINGTON, D. C. OFFICE
1250 EYE STREET, N. W.
WASHINGTON, D. C. 20005
(202) 682-0240
TELECOPIER
(202) 682-0249

*ALASKA AND DISTRICT OF COLUMBIA BARS
**WISCONSIN BAR
ALL OTHERS DISTRICT OF COLUMBIA BAR

MEMORANDUM NO. 9A-90

TO: Michael Thill, Aide to Senator Zharoff
FROM: Sonosky, Chambers, Sachse & Miller
RE: Senate Bill No. 484 (Our File No. 2202.21)

As you requested, we submit this Memorandum on behalf of our clients the Alaska Native Health Board, the Aleutian/Pribilof Islands Association, the Aleutian Housing Authority and the Kodiak Area Native Association (referred to herein as "the four permittees") to discuss the need for Senate Bill No. 484 amending the Gaming Reform Act of 1988.

A. BACKGROUND

As you know, the four permittees are non-profit organizations providing health and social services to rural Alaskans throughout the state. The four conduct games of chance in conjunction with one another in Anchorage through an enterprise they named "Lucky Strike Bingo." The permittees began working together in 1986 by forming a Board of Directors consisting of a representative from each non-profit and by each contributing a substantial (and equal) sum of money to start the enterprise. The principal purpose in working together was and remains today to offer gaming in a manner competitive with operator-run halls while avoiding having to contract with and surrender control to an operator. The permittees jointly own equipment, hire employees, rent hall space, and pay expenses. The four permittees retain control over their permits and realize among the highest net revenues in the state for their non-profit organizations by cutting out the "middleman" operator.

The reasons for eliminating the operator are simple: a permittee retains control over the permit being played in the name of its organization and the revenues returned to the non-profit agency are approximately double the percentage the 1988 Act requires operators to return to non-profits.

The 1988 Gaming Reform Act was a significant step forward in encouraging permittees to offer games without the use of an operator and in controlling operator activities. The four permittees were actively involved in the development of the legislative reform. The 1988 Act encouraged the permittees' efforts through three particularly critical provisions: AS 05.15.180(g) authorizes permittees which do not use operators to offer prize limits twice that of operators; AS 05.15.060(8) authorizes a monthly session limit of fourteen per permit, thereby allowing four coordinating permittees to run 56 sessions a month and thus compete with the maximum number of sessions offered by operators (which pool together a dozen or more permits each month); and AS 05.15.180(e) specifically recognizes that permittees work in conjunction with one another without an operator. On the latter two issues, the four permittees were the only organizations urging reform.

Despite the intent of the legislature, the four permittees have spent countless hours and significant resources in the year and one-half since passage of the Act trying to preserve their statutory right to conduct games without an operator. First the Department of Revenue, then the Department of Commerce, issued proposed regulations which would have forced the four permittees to contract with an operator. Department officials also suggested directly to the four permittees and to their employees that they should retain an operator.

At long last, the agencies' position has begun to shift consistent with the Gaming Reform Act. The Commissioner and his aides now inform us that the Department of Commerce recognizes that the statute encourages permittees to work without operators, and that the regulations will protect a permittee's right to conduct games with other permittees. Those permittees which work in conjunction with one another will, we understand, retain their individual prize limits and will each be able to offer fourteen sessions per month. These regulations are not yet available to the public, and we are told may be issued once again as draft regulations subject to a 30 day notice and comment period. Given the uncertainties inherent in the regulatory process, even the Commissioner has urged the four permittees to seek clarification through statutory amendment.

Memo No. 9A-90
February 21, 1990
Page 3

B. SENATE BILL NO. 484

As introduced, Senate Bill No. 484 and House Bill No. 521 would clarify that the Gaming Reform Act of 1988 allows permittees to coordinate together to offer games of chance without contracting with an operator. The Bill would also clarify that each coordinating permittee would retain a yearly prize limit of \$1,000,000. These amendments would not change the meaning or intent of the current Act; they would simply remove any conceivable uncertainty on these issues by making the Act explicit and crystal clear.

As you know, the Department is generally supportive of this proposed legislation. The requirements under Section (1) reflect the Department's views and are not significantly different from the current practice of the four permittees. Each permittee would be required to report to the Department the same information operators are required to report under current law. The only difference would be that operators must report for all permits the operator plays; the permittee would report only for its own permit. This difference is sensible because a coordinating permittee is not conducting games under any permit other than its own. The coordinating permittee would also have its records audited as currently required of operators and would submit the audit results to the Department. (Our clients already do this.) Finally, the number of permittees which may work in conjunction with one another would be limited to between two and six.

In sum, the proposed amendments as introduced improve the clarity of the Gaming Reform Act of 1988. The basic intent of the Act--that permittees enjoy protection and an advantage over operators--would be enhanced by these clarifying amendments. In essence, the amendments would make clear that permittees can work together in a manner competitive with operator-run halls and thereby eliminate a significant drain on net revenues, eliminate a substantial loss of control over their permits, and maximize the gaming income earned by non-profit health and social service providers.

Respectfully submitted,

SONOSKY, CHAMBERS, SACHSE & MILLER

Lloyd Benton Miller
Jill A. De La Hunt

c:\newwp\lsb\gaming2.mem

C. File

LAW OFFICES
SONOSKY, CHAMBERS, SACHSE & MILLER

SUITE 700
900 WEST FIFTH AVENUE
ANCHORAGE, ALASKA 99501
(907) 258-6377

TELECOPIER (907) 272-8332

MARVIN J. SONOSKY
HARRY R. SACHSE
REID PEYTON CHAMBERS
WILLIAM R. PERRY
LLOYD BENTON MILLER*
DONALD J. SIMON
DOUGLAS B. L. ENDRESON**
MARY V. BARNEY
ANNE D. NOTO
JILL A. DE LA HUNT*

January 24, 1990

OF COUNSEL
LOFTUS E. BECKER, JR.
ROGER W. DUBROCK

—
WASHINGTON, D. C. OFFICE
1250 EYE STREET, N. W.
WASHINGTON, D. C. 20003
(202) 682-0240
TELECOPIER
(202) 682-0249

*ALASKA AND DISTRICT OF COLUMBIA BARS
**WISCONSIN BAR
ALL OTHERS DISTRICT OF COLUMBIA BAR

VIA TELEFAX

Larry Mercurieff, Commissioner
Department of Commerce and Economic
Development
Ninth Floor, State Office Building
P.O. Box D
Juneau, Alaska 99801

Re: Proposed Gaming
Regulations (Our File No.
~~2101.33~~)

2201.33

Dear Commissioner Mercurieff:

We write again on behalf of the Alaska Native Health Board, the Aleutian/Pribilof Islands Association, the Aleutian Housing Authority, and the Kodiak Area Native Association ("the permittees") to address the Department's proposed gaming regulations.

On more than one occasion you have shared with me your general support of our clients' efforts to coordinate their gaming activities and thus avoid giving up control and money to an operator. Nonetheless, we have recently been learning that some staff members of the Department continue to raise both old and new objections to this sensible approach. For the record this letter addresses these concerns. At the same time, we

Larry Mercurieff, Commissioner
January 24, 1990
Page 2

hasten to add that we are encouraged that overall the Department appears to be moving toward a resolution of the issue which will preserve coordinated permittee intentions.

As we understand it, Department staff recently identified AS 05.15.122(a) as a provision which be in conflict with AS 05.15.180(e) (the door prize limits provision which clearly recognizes the cooperative efforts of permittees who do not use operators). AS 05.15.122(a) states:

A person, municipality, or qualified organization may not conduct an activity subject to this chapter on behalf of a municipality or qualified organization unless the person, municipality, or qualified organization has received an operator's license issued by the department.

The relevant portion of AS 05.15.180(e) states:

The total value of all door prizes offered or awarded at a single facility or bingo hall or parlor by an operator on behalf of authorizing permittees or by a permittee in conjunction with other permittees may not exceed \$20,000 a month or \$240,000 a year.

We frankly find it impossible to identify the perceived conflict between these provisions. Department staff focus on the words "on behalf of." But by very definition an operator works "on behalf of" permittees; in no other way could the operator conduct games under the permit of another organization and there is no other obvious way to describe what it is operators do. In contrast, the Alaska Native Health Board, the Aleutian/Pribilof Islands Association, the Aleutian Housing Authority, and the Kodiak Area Native Association do not act "on behalf of" each other; they act as separate organizations operating their own permits and sharing equally in the costs of the project and the oversight of employees. The joint employees also do not act "on behalf of" the permittees in the sense intended by the Legislature in the operator's license provision. Of necessity all employees work "on behalf of" their employers. Were employees required to obtain operator's licenses, no gaming would be conducted without an operator, which would obviously be contrary to the Legislature's intent and render much of the Gaming Act superfluous.

The Legislature clearly understood this difference. Sec. 05.15.180(e) distinguishes operators acting "on behalf of" permittees from permittees acting "in conjunction." As you know, the distinction between operators and coordinating permittees was specifically made in recognition of the four non-profits' Lucky Strike Bingo project. If the Legislature had understood the four

Larry Mercurieff, Commissioner
January 24, 1990
Page 3

non-profits (or the employees of the non-profits) as acting "on behalf of" one another there would be no separate reference to permittees working "in conjunction" with one another.

Department staff apparently believe that if the Legislature truly had been aware of the permittees' coordinating efforts, the Act would have referred more specifically to their situation and distinguished it from that of operators. This argument defeats itself.

The 1988 Act was principally designed to place greater controls on the operators; the Legislature was not attempting to identify and categorize each and every variation of permittee activity. The legislative history clearly demonstrates our clients' active participation in the development of the Act. If the Legislature had wanted to include coordinating permittees as operators it could and would have done so. The current pressure from operators to force one of our clients to become an operator is not new; it was at least as strong during the development of the Act.

Instead of requiring coordinating permittees to obtain operator's licenses, the Legislature set a monthly session limit at a number specifically chosen to allow the four permittees we represent to compete with the operator-run halls. The Act was not designed to force permittees into operator status, but rather to enable permittees to exercise maximum control over their permits. Our clients are perhaps the best example in the State of what permittees can do if allowed to conduct their own games on a basis competitive with operators.

The four permittees have been as forthcoming and cooperative as possible in providing the Department with any information requested to help demonstrate that each of the permittees controls its own permit. I enclose another copy of a letter to Kent Hartzberg written in response to a lengthy letter of inquiry concerning the permittees' gaming project. This letter definitively reveals the cooperative and equal role each of the permittees plays in the Lucky Strike Bingo project and the employer relationship of each of the permittees to the Lucky Strike staff.

Very clearly no one of the four permittees we represent acts "on behalf of" any of the other permittees. Nonetheless, it has been suggested that the Department might view the Lucky Strike Board of Directors to be an operator, on the ground that all four board members make joint decisions concerning the Lucky Strike project rather than each individual permittee making decisions affecting only its permit. This position is worthy of Alice In Wonderland's Queen of Hearts. The Board cannot be an operator;

Larry Mercurieff, Commissioner
January 24, 1990
Page 4

the Board is the permittees themselves, making decisions concerning their permits. Obviously the permittees make joint decisions concerning the conduct of their games. If they did not, they would not be coordinating together in a manner which allows them to compete with operators. At the same time, each retains the right to make independent decisions regarding how its organization's games are run.

Equally clear, the Lucky Strike staff is not "an operator". The staff works under the direct control of the permittees and all are subject to termination at will. If an employee does not perform properly, the permittees may terminate the employee and hire another. The games played on their permits in the hall owned by them, however, continue. In contrast, if a permittee is unhappy with an operator, the permittee's only recourse is to terminate its contract and forgo play of its permit until it can find another operator at another hall. (As you know, many permittees cannot locate an operator in whom they have confidence, and those permittees which express dissatisfaction are "blacklisted" and typically cannot find another operator.) The operator, on the other hand, continues realizing substantial income from other permits in his/her hall, and simply picks up another permit.

We recognize the Department's desire to make enforcement and monitoring responsibilities as simple as possible. Such concerns, however, cannot override the Gaming Act itself, particularly when they can easily be accommodated by other means. The Legislature knew and approved of the coordinating efforts of the four permittees and their desire to control their own permits. The Department's apparent push to require permittees to retain an operator flies in the face of the Act. Ironically, the Lucky Strike project has always been considered a model of honest gaming. As we have indicated before, the four permittees are ready to provide reporting information equivalent to that of the operators and to aid the Department in fulfilling its monitoring duties.

We understand the Department remains concerned that operators will attempt to structure their operations to appear similar to the Lucky Strike project. If the Department issues a regulation drafted along the lines of that which we submitted to you in November, false imitation will not be possible. Either the permittees will control the gaming or they will not. Unless the permittees are conducting their own games, they will not meet the proposed criteria. We believe our draft language meets both the Department's concerns and the intent of the Act. The criteria would not be overly difficult to enforce. The heart of the test distinguishing between an operator-permittee relationship and a coordinating permittees relationship is the

Larry Mercurieff, Commissioner
January 24, 1990
Page 5

question of ultimate control of the conduct of games.

It has been suggested that retaining an operator would not change our clients' situation in any meaningful way. This suggestion reflects a belief that the permittees can design an operator's contract which will allay all worries concerning control and net revenue. This position reflects a serious misunderstanding of the competitive nature of gaming and the contracting process. None of the four permittees we represent has the resources or the desire to become an operator; they are far too taxed in trying to provide state-wide health and social services to Native and rural Alaskans. Any operator with whom the permittees contract will obviously bargain for a profit level comparable to other operators. The operator will also contract with other permit holders in order to remain competitive. The character of the most successful permittee-run gaming organization will soon become just another operator's bingo hall. The organization built with the money and hard effort of the permittees themselves will be handed to a profit-making gaming business, and the Department will truly be able to categorize Lucky Strike as an operator-run hall.

The Department is well aware of the problems associated with operator gaming and of our clients successful and forthright gaming practices. It is ironic, to say the least, that the Department would force the permittees into the mold of an operator in order to avoid having to explain to violating operators why the four permittees, with their cooperative and clean gaming, are different. After the Department has successfully shaped the Lucky Strike project into an operator, the net gaming revenues of the four permittees will diminish to the statutory fifteen percent level and their control over their permits will be minimal. To think otherwise is to favor wishful theory over reality and practice. Meanwhile, violating operators will merely find new ways to avoid statutory requirements. In short, forcing the four permittees to become or retain an operator is no solution to the Department's difficulties with others.

Our clients are increasingly concerned that the Department's regulations may not reflect the intent of the Act to allow permittee coordination. Not until the past very few days have Department staff begun to work with us in developing regulations and sharing the Department's thoughts concerning our proposed amendment. If warranted we are ready to fly to Juneau to meet with Mr. Hanson and any other Department personnel to try to craft a solution which will meet the concerns of all.

We are, of course, encouraged that deliberations within the Department reportedly are moving toward a resolution of the

Larry Mercurieff, Commissioner
January 24, 1990
Page 6

operator issue which will accommodate non-operator coordinated multi-permit gaming. If, however, a favorable resolution is not achieved, this will force the permittees, albeit reluctantly, to return to the Legislature. Such an effort will be terribly costly to the non-profits, but to wait much longer means no legislative redress would likely be possible this year. The loss of control over their permits and the project in which they have invested so much is too great a risk.

We renew our request that the Department work with us and the permittees to adopt a regulation meeting the intent of the Gaming Reform Act, and request your personal involvement in this process. On our part, we are ready to consider all suggestions and do whatever is necessary to facilitate the process. If, however, deliberations along these lines will not be fruitful, we must know within the next day or two so we can turn our efforts to the Legislature.

I look forward to hearing from you.

As always, warm personal regards.

Sincerely,



Lloyd B. Miller

LBM/JAD/lsh/bingo.8

cc: Randall P. Burns
John Hanson
Elizabeth J. Kerttula

Enclosure as stated.

107-B West Northern Lights Blvd.
Anchorage, Alaska 99503
(907) 274-6711

LUCKY STRIKE BINGO

September 5, 1989

Mr. Kent Hartzberg
State of Alaska
Auditor, Games of Chance & Skill
Department of Revenue
3601 C Street, Suite 722
Anchorage, Alaska 99508

Re: Response to inquiry concerning
operator/employee distinction

Dear Mr. Hartzberg:

As the Chairman of the Board of Directors of Lucky Strike Bingo, I write to answer the letter of inquiry from your Department concerning the relationship between the four permittees conducting games under the name "Lucky Strike Bingo" (LSB) and its employees.

The four permittees comprising Lucky Strike Bingo are the Alaska Native Health Board, the Aleutian Housing Authority, the Aleutian/Pribilof Islands Association, and the Kodiak Area Native Association. We are very proud of LSB's status as an organization of cooperating permittees offering their own games without the "middle layer" of an operator. As you review our answers to the Department's queries, please understand that a reference to "Lucky Strike Bingo" is a reference to all four permittees unless stated otherwise.

1. WHO ACTUALLY MANAGES, SUPERVISES AND/OR CONTROLS (I.E. CONDUCTS) YOUR GAMING ACTIVITIES?

The LSB Board of Directors controls and directs LSB gaming activities. Supervision and management directives made by the



Mr. Kent Hartzberg
September 5, 1989
Page 2

Board are implemented by the LSB Business Manager, an employee of LSB who reports directly to the Board during each of its regular meetings.

2. WHAT ARE THE RESPONSIBILITIES AND DAILY DUTIES OF THE PERSON(S) WHO CONDUCTS GAMING ACTIVITIES ON YOUR BEHALF? MAY THIS PERSON ENTER INTO CONTRACTS ON YOUR BEHALF, SIGN CHECKS, ETC?

Games are conducted by the LSB Board using LSB employees. The line of authority of LSB begins and ends with the Board of Directors. Answering directly to the Board is the Business Manager. The Finance Director reports to the Business Manager. All other employees are under the daily management of the Business Manager or his delegated representatives, the various Department Heads. Each level of employee has different responsibilities and daily duties dependent on his/her position. For example, the Deli worker prepares and sells food to patrons, and is responsible for filling food orders properly and in an attractive, safe, and lawful manner. With approval and close supervision from the Board, the Business Manager provides overall daily supervision of employees, the games conducted, and the services offered to patrons.

No LSB employee has the authority to enter contracts on behalf of LSB. The authority to enter binding agreements lies only in the Board of Directors. The Business Manager may co-sign checks only with a Board member.

3. DO YOU HAVE A CONTRACT (SIC) THE INDIVIDUAL(S) WHO CONDUCT GAMING ACTIVITIES ON YOUR BEHALF, OR IS THIS INDIVIDUAL AN EMPLOYEE? IF THE PERSON IS AN EMPLOYEE, WHO PAYS THAT PERSON'S SALARY AND BENEFITS AND WHO REPORTS THE WAGES WITHHELD TO THE STATE AND FEDERAL GOVERNMENTS?

All LSB employees, including the Business Manager, are employees at-will and do not have a contract of employment or any other form of contract with LSB. Wages of all LSB employees are authorized gaming expenses paid proportionately by each of the four permittees. Wage withholdings are calculated and reported to the state and federal governments by the LSB business office.

4. DOES YOUR ORGANIZATION MAINTAIN A SEPARATE CHECKING ACCOUNT THROUGH WHICH THE REVENUES FROM YOUR GAMING ACTIVITIES ARE FUNNELLED?

For simplicity's sake LSB maintains one combined account and uses an in-house accounting system which separately identifies the income and expenses of each of the four permittees.

Mr. Kent Hartzberg
September 5, 1989
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5. WHAT PERSONS ARE PRESENTLY AUTHORIZED TO SIGN ON THE CHECKING ACCOUNT(S) RELATED TO YOUR GAMING ACTIVITIES? WHAT IS THE RELATIONSHIP OF THESE PERSONS TO YOUR ORGANIZATION? IS ONE OF THE SIGNATORIES TO THE ACCOUNT YOUR ORGANIZATION'S DESIGNATED "MEMBER IN CHARGE"? ARE THE SIGNATORIES MEMBERS OR OFFICERS OF YOUR ORGANIZATION? IF SO, HOW LONG HAVE THEY BEEN MEMBERS AND/OR OFFICERS AND WHAT OFFICES DO THEY HOLD?

Persons presently authorized to sign checks from the LSB checking account are: (1) each of the three LSB Board members who are located in Anchorage (that is, all Board members other than the Director representing KANA); (2) the Finance Director of A/PIA who is also the alternative LSB Board member representing A/PIA; (3) the Deputy Director of ANHB who acts for the LSB Board member representing ANHB during his absence; and (4) the LSB Business Manager. All checks are co-signed and must include the signature of at least one LSB Board member. The Business manager's signature is not required.

The signatory from A/PIA (the Chairperson of the LSB Board and A/PIA Executive Director) is A/PIA's "member-in-charge." No other signatory is a "member-in-charge."

With the exception of the KANA member of the LSB Board, all Directors have been on the LSB Board since the formation of LSB in 1986 and have been with their permittee organization for at least as long. The KANA member of the LSB Board became an LSB Director in 1989, following resignation of the previous Director who had been on the LSB Board since 1986. The Deputy Director of ANHB and the Finance Director of A/PIA have also held their roles with LSB since 1986. The LSB Business Manager has been an employee of LSB since 1986, starting in the position of a part-time floor employee and through promotion attaining the position of Business Manager in 1987.

6. WHO DEPOSITS THE DAILY PROCEEDS OF YOUR ORGANIZATION'S GAMING ACTIVITIES?

LSB contracts with an armored car service known as Alaska Security. Under the supervision of the LSB Financial Director, the LSB audit analyst prepares the proceeds for deposit. Alaska Security arrives at LSB daily and transports and deposits LSB's daily gaming proceeds in LSB's account.

7. WHAT -- IF ANY -- EXPENSES DO YOU PAY OUT OF YOUR GAMING CHECKING ACCOUNT?

Mr. Kent Hartzberg
September 5, 1989
Page 4

All expenses authorized under the Alaska Game Reform Act are paid from the LSB gaming checking account.

8. DO YOU HAVE COPIES OF YOUR 941 FEDERAL QUARTERLY AND 1004 ALASKA STATE UNEMPLOYMENT REPORTS? IF NOT, HAS YOUR ORGANIZATION BEEN FILING THEM, OR HAS SOMEONE ELSE FILED THEM ON YOUR BEHALF?

LSB has copies of all 941 Federal Quarterly and 1004 Alaska State Unemployment reports.

9. WHO ESTABLISHES THE HOURS OF OPERATION, GAME PRICE, KINDS AND STRUCTURE OF THE GAMES CONDUCTED UNDER YOUR PERMIT? WHO DETERMINES UNDER WHOSE PERMIT THE GAMES WILL OPERATE ON EACH DAY GAMES ARE CONDUCTED? WHO DETERMINES WHAT DOOR PRIZES WILL BE AWARDED?

All such decisions are made by the LSB Board. The Business Manager implements all directives of the Board.

10. WHO OWNS THE GAMING EQUIPMENT UTILIZED BY YOUR ORGANIZATION IN THE CONDUCT OF GAMES HELD UNDER YOUR PERMIT?

All equipment is owned proportionately by the four permittees.

11. IF YOUR ORGANIZATION LEASES (RENT) ITS GAMING EQUIPMENT, WHO HOLDS THE LEASE, WHAT IS THE AMOUNT OF YOUR PAYMENTS, AND HOW ARE THE PAYMENTS STRUCTURED?

N/A

12. DO YOU OWN OR RENT/LEASE THE SPACE USED FOR YOUR ORGANIZATION'S GAMING ACTIVITIES? WHAT IS THE SQUARE FOOTAGE OF YOUR GAMING SPACE? WHAT IS THE AMOUNT OF YOUR PURCHASE OR RENTAL/LEASE PAYMENT, HOW IS THE PAYMENT STRUCTURED, AND TO WHOM IS THE PAYMENT MADE? IF THE BUILDING IS OWNED BY EITHER THE PERMITTEE OR ANOTHER, WHAT IS THE METHOD OF PRORATION APPLIED TO THE FACILITY TO DETERMINE THE PERCENTAGE TO BE PAID BY YOUR ORGANIZATION FOR USE OF THE FACILITY?

LSB leases approximately 11,000 square feet at a monthly rental fee of \$9367.00 from an independent landlord who is not otherwise associated with LSB or any of the four permittees. The payment is divided in equal proportions among the four permittees.

13. WHO IS RESPONSIBLE FOR MAINTAINING YOUR GAMING RECORDS, FINANCIAL AS WELL AS GENERAL ADMINISTRATIVE? WHO COMPLETES AND FILES FOR YOUR ORGANIZATION THE REQUIRED REPORTS TO THE STATE ON YOUR ORGANIZATIONS'S GAMING ACTIVITIES?

Mr. Kent Hartzberg
September 5, 1989
Page 5

All gaming records are maintained by LSB employees under the supervision of the Business Manager and Financial Manager. As in all matters, ultimate oversight is provided by the Board of Directors. Reports required by the State on each permittee's gaming activities are completed and filed by the individual permittees.

14. WHO IN YOUR ORGANIZATION IS THE MOST KNOWLEDGEABLE ABOUT GAMING LAWS, RULES AND REGULATIONS?

All LSB employees are required to be familiar with gaming laws, rules, and regulations. Managerial employees such as the Finance Director and the Business Manager are especially familiar with gaming requirements. In addition, Board members are quite familiar with the laws and regulations and were critical participants in the drafting of the Alaska Game Reform Act (as well as participating in the current implementing regulations drafting process).

15. HOW LONG HAS YOUR ORGANIZATION HELD A PERMIT TO CONDUCT GAMING ACTIVITIES?

A/PIA and AHA have held permits since 1981. ANHB and KANA have held permits since 1986.

16. WHO FURNISHES THE "START-UP BANK" FOR YOUR GAMING OPERATIONS?

The "start-up bank" is furnished by the individual permittee of the four LSB permittees whose permit is sponsoring a particular night's play.

17. WHO HAS THE AUTHORITY TO HIRE AND FIRE WORKERS EMPLOYED TO ASSIST IN THE CONDUCT OF YOUR ORGANIZATION'S GAMING ACTIVITIES?

Hiring and firing decisions are made by the Business Manager, subject to the oversight of the LSB Board.

18. WHO SETS POLICIES (I.E., "HOUSE RULES") FOR YOUR GAMING ACTIVITIES?

All policies for gaming activities are set by the LSB Board.

19. WHO APPLIES FOR THE BONDING AND LIABILITY INSURANCE AFFECTING THE PREMISES ON WHICH YOUR GAMING ACTIVITIES ARE CONDUCTED?

Mr. Kent Hartzberg
September 5, 1989
Page 6

LSB is not required to apply for any particular bonding insurance. Liability and other forms of insurance are obtained by the LSB Board. All four permittees are named as beneficiaries of the various insurance policies.

20. IN CASE A PROBLEM OR DISPUTE MAY ARISE BETWEEN THE ORGANIZATION AND THE PERSON CONDUCTING GAMING ACTIVITIES ON ITS BEHALF, HOW IS THAT PROBLEM RESOLVED? WHAT IS THE USUAL METHOD OF COMMUNICATION AND RESOLUTION IN SUCH CASES?

As described above, the line of authority in LSB begins and ends with the LSB Board. As an at-will employee of LSB, the Business Manager is subject to the direction of the Board and may be terminated at any time without cause. The Board holds regular meetings at which the Business Manager reports on all activities the Board holds special meetings when a particular problem develops. Employees other than the Business Manager do not have direct access to the Board, unless the Board decides to make an exception to its general rule that employees communicate to the Board through the Business Manager.

21. WHO ORDERS GAMING SUPPLIES AND WHO DETERMINES THE PRORATION BETWEEN THE OTHER PERMITTEES?

Gaming supplies are ordered by the Business Manager, the Finance Director, and the various Department Heads, as dictated by inventory needs. Ultimate determinations on expenditures are made by the LSB Board. Proration is formulated by the Board.

22. HOW MANY PERMITTEES ARE USING THE SAME GAMING FACILITIES?

Only the four permittees comprising LSB offer games at the LSB facilities.

Sincerely,

Dimitri Philemonof
Chairperson, Lucky Strike Bingo
Board of Directors

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: An Act authorizing charitable gaming permittees to work in conjunction...
 Sponsor: Senator Zharoff
 Requestor: Senate C&RA

Agency Affected: Commerce & Economic Dev.
 BRU: Occupational Licensing

Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS : (Attach a separate page if necessary)

The bill authorizes charitable gaming permittees to work in conjunction with one another in the same location provided each permittee is accountable for reporting activities of its own permit, and its financial records are reviewed annually by a certified public accountant. New funds are not required to implement this bill.

Prepared by: Jennifer Strickler, Administrative Officer Phone: 465-2144
 Division: Occupational Licensing Date: 3/6/90

Approved by Commissioner: Larry Mercurieff Date: 3/7/90
 Agency: Commerce & Economic Development

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

ported by the Arctic Winter Games without the written authorization of the Arctic Winter Games Incorporated.

(c) A person who violates a provision of this section is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than \$100. Each day of unauthorized use, display, or publication is a separate offense. (§ 1 ch 131 SLA 1972)

Revisor's notes. — Formerly AS 11.70.050. Renumbered in 1978

Chapter 15. Games of Chance and Contests of Skill.

Article

1. Administration (§§ 05.15.010 — 05.15.095)
2. Licenses and Permits (§§ 05.15.100 — 05.15.187)
3. General Provisions (§§ 05.15.190 — 05.15.995)

Cross references. — For gambling offenses, see AS 11.66.200 — 11.66.280.

Article 1. Administration.

Section

10. Department of commerce and economic development to administer chapter
20. Annual permit and fees
25. Money deposited in general fund
30. Required notices by applicant, permittee, or licensee
40. Issuance and effect and term of permit
50. Surrender of permit upon suspension or revocation

Section

60. Regulations
70. Examination of books and records
80. Reports and fees required of municipalities and qualified organizations
83. Reports to department by operators
87. Reports to permittee and payment of net proceeds
90. Reports to the legislature
95. General provisions relating to the filing of applications and reports and payment of fees

Sec. 05.15.010. Department of commerce and economic development to administer chapter. The Department of Commerce and Economic Development shall administer this chapter. (§ 3 ch 27 SLA 1960; am E.O. No. 74 § 2 (1989))

Effect of amendments. — The 1989 amendment, effective July 1, 1989, substituted "Department of Commerce and Economic Development" for "Department of Revenue."

Opinions of attorney general. — AS 05.15.010 — 05.15.210 does not create any new categories of prohibited gambling activities. 1962 Op. Att'y Gen., No. 22.

Collateral references. — 38 Am. Jur.

2d, Gambling, §§ 1-9, 10-14, 17-19, 41, 42, 49, 57-61, 67, 74, 190, 264-268.

38 C.J.S., Gaming, §§ 80 to 132; 54 C.J.S., Lotteries, § 1 et seq.

What transactions are within the purview of statutes or ordinances in relation to gifts or prizes or gift enterprises. 39 ALR 1035.

Constitutionality of statute which affir-

matively permits certain or gambling. 85 ALR 6
Construction and appli
permitting specified form
ALR 828.

Lottery as game of c
168.

What are games of c

Sec. 05.15.020. A
qualified organizati
chapter, if the mun
pate permit fee at
ment. The annual

(1) \$20 for an ap
ceding year;

(2) \$20 for an ap
from activities cor
year;

(3) \$50 for an ap
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§ 05.15.025

...matively permits certain forms of betting
...or gambling. 85 ALR 622.

...Construction and application of statutes
...permitting specified forms of betting. 117
...ALR 828.

...Lottery as game of chance. 135 ALR
...168.

...What are games of chance, games of

...skill, and mixed games of chance or skill.
...139 ALR 104.

...Validity and construction of statute ex-
...empting gambling operations carried on
...by religious, charitable, or other nonprofit
...organizations from general prohibitions
...against gambling. 42 ALR3d 663.

Sec. 05.15.020. Annual permit and fees. (a) A municipality or qualified organization may conduct an activity permitted under this chapter, if the municipality or qualified organization pays the appropriate permit fee and receives an annual permit issued by the department. The annual permit fee is

(1) \$20 for an applicant that did not hold a permit during the preceding year;

(2) \$20 for an applicant that had gross receipts of less than \$20,000 from activities conducted under this chapter during the preceding year;

(3) \$50 for an applicant that had gross receipts of \$20,000 or more but not exceeding \$100,000 from activities conducted under this chapter during the preceding year; or

(4) \$100 for an applicant that had gross receipts exceeding \$100,000 from activities conducted under this chapter during the preceding year.

(b) An additional fee of one percent of the net proceeds received during the preceding year from the activities authorized under the permit shall be paid to the department annually by the municipality or qualified organization authorized to conduct activities under this chapter, if the gross receipts for the activities were \$20,000 or more. (§ 3 ch 27 SLA 1960; am § 1 ch 182 SLA 1976; am § 1 ch 99 SLA 1988)

Effect of amendments. — The 1988 amendment rewrote this section to the extent that a detailed comparison is impracticable.

Opinions of attorney general. — Although states do not have regulatory au-

...thority over conduct of Indians on reserva-
...tions, a village council conducting bingo
...games off-reservation must comply with
...this section requiring a permit for such
...activities. April 25, 1986, Op. Att'y Gen.

Sec. 05.15.025. Money deposited in general fund. Money received by the department under this chapter shall be deposited in the general fund. The commissioner of administration shall separately account for the money deposited in the general fund under this section. The annual estimated balance in the account may be used by the legislature to make appropriations to the department to carry out enforcement of this chapter. (§ 2 ch 99 SLA 1988)

Sec. 05.15.030. Required notices by applicant, permittee, or licensee. (a) At the time of filing an application for a permit or license under this chapter the applicant shall notify the city or borough nearest to the location of the proposed activity of the application. A local government unit may protest the conduct of the activity in its jurisdiction by resolution stating the reasons for the protest filed with the department; protests are limited to the lack of qualifications prescribed by this chapter. This resolution is only a recommendation by the local government that may be considered by the commissioner in determining whether to issue or refuse to issue a permit or license.

(b) In addition to the requirements of (a) of this section, an applicant for a permit to conduct an activity under AS 05.15.100(b) shall notify the law enforcement agency having jurisdiction over the location of the proposed activity. The commissioner may not issue a permit for the proposed activity unless the application is accompanied by the written approval of the law enforcement agency having jurisdiction.

(c) If a permittee or licensee changes the location of an activity in the jurisdiction for which a permit has been issued, the permittee shall notify the department and the local government within 10 days after moving to the new location. (§ 3 ch 27 SLA 1960; am § 2 ch 94 SLA 1980; am § 1 ch 59 SLA 1983; am §§ 3, 4 ch 99 SLA 1988)

Revisor's notes. — Reorganized in 1981.

In 1988 the term "local government" was substituted for "city" in the last sentence of (a) of this section to correct an oversight in the 1962 codification

Effect of amendments. — The 1988

amendment substituted "an application for a permit or license under this chapter" for "application" in the first sentence in subsection (a), added "or license" at the end of the last sentence in subsection (a), and added subsection (c).

Sec. 05.15.040. Issuance and effect and term of permit. After the fee is paid, a permit issued, and during the effective period of the permit, the municipality or qualified organization may conduct the activity specified in the permit. A municipality that has been issued a permit under this chapter may not conduct any activity authorized by the permit outside of the geographic boundaries of the municipality. If a permit is revoked, the permittee is not eligible for another permit until the expiration of one year from the date of revocation. A permit expires at the end of the period for which it is issued. A permit is not transferable. (§ 3 ch 27 SLA 1960; am § 1 ch 27 SLA 1982)

Opinions of attorney general. — Under AS 05.15.210 a permit may be issued which gives a qualified organization the privilege of conducting any of the designated activities. AS 05.15.040 limits the activities that may be conducted to those activities specified in the permit. Under AS 05.15.060 the commissioner has au-

thority to further limit the number of activities which may be conducted pursuant to any permit. Therefore, absent any regulation to the contrary, a permit could be issued for more than one activity to a qualified organization. 1960 Op. Att'y Gen., No. 8.

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permittee, or a permit or license, or a municipality or borough application. A permittee shall not issue a permit or license over the location of an activity in its jurisdiction unless the application is accompanied by a recommendation by the commissioner in writing. An application for a permit or license shall be accompanied by a map showing jurisdiction over the location of an activity in its jurisdiction.

within 10 days of the date of the application. (AS 2 ch 94 § 2, 1999 SLA 1988)

"an application under this chapter" means the first sentence in the definition of "license" at the end of subsection (a), AS 2 ch 94 § 2.

permit. After the expiration of the period of the permit, the permittee shall not conduct the activity unless the permit has been renewed. A permit issued by a municipality shall not be renewed unless the municipality has been authorized by the commissioner to do so. A permit issued by a municipality shall not be renewed unless the municipality has been authorized by the commissioner to do so. (AS 2 ch 94 § 2, 1999 SLA 1982)

number of activities conducted pursuant to a permit or license shall not exceed the number of activities authorized by the permit or license. (AS 2 ch 94 § 2, 1999 SLA 1982)

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Sec. 05.15.050. Surrender of permit upon suspension or revocation. When a permit is suspended or revoked, the permittee shall surrender the permit to the department on or before the effective date of the suspension or revocation. A permit is not valid beyond the effective date of the suspension or revocation, whether surrendered or not. (§ 3 ch 27 SLA 1960)

Sec. 05.15.060. Regulations. The department shall adopt regulations under the Administrative Procedure Act (AS 44.62) necessary to carry out this chapter covering, but not limited to,

- (1) the issuance, renewal, and revocation of permits and licenses;
- (2) a method of ascertaining net proceeds, the determination of items of expense that may be incurred or paid, and the limitation of the amount of the items of expense to prevent the proceeds from the activity permitted from being diverted to noncharitable, noneducational, nonreligious, or profit-making organizations, individuals, or groups;
- (3) the immediate revocation of permits and licenses authorized under this chapter if this chapter or regulations adopted under it are violated;
- (4) the requiring of detailed, sworn, financial reports of operations from permittees and licensees including detailed statements of receipts and payments;
- (5) the investigation of permittees, licensees, and their employees, including the fingerprinting of those permittees, licensees, and employees whom the commissioner considers it advisable to fingerprint;
- (6) exclusion from participation as a permittee, licensee, or employee of a permittee or licensee, of a person convicted of, in prison for, or on parole for a felony within the preceding five years, or convicted of a crime involving theft or dishonesty or of a violation of a municipal, state, or federal gambling law;
- (7) the method and manner of conducting authorized activities and awarding of prizes or awards, and the equipment that may be used;
- (8) the number of activities that may be held, operated, or conducted under a permit during a specified period; however, the department may not allow more than 14 bingo sessions a month and 35 bingo games a session to be conducted under a permit;
- (9) a method of accounting for receipts and disbursements by operators, including the keeping of records and requirements for the deposit of all receipts in a bank;
- (10) the disposition of funds in possession of a permittee or a person, municipality, or qualified organization that possesses an operator's license at the time a permit or a license is surrendered, revoked, or invalidated;
- (11) restrictions on the participation by employees of the Department of Fish and Game in salmon classics;

(12) other matters the commissioner considers necessary to carry out this chapter or protect the best interest of the public. (§ 4 ch 27 SLA 1960; am § 1 ch 94 SLA 1986; am § 5 ch 99 SLA 1988)

Effect of amendments. — The 1986 amendment in the introductory language deleted ", no later than September 7, 1960," preceding "regulations necessary," designated former paragraph (11) as present paragraph (12), added present paragraph (11) and inserted a comma following "revoked" in paragraph (10).

The 1988 amendment rewrote this section to the extent that a detailed comparison is impracticable.

Opinions of attorney general. — Under AS 05.15.210 a permit may be issued

which gives a qualified organization the privilege of conducting any of the designated activities. AS 05.15.040 limits the activities that may be conducted to those activities specified in the permit. Under AS 05.15.060 the commissioner has authority to further limit the number of activities which may be conducted pursuant to any permit. Therefore, absent any regulation to the contrary, a permit could be issued for more than one activity to a qualified organization. 1960 Op. Att'y Gen., No. 8.

NOTES TO DECISIONS

Annulment of regulations by legislature. — The legislature acting under AS 44.62.320(a) could not constitutionally annul by concurrent resolution a regulation

prohibiting lottery owners from giving prizes exceeding certain personal and real property limits. State v. A.L.I.V.E. Voluntary, 606 P.2d 769 (Alaska 1980).

Sec. 05.15.070. Examination of books and records. The commissioner may examine or have examined the books and records of a permittee, an operator, or a person licensed to manufacture or to distribute pull-tab games in the state. The commissioner may issue subpoenas for the attendance of witnesses and the production of books, records, and other documents. (§ 6 ch 27 SLA 1960; am § 6 ch 99 SLA 1988)

Effect of amendments. — The 1988 amendment added "an operator, or a person licensed to manufacture or to distribute pull-tab games in the state" at the end of the first sentence and deleted the

former second sentence, which read "The commissioner may require the permittee to pay the reasonable cost of the examination."

Sec. 05.15.080. Reports and fees required of municipalities and qualified organizations. (a) A municipality or a qualified organization issued a permit under this chapter shall file a report with the department by the 45th day following each calendar quarter in which the permittee had gross receipts of \$50,000 or more from activities authorized under this chapter. The report must include the type of activity conducted, the date and location of the activity, the amount of gross receipts, the amount of authorized expenses, the value of prizes awarded, the amount of net proceeds, and other information the department may require. However, if the only activity conducted by a municipality or qualified organization during a calendar quarter is a raffle or lottery, then the municipality or qualified organization is not

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required to file a report under this subsection until the raffle or lottery is completed.

(b) A municipality or a qualified organization issued a permit under this chapter shall file an annual report with the department by March 15 of the year following the year in which activities were conducted, accompanied by the payment of the additional fee, as may be required under AS 05.15.020(b). The report must list the types of activities conducted, and, for each activity, the total amount of gross receipts, the total amount of authorized expenses, the total value of prizes awarded, and the total amount of net proceeds. (§ 6 ch 27 SLA 1960; am § 2 ch 182 SLA 1976; am § 7 ch 99 SLA 1988)

Effect of amendments. — The 1988 amendment rewrote this section to the extent that a detailed comparison is impracticable.

Sec. 05.15.083. Reports to department by operators. (a) An operator shall file a report with the department by the last business day of the month following each calendar quarter in which an activity was conducted. The report must include, for each authorizing permittee on whose behalf an activity was conducted during the quarter, the date and location of each activity, the type of activity conducted, the amount of gross receipts, the amount of authorized expenses, the value of prizes awarded, the amount of net proceeds paid, and other information the department may require; a completed Internal Revenue Service Form 941; and a copy of the operator's employer contributions and wage reports submitted to the Department of Labor for the quarter. However, if the only activity conducted by an operator during the calendar quarter is a raffle or lottery, then the operator is not required to file a report under this subsection until the raffle or lottery is completed.

(b) An operator shall file an annual report with the department no later than February 28 of the year following the year in which activities were conducted. The report must include, for each authorizing permittee on whose behalf an activity was conducted, the types of activities conducted, the total amount of gross receipts, the total amount of authorized expenses, the total value of prizes awarded, and the total amount of net proceeds paid to each authorizing permittee. The annual report must also include a completed Internal Revenue Service Form W-2 for each person employed by the operator during the preceding year. (§ 8 ch 99 SLA 1988)

Sec. 05.15.087. Reports to permittee and payment of net proceeds. (a) An operator shall file a monthly report with each authorizing permittee for which the operator has conducted an activity during the preceding month. The report must include a daily summary of activity conducted under the permit issued to the authorizing permit-

tee and an accounting of gross receipts, expenses, and net proceeds for the month. A check in the amount of the net proceeds due to the authorizing permittee for the month must accompany the report. The operator shall file the report by the 15th day after the end of the month covered by the report.

(b) An operator shall file a quarterly report with each authorizing permittee for which the operator has conducted an activity during the preceding calendar quarter. The report must contain quarterly summaries and year-to-date totals of the information provided under (a) of this section. The operator shall file the report by the last day of the month following the end of the calendar quarter.

(c) An operator shall file an annual report with each authorizing permittee for which the operator has conducted an activity during the preceding calendar year. The report must contain an annual summary of the information provided under (a) of this section. The operator shall file this report by February 28 of the year following the year in which the activities were conducted.

(d) An operator shall provide original invoice documents and deposit slips upon the request of an authorizing permittee for whom the operator has conducted activities. (§ 8 ch 99 SLA 1988)

Sec. 05.15.090. Reports to the legislature. Before April 15 of each year the commissioner shall submit a detailed report containing a summary of all reports required of permittees and operators. The attorney general and the commissioner of public safety shall, within 10 days after the convening of the legislature each year, submit a jointly prepared, detailed report outlining the effect, if any, of the operation of this chapter on the legal and law enforcement activities of the state. (§ 9 ch 27 SLA 1960; am § 3 ch 182 SLA 1976; am § 9 ch 99 SLA 1988)

Effect of amendments. — The 1988 amendment substituted "April 15" for "March 2," and "operators" for "recommending a permit fee scale that will cover costs of administration and enforcement" in the first sentence.

Sec. 05.15.095. General provisions relating to the filing of applications and reports and payment of fees. (a) The applications and reports to the department required by this chapter shall be signed under penalty of unsworn falsification by the following person, as applicable:

- (1) the member in charge for the qualified organization;
- (2) a person authorized to sign on behalf of the municipality;
- (3) the operator or the operator's agent;
- (4) the licensed pull-tab distributor or the distributor's agent; or
- (5) the licensed pull-tab manufacturer or the manufacturer's agent.

(b) A permittee or operator may not conduct an activity under this chapter during a period in which a report or fee is delinquent.

(c) A delinquent
(d) A permittee or operator who fails to pay the amount of a fee due within the prescribed time period shall be subject to a penalty if the cause, as determined by the department, is the amount of the fee. (§ 10 ch 99)

Revisor's note: "unsworn falsification" in for "perjury" in

- Section**
- 100. Issuance
 - 110. Authorize
 - 112. Member
 - 115. Contracts operator
 - 120. Eligibility
 - 122. Operator
 - 124. Municipality
 - 128. Revocation
 - 130. Commission
 - 140. Proof necessary

Sec. 05.15.100. The commissioner shall not be liable for the negligence of a permittee or operator. The privilege of a permittee or operator shall not be lost by the negligence of a permittee or operator. The commissioner shall not be liable for the negligence of a permittee or operator. The commissioner shall not be liable for the negligence of a permittee or operator.

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(c) A delinquent fee bears interest at the rate set by AS 43.05.225.
(d) A permittee or licensee under this chapter shall pay a penalty of one percent of the unpaid balance, as determined by the department, of a fee due under this chapter for each 30-day period or part of a 30-day period that the fee is delinquent. The department may waive the penalty if the failure to pay the fee on time is due to a reasonable cause, as defined by regulation adopted by the department. The amount of the penalty may not exceed 25 percent of the unpaid fee. (§ 10 ch 99 SLA 1988)

Revisor's notes. — In 1988 the term "unsworn falsification" was substituted for "perjury" in the introductory language of (a) of this section to correct a manifest error in § 10, ch. 99, SLA 1988.

Article 2. Licenses and Permits.

Section	Section
100. Issuance of permits and licenses	150. Limitation on use of proceeds
110. Authorized activities a privilege	160. Authorized expenses
112. Member in charge	165. Operators
115. Contracts between permittees and operators	167. Operator's bond
120. Eligibility for permit	170. Suspension of permit
122. Operator's license	180. Limitations on authorized activity
124. Municipal regulation of operators	181. Pull-tab manufacturer's license
128. Revocation of operator's license	183. Pull-tab distributor's license
130. Commissioner may impose additional requirements for eligibility	184. Pull-tab tax
140. Proof necessary to qualify for permit	185. Distribution of pull-tab games
	187. Operation of pull-tab games

Sec. 05.15.100. Issuance of permits and licenses. (a) The commissioner may issue a permit to a municipality or qualified organization. The permit gives the municipality or qualified organization the privilege of conducting bingo, raffles and lotteries, pull-tab games, ice classics, rain classics, goose classics, mercury classics, salmon classics, dog mushers' contests, fish derbies, and contests of skill.

(b) The commissioner also may issue a permit giving a municipality or qualified organization the privilege of conducting an activity involving the use of playing cards, dice, and numbers wheels. Each year, a municipality or qualified organization may apply for a permit under this subsection for either a single event lasting no more than three consecutive days, or for no more than three events lasting no more than one day each.

(c) The commissioner may issue an operator's license to a natural person to conduct an activity permitted under this chapter on behalf of a municipality or a qualified organization. The commissioner may also issue an operator's license to a municipality or a qualified organization to conduct an activity on behalf of another municipality or qualified organization. (§ 1 a ch 27 SLA 1960; am § 1 ch 66 SLA 1976;

am § 2 ch 27 SLA 1982; am § 2 ch 59 SLA 1983; am § 1 ch 93 SLA 1986; am § 2 ch 94 SLA 1986; am §§ 11, 12 ch 99 SLA 1988)

Effect of amendments. — The first 1986 amendment inserted "goose classics, mercury classics," in subsection (a) and inserted a comma following "derbies."

The second 1986 amendment in subsection (a) inserted "salmon classics," in the second sentence.

The 1988 amendment, in subsection (a), deleted "of revenue" following "commissioner" in the first sentence and, in the second sentence, inserted "qualified" and

"pull-tab games," and made a minor punctuation change; and added subsection (c).

Opinions of attorney general. — Charitable gaming permittees cannot combine their permits and aggregate their respective \$200,000 prize limits (set by 15 AAC 105.120), since the purpose of this chapter is simply to permit individual permittee organizations to conduct relatively small scale activities, such as lotteries, themselves. May 7, 1987, Op. Att'y Gen.

NOTES TO DECISIONS

Quoted in *State v. A.L.I.V.E. Voluntary*, 606 P.2d 769 (Alaska 1980).

Collateral references. — 38 Am. Jur. 2d, Gambling, §§ 10-19.

38 C.J.S., Gaming, §§ 2, 50, 80-83; 54 C.J.S., Lotteries, §§ 8, 11-13.

Sec. 05.15.110. Authorized activities a privilege. The activities specified in AS 05.15.100 may be permitted as a privilege and do not confer a right upon any person to conduct the activities. (§ 1 b ch 27 SLA 1960)

Sec. 05.15.112. Member in charge. (a) Each municipality or qualified organization that receives a permit under this chapter shall designate a member in charge.

(b) The member in charge is responsible for preparation, maintenance, and transmittal of all records and reports required of the permittee. The member in charge shall be a member of the qualified organization or the board of directors of the qualified organization or an employee of the municipality.

(c) The member in charge shall monitor the operator's performance under and compliance with contracts for the conduct of activities on behalf of the authorizing permittee.

(d) The municipality or qualified organization shall designate alternate members in charge who are responsible for the duties of the member in charge in the absence of the member in charge. (§ 13 ch 99 SLA 1988)

Sec. 05.1:
(a) A municipality or qualified organization shall not conduct an activity unless the operator license authority of the municipality or qualified organization has been notified in writing of the activity.

(b) The contract must include the name of the operator, the operator's name, address, and other pertinent information.

(c) A permittee shall not be permitted to conduct an activity unless the operator license authority of the municipality or qualified organization has been notified in writing of the activity.

(d) A permittee shall not contract with a person to conduct an activity unless the contract is approved by the department of social services.

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Sec. 05.15.115. Contracts between permittees and operators.

(a) A municipality or qualified organization holding a permit to conduct an activity under this chapter may enter into a contract with an operator licensed under this chapter to conduct on behalf of the municipality or qualified organization those activities permitted under the authority of the permit.

(b) The contract between an authorizing permittee and an operator must include the amount and form of compensation to be paid to the operator, the term of the contract, the activities to be conducted by the operator on behalf of the permittee, the location where the activities are to be conducted, the name and address of the member in charge, and other provisions the department may require.

(c) A permittee may not contract with more than one operator at a time to conduct the same type of activity. For the purposes of this subsection, bingo games, raffles, lotteries, pull-tab games, ice classics, rain classics, goose classics, mercury classics, salmon classics, dog mushers' contests, fish derbies, contests of skill, and all activities permitted under AS 05.15.100(b) are each a different type of activity.

(d) A permittee shall submit to the department a copy of each contract with an operator with whom the permittee contracts to conduct activities subject to this chapter. The permittee shall submit to the department a copy of the contract or subsequent amendment of the contract by certified mail at least 15 days before activities are conducted under the contract or amended contract. (§ 13 ch 99 SLA 1988)

Sec. 05.15.120. Eligibility for permit. An applicant shall be a municipality or qualified organization to be eligible for a permit. (§ 1 c ch 27 SLA 1960; am § 3 ch 27 SLA 1982)

NOTES TO DECISIONS

Cited in *State v. A.L.I.V.E. Voluntary*,
606 P.2d 769 (Alaska 1980).

Sec. 05.15.122. Operator's license. (a) A person, municipality, or qualified organization may not conduct an activity subject to this chapter on behalf of a municipality or qualified organization unless the person, municipality, or qualified organization has received an operator's license issued by the department.

(b) The department may issue an operator's license to a natural person, municipality, or qualified organization that

(1) applies on the form provided by the department;

(2) pays the annual fee of \$500;

(3) discloses the identity of persons employed by the applicant in a managerial or supervisory capacity;

(4) submits proof of liability insurance satisfactory to the department; and

(5) posts a bond or security satisfactory to the department in the amount of \$25,000 for each permit under which the operator operates up to a maximum of \$100,000.

(c) The department may not issue an operator's license to an applicant if the applicant or a person employed by the applicant in a managerial or supervisory capacity, has been convicted of, in prison for, or on parole for a felony within the preceding five years, or convicted of a crime involving theft or dishonesty or of a violation of a municipal, state, or federal gambling law.

(d) A licensee may not employ a person in a managerial or supervisory capacity if the person has been convicted of, in prison for, or on parole for a felony within the preceding five years, or convicted of a crime involving theft or dishonesty or of a violation of a municipal, state, or federal gambling law. (§ 14 ch 99 SLA 1988)

Sec. 05.15.124. Municipal regulation of operators. A municipality may by ordinance prohibit an operator from conducting activities under this chapter within the municipality. (§ 14 ch 99 SLA 1988)

Sec. 05.15.128. Revocation of operator's license. (a) The department shall revoke the license of an operator who does not

(1) report an adjusted gross income of at least 15 percent of gross income for two consecutive quarters based on the total operation of the operator; or

(2) pay to each authorizing permittee for two consecutive quarters at least 15 percent of the adjusted gross income, as determined under (1) of this subsection, received from activities conducted on behalf of the authorizing permittee.

(b) A person, municipality, or qualified organization whose operator's license has been revoked under this section may appeal the revocation if the person, municipality, or qualified organization submits to and pays for a complete audit of the operator's financial records by the department. The results of the audit are conclusive. (§ 14 ch 99 SLA 1988)

Sec. 05.15.130. Commissioner may impose additional requirements for eligibility. The commissioner may supplement the definitions of qualified organizations and activities by regulations adopted under this chapter adding to the definitions additional requirements that the commissioner considers necessary for the best interests of the public or for the proper administration of this chapter. (§ 1d ch 27 SLA 1960)

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AMUSEMENTS AND SPORTS

§ 05.15.150

Sec. 05.15.140. Proof necessary to qualify for permit. (a) The commissioner may not issue or renew a permit except upon satisfactory proof that the applicant is a municipality or qualified organization, the activity may be permitted under this chapter, and the issuance of a permit is not detrimental to the best interests of the public. Upon request of the commissioner, the applicant shall prove conclusively each of these requirements before a permit may be issued or renewed.

(b) In an application for a permit, a municipality or qualified organization shall disclose the name and address of each person responsible for the operation of the activity and whether any person named

(1) has been convicted of, in prison for, or on parole for a felony within the preceding five years, or convicted of a crime involving theft or dishonesty or of a violation of a municipal, state, or federal gambling law; or

(2) has a prohibited financial interest, as defined in regulations adopted by the commissioner, in the operation of the activity.

(c) The commissioner may not issue a permit for an activity operated by a person who has been convicted of, in prison for, or on parole for a felony within the preceding five years, or convicted of a crime involving theft or dishonesty or of a violation of a municipal, state, or federal gambling law.

(d) Application forms for permits must contain a notice that a false statement in the application is punishable by law. (§ 1 d ch 27 SLA 1960; am § 4 ch 27 SLA 1982; am § 3 ch 59 SLA 1983; am §§ 15, 16 ch 99 SLA 1988; am E.O. No. 74 § 3 (1989))

Effect of amendments. — The 1938 amendment rewrote subsections (b)(1) and (c), which read "has ever been convicted of a felony or gambling misdemeanor; or" and "The commissioner may not issue a permit for an activity operated by a per-

son who has been convicted of a felony or a gambling misdemeanor," respectively.

The 1989 amendment, effective July 1, 1989, deleted "of revenue" following "commissioner" in the second sentence in subsection (a).

Sec. 05.15.150. Limitation on use of proceeds. (a) The authority to conduct the activity authorized by this chapter is contingent upon the dedication of the net proceeds of the raffles or contests to the awarding of prizes to contestants or participants and to political, educational, civic, public, charitable, patriotic or religious uses in the state. "Political, educational, civic, public, charitable, patriotic, or religious uses" means uses benefiting persons either by bringing them under the influence of education or religion or relieving them from disease, suffering, or constraint, or by assisting them in establishing themselves in life, or by providing for the promotion of the welfare and well-being of the membership of the organization within their own community, or through aiding candidates for public office or groups that support candidates for public office, or by erecting or maintaining

public buildings or works, or lessening the burden on government, but does not include the erection, acquisition, improvement, maintenance, or repair of real, personal, or mixed property unless it is used exclusively for one or more of the uses stated.

(b) The net proceeds derived from the activity must be devoted within one year to one or more of the uses stated in (a) of this section. A municipality or qualified organization desiring to hold the net proceeds for a period longer than one year must apply to the commissioner for special permission and upon good cause shown the commissioner may grant the request. (§ 1 e ch 27 SLA 1960; am § 2 ch 66 SLA 1976; am § 5 ch 27 SLA 1982)

Opinions of attorney general. — Proceeds from raffles may be donated, not loaned, to a political candidate and may not exceed the \$1000 limitation imposed by AS 15.13.070(a). This limit applies even if the permit holder is a "controlled group" under AS 15.13.130.4). June 15, 1987, Op. Att'y Gen.

NOTES TO DECISIONS

Quoted in State v. A.L.I.V.E. Voluntary, 606 P.2d 769 (Alaska 1980).

Sec. 05.15.160. Authorized expenses. (a) The only expenses that may be incurred or paid in connection with the operation of an activity under a permit issued under this chapter are bona fide expenses reasonably necessary for

(1) goods, wares, and merchandise necessary for the operation of the activity;

(2) personal services involved with the operation of the activity, including those performed by

(A) an employee of the permittee; or

(B) an operator hired by the permittee to conduct the activity if the compensation is not related to the receipts from the activity.

(b) Municipalities, qualified organizations, and operators may pay their employees a reasonable amount in wages or other compensation for personal services rendered by their employees while the employees are engaged in activities subject to this chapter. A reasonable amount of compensation is an amount approximating the amount ordinarily paid by similar businesses for similar work performed under similar circumstances. (§ 1 e ch 27 SLA 1960; am § 4 ch 59 SLA 1983; am §§ 17, 18 ch 99 SLA 1988)

Effect of amendments. — The 1988 amendment added subsection (b) and, in subsection (a), substituted "The only expenses that may" for "An item of expense may not" and "are" for "except for" in the introductory language, and combined together former paragraphs (2) and (3) into present paragraph (2) and rewrote and restructured the contents thereof.

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§ 05.15.167

Sec. 05.15.165. Operators. (a) An operator shall pay net proceeds to the authorizing permittee by check.

(b) If the department finds that an operator has incurred expenses that are not authorized under AS 05.15.160, the department shall order the operator to refund to the authorizing permittee the amount of the unauthorized expenses. The operator shall pay the authorizing permittee interest on the amount ordered to be paid at the rate of 1.5 percent a month for each month or fraction of a month between the date of the activity and the date the refund is made.

(c) The operator shall post in a public place on the premises where the activities are conducted the operator's license and a copy of the permit of each authorizing permittee with whom the operator has a contract to conduct activities at the location.

(d) An operator shall obtain liability insurance covering each location where the licensee conducts an activity subject to this chapter. The operator shall provide upon request proof of insurance for each location to the department. The operator and the insurer shall inform the department of changes in the coverage of the insurance or of cancellation of the insurance. Cancellation of the insurance immediately suspends the rights of the operator to conduct activities under this chapter at the location covered by the insurance until subsequent insurance is obtained.

(e) An operator shall have its financial records reviewed annually by a certified public accountant. The operator shall submit the results of the review to the department by February 28 of the year following the year for which the review is conducted.

(f) An operator may not

(1) charge losses resulting from bad checks or uncollectable debts against the net proceeds due to the authorizing permittee;

(2) extend credit to players;

(3) employ house players;

(4) allow the operator's employees to play a game conducted by the operator at the location where the employee works for the operator. (§ 19 ch 99 SLA 1988)

Sec. 05.15.167. Operator's bond. (a) The bond or security filed under AS 05.15.122(b) must be made payable to the department and must be conditioned upon payment of the amounts due to the department and payment of net proceeds due to the authorizing permittee. If the operator fails to make the required payments, the operator forfeits the bond or security to the department.

(b) The amount forfeited under (a) of this section shall be first used to satisfy delinquent fees, interest, and penalties due the department under this chapter. If the bond or security is not exhausted by payment of delinquent fees, interest, and penalties, the department may use the remaining amount to pay net proceeds due an authorizing

permittee. The total amount available for payment of net proceeds shall be prorated among the permittees to whom proceeds are due from that operator.

(c) The operator and the surety shall inform the department if the bond is cancelled or the security is impaired. (§ 19 ch 99 SLA 1988)

Sec. 05.15.170. Suspension of permit. The commissioner may suspend a permit pending investigation or hearing. The suspension is effective upon the giving of notice to the permittee. The notice may be given by the delivery or handing of written notice to the permittee or a person conducting an activity under the permittee's permit or the mailing of notice to the permittee at the address shown on the permit. A permit may be suspended under this section for a period of 90 days or until the end of a hearing or other proceeding begun during suspension. The authority of the commissioner to suspend a permit is not subject to the Administrative Procedure Act (AS 44.62). (§ 5 ch 27 SLA 1960)

Sec. 05.15.180. Limitations on authorized activity. (a) Except as provided in AS 05.15.100(b), this chapter does not authorize the use of playing cards, dice, roulette wheels, coin-operated instruments or machines, or other objects or instruments used, designed, or intended primarily for gaming or gambling or any other method or implement not expressly authorized by the commissioner.

(b) With the exception of raffles, lotteries, bingo games, pull-tab games, rain classics, goose classics, mercury classics, salmon classics, and other activities authorized under AS 05.15.100(b), an activity may not be licensed under this chapter unless it existed in the state in substantially the same form and was conducted in substantially the same manner before January 1, 1959.

(c) The operation of activities licensed under AS 05.15.100(b) is limited as follows:

- (1) cash prizes may not be awarded;
- (2) only money substitutes such as chips or scrip may be used by a player in the activity;
- (3) the money substitutes may be exchanged only for prizes other than money and may not be otherwise exchanged or sold; and
- (4) additional limitations may be established by the commissioner under adopted regulations.

(d) The total value of door prizes offered or awarded under authority of a permit issued to a municipality or qualified organization under this chapter may not exceed \$20,000 a month or \$240,000 a year.

(e) The total value of all door prizes offered or awarded at a single facility or bingo hall or parlor by an operator on behalf of authorizing permittees or by a permittee in conjunction with other permittees may not exceed \$20,000 a month or \$240,000 a year.

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§ 05.15.183

(f) A person under the age of 19 years may not play a bingo game.

(g) A municipality or a qualified organization may award a maximum of \$1,000,000 in prizes each year in activities authorized under this chapter; however, if a municipality or a qualified organization contracts with an operator to conduct on its behalf activities authorized under this chapter, the municipality or qualified organization may award a maximum of \$500,000 in prizes each year. In this subsection "activities authorized under this chapter" means all activities subject to this chapter other than bingo. (§ 2 ch 27 SLA 1960; am § 3 ch 66 SLA 1976; am §§ 5, 6 ch 59 SLA 1983; am § 2 ch 93 SLA 1986; am § 3 ch 94 SLA 1986; am §§ 20, 21 ch 99 SLA 1988)

Effect of amendments. — The first 1986 amendment inserted "goose classics, mercury classics," in subsection (b).

The second 1986 amendment in subsection (b) inserted "salmon classics," and "not" preceding "be licensed" and substituted "an" for "no."

The 1988 amendment inserted "bingo

games, pull-tab games" in subsection (b) and added subsections (d)-(g).

Opinions of attorney general. — The limitation in subsection (a) on machines intended primarily for gaming or gambling applies to token-operated bingo machines. November 6, 1987, Op. Att'y Gen.

NOTES TO DECISIONS

Quoted in Pin-Ball Mach. Serial No. 2334 v. State, 371 P.2d 805 (Alaska 1962).

Sec. 05.15.181. Pull-tab manufacturer's license. (a) A person may not manufacture pull-tabs in the state unless the person has received a pull-tab manufacturer's license issued by the department.

(b) The department may issue a pull-tab manufacturer's license to a person who pays an annual fee of \$500.

(c) Each series of pull-tabs manufactured in the state must be sealed and have a serial number label issued by the National Association of Fundraising Ticket Manufacturers or other serial number label approved by the department.

(d) A pull-tab manufacturer may distribute pull-tabs only to a licensed pull-tab distributor unless the pull-tab manufacturer is also a licensed pull-tab distributor.

(e) Each pull-tab manufacturer shall report to the department by the last business day of the month on each series of pull-tabs distributed during the preceding month, including the serial number of each series distributed and the name of the distributor to whom the series was distributed. (§ 22 ch 99 SLA 1988)

Sec. 05.15.182. Pull-tab distributor's license. (a) A person may not distribute pull-tab games unless the person has received a pull-tab distributor's license issued by the department.

(b) The department may issue a pull-tab distributor's license to a person who pays an annual fee of \$1,000.

(c) Pull-tabs may be distributed only from a location in the state. A person may not distribute pull-tabs directly to another person in the state from a location outside of this state.

(d) A pull-tab distributor shall report to the department by the last business day of each month on each pull-tab series distributed in the preceding month. The report must include the name of the permittee to whom each series of pull-tabs is distributed and the serial number of each series. (§ 22 ch 99 SLA 1988)

Sec. 05.15.184. Pull-tab tax. A pull-tab distributor shall collect a tax of three percent of an amount equal to the gross receipts less prizes awarded on each series of pull-tabs distributed. The pull-tab distributor shall pay to the department the tax collected in the preceding month at the time that the report under AS 05.15.183(d) is filed with the department. (§ 22 ch 99 SLA 1988)

Revisor's notes. — Enacted as AS 05.15.183(e). Renumbered in 1988.

Sec. 05.15.185. Distribution of pull-tab games. Each series of pull-tabs distributed in the state must be sealed and have a serial number label issued by the National Association of Fundraising Ticket Manufacturers or other serial number label approved by the department and may be distributed only to a municipality or a qualified organization that has obtained a permit issued under this chapter or to an operator on behalf of an authorizing permittee. (§ 22 ch 99 SLA 1988)

Sec. 05.15.187. Operation of pull-tab games. (a) A municipality or qualified organization may operate pull-tab games. Pull-tabs shall be obtained from a licensed distributor.

(b) A pull-tab series may not be sold at more than one location during the same day.

(c) Pull-tabs from different series may not be mixed or combined, unless 10 percent or less of a series remains unsold, in which case, the remaining pull-tabs may be combined with a different series having an identical price and prize structure.

(d) A pull-tab series may not be withdrawn from sale until all pull-tabs in the series are sold, except that a pull-tab series may be withdrawn from sale if a manufacturing defect exists in the series and the department is notified of the defect and of the withdrawal from sale within a period established by regulation by the department.

(e) Pull-tabs may not be sold to a person under the age of 19 years. A person under the age of 19 years may not purchase a pull-tab.

(f) Each municipality or qualified organization that had gross receipts exceeding \$100,000 during the preceding year from activities

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conducted under this chapter or that is required to report under AS 05.15.080(a), that conducts a pull-tab game shall maintain records for two years of each prize of \$50 or more, the first day and last day that each series was distributed, the serial number of each series, and the distributor from whom each series was purchased.

(g) Notwithstanding other provisions of this chapter, a pull-tab game that confers an additional right upon all or some of the purchasers of a pull-tab series to participate in a lottery for additional prizes may not be conducted in the state unless a surety bond in the amount of \$250,000 conditioned upon payment of all prizes and awards when due is submitted to the department by the operator or authorizing permittee and approved by the attorney general. (§ 22 ch 99 SLA 1988)

Editor's notes. — Section 37, ch. 99, SLA 1988 provides that notwithstanding the provisions of (b) of this section, "a pull-tab series may be sold at more than one location during the same day if the pull-tab series also confers an additional right upon all or some of the purchasers of the series to participate in a lottery for additional prizes and the pull-tab series is sold before July 1, 1989."

Opinions of attorney general — Sale of pull-tabs in bars is legal but only if the pull-tabs are sold by a charitable gaming permittee and there has been compliance with all provisions of this title and 15 AAC 105. November 6, 1987, Op. Att'y Gen. (rendered prior to enactment of this section).

Article 3. General Provisions.

Section

190. Interpretation and construction
200. Penalties

Section

210. Definitions
995. Short title

Sec. 05.15.190. Interpretation and construction. If any provision of this chapter, or regulation adopted under this chapter, is determined to be unlawful, then all permits issued in connection with the licensed activity to which the unlawful provision or regulation related are cancelled. (§ 8 ch 27 SLA 1960)

Collateral references. — 38 Am. Jur. 2d, Gambling, § 18.
54 C.J.S., Lotteries, §§ 9, 10.

Sec. 05.15.200. Penalties. (a) A person who knowingly violates or aids or solicits a person to violate this chapter is guilty of a violation for the first offense and a class B misdemeanor for the second and each subsequent offense.

(b) A person who, with the intent to mislead a public servant in the performance of the public servant's duty, submits a false statement in an application for a permit under this chapter, is guilty of unsworn falsification. (§ 7 ch 27 SLA 1960; am § 7 ch 59 SLA 1983)

Cross references. — For fines and sentences for class B misdemeanors, see AS 12.55.025 and AS 12.55.135, respectively; for unsworn falsification, see AS 11.56.210.

Sec. 05.15.210. Definitions. In this chapter

(1) "adjusted gross income" means gross income less prizes awarded and state, federal, and municipal taxes paid or owed on the income;

(2) "authorizing permittee" means a municipality or qualified organization that authorizes an operator to conduct an activity subject to this chapter on its behalf;

(3) "bingo" means a game of chance of, and restricted to, the selling of rights to participate, and the awarding of prizes, in the specific kind of game of chance sometimes known as bingo or lotto, played with cards bearing numbers or other designations, five or more in one line, the holder covering numbers when objects similarly numbered are drawn from a receptacle, and the game being won by the person who first covers a previously designated arrangement of numbers on the card;

(4) "charitable organization" means an organization, not for pecuniary profit, that is operated for the relief of poverty, distress, or other condition of public concern in the state;

(5) "civic or service organization" means any branch or lodge or chapter of a national or state organization that is a civic or service organization, not for pecuniary profit, and authorized by its written constitution, charter, or articles of incorporation, or bylaws to engage in a fraternal, civic, or service purpose in the state;

(6) "commissioner" means the commissioner of commerce and economic development;

(7) "contest of skill" means a contest or game in which prizes are awarded for the demonstration of human skills in marksmanship, races, and other athletic events;

(8) "department" means the Department of Commerce and Economic Development;

(9) "distribute" means sell, distribute, furnish, or supply;

(10) "dog mushers' association" means a civic, service, or charitable organization in the state, not for pecuniary profit, formed exclusively to promote interest in the breeding and training of dog teams for work or recreational and racing purposes, but does not include an organization formed or operated for gaming or gambling purposes;

(11) "dog mushers' contest" means a contest in which prizes are awarded for the correct guess of the racing time of a dog team or of team position in the race, including prizes to the race contestants;

(12) "educational organization" means a civic, service, or charitable organization in the state, not for pecuniary profit, whose primary purpose is educational in nature and designed to develop the capabilities of individuals by instruction;

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(13) "fishing-derby association" means a civic, service, or charitable organization in the state, not for pecuniary profit, whose primary purpose is to promote interest in fishing for recreational purposes, but does not include an organization formed or operated for gaming or gambling purposes;

(14) "fish derby" means a contest in which prizes are awarded for catching fish;

(15) "fraternal organization" means a civic, service, or charitable organization in the state, except a college and high school fraternity, not for pecuniary profit, that is a branch or lodge or chapter, of a national or state organization and exists for the common business, brotherhood, or other interest of its members;

(16) "goose classic" means a game of chance where a prize of money is awarded for the closest guess of the time of the arrival of the first goose in spring to Creamer's Field in Fairbanks or to the Kenai River Flats near Kenai and is limited to the goose classics operated and administered by the Fairbanks Montessori Association and by the Kenai Chamber of Commerce;

(17) "gross receipts" means receipts from the sale of shares, tickets, or rights connected with participation in any activity permitted under this chapter or the right to participate, including admission, fee or charge, sale of equipment or supplies, and all other miscellaneous receipts;

(18) "ice classic" means a game of chance where a prize of money is awarded for the closest guess of the time the ice moves in a body of water or watercourse in the state and is limited to the Nenana and Chena Ice Pools in the same manner as they were conducted in 1959 and previous years, a Kuskokwim Ice Classic to be operated and administered by Bethel Social Services, Inc., a Kenai River Ice Classic to be operated and administered by the Kenai and Soldotna Rotary Clubs jointly or by either the Kenai Rotary Club or the Soldotna Rotary Club, a Yukon River Ice Classic to be operated and administered by the City of Fort Yukon, and an Alaska-Soviet Ice Classic to be operated and administered jointly by CAMAI, Inc., and the City of Diomede;

(19) "labor organization" means an organization, not for pecuniary profit, constituted wholly or partly to bargain collectively or deal with employers, including the state and its political subdivisions, concerning grievances, terms, or conditions of employment or other mutual aid or protection in connection with employees;

(20) "mercury classic" means a game of chance where a prize of money is awarded for the closest guess of the time the temperature reaches a certain degree and is limited to the mercury classic operated and administered by the Greater Fairbanks Chamber of Commerce;

(21) "municipality" means a political subdivision of the state that is a home rule or general law city or borough or a unified municipality;

(22) "net proceeds" means the gross receipts from an authorized activity less the fee described in AS 05.15.020(b), the expenses authorized by AS 05.15.160, and the prizes awarded at the activity;

(23) "numbers wheel" means any electronic, mechanical, or other device with numbers or other figures that are selected randomly and used in a game of chance in which the outcome is determined by the number or figure selected by the device; not including games in which a hamster or other animal is placed in an enclosure with several numbered exit holes and the winner is determined by which hole the hamster or other animal exits, or slot machines or other devices that operate by insertion of a coin or other object that may entitle the person operating the machine to receive a prize by strict dependence on the element of chance;

(24) "operator" means a natural person who, or a municipality or qualified organization that, has obtained a license to conduct an activity subject to this chapter on behalf of a permittee;

(25) "police or fire department and company" means a civic, service, or charitable organization in the state, not for pecuniary profit, consisting of members of a police department or fire company established by the state or a political subdivision of the state;

(26) "political organization" means an organization or club organized under or formally affiliated with a political party as defined in AS 15.60.010;

(27) "pull-tab game" means a game of chance where a card, the face of which is covered to conceal a number, symbol, or set of symbols, is purchased by the participant and where a prize is awarded for a card containing certain numbers or symbols designated in advance and at random;

(28) "qualified organization" means a bona fide civic or service organization or a bona fide religious, charitable, fraternal, labor, political, or educational organization, police or fire department and company, dog mushers' association, outboard motor association, or fishing derby or nonprofit trade association in the state, that operates without profits to its members and that has been in existence continually for a period of three years immediately before applying for a license; the organization may be a firm, corporation, company, association, or partnership;

(29) "raffle and lottery" means the selling of rights to participate and the awarding of prizes in a game of chance conducted by the drawing for prizes by lot;

(30) "rain classic" means a game of chance in that a prize is awarded for the closest guess of the amount of precipitation that is recorded at a certain location during a certain length of time;

(31) "religious organization" means an organization, church, body of communicants, or group, not for pecuniary profit, gathered in common membership for mutual support and edification in piety, worship,

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and religious observances, or a society, not for pecuniary profit, of individuals united for religious purposes at a definite place and that is recognized as a religious organization under the federal income tax laws and the selective service law;

(32) "salmon classic" means a game of chance, to be operated and administered by the United Fishermen of Alaska, in which a prize of money is awarded for the closest guess of the total number of salmon harvested commercially statewide, as determined by the Department of Fish and Game, during a certain period of time;

(33) "series" means a unit of pull-tabs with the same serial number;

(34) "veterans organization" means a civic, service, or charitable organization in the state, or a branch or lodge or chapter of a national or state organization in the state, not for pecuniary profit, the membership of which consists of individuals who were members of the armed services or forces of the United States. (§ 1 ch 27 SLA 1960; am §§ 4, 5 ch 66 SLA 1976; am §§ 6 — 8 ch 27 SLA 1982; am § 8 ch 59 SLA 1983; am § 1 ch 27 SLA 1985; am §§ 3, 4 ch 93 SLA 1986; am § 4 ch 94 SLA 1986; am §§ 23 — 35 ch 99 SLA 1988; am E.O. No. 74 §§ 4, 5 (1989); am § 1 ch 76 SLA 1989)

Revisor's notes. — Reorganized in 1933, 1986, and 1988 to alphabetize the defined terms.

Effect of amendments. — The 1985 amendment in paragraph (18) substituted "where" for "in which" and added "and a Kuskokwim Ice Classic to be operated and administered by Bethel Social Services, Inc."

The first 1986 amendment in paragraph (18) deleted "and" preceding "a Kuskokwim Ice Classic" and added the language beginning ", a Kenai River Ice Classic" at the end of the paragraph and added paragraphs (16) and (20).

The second 1986 amendment added paragraph (32).

The 1988 amendment added paragraphs (1) and (2); deleted "and that has been so engaged for five years before applying for a permit under this chapter" at the end of paragraph (4); in paragraph (5), made a minor punctuation change and deleted "and that has been so engaged for five years before applying for a license under this chapter" at the end; inserted paragraphs (6), (8), and (9); in paragraph (10), made a minor punctuation change and deleted "and which has been in existence for five years before applying for a permit under this chapter" following "racing purposes"; in paragraph (12), made a minor punctuation change and deleted "and which has been in existence for five years

before applying for a license under this chapter" at the end; in paragraph (13), made a minor punctuation change and deleted "and which has been in existence for five years before applying for a permit under this chapter" following "recreational purposes"; in paragraph (15), made a minor punctuation change and deleted "and that has so existed for five years before applying for a license" at the end; repealed and recreated paragraph (22), which formerly related to the same subject matter; inserted paragraph (24); in paragraph (25), made a minor punctuation change, inserted "consisting of members of a police department or fire company," and deleted "that has been in existence for five years before applying for a license under this chapter" at the end; inserted paragraph (27); in paragraph (28), inserted "and" following "police or fire department," substituted "three" for "five," and made a series of minor stylistic changes; repealed and recreated paragraph (29), which formerly related to the same subject matter; in paragraph (31), made a minor punctuation change and deleted "has been so gathered or united for five years before applying for a license and" preceding "is recognized"; inserted paragraph (33); and, in paragraph (34), made a minor punctuation change and deleted "and which has been in existence for five years before applying for a license under this chapter" at the end.

6-2179E
Gaguine
4/5/90

*Title
Change*

Original sponsor(s): SEN. ZHAROFF

1 IN THE SENATE

BY THE C&RA COMMITTEE

2 CS FOR SENATE BILL NO. 484 (C&RA)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to multiple-beneficiary charitable
7 gaming permits; ^{and door prizes at bingo halls} prohibiting municipalities and quali-
8 fied organizations holding charitable gaming permits
9 from working in conjunction with one another, except
10 in certain circumstances; and providing for an effec-
11 tive date."

12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

13 * Section 1. AS 05.15.100(a) is amended to read:

14 ~~(a) The commissioner may issue a permit to a municipality or
15 qualified organization. The permit gives the municipality or quali-
16 fied organization the privilege of conducting bingo, raffles and
17 lotteries, pull-tab games, ice classics, rain classics, goose clas-
18 sics, mercury classics, salmon classics, dog mushers' contests, fish
19 derbies, and contests of skill. Municipalities and qualified organi-
20 zations holding permits under this subsection may not work in conjunc-
21 tion with one another unless they jointly enter into a contract with
22 an operator under AS 05.15.115.~~

23 * Sec. 2. AS 05.15.100 is amended by adding a new subsection to read:

24 (d) The commissioner may issue a multiple-beneficiary permit to
25 two to four municipalities or qualified organizations or to a com-
26 bination of two to four municipalities and qualified organizations
27 that apply jointly for the permit. The permit gives the permit hold-
28 ers the privilege of jointly conducting the activities specified in
29 (a) and (b) of this section, subject to the restrictions set out in

1 (b) of this section.

2 * Sec. 3. AS 05.15.112(a) is amended to read:

3 (a) Each municipality or qualified organization that receives a
4 permit under this chapter shall designate a member in charge. Municipalities and qualified organizations that hold a multiple-beneficiary permit shall jointly designate one member in charge.

7 * Sec. 4. AS 05.15.112(b) is amended to read:

8 (b) The member in charge is responsible for preparation, maintenance, and transmittal of all records and reports required of the
9 permittee. The member in charge shall be a member of the qualified
10 organization or the board of directors of the qualified organization
11 or an employee of the municipality, or, in the case of a multiple-beneficiary permit, a member of one of the municipalities or qualified organizations holding the permit.

15 * Sec. 5. AS 05.15.112(d) is amended to read:

16 (d) The municipality or qualified organization, or the holders of a multiple-beneficiary permit, shall designate alternate members in
17 charge who are responsible for the duties of the member in charge in
18 the absence of the member in charge.

20 * Sec. 6. AS 05.15 is amended by adding a new section to read:

21 Sec. 05.15.145. MULTIPLE-BENEFICIARY PERMITS. (a) Two to four
22 municipalities or qualified organizations, or a combination of two to
23 four municipalities and qualified organizations, may jointly apply for
24 a multiple-beneficiary permit under AS 05.15.100(d). The commissioner
25 may not issue or renew a permit except upon satisfactory proof that
26 each joint applicant is a municipality or qualified organization, the
27 activity may be permitted under this chapter, and the issuance of a
28 permit is not detrimental to the best interests of the public. Upon
29 request of the commissioner, the joint applicants shall prove

1 conclusively each of these requirements before a permit may be issued
2 or renewed.

3 (b) The provisions of AS 05.15.140(b) - (d) apply to multiple-
4 beneficiary permits and applications for them.

5 (c) A municipality or qualified organization that is among the
6 holders of a multiple-beneficiary permit may not hold another permit
7 under this chapter.

8 (d) A municipality or qualified organization that is among the
9 holders of a multiple-beneficiary permit may withdraw from the permit
0 by giving written notice of intent to withdraw to the department and
1 to the other holders of the permit. The effective date of the with-
2 drawal is 30 days after the department receives written notice of
3 intent. A municipality or qualified organization that withdraws from
4 a multiple-beneficiary permit may apply for a permit under AS 05.15.-
5 100(a), but its share of the prizes awarded under the multiple-bene-
6 ficiary permit and the prizes it awards under its own permit are
7 subject to the maximums established in AS 05.15.180(g).

8 (e) The holders of a multiple-beneficiary permit shall jointly
9 file reports with the department that comply with the reporting re-
0 quirements imposed on operators under AS 05.15.083.

21 * Sec. 7. AS 05.15.180(d) is amended to read:

22 (d) The total value of door prizes offered or awarded under
23 authority of a permit issued to a municipality or qualified orga-
24 nization under this chapter or under authority of a multiple-benefici-
25 ary permit may not exceed \$20,000 a month or \$240,000 a year.

26 * Sec. 8. AS 05.15.180(e) is amended to read:

27 (e) The total value of all door prizes offered or awarded at a
28 single facility or bingo hall or parlor by an operator on behalf of
29 authorizing permittees [OR BY A PERMITTEE IN CONJUNCTION WITH OTHER

1 PERMITTEES] may not exceed \$20,000 a month or \$240,000 a year.

2 * Sec. 9. AS 05.15.180(g) is amended to read:

3 (g) A municipality or a qualified organization may award a
4 maximum of \$1,000,000 in prizes each year in activities authorized
5 under this chapter; however, if a municipality or a qualified orga-
6 nization contracts with an operator to conduct on its behalf activ-
7 ities authorized under this chapter, the municipality or qualified
8 organization may award a maximum of \$500,000 in prizes each year. The
9 holders of a multiple-beneficiary permit under AS 05.15.100(d) may
10 award a maximum in prizes each year of \$1,000,000 times the number of
11 holders of the permit for activities authorized under this chapter.

12 In this subsection "activities authorized under this chapter" means
13 all activities subject to this chapter other than bingo.

14 * Sec. 10. AS 05.15.187(f) is amended to read:

15 (f) Each permittee [MUNICIPALITY OR QUALIFIED ORGANIZATION] that
16 had gross receipts exceeding \$100,000 during the preceding year from
17 activities conducted under this chapter or that is required to report
18 under AS 05.15.080(a), that conducts a pull-tab game shall maintain
19 records for two years of each prize of \$50 or more, the first day and
20 last day that each series was distributed, the serial number of each
21 series, and the distributor from whom each series was purchased. In
22 this section "permittee" includes municipalities and qualified orga-
23 nizations that jointly hold a multiple-beneficiary permit.

24 * Sec. 11. This Act takes effect immediately under AS 01.10.070(c).
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Alaska State Legislature

Senator Mike Szymanski

While in Session:
P.O. Box V
Juneau, Alaska 99811
(907) 465-4978

Interim:
3111 C Street, Suite 510
Anchorage, Alaska 99503
(907) 561-7617
or
165 E. Parks Highway
Wasilla, Alaska 99687
(907) 376-6453

MEMORANDUM

To: Senator Jan Faiks, Chairman
Senate Judiciary Committee

From: Senator Mike Szymanski

Re: CSSB 484 (C&RA)

The Senate C&RA Committee passed out a CS for SB 484 with an error that will require correcting in Senate Judiciary. The committee mistakenly omitted language which would prevent multiple-beneficiary permit holders from working in conjunction with each other without using an operator. This language needs to be added back into the bill.

John Gaguine has been the drafter working on this legislation and he will be able to assist you

Original sponsor(s): SEN. ZHAROFF

1 IN THE SENATE

BY THE C&RA COMMITTEE

2 CS FOR SENATE BILL NO. 484 (C&RA)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to multiple-beneficiary charitable
7 gaming permits and door prizes for charitable gaming;
8 and providing for an effective date."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

0 * Section 1. AS 05.15.060(8) is amended to read:

1 (8) the number of activities that may be held, operated, or
2 conducted under a permit during a specified period; however, the
3 department may not allow more than 14 bingo sessions a month and 35
4 bingo games a session to be conducted under a permit; the holders of a
5 multiple-beneficiary permit under AS 05.15.100(d) may hold, operate,
6 or conduct the number of sessions and games a month equal to the
7 number allowed an individual permittee multiplied by the number of
8 holders of the multiple-beneficiary permit;

9 * Sec. 2. AS 05.15.100 is amended by adding a new subsection to read:

0 (d) The commissioner may issue a multiple-beneficiary permit to
1 two to four municipalities or qualified organizations or to a com-
2 bination of two to four municipalities and qualified organizations
3 that apply jointly for the permit. The permit gives the permit hold-
4 ers the privilege of jointly conducting the activities specified in
5 (a) and (b) of this section, subject to the restrictions set out in
6 (b) of this section.

7 * Sec. 3. AS 05.15.112(a) is amended to read:

8 (a) Each municipality or qualified organization that receives a
9 permit under this chapter shall designate a member in charge.

1 Municipalities and qualified organizations that hold a multiple-
2 beneficiary permit shall jointly designate one member in charge.

3 * Sec. 4. AS 05.15.112(b) is amended to read:

4 (b) The member in charge is responsible for preparation, mainte-
5 nance, and transmittal of all records and reports required of the
6 permittee. The member in charge shall be a member of the qualified
7 organization or the board of directors of the qualified organization
8 or an employee of the municipality. In the case of a multiple-bene-
9 ficiary permit, the member in charge shall be a member of one of the
10 qualified organizations or the board of directors of one of the qual-
11 ified organizations or an employee of one of the municipalities.

12 * Sec. 5. AS 05.15.112(d) is amended to read:

13 (d) The municipality or qualified organization, or the holders
14 of a multiple-beneficiary permit, shall designate alternate members in
15 charge who are responsible for the duties of the member in charge in
16 the absence of the member in charge.

17 * Sec. 6. AS 05.15 is amended by adding a new section to read:

18 Sec. 05.15.145. MULTIPLE-BENEFICIARY PERMITS. (a) Two to four
19 municipalities or qualified organizations, or a combination of two to
20 four municipalities and qualified organizations, may jointly apply for
21 a multiple-beneficiary permit under AS 05.15.100(d). The commissioner
22 may not issue or renew a permit except upon satisfactory proof that
23 each joint applicant is a municipality or qualified organization, the
24 activity may be permitted under this chapter, and the issuance of a
25 permit is not detrimental to the best interests of the public. Upon
26 request of the commissioner, the joint applicants shall prove conclu-
27 sively each of these requirements before a permit may be issued or
28 renewed.

29 (b) The provisions of AS 05.15.140(b) - (d) apply to multiple-

1 beneficiary permits and applications for them.

2 (c) A municipality or qualified organization that is among the
3 holders of a multiple-beneficiary permit may not hold another permit
4 under this chapter.

5 (d) A municipality or qualified organization that is among the
6 holders of a multiple-beneficiary permit may withdraw from the permit
7 by giving written notice of intent to withdraw to the department and
8 to the other holders of the permit. The effective date of the with-
9 drawal is 30 days after the department receives written notice of
10 intent. A municipality or qualified organization that withdraws from
11 a multiple-beneficiary permit may apply for a permit under AS 05.15.-
12 100(a), but its share of the prizes awarded under the multiple-bene-
13 ficiary permit and the prizes it awards under its own permit are
14 subject to the maximums established in AS 05.15.180(g).

15 (e) The holders of a multiple-beneficiary permit shall jointly
16 file reports with the department that comply with the reporting re-
17 quirements imposed on operators under AS 05.15.083.

18 * Sec. 7. AS 05.15.180(d) is amended to read:

19 (d) The total value of door prizes offered or awarded under
20 authority of a permit issued to a municipality or qualified orga-
21 nization under this chapter or under authority of a multiple-benefici-
22 ary permit may not exceed \$20,000 a month or \$240,000 a year.

23 * Sec. 8. AS 05.15.180(e) is amended to read:

24 (e) The total value of all door prizes offered or awarded at a
25 single facility or bingo hall or parlor by an operator on behalf of
26 authorizing permittees [OR BY A PERMITTEE IN CONJUNCTION WITH OTHER
27 PERMITTEES] may not exceed \$20,000 a month or \$240,000 a year.

28 * Sec. 9. AS 05.15.180(g) is amended to read:

29 (g) A municipality or a qualified organization may award a
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1 maximum of \$1,000,000 in prizes each year in activities authorized
2 under this chapter; however, if a municipality or a qualified orga-
3 nization contracts with an operator to conduct on its behalf activ-
4 ities authorized under this chapter, the municipality or qualified
5 organization may award a maximum of \$500,000 in prizes each year. The
6 holders of a multiple-beneficiary permit under AS 05.15.100(d) may
7 award a maximum in prizes each year of \$1,000,000 times the number of
8 holders of the permit for activities authorized under this chapter.
9 In this subsection "activities authorized under this chapter" means
10 all activities subject to this chapter other than bingo.

11 * Sec. 10. AS 05.15.187(f) is amended to read:

12 (f) Each permittee [MUNICIPALITY OR QUALIFIED ORGANIZATION] that
13 had gross receipts exceeding \$100,000 during the preceding year from
14 activities conducted under this chapter or that is required to report
15 under AS 05.15.080(a), that conducts a pull-tab game shall maintain
16 records for two years of each prize of \$50 or more, the first day and
17 last day that each series was distributed, the serial number of each
18 series, and the distributor from whom each series was purchased. In
19 this section "permittee" includes municipalities and qualified orga-
20 nizations that jointly hold a multiple-beneficiary permit.

21 * Sec. 11. " This Act takes effect immediately under AS 01.10.070(c).
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FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Commerce & Economic Dev.
 Title: An Act authorizing charitable gaming permittees to work in conjunction BRU: Occupational Licensing
 Sponsor: Senator Zharoff Components: _____
 Requestor: Senate C&RA

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

CSSB 484 (C&RA) establishes a new category of charitable gaming permit, a multiple beneficiary permit, under which two to four municipalities or qualified organizations may join together to conduct gaming activities.

New funds would not be required to implement the provisions of this legislation.

Prepared by: Jennifer Strickler, Administrative Officer Phone: 465-2144
 Division: Occupational Licensing Date: 4/6/90
 Approved by Commissioner: Larry Mercurieff Date: 4/6/90
 Agency: Department of Commerce & Economic Development

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)



Alaska State Legislature

Please enter into the record my testimony to the C & RA
committee name

committee on CS 484 - , dated April 4, 1990
bill/subject

Farthest North Girl Scout Council, is one of 4 agencies running Honest Bingo, in Fairbanks. Each agency works directly in managing ^{and} Bingo/Pull-Tab operation without an operator. It is important to the Board of Directors of F.N.G.S.C. that we ~~to~~ remain directly responsible for all aspects of the operation during our assigned time. The original 484 allowed this to occur. This revision is not acceptable to our situation. It is extremely important that we do not commingle our responsibilities. We feel that a single member-in-charge of a multiple-beneficiary permit, as well as a governing board, could be viewed as ~~setting~~ establishing a profitable small business and could be potential threat to our non-profit status. It is essential that we remain independent, governed by our ^{individual} ~~independent~~ Bd of Directors and each ^{agency} report directly to the state, without the red tape of commingling operations.

Signed: Janine M. Jentia / Janice M. Jentis
 Testifier
Executive Director - Farthest North Girl Scout Council
 Representing (Optional)
946 Cowles, #210 Fairbanks 99701
 Address
907-456-4782
 Phone No.



Alaska State Legislature

Please enter into the record my testimony to the C + RA committee name

committee of: C.A. for Senate Bill # 384, dated 4-5-90 bill/subject

- I. Does SB. 384 add to or change existing legislation?
- II. Does a "multi-tenure permit" allow one of the permittees involved to use the permit for other gaming activities such as raffles and pull tabs in a separate operation?
- III. Is there a problem with four permittees using one facility with completely separate accountability? One manager is hired by each of the four permittees.
- IV. There is general agreement here that there is not a need for the "Operator" management detail which this Bill seems to advocate in Section 2.A.

Please clarify -> ^{# 384} Is this the only to function without an operator ???

Signed: Jo. Frank McGuigan
Testifier

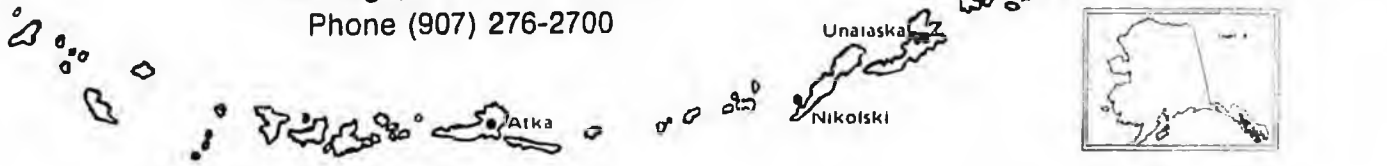
Monroe Foundation, Inc.
Representing (Optional)

P.O. Box 71620, Fairbanks, Ak 99707
Address

451-7970
Phone No.

Aleutian/Pribilof Islands Association, Inc.

401 E. Fireweed Lane, Suite 201
Anchorage, Alaska 99503-2111
Phone (907) 276-2700



ADM-200/90

March 29, 1990

RECEIVED

APR 2 1990

Senator Mike Szymanski, Chairman
Senate Labor & Commerce Committee
Alaska State Legislature
P. O. Box V (MS 3100)
Juneau, Alaska 99811

RE: Senate Bill 484

Dear Senator Szymanski:

I write to discuss with you Senate Bill 484, on which you held a hearing on March 20, 1990. This bill is crucial to revenues raised by our nonprofit organization and will provide an equally important choice for other nonprofits. We believe this bill deserves your support.

I am the Executive Director of one of four permittees working together in a project known as "Lucky Strike Bingo". I am also the Chairman of the Lucky Strike Bingo Board of Directors, which is made up of one representative from each of the four nonprofits.

Our nonprofit has worked very hard for four years with three other nonprofit organizations to create a cooperative gaming effort which we control. We do not have to put our trust in any businessman with an operator's license to play our permit fairly and to return as high a net revenue as possible because we hire our own employees and make our own decisions about our permits. We earn for ourselves double the amount operators are required to return to permittees. We choose for ourselves when and how our permits are played. And if we are unhappy with the way our permit is played, we don't have to sacrifice even one night of gaming; we can terminate our employees or otherwise change the situation in our hall. The bottom line is that we know what is happening with our permit, we make all the decisions, we take all

the responsibility, we are a model of clean gaming, and we earn among the highest revenues in the state.

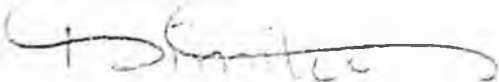
I understand from the hearing last week that you are concerned about protection of the public should something go wrong at our bingo hall or the hall of any other permittees who cooperate together. I do not think this is a major concern. If, for example, someone were to injure themselves in the hall and want to sue potentially responsible parties, he or she could name both the individual permittee and the other three permittees (as well as others, including a landlord or owner). The injured person would not be in any different position than he or she would be if the hall were leased by either a single permittee or an operator.

Your suggestion that a new category of operators be created would be very troubling to permittees who work without operators. As you know, the 1988 amendments were designed to correct operator abuse and to give permittees more control. By forcing permittees working together to become an operator, the bill would make permittees give up the most efficient and self-sufficient way to exercise their permits. This would be the opposite of the intent of the statute.

S. B. 484 would require permittees to satisfy the reporting and auditing standards currently required only of operators (in fact we do that now), but we would still retain control over our own permits. If our permit is mishandled in some way, our employees will answer to us. In contrast, our experience is that operators do not answer to the permittee and do not return comparable net revenues. The Senate bill would not harm the public. Instead it would serve the public by ensuring that nonprofits can work together in the most efficient and cost effective way and realize the greatest amount for the public service programs they deliver.

I hope you will support S. B. 484 as drafted. Thank you for your consideration.

Sincerely,



Dimitri Philemonof
Executive Director

DP/nlb

cc: Senator Zaroff
Representative Jacko
Commissioner Mercurief

Alaska State Legislature

Legislative Research Agency



P.O. Box Y
Juneau, AK 99811-3100
Phone: (907) 465-3991
Fax: (907) 463-3351

April 5, 1990

MEMORANDUM

TO: Senator Mike Szymanski

FROM: Paula d. Scavera *PKS*
Legislative Analyst

RE: Regulation of Games of Chance and Skill in Other States
Research Request 90.296 (Supplemental Information)

We received additional information from two states concerning games of chance and skill that may be of interest to you.

California

The 22nd District Agricultural Association set rules and regulations concerning games concessions at the Del Mar Fair. These rules and regulations are in addition to state and county laws and are attached for your reference.

Idaho

Attached you will find an Attorney General opinion from the Office of Attorney General for the State of Idaho. This opinion discusses when a game of chance is considered a lottery, and therefore illegal in the State of Idaho.

If we can be of further service, please contact us.

Attachments

22ND DISTRICT AGRICULTURAL ASSOCIATION
1990 DEL MAR FAIR

GAME CONCESSIONS
RULES AND REGULATIONS

GENERAL RULES

1. No game shall be permitted in which the outcome of the game is dependent upon the judgement of the agent or operator.
2. No flat stores, alibis or games of chance will be permitted.
3. The appearance of all games and midway equipment must meet the approval of the Del Mar Fair Midway Management whose decisions on such matters shall be final.
4. Agents/operators shall not throw or toss an object such as baseballs, etc., to a patron for the purpose of luring them to the game.
5. There will be no substitute games without the approval of Midway Management.
6. Any game operating with mechanical or motorized equipment must be equipped with a 2 1/4 lb ABC fire extinguisher.

PAYMENT OF FEES

50% of total contract amount is due by date specified on contract. Balance of contract is due in full by date also specified on the contract. If payment is not received within 10 days of the due date, a late fee of 5% of the contract amount will be assessed then and every 15 days thereafter. Late fees will NOT be prorated and will be assessed according to the 15-day schedule ONLY. An administrative fee of \$25.00 will be charged for any checks returned for ANY reason. Any contract not returned and not paid in full, including all fees and late charges, is subject to cancellation whenever Fair Management deems necessary.

CAME OPERATIONS

1. No obstacles shall be permitted to hinder the play of the player, i.e., low hanging plush on pitch games.
2. NO CASH PRIZES ARE PERMITTED.
3. Foul lines are not permitted for any game operations.
4. On a build up game, all prizes must be clearly marked and posted so that the player understands the rules and exchanges of smaller prizes for larger prizes. At least one (1) of each size prize to be won must be marked with a sign (1 win, 2 win, etc.) with a minimum of 1" letters. If the front counter is over 16' long, they must be marked at each side of counter.

SIGNS

1. Every game operated at the Del Mar Fair shall have conspicuously posted at all times while in operation, a sign stating the cost play, how the game is played and exactly what is required of the player in order to win each prize offered with a minimum of 1 inch letters.
2. Signs must be of permanent type material such as wood, metal, plastic or masonite and the lettering shall be plain and readable to the public eye. All price signs must be in figures at least four (4) inches in height.
3. A permit, obtained from the Midway Office, must be conspicuously posted with the name of the owner or company of the game with a minimum of two (2) inch letters.
4. Any restrictions on numbers or types of prizes which may be won by an individual player per day must be clearly posted.
5. All games shall display in a conspicuous place the City of Del Mar business license permit for operation. Failure to post said permit will result in the shut down of the game until such permit is properly displayed.

SAFETY

1. As with rides, games shall be operated with safety in mind.
2. Games such as darts, baseballs, etc., shall be designed so that objects thrown will not pass through or around backboard or bounce back into player area.
3. Lights shall be guarded against breakage by objects being thrown.

WORK AREA

Operators of game concessions must work inside booths at all times. In the event a game requires that the operator work outside the "structure", he/she must remain within 4' of the front counter, and must stay directly in front of the game they are operating.

MERCHANDISE DISPLAY

1. All merchandise which can be won must be openly displayed in public view.
2. No merchandise shall be displayed which is not one of the prizes possible to win.
3. All displayed merchandise shall be marked so that any player may know in advance what is required to win any of the prizes.
4. WHEN AN "OBJECT TARGET" IS USED FOR "CHOICE", IT MUST BE STATED THAT THE OBJECT TARGET IS JUST THAT AND NOT A POSSIBLE PRIZE.
5. No drug related paraphernalia or pornographic materials, knives, weapons, etc. shall be displayed, sold or given as a prize. The decision of the midway management regarding the above shall be final.

ATTORNEY GENERAL OPINION NO. 52-75

TO: Tom D. McEldowney
Director
Department of Finance
Building Mail

Per request for Attorney General Opinion.

QUESTION PRESENTED: Does a violation of the Idaho Anti-Lottery Statute (Section 18-4901, *Idaho Code*) occur when property or any other prize is awarded or distributed on the basis of lot or chance to one or more participants in an open promotional scheme or contest, such as a sweepstakes, raffle, drawing, or similar gift enterprise?

CONCLUSION: No violation of the Idaho Anti-Lottery Statute occurs unless a participant (or his agent) in one of the above-described open promotional "give-away" programs has paid or promised to pay a valuable consideration — which is a consideration having economic or monetary value, as opposed to mere inconvenience — for the chance of obtaining the prize. However, if participants who make no purchase or who part with nothing of value are not given an equal opportunity to win the prize, then the contest is a lottery.

ANALYSIS: The Idaho prohibition against lotteries finds its roots in Article 3, Section 20, *Idaho Constitution*, which provides:

The legislature shall not authorize any lottery or gift enterprise under any pretense or for any purpose whatever.

The Idaho Supreme Court has ruled that "[T]his provision of the Constitution . . . is negative and prohibitory, is self-acting and needs no legislation to carry it into effect . . ." *State v. Village of Garden City*, 74 Idaho 513, 526; 265 P.2d 328 (1953).

The Legislature has chosen to statutorily define a lottery. Section 18-4901, *Idaho Code*, provides in pertinent part the following:

A lottery is any scheme for the disposal or distribution of property by chance among persons who have paid or promised to pay any valuable consideration for the chance of obtaining such property, or a portion of it, or for any share or interest in such property, upon any agreement, understanding or expectation that it is to be distributed or disposed of by lot or chance, whether called a lottery, raffle, or gift enterprise, or by whatever name the same may be known . . .

While it could conceivably be argued that the above statutory definition is too liberal and therefore a legislative violation of the proscription contained in Article 3, Section 20, *Idaho Constitution*, this office is not prepared to declare Section 18-4901, *Idaho Code*, unconstitutional — or to declare any statute unconstitutional — in the absence of a patent defect. The prerogative to accept

a different standard to determine the constitutionality of statutes rests solely with the judiciary. However, in defense of the legality of the statute, it should be noted that the concept of "valuable consideration" as an element of a lottery was not unknown at the time of the promulgation of the *Idaho Constitution*, which is silent in defining a lottery. In addition, Montana, which has identical statutory language and a similar constitutional prohibition, has held the statute constitutional:

To our mind, the framers of the Montana Constitution who expressly forbade the Legislature to authorize lotteries or gift enterprises . . . were seeking to suppress and restrain the spirit of gambling which is cultivated and stimulated by chances whereby one is induced to hazard his earnings with the hope of larger winnings. The statutes which define and prohibit lotteries must therefore be interpreted with this purpose in mind. *State v. Cox*, 349 P.2d 104, 106 (Montana, 1960).

The above-quoted statutory definition requires that *all* three of the following elements must exist in order to find a lottery: (1) The opportunity to win a *prize*; (2) Upon a set of events determined by *chance*; (3) In favor of one who has paid or agreed to pay a *valuable consideration* for the chance of obtaining the prize. The existence of the first two elements, namely "prize" and "chance" are not generally difficult to determine, and the applicability of this opinion is limited to promotional schemes or contests in which those elements are present. The third element of "consideration" or "valuable consideration", however, presents considerable ambiguity and confusion, and it is the interpretation of this latter element to which this opinion is primarily directed. To this end, we must determine whether Idaho requires mere "consideration" or "valuable consideration" to support the finding of a lottery, and whether there is a legal distinction between these terms.

The Idaho Supreme Court has approvingly quoted Section 18-4901, *Idaho Code*, in the case of *State v. Village of Garden City*, supra. As heretofore noted, said statute uses the term "valuable consideration" in defining a lottery. Following the statutory quote, the Court states in reference to Section 18-4901, at 74 Idaho 520:

This definition in substance conforms to that of the common law which has defined a lottery as a species of gaming, wherein prizes are distributed by chance among persons *paying* a consideration for the chance to win; a game of hazard in which *sums are paid* for the chance to obtain a larger value in money or articles. (Emphasis supplied).

Citing from *Corups Juris Secundum* and from *American Jurisprudence* – but not from any specific cases – the Court continues in the next paragraph.

. . . to constitute a lottery; . . . it is generally held there are three essential elements, namely, chance, consideration and prize. When these three elements are present, the scheme is a lottery. 54 C.J.S., Lotteries, § 2 (a), p. 845; 34 Am.Jur. 647 Sec. 3.

The Court makes no effort to distinguish between "consideration," as used in the legal encyclopedias, and "valuable consideration" as used in Section 18-4901, *Idaho Code*. The *Village of Garden City* case, however, did not turn on the issue of "consideration" or "valuable consideration." Rather, the issues in that case were whether certain gambling-type mechanical devices could be legislatively authorized in view of the lottery prohibition of Article 3, Section 20, *Idaho Constitution*, and if not, whether said devices could be judicially abated as moral nuisances. The question of "consideration" or "valuable consideration" was not at issue, inasmuch as it was clearly necessary to pay money in order to use the machine. It would appear that the use of the term "consideration" without further qualification on the part of the Court was casual, particularly since every "valuable consideration" is a "consideration" (although the converse would not necessarily follow). Both the Supreme Court and the Legislature recognized that the consideration contemplated is one in which "sums are paid" (74 Idaho at 520) or in which a participant or his agent has "paid or promised to pay" (Section 18-4901, *Idaho Code*) for the chance to win the prize. This is more than the common law "consideration" required to support a simple contract.

It is, therefore, our opinion that the standard in determining that a lottery exists must include provision for a finding of "valuable consideration." The same opinion has been reached by the majority of courts of other states where the question has presented itself. Indeed, although a judicial determination has been made in a handful of states that simple "consideration," as used in the law of contracts, is sufficient to find that a lottery exists, we are aware of only two states having a statute similar to § 18-4901, *Idaho Code*, that have done so. See, *Knox Industries Corp. v. State*, 258 P.2d 910 (Oklahoma, 1953); and *State v. Safeway Stores, Inc.*, 450 P.2d 949 (Washington, 1969) (wherein the statute was held unconstitutional). Approximately fifteen states have ruled that something more than simple "consideration" is necessary to support the finding of a lottery, although most of those states do not have statutes as liberal as the Idaho statute, in which the term "valuable consideration" is used in the definition of a lottery. For cases involving a statute similar to that found in Idaho, see, for example, *California Gasoline Retailers v. Regal Petroleum Corp.*, 330 P.2d 778 (California, 1958); *State v. Cox*, supra; *People v. Psallis*, 17 2d 796 (New York, 1939). Other relevant cases from several different jurisdictions are cited in an annotation entitled "Promotional Schemes of Retail Stores as Criminal Offense Under Anti-Gambling Laws," 29 ALR3d 888.

In construing the concept of "consideration" as used in the lottery context, most courts have held that it is the giving of something of economic or pecuniary value, which can be translated into dollars and cents. For example, in *Cudd v. Aschenbrenner*, 377 P.2d 150 (Oregon, 1962), the court held at page 155:

... Unless a scheme requires that (1) a participant part with a consideration, and (2) the consideration be something of economic value to him, participation therein can rob him neither of purse nor his accumulated worldly goods. We must conclude, therefore, that the anti-lottery provisions of our statute are directed at schemes in which participants are obligated to contribute something which is of economic value to

them as a condition of participation. We do no violence to the law of contracts when we hold that a lottery contemplates a greater consideration than is generally required to support a contract . . . We merely hold that a lottery is a special kind of contract which requires a special kind of consideration — consideration which can impoverish the individual who parts with it.

The Oregon case is significant, because Oregon, like Idaho, has a constitutional prohibition against lotteries, yet, unlike Idaho, has no statutory definition of a lottery. The case for "valuable consideration" is stronger in Idaho, where the statute specifically incorporates the concept of "valuable consideration."

California, which has both a constitutional provision and a statutory provision similar respectively to the *Idaho Constitution* and statute, has held in the case of *California Gasoline Retailers v. Regal Petroleum Corp.*, supra, at pages 788-89:

In view of our statute (Pen. Code, § 319) defining a lottery and which provides that the consideration necessary is a 'valuable one' paid, or promised to be paid by the one receiving the ticket, the fact that a ticket holder must go to the place of business of the sponsor of the scheme to deposit the ticket stub cannot be considered the necessary consideration.

We believe that we are in accordance with the overwhelming majority of jurisdictions that have defined "consideration" and "valuable consideration" in the lottery context, when we state that the "valuable consideration" required to be "paid" (§ 18-4901, *Idaho Code*) is a detriment to the participant (or his agent) that has an economic or monetary value. Mere physical inconvenience engendered by participation in a promotional scheme does not constitute such "consideration". Rather, the element of "consideration" necessary to bring a promotional scheme within the purview of the anti-lottery laws must be in money or other items of value.

Potential benefit to the promoter of a "give-away" is not sufficient to support a finding of a lottery. See, for example, *Federal Communications Commission v. American Broadcasting Co.*, 347 U.S. 284, 74 S.Ct. 593, 98 L.Ed. 699 (1954), in which the United States Supreme Court held, in interpreting a federal anti-lottery broadcasting statute (which does not define a lottery) that the potential benefit to a broadcasting station or its sponsors in requiring one to listen to a particular "give-away" program in order to be potentially able to win a prize, does not make the scheme a lottery. In Idaho, the case is even stronger, because the wording of the statute directs us to look at what the participant must pay for the ticket or chance, and not to the benefit, direct or indirect, that the promoter may receive:

A lottery is any scheme for the disposal or distribution of property by chance among persons who have paid or promised to pay any valuable consideration for the chance . . . (Emphasis supplied). § 18-4901, *Idaho Code*.

This interpretation is not inconsistent with the rationale behind the lottery prohibition, which is to protect the individual from squandering his resources in the dim hope of realizing profits.

We are, therefore, of the opinion that mere registration for a sweepstakes, without purchase of goods or services; or mere physical attendance at places or events, without payment of an admission price or fee; or listening to or watching radio and television programs; or answering the telephone or making a telephone call; and acts of like nature which involve mere inconvenience arising from participation in the promotional scheme — but not economic or pecuniary detriment — are not acts which can be deemed the payment of a “valuable consideration” to support the finding of a lottery, even if such acts are of benefit to the promoter of the contest. Nor is the purchase of a postage stamp to mail a contest form the payment of a “valuable consideration,” because the payment is not made to the promoter or his agent for the chance to win the prize, but rather to an independent third party (the United States Post Office) for delivery of a letter which could conceivably have been hand-carried or sent by other means. The use of the mails would present an entirely different problem, however, if it were required by the promoter as part of the bargain.

Obviously, this office cannot attempt to define the myriad of acts which would constitute the giving of “valuable consideration.” Each case must be analyzed on its own facts. However, any attempt — direct or indirect — to link a ticket or chance with the purchase or possession of a commodity or the purchase of a service, or with the requirement that the entrant part with something of value, will be viewed by this office as a violation of law, and will be dealt with accordingly.

For example, it is an unlawful gift enterprise or lottery when one gives or deposits money, and as a result, he receives a ticket or chance in a promotional scheme, even when said money will ultimately be refunded with interest, because one has parted with the use of the money during the interim. To like effect, the payment of money for the purchase of a commodity or service, accompanied by receipt to the purchaser or a ticket or chance in a promotional scheme, amounts to the giving of a “valuable consideration,” even when there is no increase in purchase price, because the scheme might induce the participant to purchase the commodity or service when he otherwise would not. See, *State v. Cox*, supra, and cases cited therein.

We are in agreement with, and hereby adopt, the below-quoted provisions of the 1969 Ruling of the Federal Communications Commission (promulgated after the Supreme Court decision of *F.C.C. v. American Broadcasting Co.*, supra) entitled “Applicability of Lottery Statute to Certain Contests and Merchandise Sales Promotions” (F.C.C. 69-611):

Clearly, consideration is present when the contestant is required to pay money or give something else of value for the chance to win a prize. Therefore, the promotional scheme must not require a purchase or the risking of money or other things of value . . . However, the availability of free chances must be real and not illusory; i.e., free chances must be

available on a basis which is reasonably equal to that on which contestants who purchase a product may obtain them.

... Although the adequacy of supply may be difficult to foresee, it is the responsibility of the sponsor of the promotion to deliver a sufficient quantity of chances to insure that everyone who asks will be able to obtain them ...

... In order to eliminate the element of consideration, non-purchasing and purchasing contestants must be accorded an approximately equal opportunity in the number of chances to be obtained; otherwise, the scheme amounts to a lottery.

... Any announcement of a promotional scheme ... should adequately describe the availability of such free chances and the locations, times and manner in which they may be obtained. Such cryptic messages as 'No purchase necessary' or 'Nothing to buy' do not meet this requirement.

We would add that to insure that there is no intimidation to purchase or that there is no unnecessary inconvenience to one wishing to participate in a "give-away" promotion, a person cannot be restricted from obtaining a ticket or chance by mail, providing that his request is accompanied by a stamped, return envelope.

We are not unmindful that this Opinion represents a departure from the 1969 Opinion of the Idaho Attorney General. On the basis of that Opinion, promotional schemes and sweepstakes were deemed to be illegal in Idaho when there was any inconvenience to the participant in such a contest. Effectively, all promotional sweepstakes were thereupon deemed to be "void" in Idaho. We believe, however, that the 1969 Opinion was erroneous in failing to distinguish between "consideration" and "valuable consideration," and we believe that the cases cited in support of the substantive portion of that Opinion represent a minority viewpoint. We accordingly reverse the 1969 Opinion, to the extent that it is inconsistent with the views expressed herein.

AUTHORITIES CONSIDERED:

1. *Idaho Code*, Section 18-4901.
2. Article 3, Section 20, *Idaho Constitution*.
3. Attorney General Opinion, dated September 11, 1969.
4. Annot: "Promotional Schemes of Retail Stores as Criminal Offense under Anti-Gambling Laws", 29 ALR3d 888.
5. 1969 Ruling of F.C.C., "Applicability of Lottery Statute to Certain Contests and Merchandise Sales Promotions" (F.C.C. 69-611).

6. *State v. Village of Garden City*, 74 Idaho 513, 526; 205 P.2d 328 (1953).
7. *Knox Industries Corp. v. State*, 258 P.2d 910 (Oklahoma, 1953).
8. *State .. Safeway Stores, Inc.*, 450 P.2d 949 (Washington, 1969).
9. *California Gasoline Retailers v. Regal Petroleum Corp.*, 330 P.2d 778 (California, 1958).
10. *State v. Cox*, 349 P.2d 104, 106 (Montana, 1960).
11. *People v. Psallis*, 17 N.Y.S.2d 796 (New York, 1939).
12. *Cudd v. Aschenbrenner*, 377 P.2d 150 (Oregon, 1962).
13. *Federal Communications Commission v. American Broadcasting Co.*, 347 U.S. 284, 74 S.Ct. 593, 98 L.Ed. 699 (1954).

DATED this 10th day of September, 1975.

ATTORNEY GENERAL OF THE STATE OF IDAHO

WAYNE L. KIDWELL
Attorney General

ANALYSIS BY:

RUDOLF D. BARCHAS
Deputy Attorney General