

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

File No. 15; Docket . 05.0009.0096

DATE RECEIVED 10/24/88 ADOPTED W/O HEARING ____

REVIEW DATE ~~11/2/88~~ EMERGENCY RULE X

DUE DATE 11/7/88 REVISOR APPROVED X

APPROVED 11/7/88 REVISOR DISAPPROVED ____

DISAPPROVED ____ FILED W/SEC. OF STATE ____

WITHDRAWN ____ RETURNED TO AGENCY ____

✓ Rule as adopted (4 copies)

____ ~~Notice to Solicit Outside Information/Opinion (if applicable)~~

____ ~~Date published in State Register~~

____ ~~Comments~~

____ ~~Petition for Adoption of a Rule (if applicable)~~

✓ Board's Authorizing Resolution

9/7/88 Date adopted

✓ Proposed Rule

Yes Revisor's Certificate

✓ Notice of Intent to Adopt Rule

MnLawsCh604 Art 1, §7 (1988) Statutory Authority

NO Small Business Statement

NO Expenditure of public money statement

Yes Signature

____ ~~Statement of Need and Reasonableness (if applicable)~~

____ ~~Small Business Statement~~

____ ~~Fees - § 16A.128~~

✓ Affidavit of Mailing Notice of Intent to Adopt Rule

10/19/88 Date (30)/25 days before adoption

____ Notice attached

____ Copy of rule or summary attached

✓ Publication in State Register

9/19/88 Date (30)/25 days before adoption

____ 180-day deadline from:

____ ~~end of comment period (§ 14.26) (rules without hearing)~~

____ effective date of statutory authority (§ 14.29) (emergency rules)

✓ Resolution Adopting

10/24/88 Date adopted

✓ Findings of Fact, Conclusions & Order Adopting

10/24/88 Date

✓ Written requests, submissions or comments (4)

✓ Declaration of attorney

Peg Bunch Name of SAAG representing agency

✓ Notice of Submission to Atty. Gen. (if applicable)

✓ Aff. of Mailing Notice to Atty. Gen. (if applicable)

ATTORNEY GENERAL

November 16, 1988

PEG BUNCH
Special Assistant
Attorney General

JULIE A. LEPPINK
Special Assistant
Attorney General

6-9422

In the Matter of the Adopted Rule Relating to
Permanent Rules Relating to Lease Payments

The above-referenced rule has been approved as to its legality by the Attorney General on November 7, 1988.

Enclosed is the agency's copy of the approved rule. This office has already filed two copies with the Secretary of State who will forward one copy to the Revisor of Statutes. The fourth is being retained by this division of the Attorney General's Office for its records.

Also enclosed are any petitions, requests, submission or comments received by the agency and any extra copies of documents which the agency submitted to the Attorney General.

In order for a permanent rule without a hearing to become effective, your agency must publish a notice of adoption in the State Register in accoradance with Minn. Stat. §14.27. An emergency rule becomes effective five working days after approval by the Attorney General; however, the agency must publish a notice in the State Register in accordance with Minn. Stat. §14.34.

If you have any questions in this regard, please contact me.

JEA:rer

Enclosures

cc: Maryanne Hruby
Executive Director
Legislative Commission to Review
Administrative Rules

William Brown
Chief Administrative Law Judge
Office of Administrative Hearings

SF-00006-05 (4/86)

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT : ATTORNEY GENERAL

DATE : OCTOBER 24, 1988

TO : CHRISTIE ELLER
Assistant Attorney General

FROM : PEG BUNCH
Special Assistant Attorney General

PHONE : 6-1248

SUBJECT : EMERGENCY RULE

Enclosed for your review is the packet containing the Emergency Rule adopted today by the Charitable Gambling Control Board together with required documents.

PLB:raa
Attachments

RECEIVED
OCT 24 88
ATTORNEY GENERAL'S OFFICE
515 TRANSPORTATION BLDG
ST PAUL, MN 55155

Charitable Gambling Control Board

Adopted Emergency Amendments to Permanent Rules Relating to Lease Payments

Rules as Adopted

7860.0090 [Emergency] LEASE AGREEMENTS.

Subpart 1. and 2. [Unchanged.]

Subp. 3. **Payments.**

A. The amount of the lease payment that an organization shall pay to a lessor for premises leased for lawful gambling, with the exception of bingo, may not exceed $24 per square foot per month. In no instance may rent payments for the leased premises exceed $600 per month.

B. The amount of the lease payment that an organization shall pay to a lessor for premises leased for the conduct of bingo and all other gambling activities during that bingo occasion shall not exceed $200 for leased premises of not more than 6,000 square feet, $300 for leased premises of not more than 12,000 square feet, and $400 for leased premises of more than 12,000 square feet.

C. The storage of the inventory of gambling equipment may be on that leased premises.

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

NOV 16 1988

Joan Anderson Growe

Secretary of State

9:40 AM

APPROVED AS TO FORM AND LEGALITY

November 7 1988

HUBERT H. HUMPHREY, III

ATTORNEY GENERAL

BY

SPECIAL ASSISTANT ATTORNEY GENERAL

CERTIFICATE OF THE

CHARITABLE GAMBLING CONTROL BOARD

AUTHORIZING RESOLUTION

I, Raymond J. Potami, do hereby certify that I am a member and the Chairman of the Charitable Gambling Control Board (CGCB), a board duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the CGCB duly and properly called and held on the 22nd day of August, 1988, that a quorum was present, and that a majority of those present voted for the resolution which has not been rescinded or modified.

"RESOLVED, that Roger Franke, the executive secretary of the Charitable Gambling Control Board, is hereby granted the authority and directed to sign and to give the Notice of the Board's Intent to Adopt an Emergency rule governing lease amounts for gambling premises to all persons who have registered their names with the Board for that purpose and publish the Notice and rule in the State Register, and to perform any and all acts incidental thereto."

IN WITNESS WHEREOF, I have hereunto subscribed my name this 7 day of Sept, 1988.

Raymond J. Potami, Chairman

Attest by one other Board member

Charitable Gambling Control Board

Proposed Emergency Amendments to Permanent Rules Relating to Lease Payments

Rules as Proposed

7860.0090 [Emergency] LEASE AGREEMENTS.

Subpart 1. and 2. [Unchanged.]

Subp. 3. **Payments.**

A. The amount of the lease payment that an organization shall pay to a lessor for premises leased for lawful gambling, with the exception of bingo, may not exceed $24 per square foot per month. In no instance may rent payments for the leased premises exceed $600 per month.

B. The amount of the lease payment that an organization shall pay to a lessor for premises leased for the conduct of bingo and all other gambling activities during that bingo occasion shall not exceed $200 for leased premises of not more than 6,000 square feet, $300 for leased premises of not more than 12,000 square feet, and $400 for leased premises of more than 12,000 square feet.

C. The storage of the inventory of gambling equipment may be on that leased premises.

Approved by Revisor

Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Emergency Amendments to Permanent Rules Relating to Lease Payments

AGENCY: Charitable Gambling Control Board

MINNESOTA RULES: Chapter 7860

The attached rules are approved for publication in the State Register

Paul M. Marinac
Assistant Deputy Revisor

Department of Revenue
In the Matter of the Proposed Adoption
of Emergency Rule of the State
Charitable Gambling Control Board
Governing Lease Amounts for Gambling
Premises

NOTICE OF
INTENT TO
ADOPT AN
EMERGENCY RULE

Notice is hereby given that the State Charitable Gambling Control Board intends to adopt the above-entitled emergency rule. The statutory authority to adopt the emergency rule is contained in Laws of Minnesota, Chapter 684, Article 1, sec. 7. (1988). The agency, in adopting the rule, is following the procedures set forth in the Administrative Procedure Act for adopting emergency rules in Minnesota Statutes, sections 14.29 to 14.36.

All persons have 25 days after publication to submit data and views on the proposed emergency rule or any part or subpart of the rule in writing. Any comments must be submitted to:

Roger Franke, Executive Secretary
200 Centennial Buildinmg
St. Paul, MN 55155
(612) 296-0937

A copy of the proposed rule is attached to this notice.

A free copy of the proposed emergency rule is available by contacting the Charitable Gambling Control Board Office at 642-0555.

The proposed emergency rule may be modified if the modifications are supported by data and views submitted to the agency and do not result in a substantial change in the proposed emergency rule as noticed.

Upon adoption of the emergency rule by the agency, the emergency rule as adopted and its supporting documents will be delivered to the Attorney General for review as to legality and form to the extent form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted rule, must submit the written request to Roger Franke.

The emergency rule will take effect five working days after approval by the Attorney General and be effective for 180 days. The emergency rule will be continued in effect for an additional 180 days if the agency gives notice of continuation in accordance with Minnesota Statutes, section 14.35.

Dated: 9-7-88

ROGER FRANKE
Executive Secretary

STATE OF MINNESOTA
CHARITABLE GAMBLING CONTROL BOARD

AFFIDAVIT OF MAILING THE NOTICE OF INTENT TO ADOPT AN EMERGENCY RULE AND CERTIFICATE OF MAILING LIST

In the Matter of the Proposed Adoption of the Rule of the State Charitable Gambling Control Board Governing Lease Amounts for Gambling Premises.

I hereby certify that the list of persons and associations who have requested, pursuant to Minnesota Statutes, sections 14.14, subdivision 1a and 14.22 or 14.30, that their names be placed on the State Charitable Gambling Control Board rulemaking mailing list is accurate, complete, and current as of this 24th day of October, 1988.

That on the 19th day of October, 1988 at the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Notice of Intent to Adopt an Emergency Rule by depositing in the United States mail a copy thereof, with postage prepaid, to all persons and associations on the aforementioned mailing list.

Bernice Caruth

BERNICE CARUTH
EXECUTIVE I

Subscribed and sworn to before me
this 24th day of October, 1988.

Karen Dorff

NOTARY PUBLIC

KAREN DORFF
NOTARY PUBLIC-MINNESOTA
ANOKA COUNTY
MY COMMISSION EXPIRES APRIL 14, 1990

Emergency Rules

Proposed Emergency Rules
According to Minn. Stat. of 1984, §§ 14.29-14.30, state agencies may propose adoption of emergency rules if: 1) expressly required; 2) authorized by statute; or 3) if the manner permitted by a directive (given by statute, federal law or court order) does not allow for compliance with sections 14.14-14.28. The agency must, however, publish a notice of intent to adopt emergency rules, along with the rules themselves, in the *State Register*. The notice must advise the public:

1) that a free copy of the proposed emergency rule is available upon request from the agency;
2) that notice of the date that the rule is submitted to the attorney general will be mailed to persons requesting notification;
3) that the public has at least 25 days after publication of the proposed emergency rule to submit data and views in writing; and
4) that the emergency rule may be modified if the data and views submitted support such modification.

Adopted Emergency Rules
Emergency rules take effect five working days after approval by the attorney general, and after compliance with Minn. Stat. §§ 14.29-14.365. As soon as possible, emergency rules are published in the *State Register* in the manner provided for in section 14.18.

Emergency rules are effective for the period stated in the notice of intent to adopt emergency rules. This may not exceed 180 days.

Continued/Extended Emergency Rules
Adopted emergency rules may be continued in effect (extended) for an additional 180 days. To do this, the agency must give notice by: 1) publishing notice in the *State Register*; and 2) mailing the same notice to all persons who requested notification on rulemaking. No emergency rule may remain in effect 361 days after its original effective date. At that point, permanent rules adopted according to Minn. Stat. 14.14-14.28 supercede emergency rules.

Charitable Gambling Control Board

Proposed Emergency Amendments to Permanent Rules Relating to Lease Payments

Notice of Intent to Adopt an Emergency Rule

NOTICE IS HEREBY GIVEN that the State Charitable Gambling Control Board intends to adopt the above-entitled emergency rule. The statutory authority to adopt the emergency rule is contained in *Laws of Minnesota,* Chapter 684, Article 1, sec. 7. (1988). The agency, in adopting the rule, is following the procedures set forth in the Administrative Procedure Act for adopting emergency rules in *Minnesota Statutes,* sections 14.29 to 14.36.

All persons have 25 days after publication to submit data and views on the proposed emergency rule or any part or subpart of the rule in writing. Any comments must be submitted to:

Roger Franke, Executive Secretary
200 Centennial Building
St. Paul, MN 55155
(612) 296-0937

A copy of the proposed rule is attached to this notice.

A free copy of the proposed emergency rule is available by contacting the Charitable Gambling Control Board Office at 642-0555.

The proposed emergency rule may be modified if the modifications are supported by data and views submitted to the agency and do not result in a substantial change in the proposed emergency rule as noticed.

Upon adoption of the emergency rule by the agency, the emergency rule as adopted and its supporting documents will be delivered to the Attorney General for review as to legality and form to the extent form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted rule, must submit the written request to Roger Franke. The emergency rule will take effect five working days after approval by the Attorney General and be effective for 180 days. The emergency rule will be continued in effect for an additional 180 days if the agency gives notice of continuation in accordance with *Minnesota Statutes,* section 14.35.

Dated: 7 September 1988

Roger Franke
Executive Secretary

Rules as Proposed

7860.0090 [Emergency] LEASE AGREEMENTS.

Subpart 1. and 2. [Unchanged.]

Subp. 3. **Payments.**

A. The amount of the lease payment that an organization shall pay to a lessor for premises leased for lawful gambling, with the exception of bingo, may not exceed $24 per square foot per month. In no instance may rent payments for the leased premises exceed $600 per month.

B. The amount of the lease payment that an organization shall pay to a lessor for premises leased for the conduct of bingo and all other gambling activities during that bingo occasion shall not exceed $200 for leased premises of not more than 6,000 square feet, $300 for leased premises of not more than 12,000 square feet, and $400 for leased premises of more than 12,000 square feet.

C. The storage of the inventory of gambling equipment may be on that leased premises.

Official Notices

Pursuant to the provisions of Minnesota Statutes § 14.10, an agency, in preparing proposed rules, may seek information or opinion from sources outside the agency. Notices of intent to solicit outside opinion must be published in the *State Register* and all interested persons afforded the opportunity to submit data or views on the subject, either orally or in writing.

The *State Register* also publishes other official notices of state agencies, notices of meetings, and matters of public interest.

Department of Education

District Financial Management and Transportation Section

Notice of State Registration Requirements for EPA-Certified Asbestos Abatement Project Designers

The Asbestos Management Program of the Department of Education has been officially designated to administer the registration of qualified Abatement Project Designers for asbestos-related work in Minnesota schools.

Persons who have successfully completed an Environmental Protection Agency (EPA)-approved course of training for Abatement Project Designer may register with the State of Minnesota to be included on the eligibility list supplied to Minnesota public and nonpublic schools.

Applicants may receive instructions and an application form by calling (612) 296-9786, or by writing to:

Asbestos Management Program
936 Capitol Square Building
550 Cedar Street
St. Paul, MN 55101

Department of Health

Office of Health Systems Development

Notice of Intent to Solicit Outside Opinions Concerning a Request for a Waiver of HMO Statutes and Rules by Physicians Health Plan (PHP)

NOTICE IS HEREBY GIVEN that the Department of Health is seeking opinions and comments pertaining to a Application for Approval of Demonstration Projects and Waiver of HMO Requirements–Individual Contract for Supplemental Medicare Benefits #601. Such waivers are authorized for demonstration projects by *Minnesota Statutes* 62D.30.

The request submitted by PHP is available for inspection during normal business hours at the following location:

Alternative Delivery Systems
Room 456
Minnesota Department of Health
Minneapolis, MN 55440
(612) 623-5365

Comments on the request must be received by September 23, 1988.

CERTIFICATE OF THE
DEPARTMENT OF REVENUE
CHARITABLE GAMBLING CONTROL BOARD

RESOLUTION ADOPTING THE RULE

I, Raymond D. Potami, do hereby certify that I am a member and the Chair of the Charitable Gambling Control Board duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the Board, duly and properly called and held on the 24th day of October, 1988, that a quorum was present, and that a majority of those present voted for the resolution which has not been rescinded or modified.

> "RESOLVED, that the rule relating to lease payments is approved and adopted, pursuant to authority vested in the Charitable Gambling Control Board by Laws of Minnesota Chapter 684, Article 1, section 7 (1988). Roger Franke, the Executive Secretary of the Charitable Gambling Control Board, is authorized to sign the findings of fact, conclusions, and order adopting the rule and further is authorized to modify the rule if necessary to obtain the approval of the rule by the attorney general (or other stated circumstances) and to perform the necessary acts to provide that the rule shall have the force and effect of law."

IN WITNESS WHEREOF, I have hereunto subscribed my name this 24th day of October, 1988.

RAYMOND D. POTAMI
Chair, Charitable Gambling
Control Board

Attest by one other Board
Member

STATE OF MINNESOTA

DEPARTMENT OF REVENUE

CHARITABLE GAMBLING CONTROL BOARD

Department of Revenue
In the Matter of the Proposed Adoption of Emergency Rule of the State Charitable Gambling Control Board Governing Lease Amounts for Gambling Premises

FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING EMERGENCY RULE

Notice of the Board's intent to adopt the above-entitled emergency rule was published in the State Register on September 19, 1988 and was sent by United States mail to all persons on the list maintained by the agency pursuant to Minnesota Statutes, section 14.30 on October 19, 1988.

All persons were given the opportunity to submit written comment on the rule for at least 25 days after notice of proposed rulemaking.

To date, ~~no submissions or comments on the rule have been received by the agency.~~ No requests for notice of submission to the attorney general have been received by the agency.

NOW, THEREFORE, IT IS ORDERED that the rule identified as Emergency Rule of the State Charitable Gambling Control Board Governing Lease Amounts for Gambling Premises is adopted this 24th day of October, 1988, pursuant to authority vested in the

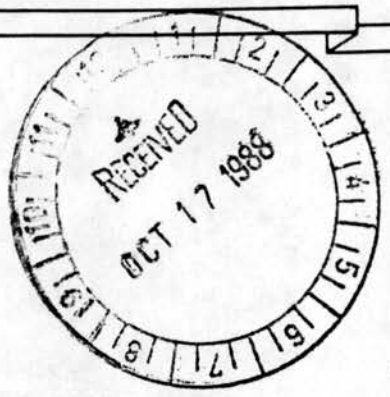
Board by Laws of Minnesota, Chapter 684, Article 1, sec. 7 (1988).

ROGER FRANKE
Executive Secretary
Charitable Gambling
Control Board

CITY OF MANKATO

202 East Jackson, Box 3368, Mankato, Minnesota 56001
(507) 625-3161

CITY OF MANKATO
CELEBRATING 120 YEARS OF SERVICE
1868-1988
MINNESOTA



October 12, 1988

Mr. Roger Franke
Executive Secretary
Minnesota Charitable Gambling Control Board
200 Centennial Building
St. Paul, Minnesota

Dear Mr. Franke:

I welcome this opportunity to comment on the proposed emergency rule regarding lease payments for charitable gambling locations. There is no question that the rule is needed and perhaps long overdue as evidenced by the extreme range of lease prices.

Since temporary rules often become the permanent rule I feel it is important to point out an area of concern which may well be addressed at this time. I anticipate with the limitations being placed on maximum lease dollars that more organizations will work out agreements relating to reimbursement of compensation paid to bar owners and employees for selling gambling devices. Rule 7860.0160 subp 2 (E) is directed to this issue, but is rather vague in it's wording. A strict interpretation of this rule from this writers view would not seem to allow the use of persons who are not hired by the charitable organization. If, however the rule is interpreted by the Charitable Gambling Control Board to allow the charitable organization to compensate lessors for the services of their employees, then I feel stricter controls must be instituted.

In the interest of ensuring maximum dollars ultimately end up in the hands of charitable organizations, I believe it is necessary to limit the amount of compensation which may be paid lessors for labor expenses. I raise this concern because we feel that lessors may use the current rule to maximize their income at the expense of the charitable organization.

Several possible solutions come to mind. One method would be to place a flat limitation on the number of hours compensated per day, week or month. This could be used whether a distinct 'booth' or a 'behind the bar' operation is used. A second option would be establish a ceiling on the maximum compensation allowed to be paid to the lessor. Thirdly, and perhaps the most simplistic, would be to disallow the payment of compensation from gambling funds.

MAYOR
Dr. David Brown
CLERK-TREASURER
Avis Marquis

REVENUE MAILROOM
OCT 13 1988

CITY OF GOODRIDGE

Goodridge, Minn. 56725

October 10, 1988

COUNCIL MEMBERS
Irving Easthouse
Gordon Henrickson
Robert Mundero
Carl Elg
Jan Cullen

Mr. Roger Franke, Ex. Sec.
Chairtable Gambling Control Board
200 Centennial Buildin g
St. Paul, MN 55155

Dear Mr. Franke:

I want to oppose the adpting of an emergency rule limiting the lease payments that organizations may pay to lessors for premises leased for lawful gambling. This is the proposed limit of $24 per square foot per month not to exceed $600 per month in any instance.

There does not seem to be any emergency and I feel that this proposal should go through the regular hearing proceudre for the adoptions of rules and regulations set forth by statute.

I reguest t hat the regular procedure be followed in adoption of these rules and that hearings be held throughout the state including Northwestern Minnesota. Thief River Falls would be a good location . Too many times state officials think they are in Northern Minnesota when they are at Brainerd or Detroit Lakes.

Yours truly,

David M. Brown

DAVID M. BROWN
MAYOR

STATE OF MINNESOTA
CHARITABLE GAMBLING CONTROL BOARD

In the Matter of the Proposed
Adoption of Emergency Rule of
the State Charitable Control Board
Governing Lease Amounts for
Gambling Premises.

DECLARATION OF COUNSEL

I, Peggy L. Bunch, Special Assistant Attorney General, do hereby declare that I have examined the above-captioned rule, and the supporting rulemaking record, and that, based on my examination, the Administrative Procedure Act and Minnesota Rules, chapter 2010 have been followed. Any exceptions are listed below. For Attorney General billing purposes, the four-digit docket client code is 0096.

Exception: Notice of Intent to Adopt Emergency Rule not mailed to registrants until 10/19/88.

Peggy L. Bunch

PEGGY L. BUNCH
Special Assistant
Attorney General

Dated: October 24, 1988.

STATE OF MINNESOTA

DEPARTMENT OF REVENUE

CHARITABLE GAMBLING CONTROL BOARD

Department of Revenue
In the Matter of the Proposed Adoption of Emergency Rule of the State Charitable Gambling Control Board Governing Lease Amounts for Gambling Premises

NOTICE OF SUBMISSION OF EMERGENCY RULE TO THE ATTORNEY GENERAL

Pursuant to your request and in accordance with Minnesota Statutes, section 14.32:

PLEASE TAKE NOTICE that the above-captioned emergency rule as adopted has been submitted to the Office of the Attorney General on the date of this notice, October 24, 1988, for review as to legality and form to the extent form relates to legality. The proposed emergency rule, the rule as adopted, all the notices, all written comments received and other required documents also have been submitted to the attorney general.

The rule must be approved or disapproved by the Attorney General on the tenth working day following date of receipt of the rule. You may submit written comments to the Attorney General. Any written comments must be submitted within seven working days of the date of this notice. Your comments must address only the issue of legality of the rule or the legality of the specific parts or subparts of the rule. The attorney general standards for review are set forth in Minnesota Rules, part 2010.1000. You

may receive a copy of the attorney general decision upon written request to the attorney general. Your comments or requests for the decision must be directed to:

The Office of the Attorney General
515 Transportation Building
St. Paul, MN 55155
Telephone: (612) 297-2040

Any written comments submitted to the Attorney General must be submitted simultaneously to:

Roger Franke
Executive Secretary
Charitable Gambling Control Board
200 Centennial Office Building
St. Paul, MN 55155
Telephone: (612) 296-0937

RAYMOND D. POTAMI
Chair, Charitable Gambling
Control Board

Dated:

STATE OF MINNESOTA
CHARITABLE GAMBLING CONTROL BOARD

In the Matter of the Proposed Adoption of the Rule of the State Charitable Gambling Control Board Governing Lease Amounts for Gambling Premises.

AFFIDAVIT OF MAILING THE NOTICE OF SUBMISSION EMERGENCY RULE TO THE ATTORNEY GENERAL

STATE OF MINNESOTA)
)ss.
COUNTY OF RAMSEY)

Peggy L. Bunch, being sworn says:

That on the 24th day of October, 1988, in the City of St. Paul, County Ramsey, State of Minnesota, I mailed the attached Notice of Submission to the Attorney General by depositing in the United States mail, a copy thereof, with postage prepaid, to all persons and associations who requested notice that the rule in the above-entitled matter has been submitted to the Attorney General.

Peggy L. Bunch

PEGGY L. BUNCH
Special Assistant Attorney General

Subscribed and sworn to before me
this 24th day of October, 1988.

Karen Dorff

Notary Public

KAREN DORFF
NOTARY PUBLIC-MINNESOTA
ANOKA COUNTY
MY COMMISSION EXPIRES APRIL 14, 1990

STATE OF MINNESOTA
DEPARTMENT OF REVENUE
CHARITABLE GAMBLING CONTROL BOARD

WAIVER

I Joanne Kusic acknowledge I have received the Notice of Intent to Adopt Emergency Rule and the Proposed Emergency Rule from the Charitable Gambling Control Board.

Having reviewed the rule, I enclosed any comments I may have and hereby waive the twenty-five day response period.

Dated: 10/20/88

Joanne C. Kusic
GIBSON SPECIALTY CORP.
2222 S. MICHIGAN AVE.
CHICAGO, ILL 60616

STATE OF MINNESOTA
DEPARTMENT OF REVENUE
CHARITABLE GAMBLING CONTROL BOARD

WAIVER

I Robert Boyle acknowledge I have received the Notice of Intent to Adopt Emergency Rule and the Proposed Emergency Rule from the Charitable Gambling Control Board.

Having reviewed the rule, I enclosed any comments I may have and hereby waive the twenty-five day response period.

Dated: 10-20-88



STATE OF MINNESOTA
DEPARTMENT OF REVENUE
CHARITABLE GAMBLING CONTROL BOARD

WAIVER

I John Jacobson acknowledge I have received the Notice of Intent to Adopt Emergency Rule and the Proposed Emergency Rule from the Charitable Gambling Control Board.

Having reviewed the rule, I enclosed any comments I may have and hereby waive the twenty-five day response period.

Dated: 10/20/88

John E. Jacobson

Subp. 3.
A. $24 per sq. ft. — how do you measure - area occupied by jar ~~ten~~?

A./B./C. ~~Is~~ storage area included to get to total sq. ft.

You probably want to add a subp. stating something like:

No payments in addition to the above limits may be made by the licensed organization, or any person representing the licensed organization, for the right to conduct games of chance on the premises from any source of funds, nor shall any additional pymt. be accepted by lessor.

[You want to prevent organizations from paying, from their general fund, amounts over the limits

STATE OF MINNESOTA
DEPARTMENT OF REVENUE
CHARITABLE GAMBLING CONTROL BOARD

WAIVER

I ROBERT FINNERTY acknowledge I have received the Notice of Intent to Adopt Emergency Rule and the Proposed Emergency Rule from the Charitable Gambling Control Board.

Having reviewed the rule, I enclosed any comments I may have and hereby waive the twenty-five day response period.

Dated: 10/22/88

Robert J. Finnerty

Rec'd 10/28/88

STATE OF MINNESOTA
DEPARTMENT OF REVENUE
CHARITABLE GAMBLING CONTROL BOARD

WAIVER

I JOHN E. BOLAND acknowledge I have received the Notice of Intent to Adopt Emergency Rule and the Proposed Emergency Rule from the Charitable Gambling Control Board.

Having reviewed the rule, I enclosed any comments I may have and hereby waive the twenty-five day response period.

Dated: 10-27-88

John E Boland

STATE OF MINNESOTA
DEPARTMENT OF REVENUE
CHARITABLE GAMBLING CONTROL BOARD

WAIVER

I Pat Geagea acknowledge I have received the Notice of Intent to Adopt Emergency Rule and the Proposed Emergency Rule from the Charitable Gambling Control Board.

Having reviewed the rule, I enclosed any comments I may have and hereby waive the twenty-five day response period.

Dated: 10-28-88

Patrick Y. Young
Captain
EAGLE P-1

STATE OF MINNESOTA
DEPARTMENT OF REVENUE
CHARITABLE GAMBLING CONTROL BOARD

WAIVER

I Wm J Yantis acknowledge I have received the Notice of Intent to Adopt Emergency Rule and the Proposed Emergency Rule from the Charitable Gambling Control Board.

Having reviewed the rule, I enclosed any comments I may have and hereby waive the twenty-five day response period.

Dated: 28 oct '88

Wm J Yantis

STATE OF MINNESOTA
DEPARTMENT OF REVENUE
CHARITABLE GAMBLING CONTROL BOARD

WAIVER

I _____ acknowledge I have received the Notice of Intent to Adopt Emergency Rule and the Proposed Emergency Rule from the Charitable Gambling Control Board.

Having reviewed the rule, I enclosed any comments I may have and hereby waive the twenty-five day response period.

Dated: 10/28/88

Rec'd 10/31/88

STATE OF MINNESOTA
DEPARTMENT OF REVENUE
CHARITABLE GAMBLING CONTROL BOARD

WAIVER

I Thomas E. Mathews acknowledge I have received the Notice of Intent to Adopt Emergency Rule and the Proposed Emergency Rule from the Charitable Gambling Control Board.

Having reviewed the rule, I enclosed any comments I may have and hereby waive the twenty-five day response period.

Dated: 10-26-88

Thomas E. Mathews

RECEIVED
OCT 28 88
ATTORNEY GENERAL'S OFFICE
FORD BLDG. SECOND FLOOR
ST. PAUL, MN 55155

HUGHES, THOREEN & SULLIVAN

ATTORNEYS AT LAW

SUITE 200, 110 SOUTH 6TH AVENUE

P.O. BOX 1187

ST. CLOUD, MINNESOTA 56302-1187

(612) 251-5474

KEITH F. HUGHES
KEVIN J. HUGHES
GERALD L. THOREEN
DENNIS J. SULLIVAN
THOMAS E. MATHEWS
THOMAS P. KNAPP

JERRY O. RELPH
JEAN M. DIDIER
RONALD W. BRANDENBURG
BRADLEY W. HANSON
TRACY F. BOWE

FRED J. HUGHES

October 27, 1988

RECEIVED

OCT 28 88

ATTORNEY GENERAL'S OFFICE
FORD BLDG. SECOND FLOOR
ST. PAUL, MN 55155

Ms. Peg Bunch
200 Ford Building
St. Paul, MN 55155

RE: Charitable Gambling Control Board
Emergency Rules

Dear Ms. Bunch:

The following are my comments regarding the proposed emergency rules:

1. I suggest that the space requirements found at subdivision 3B be defined better. The intent of the rule, I believe, is to specify the maximum rent for space between 1 to 5,999 square feet, between 6,000 to 11,999 square feet, and for any space in excess of 12,000 square feet. For instance, if the lease space is 5,000 square feet, argument could be made that the rent amount should not exceed $300 because the leased premises is not more than 12,000 square feet. I believe the intent of the rule is to apply the $200 limitation in that situation.

2. Does the limitations provided in subdivision 3A apply without regard to subdivision 3B in the situation of a sublease? In the situation where two (or more) charities are leasing premises from an unrelated lessor and are conducting bingo only on the premises, the charities then sublease a portion of the premises to an unrelated organization to conduct pull tabs. May the charities conducting bingo sublease space to the third charity at $24 per square foot, maximum $600, without regard to the second limitation?

   A literal application of subdivision 3B would provide that there are two distinct lessors. The organization conducting pull tabs is leasing from the lessee organizations and not from the building owner lessor.

3. What is the effect of the proposed emergency rule on current leases? Many leases may have terms in excess of one year. Leases may also have renewal provisions which

were negotiated and set at the time of the lease was entered into. This is particularly true of leases regarding Bingo halls where substantial improvements were made and have to be amortized over a three or five year period.

Will the rent limitations be effective for the month immediately after its adoption? Will the rent limitations be effective for any leases entered into after the effective date of adoption?

The question of limitation of rent was addressed in the proposed rules which were discussed, I believe, on May 10, 1988. See .0160, subdivision 2C. The rent limitations were effective for all lease agreements entered into after the effective date of the rule.

Thank you for the opportunity to address the proposed rules.

Very truly yours,

Thomas E. Mathews

TEM:kjr

October 29, 1988

Peggy Bunch, Special Assistant
Attorney General
200 Ford Building
117 University Avenue
St. Paul, Minnesota 55155

Dear Peg,

I am in receipt of the Notice of Submission of Emergency Rule to the Attorney General, undated.

I take exception to the statement of Ray Potami, Chair of the Charitable Gambling Control Board when he made the following comment. He stated, "Your comments must address only the issue of legality of the rule or the legality of the specific parts or subparts of the rule." If this statement is valid, I may not bring up or point out inconsistencies in the procedures used by the Charitable Gambling Control Board. I reject that contention.

I draw your attention to Minnesota Rule 2010.0400 Documents Necessary For Review of Emergency Rule subpart C. which states as follows;

"If the agency is a multimember agency as provided in Minnesota Statutes, section 15.0597, subdivision 1a, the certificate of the multimember agency's authorizing resolution or a copy of a delegation of authority. The resolution must direct and delegate to an individual the authority to sign and to give the notice of the multimember agency's intent to adopt the emergency rule. The delegation of authority must expressly authorize an individual to sign and to give the notice of the agency's intent to adopt the emergency rule. The resolution or delegation of authority must be adopted at a meeting duly called and attended by a quorum. For the recommended format of the resolution, see part 2010.9910."

Further, Minnesota Rule 2010.9910 implies very clearly that the grant of authority to an individual representing the Board must either be, at a minimum, a public officer as an employee of the Board or a member thereof.

Enclosed is a copy of correspondence dated October 11, 1988 (petitioner's exhibit A.) in which I complained about the legal status of the executive secretary of the Gambling Board.

I have examined certain documents sent to me. I have identified one as petitioner's exhibit B. (the submission notice) and the other as petitioner's exhibit C. (the intent notice). I noted the following:

1. This notice which was dated October 24, 1988 and identified as petitioner's exhibit B. states that Roger Franke is the executive secretary of the Charitable Gambling Control Board.

2. This notice which was undated but received October 20, 1988 and identified as petitioner's exhibit C. implies in two locations that Roger Franke is executive secretary of the Department of the Revenue.

I am sure that there has been considerable conversation about whether Roger Franke is the executive secretary of the Charitable Gambling Control Board or the Department of Revenue. Even Roger Franke is confused because of his testimony on Wednesday September 14, 1988 in Brainerd, Minnesota. Roger himself stated he did not know who is employing him.

If your office believes that he is the executive secretary of the Charitable Gambling Control Board because of his alleged hiring by the Gambling Board in 1984 then please refer to petitioner's exhibit D.

If your office decides that he is the executive secretary of the Department of Revenue because of the reorganization plan signed by Governor Perpich dated 8-19-88 then please refer to petitioner's exhibit E. The August 19, 1988 Department of Administration Reorganization Order Number 152 states in part, "The following powers and duties of the Charitable Gambling Control Board are transferred to the Department of Revenue.. (5)...To employ an executive secretary and other employees to carry out the functions of the Charitable Gambling Control Board (Section 349.151 subd. 4 (5)."

As an employee of the Department of Revenue the notices attached and that which was printed in the State Register invalidates the procedure used under Minnesota Rule 2010.0400.

Sincerely, yours,

Robert Finnerty

October 11, 1988

Hubert H. Humphrey III
Attorney General, State of Minnesota
102 State Capital,
St. Paul, Minnesota 55155

Dear Mr. Humphery,

I believe that your office has failed in its duty under Minnesota Statute 556.01 in regards to Roger Franke who claims to be the executive secretary of the Minnesota Charitable Gambling Control Board.

This question first arose in later part of 1984 and was brought to the attention of special attorney general Jerry Anderson. He assured the public that Mr. Franke was properly hired as executive secretary.

The question arose further in a Rice County court case in 1988 in which special attorney general Peggy Bunch was involved.

It appears that Roger Franke has never been hired as executive secretary, never taken an oath of office as required under Minnesota Statute 358.05 and has usurped the title and further your office has engaged in a cover up of this fact.

Enclosed please find a copy of the October 22, 1984 meeting in which Roger Franke claims that he was hired and the meeting that the office of the attorney general now belatedly claims was a valid one. I have personally researched this vital question and I have found no indication that any action was ever taken by the Board to hire Mr. Franke at any date since October 22, 1984.

All other documents that verify Roger Franke's employment were caused by illegal actions taken by those having usurped the power of the Board and as such those actions were illegal. Prosecution of those involved should be commenced.

BOARD MEETING OCTOBER 22, 1984

Open Meeting Law Discussions:
The requirements of the Open Meeting Law were discussed at the first meeting of the Board. The minutes state, "Jerry Anderson from the A. G.'s office explained that any time there is a quorum of the board present, it constitutes a public meeting and thereby open. Proper notice needs to be given. Initial problems with legislation make it impossible to comply with requirements. ... Tom Carey then led a cheer for getting this done on time without touching base with even a single interest group in the state."



Comment: Observers at the meeting remember quite distinctly that the chairman of the Board gave the appearance that he was going to push through his agenda, come hell or high water. They recall that on more than one occasion he mentioned the audience's need to cooperate. The chairman's tone bordered on a threat. When the chair asked for a cheer from the assembled Board members, after his statement about avoiding interest groups, the observers have stated that both the chairman's statement and the cheer appeared to absolutely inappropriate. The public did ask questions of the Board, however, everyone was cooperative. They were attempting understand the procedures and the direction that the Board was taking. The members of the Board shouldn't have interpreted these questions from the observers as being uncooperative. Many times it was difficult to hear what was going on and members of the public would ask them to speak up or repeat their statements. There were complaints from the public about not knowing of the meeting, subsequently, explanations were given about the open meeting law early in the meeting. Observers remember that there was some confusion about where the official board offices would be, since the chair referred to his law offices as a possible meeting location. He stated that Franke was operating from them.

It was plain to everyone attending that the meeting violated the open meeting law. Observers recall that the chair made it quite clear that nothing substantial would happen at this meeting. Because of the problems, it was going only to be an information gathering meeting, i.e. a "get to know you process". As anyone can tell by examination of the Board minutes, there was considerable and substantial action and decision making actually done.

Executive Secretary/Consultant:

During the meeting two significant and contradictory occurrences in the establishment and formation of the Board happened. "Leo Reding moved that Roger Franke be hired as Executive Secretary with retroactive salary. Motion was seconded and passed unanimouly." Secondly, after an inquiry was made from the audience about the legality of retroactive pay, "Previous motion to hire Roger Franke as Executive Secretary needed to be amended. Motion was requested by Mr. Carey that Roger Franke be hired as a consultant and that Mr. Carey by authorized to pay him at a level commeasurate to the Racing Committee Executive Secretary. Motion was made, seconded and passed."

Comment: These two motions were the most unusual situation that occurred that day. Observers speculated that in all likelihood most of the Board members had never laid eyes on each other prior to that meeting. As a consequence the observers were amazed that the Board would hire an executive secretary that first meeting day.

Observers grumbled about a political fix. The public without a doubt had no opportunity to submit anything similar to job applications or even be aware that a position was available. It appears that it never was. A member of the audience asked about how one could get retroactive pay for a job that no one was, as yet, hired. When the motion was changed to hire Franke as a consultant, the observers believed that the job position of executive secretary was again open. The observers recall as a consultant Franke was given various tasks, such as advising on administrative duties and the rules.

How could any of this be done legally? To the observers it seemed improbable. Under various Minnesota statutes and rules it appears it was impossible. Under Minnesota Rules 3900.9100 ostensibly, an appointing authority (Board) could have hired Franke without notice, but it in no way would it have been lawful to do so with a retroactive pay provision. Minnesota Rule 3900.9100 states, "Unless otherwise specified in a statute, an appointing authority may appoint any person he or she considers qualified . . . the appointing authority shall submit the person's resume to the commissioner." After investigation it was found that the commissioner received no such resume, prior to the appointment, at that time of the appointment thereafter. In addition, Minn. Stat. 43A.18 Subd. 4. (d) says, "The initial salary of a head of an agency thereafter established whose salary is not specifically prescribed by law shall be fixed by the governor, after consultation with the commissioner, whose recommendations shall be advisory only, in an amount comparable to the salary of an agency head having similar duties and responsibilities." After investigation it was found that the commissioner received no such inquiry or request for consultation from the governor. In fact, it has been found that neither the governor nor his staff were ever consulted, about the pay for the executive secretary, prior to the fixing of the salary or thereafter. The only conclusion that one could reach was that Franke could never have been properly hired as an executive secretary to the Board. This is especially so because the first meeting could not have been in compliance with the law.

Turning to the obvious question was Franke hired as a consultant that fateful day in October? The minutes unequivocally state that Franke was to be hired as a consultant. Any pretense that he simultaneously held the position of executive secretary must be dismissed. In the case of State v. Sword, (1923) 196 NW 467, 157 Minn. 263 it was definitively held that the acceptance of a second incompatible office works the vacation of the

first. He could not have held both offices at the same time, therefore the latter, the consultant's job, would take precedence.

A dilemma now appears. How does a Board, that declared to the public that it was not going to do substantive work, in order to avoid violating the open meeting law, hire a consultant? If the Board did, in fact, hire a consultant how did it legally fix the salary commensurate to the Racing Committee Executive Secretary? Multiple problems occur.

If a public board such as the Gambling Control Board wished to hire a consultant, it must have done so according to prescribed procedures issued by the Commissioners of the Department of Administration and the Department of Finance. The very first procedure that the Board had to accomplish was public notice of the job's vacancy and an explanation of the requirements for it. As part of the procedure in order for the board to have obtained a consultant there needs to have been a request for a proposal (RFP) published in the State Register. After publication, a bona fide RFP must have been supplied by the would-be consultant to the Board before being legally hired. That RFP would have taken weeks, even without the normal one week delay in publishing the request for it in the State Register. See Exhibit ____ of the Procedures Manual, Department of Administration. Publication of the notice was required if the contract exceeded $2,000 and without a doubt the contract exceeded $10,000, therefore, it was required to be published in the State Register. The actual consultant contract must have been approved by the Office of the Attorney General, the Department of Administration, and the Department of Finance after they were satisfied that certain requirements under the law and rules were properly completed. It is reasonable to assume that considerable time would have past before Franke would have received all of the required approvals including evaluation of the proper remuneration.

The Office Contract Management (OCM) of the Department of Administration **controls** the review and approval of all requests for contractual services which include all consultant services. It is the agency head, probably the chairman of the Board, who determines the need for the consultant's services. However, neither the chairman nor the Board has the inherent powers to contract for those services, i.e. obligate the state of Minnesota or incur an obligation on its behalf. The law in this matter is exceptionally clear because of Minnesota's accounting system known as the Statewide Accounting System (SWA); a system which records Appropriations, receipts, allot-

ments, expenditures and encumbrances. OCM prenegotiates all consultant contracts for more than $10,000. The Board appears to be authorizing an expense greater than $60,000 per year based upon the remuneration of the Racing Secretary. In any event, the Board must by law have used form MS-00032 Contractual Services to submit Franke's name to the OCM. Without prior OCM approval, the Board could not enter into this type of agreement. The Board must have been able to cite its legal authority to enter into a contractual agreement. Not all state agencies have the right to hire without a specific "finding" from the Commissioner of Administration (DOA). At this point in time , the DOA begins to monitor the contract under its Contract Management Division (CMD) which has established its own Policy and Procedures Statement (ADM-188). This CMD monitors the performance of both parties to the contract and receives reports. Multiple searches for an approved consultant's contract between Franke and the State or its Board has met with failure. No contract can be found for any of the following fiscal years; 1984, '85, '86, '87 or '88.

As a result of this search, it can be determined that the Board and especially its chairman failed to abide by the provisions of the law. Since any encumbrance incurred prior to receiving an encumbrance from the Department of Finance violates Minn. Stat. 16 A.15 subd. 3. Each case of violation must be reviewed to determine if the obligation was for a necessary and proper state purpose, and whether this particular encumbrance is authorized by statute to be incurred. The party who authorized the obligation must write the letter of explanation and have it accepted before the obligation is approved for encumbrance.

The state clearly enumerated the process the Board had to follow prior to obtaining any consultants contract. This is contained in Subd. 3. of Minn. Stat. 16B.17. **"Before an agency may seek approval of a consultant or professional and technical services contract valued in excess of $2,000, it must certify to the commissioner that:**

1) no state employee is able to perform the services called for by the contract;

Note: If Franke was indeed executive secretary he could not be both a consultant and a state employee, even if it was unclassified service.

2) the normal competitive bidding mechanisms will not provide for adequate performance of the services;

Note: No finding or certification of the correctness of paragraph 2 can be found.

3) the services are not available as a product of a prior consultant or professional and technical services

contract, and the contractor has certified that the product of his services will be original in character;

Note: No finding or certification of the truthfulness of paragraph 3 can be found.

4) reasonable efforts were made to publicize the availability of the contract;

Note: No notice in State Register, any legal notice in newspapers within the counties of Hennepin, Ramsey or actual notice published in any finance or commerce paper can be found.

5) the agency has received, reviewed, and accepted a detailed work plan from the contractor for performance under the contract; and

6) the agency has developed, and fully intends to implement, a written plan providing for the assignment of specific agency personnel to a monitoring and liaison function; the periodic review of interim reports or other indication of past performance, and the ultimate utilization of the final product of the services.

Note: If only the Board had a "written plan", it would have gone a long way to alleviate the problems plaguing the Board today. See Exhibit , Department of Administration, Management Analysis Division "Charitable Gambling Control Board Final Report" dated July 1,'988. It was possible that the Board intended that its Administration Committee, established on October 22, 1984, was to handle such matters. However, a search of records of the Board reveals no such work plan ever having been submitted by Franke. Neither are there any minutes, notes, or letters of acceptance of the plan by the Board or any of it committees, let alone other state departments.

Subd. 2. of Minn. Stat. 16B.17 states, **"Before approving a proposed state contract for consultant services or professional and technical services the commissioner must determine, at least, that:**

1) all provisions of section 16B.19 and subdivision 3 of this section have been verified or complied with;

2) the work to be performed under the contract is necessary to the agency's achievement of its statutory responsibilities, and there is statutory authority to enter into the contract;

3) The contract will not establish an employment relationship between the state or the agency and any person performing under the contract;

4) no current state employees will engage in the performance of the contract;

5) no state agency has previously performed or contracted for the performance of tasks which would be substantially duplicated under the proposed contract; and

6) the contracting agency has specified a satisfactory method of evaluating and using the results of the work to be performed."

A search of the Department of Administration's records has revealed no commissioner findings or certification as required by law to the provisions of paragraphs 1 through 6. There appears to have been no application or request from the Board to the Commissioner concerning permission to enter into a consultant's contract. If a finding or certification had been done according to the law paragraphs 3, 4, and 6 would not have been violated.

After the proper certification is concluded the chairman of the Board is then obligated to clear the consultants contract with the Department of Finance as required under Minn. Stat. 16A.15, subd. 3. To accomplish this task the chairman would have had to coordinate the actions of the OCM and the Finance Encumbrance Center.

This is especially so when it comes to the back door approach of obtaining a government job. In every likelihood the present pretender to the executive secretary's job could not have received this position since he knew nothing of charitable gambling prior to this appointment as consultant. Therefore he came in the back door, in order to snatch a political plum, just as a proverbial sneak thief would do.

The legal problems of the Board and Franke intensify as one examines the lack of documentation as it relates to the issue of Franke's proper employment as a consultant. One is awestruck by the fact that no Board member caught the fact that Franke usurped the title of executive secretary of the Charitable Gambling Control Board. It is impossible to believe that no board member noticed, at the Board meeting of Nov. 13, 1984, the discrepancy between the text of the minutes of Oct. 22, 1984, that they had just approved, and the leading paragraph of those minutes. The leading paragraph described Franke as executive secretary. It can be concluded, from that time, Franke began using the title, that he had no right to do so, but he had the secret blessing of the Board's members.

A microscopic examination of all Board minutes from October 22, 1984, to date reveals that the subject was never again mention. The subject of Franke's employment as a consultant evaporated. There were no reports. There was no program of administration presented to the Board for evaluation. There was no termination of his consultant's contract. The only mention was of the situ-

ation that can be found relates to the many raises received by Franke and authorized by the Board, as their executive secretary.

Yet even to the casual observer it appears that a sham or fraud has been perpetrated by both the Board and Franke. It is not just a case of malfeasance or misfeasance in office. It is an example of pure cunning and political opportunism and greed. It can not be just a case of the members of the Board attempting to mollify members of the audience; just because one of the observers of the meeting happen to mentioned the "inappropriateness" of Franke's retroactive pay. A fraud has been committed. One of the principle reasons for our Minnesota Open Meeting Law is for the public to detect improper influences. There can be a no more perfect justification for the purpose of the Open Meeting Law, than the foregoing.

Even a cursory examination of the statutes leads one to see that Franke has engaged in more than one fraudulent practice. This statement was not made lightly. The full impact and the seriousness of this position requires further clarification. An examination of Minn. Stat. 609.415, as it relates to Franke, defines him as a public officer but not because he is entitled as a matter of law. Under the provision (f), "any other person exercising the functions of a public officer" is considered a public officer. Franke is a public officer at least under the "color" of the office he claims to hold. This is the only definition of a public officer that fits this particular and peculiar situation. For only the shortest period of time (approximately thirty minutes) was this person ever appointed or otherwise designated as a public officer. Minutes show that afterward, the action of hiring Franke was unequivocably rescinded. It becomes immediately apparent Franke has violated Minn. Stat. 609.44 states in part "Whoever intentionally and without lawful right thereto, exercises a function of a public office ... may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than $3,000.00 or both.

As a direct and knowing consequence of his own actions, Franke can be accused of violating Minn. Stat. 609.45 which states, in part, "Whoever is a public officer . . . under color of his office or employment intentionally asks, receives or agrees to receive a fee or other compensation in excess of that allowed by law or where no such fee or compensation is allowed is guilty of a misdemeanor." Whether or not Franke actually received retroactive pay as either a consultant or an executive secretary is immaterial, since he readily agreed to receive

it. Notwithstanding the retroactive pay issue, Franke has been accepting compensation of nearly $64,000.00 a year illegally because of his fraudulent claim to the office of executive secretary of the Board. In a lawsuit against the Board certain records were requested regarding Franke's employment situation. They were not forthcoming. Franke has claimed that he as a minimum edited the early minutes of the Board. He wrote them as well. What did the statement contained in the minutes, "(I assume , c.l.)" actually mean.

It goes without saying that 609.415 has been violated because it states in part, "Whoever falsely impersonates a ... public official with intent to mislead another into believing that he is actually such ... official is guilty of a misdemeanor."

At various times and places Franke has testified in either Grand Jury investigations or/and actual trials at which he has claimed to be the executive secretary of the Board after he subscribed to the oath that was given. These instances were in direct violation of the perjury statutes. Not to mention the occasions in which Franke had to sign various official documents upon oath or affirmation under penalty of perjury.

Finally, under Minnesota Statute 358.05 states in part, ... "**Every person** elected or **appointed to** any other **public office** ... before transacting any of the business or exercising any privilege of such office, shall take and subscribe the oath defined in the Constitution of the State of Minnesota, Article 5, Section 6." No one has been able to produce said oath of office and most telling the oath was never given at the October 22, 1984 meeting prior to Franke acting on behalf of the State of Minnesota.

General.

Observers listened to statements made during the first meeting of the Board. Even a few statements made it quite apparent that Franke, operating out of the business offices of the chairman, **prior** to the first meeting of the Board, had in fact acted as an agent of the Board with at least the consent of its chairman, and as a consequence; the State of Minnesota. As an example the minutes state, "Roger Franke report on administrative matter. Office space in the Summit National Bank building is tentatively rented effective November 1. He is also working of the job description for clerical staff and inspectors." Observers at the meeting remember statements of Franke and the chairman that indicated Franke had been working on such things as job descriptions, equipment needs and procurement, rules, and a rental lease

for the Board. Observers recall that it was stated that the Administration Committee could meet at the Board's new offices, but observers wondered where those offices were to be; at least while a Rules Committee was to meet on first floor of the bank building.

Comment: There is no doubt that certain procedures of the Department of Administration were being violated. Minn. Stat. 16B.24 Subd. 6. (a) specifically states, "The commissioner shall rent land and other premises when necessary for state purposes." It is obvious that only the commissioner could rent space in a private building. No where can be found any statute to allow the Board or a non employee such as Franke to directly lease or rent space on behalf of the Board. In addition, section b) states clearly, "No agency may initiate ... a lease for space for its own use in a private building **unless the commissioner has thoroughly investigated presently vacant space in public buildings, ... and found that none is available.** As far as can be determined, there never was such a commissioner determination as required by the law. Franke usurped both the power of the Board and that of the Commissioner of the Department of Administration.

In conclusion, I believe your office should commence immediately an investigation of what went wrong with the system when this problem first arose and why did the office of the attorney general cover up for the actions of the Board and Roger Franke.

Sincerely yours,

Robert Finnerty
5019 43rd Avenue South
Minneapolis, Minnesota 55417
(612) 724-0109

STATE OF MINNESOTA

DEPARTMENT OF REVENUE

CHARITABLE GAMBLING CONTROL BOARD

Department of Revenue
In the Matter of the Proposed Adoption of Emergency Rule of the State Charitable Gambling Control Board Governing Lease Amounts for Gambling Premises

NOTICE OF SUBMISSION OF EMERGENCY RULE TO THE ATTORNEY GENERAL

Pursuant to your request and in accordance with Minnesota Statutes, section 14.32:

PLEASE TAKE NOTICE that the above-captioned emergency rule as adopted has been submitted to the Office of the Attorney General on the date of this notice, October 24, 1988, for review as to legality and form to the extent form relates to legality. The proposed emergency rule, the rule as adopted, all the notices, all written comments received and other required documents also have been submitted to the attorney general.

The rule must be approved or disapproved by the Attorney General on the tenth working day following date of receipt of the rule. You may submit written comments to the Attorney General. Any written comments must be submitted within seven working days of the date of this notice. Your comments must address only the issue of legality of the rule or the legality of the specific parts or subparts of the rule. The attorney general standards for review are set forth in Minnesota Rules, part 2010.1000. You



may receive a copy of the attorney general decision upon written request to the attorney general. Your comments or requests for the decision must be directed to:

The Office of the Attorney General
1515 Transportation Building
St. Paul, MN 55155
Telephone: (612) 297-2040

Any written comments submitted to the Attorney General must be submitted simultaneously to:

Roger Franke
Executive Secretary
Charitable Gambling Control Board
200 Centennial Office Building
St. Paul, MN 55155
Telephone: (612) 296-0937

RAYMOND D. POTAMI
Chair, Charitable Gambling
Control Board

Dated: 10/24/88

Department of Revenue
In the Matter of the Proposed Adoption of Emergency Rule of the State Charitable Gambling Control Board Governing Lease Amounts for Gambling Premises

NOTICE OF INTENT TO ADOPT AN EMERGENCY RULE

Notice is hereby given that the State Charitable Gambling Control Board intends to adopt the above-entitled emergency rule. The statutory authority to adopt the emergency rule is contained in Laws of Minnesota, Chapter 684, Article 1, sec. 7. (1988). The agency, in adopting the rule, is following the procedures set forth in the Administrative Procedure Act for adopting emergency rules in Minnesota Statutes, sections 14.29 to 14.36.

All persons have 25 days after publication to submit data and views on the proposed emergency rule or any part or subpart of the rule in writing. Any comments must be submitted to:

Roger Franke, Executive Secretary
200 Centennial Buildinmg
St. Paul, MN 55155
(612) 296-0937

A copy of the proposed rule is attached to this notice.

A free copy of the proposed emergency rule is available by contacting the Charitable Gambling Control Board Office at 642-0555.

The proposed emergency rule may be modified if the modifications are supported by data and views submitted to the agency and do not result in a substantial change in the proposed emergency rule as noticed.

Upon adoption of the emergency rule by the agency, the emergency rule as adopted and its supporting documents will be delivered to the Attorney General for review as to legality and form to the extent form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted rule, must submit the written request to Roger Franke.



The emergency rule will take effect five working days after approval by the Attorney General and be effective for 180 days. The emergency rule will be continued in effect for an additional 180 days if the agency gives notice of continuation in accordance with Minnesota Statutes, section 14.35.

Dated: _____

_____

ROGER FRANKE
Executive Secretary

Charitable Gambling Control Board

Proposed Emergency Amendments to Permanent Rules Relating to Lease Payments

Rules as Proposed

7860.0090 [Emergency] LEASE AGREEMENTS.

Subpart 1. and 2. [Unchanged.]

Subp. 3. Payments.

A. The amount of the lease payment that an organization shall pay to a lessor for premises leased for lawful gambling, with the exception of bingo, may not exceed $24 per square foot per month. In no instance may rent payments for the leased premises exceed $600 per month.

B. The amount of the lease payment that an organization shall pay to a lessor for premises leased for the conduct of bingo and all other gambling activities during that bingo occasion shall not exceed $200 for leased premises of not more than 6,000 square feet, $300 for leased premises of not more than 12,000 square feet, and $400 for leased premises of more than 12,000 square feet.

C. The storage of the inventory of gambling equipment may be on that leased premises.

Reproduced from the original in the Legislative Reference Library Records

MINNESOTA STATE ARCHIVES,
MINNESOTA HISTORICAL SOCIETY.

NOT

Charitable Gambling Board
October 22, 1984

MINUTES

Board members present included: Tom Carey, Chair, Roger Franke, Executive Secretary, Louis A. Murray, Ray Potami, Dorothy Meany, Rita Fassbinder, James Evans, Leo Reding, Lorraine Berman, Barbara Grove, Roseann Prich, Jim Clifford, Frank Dougherty and Special Assistant Attorney General Jerry Anderson. Also present were Paul Marinac, Revisor's Office, Don Feeney, State Planning Agency, Peggy Byrne, State Planning Agency, Dick Krueger, Dept. of Finance, and Bill Peterson, Lobbyist representing distributors.

The meeting was called to order at 2:05 p.m. Press release was made part of the record.* Any time there is a quorum of the Board present, ~~that~~ constitutes a public meeting and is thereby open. Proper notice needs to be given.

* Jerry Anderson from the A.G.'s office explained that

Initial problems with legislation make it impossible to comply with requirements. Jerry Anderson put together a timetable designed to meet a March 1 dealine for getting rules in place on time. He also gave some background as to his experience.

~~History prior to Legislation~~ Background

County municipalities issued gambling licenses, set fees, etc. As of February 28 all licenses issued by local municipalities expire and are then issued by the Board. The licenses can be issued pusuant only to the rules adopted by the Board.

Rulemaking

Corners needs to be cut and all players involved persuaded to cooperate in order to get licenses on the streeet by March 1. Applications need to be readied for people (1500 or more) to apply. Staff need to be in place to review the applications. The timetable was reviewed. There are no rules on statewide charitable gaming existing now. Fees range from $0-$300, some are as high as $1,000. There are a wide variety of groups and differences in the way they operate. Copies of rules have been gathered from other states. 22 states have been written to for information regarding their rules. We will be able to use some existing rules to draft ours.

PETITIONER'S EXHIBIT D

How do we issue licenses without rules?

If we wait until the rules are in place, there would be 2 days to reivew and issue 1500 or more licenses. Municipality has 30 days to review local applications to decide whether or not they want the organization to have a license

Municipalities have issued temporary licenses to coincide with the November 1 enactment date. A legislative enactment extending the March 1 date would create numerous problems.

Tom Carey commented that he is opposed to going to the legislature for special legislation thereby opening up further debate. As it is, a Report is due to the Governor and legislature by October 24 explaining why rules have not been ~~adopted or implemented~~ drafted + adopted.

Mr. Jerry Anderson proposed that while putting rules together, ~~also get~~ should put out application forms ~~together~~ with a letter laying out minimal reporting requirements to local municipalities.

Rep. Jim Evans raised the issue that some of the municipalities have indicated that they ~~just~~ won't issue licenses ~~by~~ January 1; instead they will wait for the Board to issue them by March 1, leaving a 2 month gap.

Leo ~~Adams~~ Reding moved that Roger Franke be hired as Executive Secretary with a retroactive salary. Motion was seconded and passed unanimouly.

John Jacobson has just finished re-writing North Dakota's Gaming Commissions rules. John has been released from his responsibilities and is free to be hired to write our rules. He will arrive tomorrow. Mr. Carey asked the Board to authorize salary expenditure to hire Mr. Jacobson as a consultant

Mr. Carey indicated that there needs to be a Rules Committee to draft the rules and asked for volunteers to serve on this Committee. The question was raised about the time commitment to serving on the Committee. Mr. Johnson responded that the Committee would meet approximately once a week. Mr. Carey indicated that he will sit on all Committess. The following persons volunteered to sit on the Rules Committee: Jim Clifford, Leo Reiding, Rita Fassbinder and Jim Evans.

Discussion followed about how often the Board should meet to review and comment on the rules. Mr. Carey indicated that he didn't think the Board should meet regularly until the Rules Committee has had a chance to put something together. He then proposed having two meeting back to back; the first being a working meeting on the rules and the next being a formal Board meeting on the rules. These meetings would take place in approximately one month.

Tom Carey then led a cheer for getting this done on time without touching base with every single interest group in the state.

Mr. Carey then proposed the creation of a Hearings Committee that would be responsible for seeking public opinion on matters related to gambling. Jerry Anderson then explained what the minimal legal requirements are for public hearings. Mr. Carey commented on the need to try and avoid the possibility of angry people showing up ~~present~~ at the hearing held by the OAH saying they haven't had a chance to be involved in the process. The Hearings Committee should also include and consider the Indian Tribal interests. The Hearings Committee will be the public relations arm of the Board. The Hearings Committee ~~is now~~ was then designated the Public Relations Committee.

The Administration Committee's responsibility will include drafting job descriptions (gambling inspectors, administrative secretary, clerks, etc.), salaries, geographic location (offices at 906 Midwest Plaza East are temporary, one year), leases, stationery and all other matters related to budget and personnel. These concerns will also be handled in part by Roger Franke.

The Forms Committee will be responsible for ~~designed~~ designing all forms related to the operation of licensing. The chairman of the Forms Committee will need to attend the Rules Committee meetings because the forms have to ~~be~~ eventually be incorporated into the rules.

Previous motion to hire Roger Franke as Executive Secretary needed to be amended. Motion was requested by Mr. Carey that Roger Franke be hired as a consultant and that Mr. Carey by authorized to pay him at a level commeasurate to the Racing Committee Executive Secretary. Motion was made, seconded and passed. ~~(I assume, c.l.)~~

Motion was made and seconded that the established Committee meetings receive the same per deim as the Board meetings.

There was further clarification given as to the the responsibilities of each Committee:

The Public Relations Committee will be responsible for law enforcement of charitable organizations. Members will include Barb Grove as chair, Lorriane Berman and Louis Murray.

The Administration Committee as stated earlier will be responsible for job descriptions, pay schedules, physical matters, recording system, checking into an computer system and other administrative tasks. Members include Roseann Prich, Dorothy Meany and Ray Potami.

The Forms Committee will also write the rules related to forms. How much is to be charged for fees? What will license stamps look like?

The Rules Committee members include Jim Clifford, Frank Dougherty, Leo Reding, Jim Evans, and Rita Fassbinder.

Since there are not enough people to sit on the Forms Committee and the Rules Committee, they were combined.

Jim Evans raised a concern about the philosophy and opinions of the Board chair and members in order to assist the Rules Committee with the drafting of rules (i.e., do you want to promote charitable gambling or do you want to put a damper on it). There was discussion of what and what not is within the purview of the Board's rulemaking capacity.

Meeting Date Determination

Each Committee will decide when they will meet. November 12 and 13 were set as the next 2 meeting dates (back to back). The first being a working meeting on the rules, the second an official Board meeting on the rules.

Ethics of Board members was discussed. Jerry Anderson commented on the ~~information~~ non-acceptance rules related to the ethics of accepting gratuities (i.e., meals, gifts, drinks, etc.). Some states have a law that Board members have to report receipt of any of the above. The Racing Commission members make a notation/record of when they ~~meet~~ meet with members of the industry.

Jerry Anderson pointed out that the Commission does not have the authority to regulate the activity of Indian Tribes.

Roger Franke report on administrative matters. Office space in the Summit National Bank building is tentatively rented effective November 1. He is also working of the job description for clerical staff and inspectors.

John Jacobsom will meet~~ing~~ with Commission members on Wednesday, October 24 at 1:00 in Suite 906, Midwest Plaza East, Minneapolis. He will give an in-depth presentation on gambling in North Dakota.

Expense forms were distributed to Board members.

Barbara Grove inquired about the fidelity bonding requirement for gambling managers. Jerry Anderson responded that bonding is required under current law.

Louis Murray offered a motion prohibiting the Board members and staff from participating in gambling activities regulated by the Board. Motion passed unanimously.

Jim Clifford offered a motion prohibiting any member of the Board or its staff from accepting any gratuities whatsoever from any source that has a direct or indirect business relationships with the Charitable Gambling Board. Motion passed unanimously.

The Board adjourned to Committees at 4:50 p.m.

STATE OF MINNESOTA
DEPARTMENT OF ADMINISTRATION
REORGANIZATION ORDER NO. 152

Pursuant to Minnesota Statutes 1986, Section 16B.37, the following administrative reorganization is made with the prior approval of the Governor.

In order to improve efficiency and avoid duplication in the operation of state government, the following powers and duties of the Charitable Gambling Control Board are transferred to the Department of Revenue:

1. To collect and deposit license fees and taxes due under chapter 349 (Section 349.151, subd. 4 (2)).

2. To receive reports required by chapter 349 and inspect the records, books, and other documents of organizations and suppliers to insure compliance with all applicable laws and rules (Sections 349.151, subd. 4 (3) and 349.19).

3. To register gambling equipment and issue registration stamps (Sections 349.151, subd. 4 (5) and 349.162).

4. To register manufacturers and collect registration fees (Section 349.163).

5. To employ an executive secretary and other employees to carry out the functions of the Charitable Gambling Control Board (Section 349.151, subd. 5).

6. To regulate the number of bingo occasions, waive certain restrictions regarding leased premises, and provide forms for bingo checkers (Section 349.17).

7. To request copies of leases from licensed organizations and grant certain exemptions regarding premises used for lawful gambling (Section 349.18).

8. To receive notices of cancellations of gambling managers' fidelity bonds (Section 349.20).

9. To receive reports on local gambling taxes from cities and counties and prescribe the form of the reports (Section 349.212, subd. 5).

10. To administer certain exemptions from bingo licensing and lawful gambling regulations (Section 349.214).



11. To make recommendations to the Charitable Gambling Control Board on the issuance, revocation, and suspension of licenses, on rule-making, on civil penalties, and on enforcement actions.

12. To take any enforcement action with respect to the collection of taxes or fees incident to the powers and duties transferred to the department.

The Charitable Gambling Control Board shall retain the following powers and duties:

1. To issue, revoke, and suspend licenses to organizations and distributors under sections 349.16 and 349.161.

2. To revoke and suspend manufacturers' certificates of registration under section 349.163.

3. To make rules, including emergency rules, required by chapter 349.

4. To provide by rule for the mandatory posting by organizations conducting lawful gambling of rules of play and the odds and/or house percentage on each form of lawful gambling.

5. To report annually to the Governor and Legislature on its activities and on recommended changes in the laws governing charitable gambling.

6. To impose civil penalties of not more than $500 per violation on organizations, distributors, and manufacturers for failure to comply with any provisions of sections 349.12 to 349.23 or any rule of the board.

7. To issue and cause to be served cease and desist orders, bring actions in district courts, and exercise other powers specified in section 349.151, subd. 4a.

8. To issue, revoke, and suspend bingo hall licenses under section 349.164.

9. To notify city councils, county boards, and town boards before issuing or renewing licenses to organizations as specified under section 349.213.

Consistent with this transfer of powers and duties, the following positions and their incumbents, with all accrued benefits, are transferred from the Charitable Gambling Control Board to the Department of Revenue:

Position Number	Incumbent	Classification
192600	Marilee J. Appleby	Office Services Supervisor 3
193550	Martha J. Bogen	Data Entry Operator
192300	Bernice A. Caruth	Executive 1
192090	Roger W. Franke	Executive Secretary
220750	Cynthia K. Lemay	Clerk Typist 3
192040	Katherine Macioch	Clerk Typist 2
192310	Linda A. Moser	Clerk Typist 3
192390	Wayne L. Sather	Auditor Senior Supervisor
194700	Gale S. Schmid	Auditor Intermediate
222010	Gerald Sieve	Auditor Senior
219500	Randy L. Stenberg	Auditor Intermediate
192360	Roger W. Swanson	Auditor Principal Supervisor
192370	Robyn Tucker	Auditor Intermediate
192380	Warren N. Walberg	Auditor Intermediate
192400	Vacant	Auditor Intermediate
231640	Geraldine Christen	Clerk Typist 2
231650	Vacant	Clerk Typist 3
231660	Vacant	Clerk Typist 2
231670	Vacant	Clerk Typist 2
231980	Vacant	Revenue Special Investigator 1
232990	Jeff Higgins	Accounting Officer

Nothing in this executive order shall be construed as abrogating or modifying any rights now enjoyed by affected employees under the managerial or commissioner's plan under Minnesota Statutes 1986, Section 43A.18 or the terms of an agreement between an exclusive representative of public employees and the state or one of its appointing authorities.

The approved complement of the Department of Revenue as provided by Laws 1987, Chapter 404, Section 20 and Laws 1988, Chapter 686, Article 1, Section 10, is increased by 21 positions; the approved complement of the Charitable Gambling Control Board as provided by Laws 1987, Chapter 358, Section 15 and Laws 1988, Chapter 684, Article 1, Section 7, is decreased by 21 positions.

The Charitable Gambling Control Board shall give to the Department of Revenue all contracts, books, maps, plans, papers, records, supplies, and equipment.

Any proceeding, court action, prosecution, or other business or matter related to the collection of taxes or fees pending on the effective date of the transfer may be conducted and completed by the Department of Revenue in the same manner under the same terms and conditions, and with the same effect, as though it involved or were commenced and conducted or completed prior to the transfer by the Charitable Gambling Control Board.

The Commissioner of Finance shall make the necessary financial determinations in accordance with Minnesota Statutes 1986, Section 16B.37, Subdivision 3.

The effective date of this order is August 19, 1988. The order is herewith filed with the Secretary of State and shall remain in effect until amended or repealed.

APPROVED:

Rudy Perpich

RUDY PERPICH, GOVERNOR

8-19-88
Date

Jeff Zlonis, Deputy Commissioner

for SANDRA J. HALE, COMMISSIONER
DEPARTMENT OF ADMINISTRATION

8-19-88
Date

FILED ACCORDING TO LAW:

Joan Anderson Growe

JOAN ANDERSON GROWE
SECRETARY OF STATE

8-19-88
Date

RECEIVED

RECEIVED
NOV 02 88
ATTORNEY GENERAL'S OFFICE
515 TRANSPORTATION BLDG
ST PAUL, MN 55155

STATE OF MINNESOTA
DEPARTMENT OF REVENUE
CHARITABLE GAMBLING CONTROL BOARD

WAIVER

I Dennis R. Heitkamp acknowledge I have received the Notice of Intent to Adopt Emergency Rule and the Proposed Emergency Rule from the Charitable Gambling Control Board.

Having reviewed the rule, I enclosed any comments I may have and hereby waive the twenty-five day response period.

Dated: 11/2/88

Dennis R. Heitkamp
Executive director
C.W.O.C. Inc
Box 919
Moorhead Mn

CLAY WILKIN
OPPORTUNITY COUNCIL
NOV 02 1988
RECEIVED

Notice - Mailed

The notice was not mailed to the 10 persons on the mailing list (per Peg Bunch). Therefore CBE + MIC have agreed to accept Waivers from the 10 persons. To date 3 have been rec'd. If all 10 have not been rec'd by 11/7/88, the rule will be rejected.

Authority

1988 Mn Laws Ch 684 Art 1 § 7

Effective day following enactment

Approved 4/27/88

+ 180 days = 10/24/88 (date rec'd)

11/2/88 Rec'd 6 waivers - one on the way.

11/2/88 Rec'd 1 comment re Notice & Submission.

to Exh A pg 1 ¶ 5

according + Peg 6. ¶ 15 Exh C see.

#10 is here.

STATE OF MINNESOTA
DEPARTMENT OF ADMINISTRATION
REORGANIZATION ORDER NO. 152

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9. To receive reports on local gambling taxes from cities and counties and prescribe the form of the reports (Section 349.212, subd. 5).

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11. To make recommendations to the Charitable Gambling Control Board on the issuance, revocation, and suspension of licenses, on rule-making, on civil penalties, and on enforcement actions.

12. To take any enforcement action with respect to the collection of taxes or fees incident to the powers and duties transferred to the department.

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3. To make rules, including emergency rules, required by chapter 349.

4. To provide by rule for the mandatory posting by organizations conducting lawful gambling of rules of play and the odds and/or house percentage on each form of lawful gambling.

5. To report annually to the Governor and Legislature on its activities and on recommended changes in the laws governing charitable gambling.

6. To impose civil penalties of not more than $500 per violation on organizations, distributors, and manufacturers for failure to comply with any provisions of sections 349.12 to 349.23 or any rule of the board.

7. To issue and cause to be served cease and desist orders, bring actions in district courts, and exercise other powers specified in section 349.151, subd. 4a.

8. To issue, revoke, and suspend bingo hall licenses under section 349.164.

9. To notify city councils, county boards, and town boards before issuing or renewing licenses to organizations as specified under section 349.213.

Consistent with this transfer of powers and duties, the following positions and their incumbents, with all accrued benefits, are transferred from the Charitable Gambling Control Board to the Department of Revenue:

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192400	Vacant	Auditor Intermediate
231640	Geraldine Christen	Clerk Typist 2
231650	Vacant	Clerk Typist 3
231660	Vacant	Clerk Typist 2
231670	Vacant	Clerk Typist 2
231980	Vacant	Revenue Special Investigator 1
232990	Jeff Higgins	Accounting Officer

Nothing in this executive order shall be construed as abrogating or modifying any rights now enjoyed by affected employees under the managerial or commissioner's plan under Minnesota Statutes 1986, Section 43A.18 or the terms of an agreement between an exclusive representative of public employees and the state or one of its appointing authorities.

The approved complement of the Department of Revenue as provided by Laws 1987, Chapter 404, Section 20 and Laws 1988, Chapter 686, Article 1, Section 10, is increased by 21 positions; the approved complement of the Charitable Gambling Control Board as provided by Laws 1987, Chapter 358, Section 15 and Laws 1988, Chapter 684, Article 1, Section 7, is decreased by 21 positions.

The Charitable Gambling Control Board shall give to the Department of Revenue all contracts, books, maps, plans, papers, records, supplies, and equipment.

Any proceeding, court action, prosecution, or other business or matter related to the collection of taxes or fees pending on the effective date of the transfer may be conducted and completed by the Department of Revenue in the same manner under the same terms and conditions, and with the same effect, as though it involved or were commenced and conducted or completed prior to the transfer by the Charitable Gambling Control Board.

The Commissioner of Finance shall make the necessary financial determinations in accordance with Minnesota Statutes 1986, Section 16B.37, Subdivision 3.

The effective date of this order is August 19, 1988. The order is herewith filed with the Secretary of State and shall remain in effect until amended or repealed.

APPROVED:

Rudy Perpich 8-19-88

RUDY PERPICH, GOVERNOR Date

Jeff Ybarra, Deputy Comm. 8-19-88

for SANDRA J. HALE, COMMISSIONER Date
DEPARTMENT OF ADMINISTRATION

FILED ACCORDING TO LAW:

Joan Anderson Growe 8-19-88

JOAN ANDERSON GROWE Date
SECRETARY OF STATE

SF-00006-05 (4/86)

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT : ATTORNEY GENERAL

DATE : NOVEMBER 2, 1988

TO : RITA DESMOND

FROM : PEGGY L. BUNCH
Special Assistant Attorney General

PHONE : 296-1248

SUBJECT : CHARITABLE GAMBLING CONTROL BOARD-EMERGENCY RULE

Enclosed are comments submitted by Robert Finnerty. His major challenge is that Roger Franke is not Executive Secretary, having never been formally hired by the Board.

Mr. Finnerty is not correct. Furthermore, the point is not relevant here. Prior to adoption of the Authorizing Resolution on August 22, 1988, at the regular board meeting, Governor Perpich (on August 19) signed an Executive Order moving the Board to the Department of Revenue. Franke then became an employee of Revenue and retained the title of Executive Secretary. (See Exh. E).

We do not see any problem here.

PLB:raa
Enclosure

SF-00006-05 (4/86)

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT : ATTORNEY GENERAL

DATE : November 1, 1988

TO : RITA DESMOND
Legal Assistant

FROM : PEGGY L. BUNCH PLB
Special Assistant
Attorney General

PHONE : 6-1248

SUBJECT : Charitable Gambling Control Board Emergency Rule

Enclosed are copies of waivers and comments I have received. The only waiver outstanding is from dennis Heitkamp, Clay-Wilkin Opportunity Council. I should receive same by next Monday.

NJB:pai
Enc.

October 29, 1988

Peggy Bunch, Special Assistant
Attorney General
200 Ford Building
117 University Avenue
St. Paul, Minnesota 55155

Dear Peg,

I am in receipt of the Notice of Submission of Emergency Rule to the Attorney General, undated.

I take exception to the statement of Ray Potami, Chair of the Charitable Gambling Control Board when he made the following comment. He stated, "Your comments must address only the issue of legality of the rule or the legality of the specific parts or subparts of the rule." If this statement is valid, I may not bring up or point out inconsistencies in the procedures used by the Charitable Gambling Control Board. I reject that contention.

I draw your attention to Minnesota Rule 2010.0400 Documents Necessary For Review of Emergency Rule subpart C. which states as follows;

"If the agency is a multimember agency as provided in Minnesota Statutes, section 15.0597, subdivision 1a, the certificate of the multimember agency's authorizing resolution or a copy of a delegation of authority. The resolution must direct and delegate to an individual the authority to sign and to give the notice of the multimember agency's intent to adopt the emergency rule. The delegation of authority must expressly authorize an individual to sign and to give the notice of the agency's intent to adopt the emergency rule. The resolution or delegation of authority must be adopted at a meeting duly called and attended by a quorum. For the recommended format of the resolution, see part 2010.9910."

Further, Minnesota Rule 2010.9910 implies very clearly that the grant of authority to an individual representing the Board must either be, at a minimum, a public officer as an employee of the Board or a member thereof.

Enclosed is a copy of correspondence dated October 11, 1988 (petitioner's exhibit A.) in which I complained about the legal status of the executive secretary of the Gambling Board.

I have examined certain documents sent to me. I have identified one as petitioner's exhibit B. (the submission notice) and the other as petitioner's exhibit C. (the intent notice). I noted the following:

1. This notice which was dated October 24, 1988 and identified as petitioner's exhibit B. states that Roger Franke is the executive secretary of the Charitable Gambling Control Board.

2. This notice which was undated but received October 20, 1988 and identified as petitioner's exhibit C. implies in two locations that Roger Franke is executive secretary of the Department of the Revenue.

I am sure that there has been considerable conversation about whether Roger Franke is the executive secretary of the Charitable Gambling Control Board or the Department of Revenue. Even Roger Franke is confused because of his testimony on Wednesday September 14, 1988 in Brainerd, Minnesota. Roger himself stated he did not know who is employing him.

If your office believes that he is the executive secretary of the Charitable Gambling Control Board because of his alleged hiring by the Gambling Board in 1984 then please refer to petitioner's exhibit D.

If your office decides that he is the executive secretary of the Department of Revenue because of the reorganization plan signed by Governor Perpich dated 8-19-88 then please refer to petitioner's exhibit E. The August 19, 1988 Department of Administration Reorganization Order Number 152 states in part, "The following powers and duties of the Charitable Gambling Control Board are transferred to the Department of Revenue.. (5)...To employ an executive secretary and other employees to carry out the functions of the Charitable Gambling Control Board (Section 349.151 subd. 4 (5)."

As an employee of the Department of Revenue the notices attached and that which was printed in the State Register invalidates the procedure used under Minnesota Rule 2010.0400.

Sincerely, yours,

Robert Finnerty

October 11, 1988

Hubert H. Humphrey III
Attorney General, State of Minnesota
102 State Capital,
St. Paul, Minnesota 55155

Dear Mr. Humphery,

I believe that your office has failed in its duty under Minnesota Statute 556.01 in regards to Roger Franke who claims to be the executive secretary of the Minnesota Charitable Gambling Control Board.

This question first arose in later part of 1984 and was brought to the attention of special attorney general Jerry Anderson. He assured the public that Mr. Franke was properly hired as executive secretary.

The question arose further in a Rice County court case in 1988 in which special attorney general Peggy Bunch was involved.

It appears that Roger Franke has never been hired as executive secretary, never taken an oath of office as required under Minnesota Statute 358.05 and has usurped the title and further your office has engaged in a cover up of this fact.

Enclosed please find a copy of the October 22, 1984 meeting in which Roger Franke claims that he was hired and the meeting that the office of the attorney general now belatedly claims was a valid one. I have personally researched this vital question and I have found no indication that any action was ever taken by the Board to hire Mr. Franke at any date since October 22, 1984.

All other documents that verify Roger Franke's employment were caused by illegal actions taken by those having usurped the power of the Board and as such those actions were illegal. Prosecution of those involved should be commenced.

BOARD MEETING OCTOBER 22, 1984

Open Meeting Law Discussions:
The requirements of the Open Meeting Law were discussed at the first meeting of the Board. The minutes state, "Jerry Anderson from the A. G.'s office explained that any time there is a quorum of the board present, it constitutes a public meeting and thereby open. Proper notice needs to be given. Initial problems with legislation make it impossible to comply with requirements. ... Tom Carey then led a cheer for getting this done on time without touching base with even a single interest group in the state."



Comment: Observers at the meeting remember quite distinctly that the chairman of the Board gave the appearance that he was going to push through his agenda, come hell or high water. They recall that on more than one occasion he mentioned the audience's need to cooperate. The chairman's tone bordered on a threat. When the chair asked for a cheer from the assembled Board members, after his statement about avoiding interest groups, the observers have stated that both the chairman's statement and the cheer appeared to absolutely inappropriate. The public did ask questions of the Board, however, everyone was cooperative. They were attempting understand the procedures and the direction that the Board was taking. The members of the Board shouldn't have interpreted these questions from the observers as being uncooperative. Many times it was difficult to hear what was going on and members of the public would ask them to speak up or repeat their statements. There were complaints from the public about not knowing of the meeting, subsequently, explanations were given about the open meeting law early in the meeting. Observers remember that there was some confusion about where the official board offices would be, since the chair referred to his law offices as a possible meeting location. He stated that Franke was operating from them.

It was plain to everyone attending that the meeting violated the open meeting law. Observers recall that the chair made it quite clear that nothing substantial would happen at this meeting. Because of the problems, it was going only to be an information gathering meeting, i.e. a "get to know you process". As anyone can tell by examination of the Board minutes, there was considerable and substantial action and decision making actually done.

Executive Secretary/Consultant:

During the meeting two significant and contradictory occurrences in the establishment and formation of the Board happened. "Leo Reding moved that Roger Franke be hired as Executive Secretary with retroactive salary. Motion was seconded and passed unanimouly." Secondly, after an inquiry was made from the audience about the legality of retroactive pay, "Previous motion to hire Roger Franke as Executive Secretary needed to be amended. Motion was requested by Mr. Carey that Roger Franke be hired as a consultant and that Mr. Carey by authorized to pay him at a level commeasurate to the Racing Committee Executive Secretary. Motion was made, seconded and passed."

Comment: These two motions were the most unusual situation that occurred that day. Observers speculated that in all likelihood most of the Board members had never laid eyes on each other prior to that meeting. As a consequence the observers were amazed that the Board would hire an executive secretary that first meeting day.

Observers grumbled about a political fix. The public without a doubt had no opportunity to submit anything similar to job applications or even be aware that a position was available. It appears that it never was. A member of the audience asked about how one could get retroactive pay for a job that no one was, as yet, hired. When the motion was changed to hire Franke as a consultant, the observers believed that the job position of executive secretary was again open. The observers recall as a consultant Franke was given various tasks, such as advising on administrative duties and the rules.

How could any of this be done legally? To the observers it seemed improbable. Under various Minnesota statutes and rules it appears it was impossible. Under Minnesota Rules 3900.9100 ostensibly, an appointing authority (Board) could have hired Franke without notice, but it in no way would it have been lawful to do so with a retroactive pay provision. Minnesota Rule 3900.9100 states, "Unless otherwise specified in a statute, an appointing authority may appoint any person he or she considers qualified . . . the appointing authority shall submit the person's resume to the commissioner." After investigation it was found that the commissioner received no such resume, prior to the appointment, at that time of the appointment thereafter. In addition, Minn. Stat. 43A.18 Subd. 4. (d) says, "The initial salary of a head of an agency thereafter established whose salary is not specifically prescribed by law shall be fixed by the governor, after consultation with the commissioner, whose recommendations shall be advisory only, in an amount comparable to the salary of an agency head having similar duties and responsibilities." After investigation it was found that the commissioner received no such inquiry or request for consultation from the governor. In fact, it has been found that neither the governor nor his staff were ever consulted, about the pay for the executive secretary, prior to the fixing of the salary or thereafter. The only conclusion that one could reach was that Franke could never have been properly hired as an executive secretary to the Board. This is especially so because the first meeting could not have been in compliance with the law.

Turning to the obvious question was Franke hired as a consultant that fateful day in October? The minutes unequivocally state that Franke was to be hired as a consultant. Any pretense that he simultaneously held the position of executive secretary must be dismissed. In the case of State v. Sword, (1923) 196 NW 467, 157 Minn. 263 it was definitively held that the acceptance of a second incompatible office works the vacation of the

first. He could not have held both offices at the same time, therefore the latter, the consultant's job, would take precedence.

A dilemma now appears. How does a Board, that declared to the public that it was not going to do substantive work, in order to avoid violating the open meeting law, hire a consultant? If the Board did, in fact, hire a consultant how did it legally fix the salary commensurate to the Racing Committee Executive Secretary? Multiple problems occur.

If a public board such as the Gambling Control Board wished to hire a consultant, it must have done so according to prescribed procedures issued by the Commissioners of the Department of Administration and the Department of Finance. The very first procedure that the Board had to accomplish was public notice of the job's vacancy and an explanation of the requirements for it. As part of the procedure in order for the board to have obtained a consultant there needs to have been a request for a proposal (RFP) published in the State Register. After publication, a bona fide RFP must have been supplied by the would-be consultant to the Board before being legally hired. That RFP would have taken weeks, even without the normal one week delay in publishing the request for it in the State Register. See Exhibit ____ of the Procedures Manual, Department of Administration. Publication of the notice was required if the contract exceeded $2,000 and without a doubt the contract exceeded $10,000, therefore, it was required to be published in the State Register. The actual consultant contract must have been approved by the Office of the Attorney General, the Department of Administration, and the Department of Finance after they were satisfied that certain requirements under the law and rules were properly completed. It is reasonable to assume that considerable time would have past before Franke would have received all of the required approvals including evaluation of the proper remuneration.

The Office Contract Management (OCM) of the Department of Administration **controls** the review and approval of all requests for contractual services which include all consultant services. It is the agency head, probably the chairman of the Board, who determines the need for the consultant's services. However, neither the chairman nor the Board has the inherent powers to contract for those services, i.e. obligate the state of Minnesota or incur an obligation on its behalf. The law in this matter is exceptionally clear because of Minnesota's accounting system known as the Statewide Accounting System (SWA); a system which records Appropriations, receipts, allot-

ments, expenditures and encumbrances. OCM prenegotiates all consultant contracts for more than $10,000. The Board appears to be authorizing an expense greater than $60,000 per year based upon the remuneration of the Racing Secretary. In any event, the Board must by law have used form MS-00032 Contractual Services to submit Franke's name to the OCM. Without prior OCM approval, the Board could not enter into this type of agreement. The Board must have been able to cite its legal authority to enter into a contractual agreement. Not all state agencies have the right to hire without a specific "finding" from the Commissioner of Administration (DOA). At this point in time , the DOA begins to monitor the contract under its Contract Management Division (CMD) which has established its own Policy and Procedures Statement (ADM-188). This CMD monitors the performance of both parties to the contract and receives reports. Multiple searches for an approved consultant's contract between Franke and the State or its Board has met with failure. No contract can be found for any of the following fiscal years; 1984, '85, '86, '87 or '88.

As a result of this search, it can be determined that the Board and especially its chairman failed to abide by the provisions of the law. Since any encumbrance incurred prior to receiving an encumbrance from the Department of Finance violates Minn. Stat. 16 A.15 subd. 3. Each case of violation must be reviewed to determine if the obligation was for a necessary and proper state purpose, and whether this particular encumbrance is authorized by statute to be incurred. The party who authorized the obligation must write the letter of explanation and have it accepted before the obligation is approved for encumbrance.

The state clearly enumerated the process the Board had to follow prior to obtaining any consultants contract. This is contained in Subd. 3. of Minn. Stat. 16B.17. **"Before an agency may seek approval of a consultant or professional and technical services contract valued in excess of $2,000, it must certify to the commissioner that:**

1) no state employee is able to perform the services called for by the contract;

Note: If Franke was indeed executive secretary he could not be both a consultant and a state employee, even if it was unclassified service.

2) the normal competitive bidding mechanisms will not provide for adequate performance of the services;

Note: No finding or certification of the correctness of paragraph 2 can be found.

3) the services are not available as a product of a prior consultant or professional and technical services

contract, and the contractor has certified that the product of his services will be original in character;

Note: No finding or certification of the truthfulness of paragraph 3 can be found.

4) reasonable efforts were made to publicize the availability of the contract;

Note: No notice in State Register, any legal notice in newspapers within the counties of Hennepin, Ramsey or actual notice published in any finance or commerce paper can be found.

5) the agency has received, reviewed, and accepted a detailed work plan from the contractor for performance under the contract; and

6) the agency has developed, and fully intends to implement, a written plan providing for the assignment of specific agency personnel to a monitoring and liaison function; the periodic review of interim reports or other indication of past performance, and the ultimate utilization of the final product of the services.

Note: If only the Board had a "written plan", it would have gone a long way to alleviate the problems plaguing the Board today. See Exhibit , Department of Administration, Management Analysis Division "Charitable Gambling Control Board Final Report" dated July 1,'988. It was possible that the Board intended that its Administration Committee, established on October 22, 1984, was to handle such matters. However, a search of records of the Board reveals no such work plan ever having been submitted by Franke. Neither are there any minutes, notes, or letters of acceptance of the plan by the Board or any of it committees, let alone other state departments.

Subd. 2. of Minn. Stat. 16B.17 states, **"Before approving a proposed state contract for consultant services or professional and technical services the commissioner must determine, at least, that:**

1) all provisions of section 16B.19 and subdivision 3 of this section have been verified or complied with;

2) the work to be performed under the contract is necessary to the agency's achievement of its statutory responsibilities, and there is statutory authority to enter into the contract;

3) The contract will not establish an employment relationship between the state or the agency and any person performing under the contract;

4) no current state employees will engage in the performance of the contract;

5) no state agency has previously performed or contracted for the performance of tasks which would be substantially duplicated under the proposed contract; and

6) the contracting agency has specified a satisfactory method of evaluating and using the results of the work to be performed."

A search of the Department of Administration's records has revealed no commissioner findings or certification as required by law to the provisions of paragraphs 1 through 6. There appears to have been no application or request from the Board to the Commissioner concerning permission to enter into a consultant's contract. If a finding or certification had been done according to the law paragraphs 3, 4, and 6 would not have been violated.

After the proper certification is concluded the chairman of the Board is then obligated to clear the consultants contract with the Department of Finance as required under Minn. Stat. 16A.15, subd. 3. To accomplish this task the chairman would have had to coordinate the actions of the OCM and the Finance Encumbrance Center.

This is especially so when it comes to the back door approach of obtaining a government job. In every likelihood the present pretender to the executive secretary's job could not have received this position since he knew nothing of charitable gambling prior to this appointment as consultant. Therefore he came in the back door, in order to snatch a political plum, just as a proverbial sneak thief would do.

The legal problems of the Board and Franke intensify as one examines the lack of documentation as it relates to the issue of Franke's proper employment as a consultant. One is awestruck by the fact that no Board member caught the fact that Franke usurped the title of executive secretary of the Charitable Gambling Control Board. It is impossible to believe that no board member noticed, at the Board meeting of Nov. 13, 1984, the discrepancy between the text of the minutes of Oct. 22, 1984, that they had just approved, and the leading paragraph of those minutes. The leading paragraph described Franke as executive secretary. It can be concluded, from that time, Franke began using the title, that he had no right to do so, but he had the secret blessing of the Board's members.

A microscopic examination of all Board minutes from October 22, 1984, to date reveals that the subject was never again mention. The subject of Franke's employment as a consultant evaporated. There were no reports. There was no program of administration presented to the Board for evaluation. There was no termination of his consultant's contract. The only mention was of the situ-

ation that can be found relates to the many raises received by Franke and authorized by the Board, as their executive secretary.

Yet even to the casual observer it appears that a sham or fraud has been perpetrated by both the Board and Franke. It is not just a case of malfeasance or misfeasance in office. It is an example of pure cunning and political opportunism and greed. It can not be just a case of the members of the Board attempting to mollify members of the audience; just because one of the observers of the meeting happen to mentioned the "inappropriateness" of Franke's retroactive pay. A fraud has been committed. One of the principle reasons for our Minnesota Open Meeting Law is for the public to detect improper influences. There can be a no more perfect justification for the purpose of the Open Meeting Law, than the foregoing.

Even a cursory examination of the statutes leads one to see that Franke has engaged in more than one fraudulent practice. This statement was not made lightly. The full impact and the seriousness of this position requires further clarification. An examination of Minn. Stat. 609.415, as it relates to Franke, defines him as a public officer but not because he is entitled as a matter of law. Under the provision (f), "any other person exercising the functions of a public officer" is considered a public officer. Franke is a public officer at least under the "color" of the office he claims to hold. This is the only definition of a public officer that fits this particular and peculiar situation. For only the shortest period of time (approximately thirty minutes) was this person ever appointed or otherwise designated as a public officer. Minutes show that afterward, the action of hiring Franke was unequivocably rescinded. It becomes immediately apparent Franke has violated Minn. Stat. 609.44 states in part "Whoever intentionally and without lawful right thereto, exercises a function of a public office ... may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than $3,000.00 or both.

As a direct and knowing consequence of his own actions, Franke can be accused of violating Minn. Stat. 609.45 which states, in part, "Whoever is a public officer . . . under color of his office or employment intentionally asks, receives or agrees to receive a fee or other compensation in excess of that allowed by law or where no such fee or compensation is allowed is guilty of a misdemeanor." Whether or not Franke actually received retroactive pay as either a consultant or an executive secretary is immaterial, since he readily agreed to receive

it. Notwithstanding the retroactive pay issue, Franke has been accepting compensation of nearly $64,000.00 a year illegally because of his fraudulent claim to the office of executive secretary of the Board. In a lawsuit against the Board certain records were requested regarding Franke's employment situation. They were not forthcoming. Franke has claimed that he as a minimum edited the early minutes of the Board. He wrote them as well. What did the statement contained in the minutes, "(I assume , c.l.)" actually mean.

It goes without saying that 609.415 has been violated because it states in part, "Whoever falsely impersonates a ... public official with intent to mislead another into believing that he is actually such ... official is guilty of a misdemeanor."

At various times and places Franke has testified in either Grand Jury investigations or/and actual trials at which he has claimed to be the executive secretary of the Board after he subscribed to the oath that was given. These instances were in direct violation of the perjury statutes. Not to mention the occasions in which Franke had to sign various official documents upon oath or affirmation under penalty of perjury.

Finally, under Minnesota Statute 358.05 states in part, ... "**Every person** elected or **appointed to** any other **public office** ... before transacting any of the business or exercising any privilege of such office, shall take and subscribe the oath defined in the Constitution of the State of Minnesota, Article 5, Section 6." No one has been able to produce said oath of office and most telling the oath was never given at the October 22, 1984 meeting prior to Franke acting on behalf of the State of Minnesota.

General.

Observers listened to statements made during the first meeting of the Board. Even a few statements made it quite apparent that Franke, operating out of the business offices of the chairman, **prior** to the first meeting of the Board, had in fact acted as an agent of the Board with at least the consent of its chairman, and as a consequence; the State of Minnesota. As an example the minutes state, "Roger Franke report on administrative matter. Office space in the Summit National Bank building is tentatively rented effective November 1. He is also working of the job description for clerical staff and inspectors." Observers at the meeting remember statements of Franke and the chairman that indicated Franke had been working on such things as job descriptions, equipment needs and procurement, rules, and a rental lease

for the Board. Observers recall that it was stated that the Administration Committee could meet at the Board's new offices, but observers wondered where those offices were to be; at least while a Rules Committee was to meet on first floor of the bank building.

> Comment: There is no doubt that certain procedures of the Department of Administration were being violated. Minn. Stat. 16B.24 Subd. 6. (a) specifically states, "The commissioner shall rent land and other premises when necessary for state purposes." It is obvious that only the commissioner could rent space in a private building. No where can be found any statute to allow the Board or a non employee such as Franke to directly lease or rent space on behalf of the Board. In addition, section b) states clearly, "No agency may initiate ... a lease for space for its own use in a private building **unless the commissioner has thoroughly investigated presently vacant space in public buildings, ... and found that none is available.** As far as can be determined, there never was such a commissioner determination as required by the law. Franke usurped both the power of the Board and that of the Commissioner of the Department of Administration.

In conclusion, I believe your office should commence immediately an investigation of what went wrong with the system when this problem first arose and why did the office of the attorney general cover up for the actions of the Board and Roger Franke.

Sincerely yours,

Robert Finnerty
5019 43rd Avenue South
Minneapolis, Minnesota 55417
(612) 724-0109

STATE OF MINNESOTA

DEPARTMENT OF REVENUE

CHARITABLE GAMBLING CONTROL BOARD

Department of Revenue
In the Matter of the Proposed Adoption of Emergency Rule of the State Charitable Gambling Control Board Governing Lease Amounts for Gambling Premises

NOTICE OF SUBMISSION OF EMERGENCY RULE TO THE ATTORNEY GENERAL

Pursuant to your request and in accordance with Minnesota Statutes, section 14.32:

PLEASE TAKE NOTICE that the above-captioned emergency rule as adopted has been submitted to the Office of the Attorney General on the date of this notice, October 24, 1988, for review as to legality and form to the extent form relates to legality. The proposed emergency rule, the rule as adopted, all the notices, all written comments received and other required documents also have been submitted to the attorney general.

The rule must be approved or disapproved by the Attorney General on the tenth working day following date of receipt of the rule. You may submit written comments to the Attorney General. Any written comments must be submitted within seven working days of the date of this notice. Your comments must address only the issue of legality of the rule or the legality of the specific parts or subparts of the rule. The attorney general standards for review are set forth in Minnesota Rules, part 2010.1000. You



may receive a copy of the attorney general decision upon written request to the attorney general. Your comments or requests for the decision must be directed to:

The Office of the Attorney General
1515 Transportation Building
St. Paul, MN 55155
Telephone: (612) 297-2040

Any written comments submitted to the Attorney General must be submitted simultaneously to:

Roger Franke
Executive Secretary
Charitable Gambling Control Board
200 Centennial Office Building
St. Paul, MN 55155
Telephone: (612) 296-0937

RAYMOND D. POTAMI
Chair, Charitable Gambling
Control Board

Dated: 10/24/88

Department of Revenue
In the Matter of the Proposed Adoption of Emergency Rule of the State Charitable Gambling Control Board Governing Lease Amounts for Gambling Premises

NOTICE OF INTENT TO ADOPT AN EMERGENCY RULE

Notice is hereby given that the State Charitable Gambling Control Board intends to adopt the above-entitled emergency rule. The statutory authority to adopt the emergency rule is contained in Laws of Minnesota, Chapter 684, Article 1, sec. 7. (1988). The agency, in adopting the rule, is following the procedures set forth in the Administrative Procedure Act for adopting emergency rules in Minnesota Statutes, sections 14.29 to 14.36.

All persons have 25 days after publication to submit data and views on the proposed emergency rule or any part or subpart of the rule in writing. Any comments must be submitted to:

Roger Franke, Executive Secretary
200 Centennial Buildinmg
St. Paul, MN 55155
(612) 296-0937

A copy of the proposed rule is attached to this notice.

A free copy of the proposed emergency rule is available by contacting the Charitable Gambling Control Board Office at 642-0555.

The proposed emergency rule may be modified if the modifications are supported by data and views submitted to the agency and do not result in a substantial change in the proposed emergency rule as noticed.

Upon adoption of the emergency rule by the agency, the emergency rule as adopted and its supporting documents will be delivered to the Attorney General for review as to legality and form to the extent form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted rule, must submit the written request to Roger Franke.



The emergency rule will take effect five working days after approval by the Attorney General and be effective for 180 days. The emergency rule will be continued in effect for an additional 180 days if the agency gives notice of continuation in accordance with Minnesota Statutes, section 14.35.

Dated: _____

_____

ROGER FRANKE
Executive Secretary

Charitable Gambling Control Board

Proposed Emergency Amendments to Permanent Rules Relating to Lease Payments

Rules as Proposed

7860.0090 [Emergency] LEASE AGREEMENTS.

Subpart 1. and 2. [Unchanged.]

Subp. 3. **Payments.**

A. The amount of the lease payment that an organization shall pay to a lessor for premises leased for lawful gambling, with the exception of bingo, may not exceed $24 per square foot per month. In no instance may rent payments for the leased premises exceed $600 per month.

B. The amount of the lease payment that an organization shall pay to a lessor for premises leased for the conduct of bingo and all other gambling activities during that bingo occasion shall not exceed $200 for leased premises of not more than 6,000 square feet, $300 for leased premises of not more than 12,000 square feet, and $400 for leased premises of more than 12,000 square feet.

C. The storage of the inventory of gambling equipment may be on that leased premises.

Reproduced from the original in the Legislative Reference Library Records.
MINNESOTA STATE ARCHIVES, MINNESOTA HISTORICAL SOCIETY.

Charitable Gambling Board
October 22, 1984

MINUTES

Board members present included: Tom Carey, Chair, Roger Franke, Executive Secretary, Louis A. Murray, Ray Potami, Dorothy Meany, Rita Fassbinder, James Evans, Leo Reding, Lorraine Berman, Barbara Grove, Roseann Prich, Jim Clifford, Frank Dougherty and Special Assistant Attorney General Jerry Anderson. Also present were Paul Marinac, Revisor's Office, Don Feeney, State Planning Agency, Peggy Byrne, State Planning Agency, Dick Krueger, Dept. of Finance, and Bill Peterson, Lobbyist representing distributors.

The meeting was called to order at 2:05 p.m. Press release was made part of the record.* Any time there is a quorum of the Board present, ~~that~~ constitutes a public meeting and is thereby open. Proper notice needs to be given.

* Jerry Anderson from the A.G.'s office explained that

Initial problems with legislation make it impossible to comply with requirements. Jerry Anderson put together a timetable designed to meet a March 1 dealine for getting rules in place on time. He also gave some background as to his experience.

~~History prior to legislation~~ Background gambling

County municipalities issued licenses, set fees, etc. As of February 28 all licenses issued by local municipalities expire and are then issued by the Board. The licenses can be issued pusuant only to the rules adopted by the Board.

Rulemaking

Corners needs to be cut and all players involved persuaded to cooperate in order to get licenses on the streeet by March 1. Applications need to be readied for people (1500 or more) to apply. Staff need to be in place to review the applications. The timetable was reviewed. There are no rules on statewide charitable gaming existing now. Fees range from $0-$300, some are as high as $1,000. There are a wide variety of groups and differences in the way they operate. Copies of rules have been gathered from other states. 22 states have been written to for information regarding their rules. We will be able to use some existing rules to draft ours.

How do we issue licenses without rules?

If we wait until the rules are in place, there would be 2 days to reivew and issue 1500 or more licenses. Municipality has 30 days to review local applications to decide whether or not they want the organization to have a license

PETITIONER'S EXHIBIT D

Municipalities have issued temporary licenses to coincide with the November 1 enactment date. A legislative enactment extending the March 1 date would create numerous problems.

Tom Carey commented that he is opposed to going to the legislature for special legislation thereby opening up further debate. As it is, a Report is due to the Governor and legislature by October 24 explaining why rules have not been ~~adopted or implemented~~ drafted + adopted.

Mr. Jerry Anderson proposed that while putting rules together, ~~also get~~ application forms should be sent out ~~together~~ with a letter laying out minimal reporting requirements to local municipalities.

Rep. Jim Evans raised the issue that some of the municipalities have indicated that they ~~just~~ won't issue licenses as of January 1; instead they will wait for the Board to issue them by March 1, leaving a 2 month gap.

Leo ~~Adams~~ Redding moved that Roger Franke be hired as Executive Secretary with a retroactive salary. Motion was seconded and passed unanimouly.

John Jacobson has just finished re-writing North Dakota's Gaming Commissions rules. John has been released from his responsibilities and is free to be hired to write our rules. He will arrive tomorrow. Mr. Carey asked the Board to authorize salary expenditure to hire Mr. Jacobson as a consultant

Mr. Carey indicated that there needs to be a Rules Committee to draft the rules and asked for volunteers to serve on this Committee. The question was raised about the time commitment to serving on the Committee. Mr. Johnson responded that the Committee would meet approximately once a week. Mr. Carey indicated that he will sit on all Committess. The following persons volunteered to sit on the Rules Committee: Jim Clifford, Leo Redding, Rita Fassbinder and Jim Evans.

Discussion followed about how often the Board should meet to review and comment on the rules. Mr. Carey indicated that he didn't think the Board should meet regularly until the Rules Committee has had a chance to put something together. He then proposed having two meetings back to back; the first being a working meeting on the rules and the next being a formal Board meeting on the rules. These meetings would take place in approximately one month.

Tom Carey then led a cheer for getting this done on time without touching base with even a single interest group in the state.

Mr. Carey then proposed the creation of a Hearings Committee that would be responsible for seeking public opinion on matters related to gambling. Jerry Anderson then explained what the minimal legal requirements are for public hearings. Mr. Carey commented on the need to try and avoid ~~avoiding~~ the possibility of angry people showing up ~~present~~ at the hearing held by the OAH saying they haven't had a chance to be involved in the process. The Hearings Committee should also include and consider the Indian Tribal interests. The Hearings Committee will be the public relations arm of the Board. The Hearings Committee ~~is now~~ was then designated the Public Relations Committee.

The Administration Committee's responsibility will include drafting job descriptions (gambling inspectors, administrative secretary, clerks, etc.), salaries, geographic location (offices at 906 Midwest Plaza East are temporary, one year), leases, stationery and all other matters related to budget and personnel. These concerns will also be handled in part by Roger Franke.

The Forms Committee will be responsible for designing ~~designed~~ all forms related to the operation of licensing. The chairman of the Forms Committee will need to attend the Rules Committee meetings because the forms have to eventually be ~~be~~ incorporated into the rules.

Previous motion to hire Roger Franke as Executive Secretary needed to be amended. Motion was requested by Mr. Carey that Roger Franke be hired as a consultant and that Mr. Carey by authorized to pay him at a level commeasurate to the Racing Committee Executive Secretary. Motion was made, seconded and passed. ~~(I assume, e.l.)~~

Motion was made and seconded that the established Committee meetings receive the same per deim as the Board meetings.

There was further clarification given as to the the responsibilities of each Committee:

The Public Relations Committee will be responsible for law enforcement of charitable organizations. Members will include Barb Grove as chair, Lorriane Berman and Louis Murray.

The Administration Committee as stated earlier will be responsible for job descriptions, pay schedules, physical matters, recording system, checking into an computer system and other administrative tasks. Members include Roseann Prich, Dorothy Meany and Ray Potami.

The Forms Committee will also write the rules related to forms. How much is to be charged for fees? What will license stamps look like?

The Rules Committee members include Jim Clifford, Frank Dougherty, Leo Reding, Jim Evans, and Rita Fassbinder.

Since there are not enough people to sit on the Forms Committee and the Rules Committee, they were combined.

Jim Evans raised a concern about the philosophy and opinions of the Board chair and members in order to assist the Rules Committee with the drafting of rules (i.e., do you want to promote charitable gambling or do you want to put a damper on it). There was discussion of what and what not is within the purview of the Board's rulemaking capacity.

Meeting Date Determination

Each Committee will decide when they will meet. November 12 and 13 were set as the next 2 meeting dates (back to back). The first being a working meeting on the rules, the second an official Board meeting on the rules.

Ethics of Board members was discussed. Jerry Anderson commented on ~~the information~~ non-acceptance rules related to the ethics of accepting gratuities (i.e., meals, gifts, drinks, etc.). Some states have a law that Board members have to report receipt of any of the above. The Racing Commission members make a notation/record of when they ~~meet~~ meet with members of the industry.

Jerry Anderson pointed out that the Commission does not have the authority to regulate the activity of Indian Tribes.

Roger Franke report on administrative matters. Office space in the Summit National Bank building is tentatively rented effective November 1. He is also working of the job description for clerical staff and inspectors.

John Jacobsom will meet~~ing~~ with Commission members on Wednesday, October 24 at 1:00 in Suite 906, Midwest Plaza East, Minneapolis. He will give an in-depth presentation on gambling in North Dakota.

Expense forms were distributed to Board members.

Barbara Grove inquired about the fidelity bonding requirement for gambling managers. Jerry Anderson responded that bonding is required under current law.

Louis Murray offered a motion prohibiting the Board members and staff from participating in gambling activities regulated by the Board. Motion passed unanimously.

Jim Clifford offered a motion prohibiting any member of the Board or its staff from accepting any gratuities whatsoever from any source that has a direct or indirect business relationships with the Charitable Gambling Board. Motion passed unanimously.

The Board adjourned to Committees at 4:50 p.m.