MEMORANDUM

State of Alaska
Department of Law

To: Neil Slotnick
Deputy Commissioner of Revenue

Date: November 1, 2002

File No: 663-03-0081

Tel. No.: (907) 465-3600

Fax: (907) 465-2417

From: Dan N. Branch DNB
Assistant Attorney General
Oil and Gas Section

Subject: The Use of Hamsters or Other Animals in Charitable Gaming

You have asked whether groups with a charitable gaming permit may raise money by conducting wagering games involving hamsters or other animals. The short answer is, "No."

Analysis

In general, gambling is illegal in Alaska. Qualified organizations holding a gaming permit may, however, engage in a variety of regulated gaming activities if the proceeds go to provide financial support for municipalities or qualified charitable organizations.[1] Only certain kinds of games are allowed.[2] The list of allowable charitable gaming activities includes bingo, pull-tab games, raffles, and canned salmon classics. It does not include hamster games or rat races.[3]

We have previously opined that the Commissioner of Revenue has authority, under AS 05.15.180(b) to issue permits for activities, other than those listed in AS 05.15.100, if the commissioner finds the activity existed in the state in substantially the same form and

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1 AS 11.66.280(2)(C) (Gaming activities are not criminal if authorized by Department of Revenue under AS 05.15).

2 *State v. A.L.I.V.E. Voluntary*, 606 P.2d 769, 770 (Alaska 1980).

3 AS 05.15.100.

was conducted in substantially the same manner before January 1, 1959.[4] This discretion is limited by restrictions set out in AS 05.15.180(a).[5]

The commissioner is prevented by AS 05.05.180(a) from authorizing the use of "...objects or instruments used, designed, or intended primarily for gaming or gambling . . . ." This limitation prevents the commissioner from issuing a permit for hamster or other animal games under AS 05.15.180(b) even if such games had existed in substantially the same form before January 1, 1959, because the games involve instruments used, designed, and intended primarily for gaming.

We acknowledge that hamsters and God's other creatures weren't designed primarily for gaming. However, the other implements of the animal games are designed for that purpose. Therefore, the games can't be authorized under AS 05.15.180(b). This conclusion is consistent with past actions taken by the Alaska Legislature to ban the use of hamsters and, with few exceptions, other animals for charitable gaming.

In 1960 the Alaska Legislature adopted laws to allow certain qualified organizations to raise money by conducting bingo, raffles, lotteries, ice classics, dog mushers' contests, fish derbies, and contests of human skill.[6] Over the years, the legislature added to this list of generally allowable activities by amendment. Except for limited exceptions not relevant here, the legislature has never included animal races on the list of generally allowable charitable gaming activities.[7]

The legislature has taken other steps to ban the use of animals in charitable gaming. In 1983 the legislative adopted AS 05.15.100(b) to give the commissioner authority to issue permits for the use of numbers wheels, dice, and playing cards to qualified organizations or municipalities. The permits were for either single events of no more than three days each or for three events each lasting no more than a day.[8] At the same time, the legislature adopted a definition for "numbers wheel." The definition provided that devices using hamsters or other animals could not qualify as a legal numbers

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4 *See* 1983 Inf. Op. Att'y Gen. (March 3; 366-439-83).

5 *Id.; See also*, 1987 Inf. Op. Att'y Gen. (November 6; 663-88-0112).\

6 Sec. 1, ch. 27, SLA 1960.

7 Dog mushers' contests, goose classics, and king salmon classics are specifically allowed forms of races involving animals. AS 05.15.690(12), (19) & (24).

8 Sec. 2, ch. 59, SLA 1983.

wheel.[9] In this way, the legislature continued the ban on most animal use in charitable gaming. It has never lifted this ban.

Your investigator told us that charitable gaming permit holders have requested approval to conduct other animal games. For example, permittees have requested approval of bovine or chicken defecation contests. These events would allow players to wager on which square in a grid the animal will first deposit its scat. The Alaska Gaming Reform Act does not authorize such scatological contests, even had they been conducted in substantially the same form and manner since Statehood.

DNB:mi

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[9] Sec. 8, ch. 59, SLA 1983 that amended AS 05.15.210 by adding a definition for "numbers wheel."