



STATE OF MINNESOTA

GAMBLING CONTROL BOARD
1711 West County Road B
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Roseville, Minnesota 55113
(612) 639-4000

September 10, 1992

Maryanne Hruby, Executive Director
Legislative Commission to Review
Administrative Rules
55 State Office Building
St. Paul, MN 55155

RE: Lawful Gambling Control Board Proposed Rules Governing Lawful Purpose Expenditures and Allowable Expenses; Minnesota Rules, Chapters 7861-7865

Dear Ms. Hruby:

Enclosed is the Statement of Need and Reasonableness for the draft rules relating to lawful purpose expenditures and allowable expenses. Publication of the Notice of Intent to Adopt will be arranged as soon as we receive the Revisor's Certificate.

Sincerely,

A handwritten signature in cursive script that reads "Nan Connor".

Nan Connor
Compliance Officer

NC:po

Enclosure

The Legislative Commission to
Review Administrative Rules

SEP 14 1992



STATE OF MINNESOTA
MINNESOTA LAWFUL GAMBLING CONTROL BOARD

In the Matter of the
Proposed Adoption of Rules
of the Minnesota Lawful
Gambling Control Board.

STATEMENT OF NEED
AND REASONABLENESS

I. GENERAL

In an effort to improve the regulation of lawful gambling in this state, the Minnesota Lawful Gambling Control Board (Board) proposes to amend the existing rules to clarify what expenditures qualify as lawful purpose and allowable expenses.

The proposed rules would result in a clearer understanding and better compliance by licensed organizations. The Board believes that the proposed rules are reasonable and are necessary. The burdens imposed on the participants of lawful gambling are not undue. The proposed rules will result in better compliance with the law.

II. STATUTORY AUTHORITY

The Board is empowered by Minnesota Statutes, section 349.151, subdivision 4(a) (1990):

Subd. 4. Powers and duties. (a) The board has the following power and duties:

- (1) to regulate lawful gambling to ensure it is conducted in the public interest;
- (2) to issue licenses to organizations, distributors, bingo halls, manufacturers, and gambling managers;
- (3) to collect and deposit license, permit, and registration fees due under this chapter;
- (4) to receive reports required by this chapter and inspect all premises, records, books, and other documents of organization, distributors, manufacturers, and bingo halls to insure compliance with all applicable laws and rules;
- (5) to make rules authorized by this chapter;
- (6) to register gambling equipment and issue registration stamps;
- (7) 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;
- (8) to report annually to the governor and legislature on its activities and on recommended changes in the laws governing gambling;
- (9) to impose civil penalties of not more than \$500 per violation on organizations, distributors, manufacturers, bingo halls, and gambling managers for failure to comply with any provision of this chapter or any rule of the board;
- (10) to issue premises permits to organizations licensed to conduct lawful gambling;
- (11) to delegate to the director the authority to issue licenses and premises permits under criteria established by the board;

(12) to suspend or revoke licenses and premises permits of organizations, distributors, manufacturers, bingo halls, or gambling managers as provided in this chapter;

(13) to register recipients of net profits from lawful gambling and to revoke or suspend the registrations;

(14) to register employees or organizations licensed to conduct lawful gambling;

(15) to require fingerprints from persons determined by board rule to be subject to fingerprinting; and

(16) to take all necessary steps to ensure the integrity of and public confidence in lawful gambling.

III. RULE-BY-RULE ANALYSIS AND STATEMENT OF NEED AND REASONABLENESS

7861.0010 Definitions:

Subp. 3a. Gambling bank account. "Gambling bank account" means all the accounts maintained by an organization at any bank(s), savings and loan(s), or credit union(s) located within Minnesota in which the organization deposits all gambling receipts and over which the organization has any control, including checking and savings accounts, certificates of deposit, and trust and escrow accounts.

This language is necessary because the term "gambling bank account" is used throughout the statutes and rules. However, it is not currently defined in statute or rules. This definition clarifies the use of the term.

Minnesota Statutes, section 349.19, subdivision 2, provides in part that all gross receipts from lawful gambling must be segregated and placed in a separate account; and all expenditures for expenses and lawful purpose must be made from the separate account. It further provides that all receipts must be deposited into the "gambling bank account" within three days of the completion of the bingo occasion, deal, or game for which they are received.

This language is reasonable because it provides for effective regulation without burdening the licensed organizations.

7861.0120, subpart 3:

E. When an organization has a fund loss by questionable means of its inventory or cash, the organization may apply to the board, on a form prescribed by the board, for an adjustment of its gambling ~~banking-checking~~ bank account. The organization shall file a fund loss report with the Department of Revenue, which will make a recommendation to the board. The fund loss report must include the following:

This technical change is necessary to conform with the new definition of gambling bank account and to conform with usage of the term throughout the rules.

(1) a local law enforcement report which was filed within ten days of the discovery of the loss. If a report was not filed with the local law enforcement agency within ten days of the discovery of the loss, the request for adjustment will not be considered;

(2) a completed fund loss report which includes the following information:

- (a) the name and address of the organization;
- (b) the license number, premises permit numbers, and effective date of the premises permit;
- (c) a description of the loss, including amount, date, location, and a summary of how the loss occurred, including if a safe was broken into or stolen;
- (d) whether the current status of the law enforcement investigation is closed, inactive, or active;
- (e) whether reimbursement for the loss has been or will be paid by insurance or criminal restitution;
- (f) a description of how the loss was verified, using schedule B if necessary;
- (g) internal controls and personnel changes that have been made to prevent future losses;
- (h) when the organization received the funds; and
- (i) signatures of the chief executive officer and the gambling manager; and

The language that is added in this subpart is necessary because Minnesota Rules, part 7861.0120, subpart 3, item E, provides that an organization may apply to the board for an adjustment to its gambling bank account when it has a fund loss of its inventory of cash by a questionable means.

The board may accept or reject the application for this adjustment.

The additional language sets forth further criteria that the board must use to determine if the adjustment will be allowed.

The changes to this part include additions of language to subitem 2(b), and additions of 2(d) and (e) and renumbering of the remaining subitems. The addition of "of the premises permit" in 2(b) is necessary to clarify that it is the effective date of the premises permit that must be reported.

The addition of subitems d and e to the fund loss by questionable means reporting procedure is necessary to ensure that the board has all the information it needs to make a determination on whether or not to approve a fund loss request.

The additional language is reasonable because it provides the board with information as to whether or not the investigation is complete and reimbursement will be paid to the organization. It does not unduly burden the licensed organization.

(3) all fund losses by questionable means must be reimbursed to the gambling ~~banking-checking~~ bank account from non-gambling funds, unless an adjustment to the gambling bank account is approved by the board.

F. Each licensed organization that files with the United States Department of the Treasury any forms that are required for organizations exempt from the payment of income tax shall retain a copy of those forms for 3-1/2 years, and make them available to the board or the Department of Revenue upon request.

Subp. 4. **Bank accounts.** The following items apply to bank accounts:

A. Each organization must maintain a separate gambling bank account at

~~a financial institution~~, bank(s), savings and loan(s), or credit union (s) located within Minnesota.

(1) All expenditures of gambling funds must be made from the checking account(s) included in the separate gambling bank account, except in case of expenditures previously approved by the organization's membership for emergencies. For the purposes of this item, "emergencies" means a financial obligation due and payable which if not met would require the organization to cease gambling.

(2) The checking account(s) included in an organization's gambling bank account must consist of one of the following:

(a) a checking account into which the organization deposits all gambling receipts and from which the organization makes all expenditures of gambling gross profits;

(b) a checking account for each of the organization's permitted premises into which the organization deposits all gambling receipts received at that premises and from which the organization makes all expenditures of gambling gross profits from that premises; or

(c) a checking account for each permitted premises as described in subitem A(2)(b), and one additional checking account into which the organization transfers all or a portion of its gambling receipts from the other checking account(s) and from which the organization makes all or a portion of its expenditures of gambling gross profits. This subitem shall not prevent an organization from transferring gambling gross profits to a non-checking account included in its gambling bank account in the period between the deposit and expenditure of the gambling gross profits.

The additional language clarifies that an organization may choose one of three different formats or structures for the checking accounts for the organization's gambling bank account. Subitem (2)(a), (b), and (c) clearly detail the acceptable forms that may be used. This allows organization the flexibility to utilize a checking account format that is best suited to its own needs.

This language is necessary to provide effective regulation. As indicated above in the comments under part 7861.0010, subpart 3a, Minnesota Statutes, section 349.19, subdivision 2, provides in part that all gross receipts from lawful gambling must be segregated and placed in a separate account; and all expenditures for expenses and lawful purpose must be made from the separate account. It further provides that all receipts must be deposited into the "gambling bank account" within three days of the completion of the bingo occasion, deal, or game for which they are received.

This additional language is reasonable because it allows organizations to choose one of three formats and will not unduly burden the licensed organizations.

(3) Except for lawful purpose expenditures by a 501(c)(3) organization pursuant to subitem C(2) of subpart 5, gambling funds may not be transferred to the organization's general bank accounts for any expenditures without prior board approval.

The additional language is necessary to clarify, except for lawful purpose expenditures by a 501(c)(3) organization, an organization may not make any transfers of gambling funds into its general account without prior board approval. This is reasonable because it does not add any additional burdens to licensed organizations.

Furthermore, the additional language clarifies that 501(c)(3) organizations which are licensed to conduct lawful gambling may make lawful purpose expenditures from its gambling bank account.

~~(3)~~ (4) Non-gambling funds shall not be deposited in the gambling bank account unless the organization is required by the board to deposit non-gambling funds in the account to reimburse the account for unlawful expenditures or expenses, or to otherwise bring the ~~account~~ organization into compliance with Minnesota Statutes, section 349.15, or to reimburse the account for gambling receipts that the organization failed to deposit in the account.

This additional language is necessary to clarify under what circumstances non-gambling funds shall be deposited into a licensed organization's gambling bank account. Language is retained to include the requirement that an organization which is out of compliance with its 50/50 or 60/40 expense calculation requirements must reimburse its gambling account prior to renewing its license. It also clarifies that non-gambling funds shall be deposited into the gambling account to reimburse that account for gambling receipts that the organization failed to deposit into the account.

This additional language is reasonable because it reflects current requirements and does not add any additional burdens to the licensed organizations.

(4) (5) All checks for expenditures from the gambling bank account must contain two signatures of active members of the organization. The treasurer of the organization may not sign the checks.

~~(5)~~ (6) Interest income from gambling proceeds must be included in gross receipts.

(6) (7) Each organization shall furnish to the board on a form prescribed by the board an "Authorization to Inspect Bank Records," which authorizes the board and its agents, and the commissioners of revenue and public safety and their agents, to inspect the bank records of the organization's gambling bank ~~accounts~~ account.

B. Deposits of gambling receipts:

(1) Deposit tickets showing receipts from deals of pull-tabs, tipboards, and paddlewheels must contain the state registration stamp number, the amount of actual cash profit for each game, and the permit number of the premises.

(2) Deposit tickets showing receipts from bingo occasions must contain the date of each separate bingo occasion, the amount of actual cash profit generated by each occasion, and the permit number of the premises.

(3) Deposit tickets showing receipts from raffles must contain the date of the raffle, actual cash profit from the sale of raffle tickets, and the permit number of the premises.

Subp. 5. Expenditures. The following items apply to expenditures of gambling funds:

A. The expenditure of gambling funds must be authorized by the members of the organization at a regular meeting of the organization and recorded in the minutes of that meeting before the expenditure is made. Copies of the authorization must be sent to the board upon request.

B. Allowable expenses:

The language added to this subpart is necessary because Minnesota Statutes, section 349.15(a), provides that gross profits from lawful gambling may be expended only for lawful purpose and allowable expenses. Minnesota Statutes, section 349.12, subdivision 3a, defines allowable expenses as "'Allowable expense' means an expense directly related to the conduct of lawful gambling." However, the statutory language does not define the term "related to lawful gambling." Minnesota Statutes, section 349.11, provides that the purpose of sections 349.11 to 349.22 is to regulate lawful gambling to prevent its commercialization, to ensure integrity of operations, and to provide for the use of net profits only for lawful purpose.

Furthermore, Minnesota Statutes, section 349.151, subdivision 4, provides that the board has the powers and duties to "(1) to regulate lawful gambling to ensure it is conducted in the public interest; . . . (5) to make rules authorized by this chapter; . . . (16) to take all necessary steps to ensure the integrity and public confidence in lawful gambling."

(1) Except as provided in this subpart, an organization may expend gambling gross profits for expenses directly related to the conduct of lawful gambling, provided the total percentage does not exceed the percentages specified in this subpart and Minnesota Statutes, section 349.15.

(2) For purposes of this item, an expense "directly related to the conduct of lawful gambling" means:

(a) the percentage of the total cost of any good, service, or other item which corresponds to the actual use of the good, service, or other item in the conduct of lawful gambling;

This language is necessary to clarify that licensed organizations may only use gambling funds to pay for the actual cost of goods, services, and items used in the conduct of lawful gambling.

This language is reasonable because it provides for efficient auditing and regulation of the use of gross receipts from lawful gambling. It does not unduly burden organizations because they must currently meet these requirements in the use of their gross receipts.

(b) interest on tax and interest on tax penalties for the taxes included within lawful purpose under item C of this subpart, but not tax penalties; and

The language in this subitem clarifies that interest on taxes and interest on tax penalties for all taxes included in lawful purpose is an allowable expense. However, tax penalties are not allowable expenses.

This is reasonable because it reflects current regulatory requirements and industry practice. It does not unduly burden licensed organizations.

(c) the cost of attendance by members of a licensed organization at a seminar or other meeting on a specified date which meets the following criteria for that date:

(i) the seminar's or meeting's primary purpose is to provide training or other information regarding the conduct of lawful gambling; and

(ii) training or information with this purpose is provided by either an official of a state, federal, or local governmental entity responsible for the

regulation of lawful gambling or a person authorized by the board to provide such training or information.

For purposes of this subitem, the "cost of attendance" includes the cost of travel to and from the location where the seminar or meeting is being held.

This additional language is necessary to clarify that licensed organizations may pay for expenses related to the cost of attendance by members at certain seminars or meetings. However, the seminar or meeting must have as its primary purpose providing training or information on the conduct of lawful gambling. This restriction is reasonable because it merely restricts the use of gambling funds for training that actually relates to the conduct of lawful gambling or a person authorized by the board to provide such training or information.

(3) For purposes of this subitem, the conduct of lawful gambling does not include:

- (a) advertising of the conduct of lawful gambling;
- (b) any activity intended to influence an election; and
- (c) influencing the nomination or election of a candidate for public office.

The exclusion of these activities shall not mean that other activities are necessarily included within the conduct of lawful gambling for purposes of this item.

The above items are necessary to clarify that those activities are not an allowable expense. This is necessary because statute directs the board to prevent the commercialization of gambling. This is reasonable because the statutory language does not clarify the meaning of "conduct of lawful gambling" for purposes of allowable expenses. These items clarify what is included in the conduct of lawful gambling. It is also reasonable because it merely restates existing board policy and places no undue burden on organizations because it does not change current practices.

Furthermore, the language in subitem (3)(b), is necessary because statutory provisions regarding lawful purpose expenditures indicate that the legislature did not intend for gambling funds to be used to support these activities.

The final sentence is necessary to clarify that there may be activities not specifically excluded by rule language which would not be allowed as allowable expenses.

(4) The board shall authorize a person under this subitem to provide training or information, other than that required by Minnesota Statutes, section 349.167, subdivision 4, regarding services, including but not limited to accounting, bookkeeping, and computer software, which are related to the conduct of lawful gambling at a seminar or meeting on a specified date if:

(a) the person submits to the board a curriculum or agenda detailing the particular subject matter of the training or information;

(b) the person has a demonstrated expertise in the particular subject matter identified in the curriculum or agenda submitted to the board; and

(c) the person has not previously violated this subitem by obtaining board authorization to provide training or information and then departing from the particular subject matter identified in the curriculum or agenda submitted to the board.

Approval of the curriculum or agenda does not guarantee the accuracy of the subject matter or constitute endorsement of the product or services by the board.

This clearly sets forth the criteria under which the board shall approve individuals who may provide training regarding the conduct of lawful gambling as provided for in part 7861.0120, subpart 3B(2)(c). This is necessary to limit the discretion of the board in determining who shall be authorized to provide training. This is reasonable because it ensures that these individuals qualify to provide adequate training.

(5) Percentage of profit to be used for allowable expenses:

(a) Not more than 60 percent of the gross profit, less the tax imposed by Minnesota Statutes, section 349.212, subdivision 1, from bingo, and not more than 50 percent of the gross profit may be expended for allowable expenses related to lawful gambling.

(b) Compliance with the maximum percentage of profits expended for allowable expenses must be determined ~~on an annual basis~~ annually, as provided in this subitem, for the organization as a whole based on the organization's cumulative past expenditures for allowable expenses. Compliance is not determined by each premises.

(c) A licensed organization must file with the board an allowable expense calculation report, on a form prescribed by the board, every 12 months from the start of the third month before the effective date of the organization's license. If the report shows that the organization is not in compliance with the maximum percentage of profits that may be expended for allowable expenses, then beginning on the first day of the organization's next 12-month reporting period, the organization must cease its conduct of lawful gambling until it has deposited sufficient non-gambling funds in its gambling bank account to bring the organization into compliance with the percentage limits on allowable expenses.

This language is necessary because Minnesota Statutes, section 349.16, subdivision 2, was amended in 1991 to provide that licenses are renewed every two years. However, licensed organizations are required to maintain compliance with Minnesota Statutes, section 349.15(a), which provides in part that no more than 60 percent of the gross profit less the tax imposed under section 349.212, subdivision 1, from bingo, and no more than 50 percent of the gross profit from other forms of lawful gambling, may be expended for allowable expenses related to lawful gambling.

Therefore, it is reasonable to require that expense calculations be filed every year because organizations are allowed a great deal of freedom on the allowable expenses but must at the same time remain within the 50/50 or 60/40 allowable expense limits.

This language would require organizations to continue to report to report every 12 months. The reporting date must be based on the time period in which the license renewals would be submitted to the board. For example, if an organization has a license which will be granted on the first of November, its report would be submitted in August.

Organizations that do not remain in compliance with the expense calculation requirements are not allowed to continue to conduct lawful gambling. An organization may reimburse its gambling account with non-gambling funds to bring its gambling account into compliance with the expense calculation requirements.

These requirements are reasonable because they do not impose any additional burdens on the licensed organizations. Licensed organizations had previously been required to file expense calculations every year with their license renewals.

C. ~~Lawful purpose expenditures include~~ "Lawful purpose" means any one or more of the following:

This is a technical change to reflect a grammatical correction.

(1) A contribution to an organization which:
(a) is classified as tax exempt under United States Code, title 26, section 501(c)(3);

~~(b) spends at least 70 percent of its gross revenue on programs related to its primary purpose and spent in its most recently completed calendar or fiscal year, whichever is the year basis on which its books are kept, 30 percent or less of its total revenue on administration and operation expenses fund raising costs and management and general costs, as determined by generally accepted accounting principles, provided that for purposes of this subitem, total revenue shall not include that portion of the organization's own gambling gross profits, if any, which it spent for allowable expenses;~~

This language clarifies criteria for 501(c)(3) organizations that receive contributions of gambling funds. It imposes a requirement that no more than 30 percent of a 501(c)(3)'s total revenue be spent on fund raising, management, and general costs. This percentage may be based on either a calendar or fiscal year, whichever is the usual practice for the 501(c)(3) organization. The language changes also reflect current statutory language under which 501(c)(3)'s operate. These changes are necessary to avoid confusion by 501(c)(3) organizations in meeting the requirements of chapter 349. This requirement is reasonable because it does not impose any additional burdens on 501(c)(3) organizations.

(c) does not exist primarily for the purpose of receiving and distributing gambling profits;

(d) does not have more than 49 percent of its membership in common with the contributing organization; and

(e) does not have an officer, director, or other person in a managerial position who is also an officer, director, or management person in the contributing organization.

~~(2) An expenditure~~ Expenditures of gambling gross profits, excluding allowable expenses, made by a licensed organization which is classified as tax exempt under United States Code, title 26, section 501(c)(3), if that expenditure is directly related to the primary purpose of the organization to the extent that during the calendar or fiscal year, whichever is the year basis on which the organization's books are kept, in which the expenditures are made, at least 70 percent of the expenditures are for program services related to the organization's primary purpose and 30 percent or less of the expenditures are for fund raising costs and management and general costs, as determined by generally accepted accounting principles, provided that for purposes of this subitem, expenditures for program services shall include expenditures that are otherwise lawful purpose under the provisions of this part.

This language clarifies criteria for 501(c)(3) organizations that are licensed to conduct lawful gambling. It imposes a requirement that no more than 30 percent of a 501(c)(3)'s total revenue be spent on fund raising,

management, and general costs. This percentage may be based on either a calendar or fiscal year, whichever is the usual practice for the 501(c)(3) organization. The language changes also reflect current statutory language under which 501(c)(3)'s operate. These changes are necessary to avoid confusion by 501(c)(3) organizations in meeting the requirements of chapter 349. This requirement is reasonable because it does not impose any additional burdens on 501(c)(3) organizations.

(3) A contribution to an individual or family suffering from poverty, homelessness, or physical or mental disability, provided the contribution is reasonably calculated to relieve the effects of that poverty, homelessness, or physical or mental disability, or a contribution to a nonprofit corporation that exists exclusively for such relief purposes, provided the corporation uses the entire amount of the contribution to relieve one or more of these effects. Disability for purposes of this subitem includes, but is not limited to, physical or mental difficulties in accomplishing daily tasks and activities such as personal care, meal preparation, cleaning, transportation, or athletic activities.

The additional language to this item is necessary and reasonable to clarify that the gambling funds are used to actually relieve the poverty, homelessness, or physical or mental disability. This language provides that those gambling funds will be used exclusively for those relief purposes. It also clarifies that "disability" is not limited to but may include physical or mental difficulties in accomplishing daily tasks and activities such as personal care, meal preparation, cleaning, transportation, or athletic activities.

(4) A contribution to an individual for treatment of delayed posttraumatic stress syndrome if the individual has documentation that the individual has been diagnosed by a licensed medical doctor as suffering from posttraumatic stress syndrome.

(5) A contribution to a recognized program for the treatment of compulsive gambling on behalf of an individual who is a compulsive gambler. For purposes of this item, a recognized program is a program which has:

(a) qualified health and addictions treatment personnel as recognized by a state or national licensing body; or

(b) met the minimum standards set by the National Council on Problem Gambling Certification Board and the Minnesota Council on Compulsive Gambling.

(6) A contribution to or an expenditure on a public or private nonprofit educational institution registered with or accredited in Minnesota or any other state provided the contribution, if made to a public educational institution, is documented on a form prescribed by the board showing the request from or acknowledgment of the institution to expend gambling funds and attached to the monthly schedule C report.

This language is necessary to clarify that contributions or expenditures to nonprofit educational institutions are acknowledged on a form provided by the board showing a request or acknowledgment from the institution to expend gambling funds. It is also necessary to avoid confusion on the part of licensed organizations as to whether contributions to public educational institutions should be reported in the same manner required as reporting for contributions to a unit of government. It is reasonable because it does not impose an undue burden on a licensed organization but allows for verification that the expenditure or contribution is for a program that is desired by the public educational institution.

(7) A contribution to a scholarship fund for defraying the cost of education to individuals, if:

(a) the funds are awarded through an open and fair selection process that does not discriminate based on race, or gender, religion, national origin, marital status, disability, or age;

This language needed because it further refines the definition of open and fair process. It is reasonable because it is language which is commonly used in providing protection against discriminatory practices.

(b) the scholarship is not limited to members of the organization or their immediate families;

(c) the criteria for the selection process is communicated to all participants and to all members of the organization; and

(d) the names of the individuals awarded scholarships are public and communicated to all members of the sponsoring organization.

(8) A contribution to an organization or governmental entity, or an expenditure by an organization, for the cost of activities recognizing humanitarian or military service to the United States, the state of Minnesota, or a community provided:

(a) ~~the contribution is not used by or intended for the personal benefit of~~ or expenditure does not result in any individual member of the organization making the contribution or expenditure, or any person in such a member's immediate family, receiving any money or money equivalent, or receiving any good(s) or service(s) with:

(i) a market value greater than \$10; or

(ii) a market value greater than \$100 based on the aggregate of contributions and expenditures in any 12-month period; and

This language is necessary to clarify that contributions recognizing humanitarian or military service do not actually result in any individual member of the contributing organization or any person in a member's immediate family receive money or money equivalent or a good or service with a market value of greater than \$10 or a market value greater than \$100 based on aggregate contributions and expenditures in any 12-month period.

(b) the contribution, if made to a unit of government, must be ~~acknowledged~~ documented on a form ~~provided~~ prescribed by the board showing the request from or acknowledgment of the unit of government to expend gambling funds and attached to the monthly schedule C report; and

This language clarifies the procedure which must be used to document contributions made to units of government. The addition of "or acknowledgment of" allows for flexibility in how the contribution is made. Local units of government need not actually request the contribution but must acknowledge that they have received the contribution.

(c) for purposes of this subitem, activities recognizing humanitarian service include the provision of transportation, food, and beverages to persons making blood donations.

This language clarifies that provision of transportation, food, and beverages to persons making blood donations constitutes activities recognizing humanitarian services under this subitem.

(9) A contribution for recreational, community, and athletic facilities and activities intended primarily for the use of persons under the age of 21, if the following conditions have been met:

(a) the facilities and activities do not discriminate on the basis of gender and the opportunity to participate reflects each gender's demonstrated interest in the activity;

(b) equal opportunity is provided for:
i. the provision of equipment and supplies;
ii. the scheduling of activities, including games and practice times;
iii. the supply and assignment of coaches or other adult supervisors;

iv. the provision and availability of support facilities; and
v. demonstrated interest in the activity;

(c) for purposes of this item, "primarily" must be demonstrated by written documentation that programs for persons under the age of 21 are given priority scheduling consideration;

(d) educational institutions or other entities are excepted from the above requirements as identified in the Higher Education Act amendments of 1976, United States Code, title 20, section 1681; and

(e) the board is notified 15 days prior to the expenditure of the gambling funds for the erection, acquisition, improvement, or expansion of real property or capital assets which will be used for recreational, community, or athletic facilities.

(10) Local gambling taxes paid to a statutory or home rule city or county, provided the tax does not exceed three percent of the gross receipts less prizes actually paid out by the organization at the permitted premises.

(11) Taxes imposed by the United States on receipts from lawful gambling, but not including the federal tax stamp required for gambling employees.

(12) Taxes imposed by Minnesota Statutes, section 349.212, subdivisions 1, and 4, and 6.

This language is necessary to clarify that the combined receipts taxes are lawful purpose expenditures. This is necessary because the current statutory language is unclear due to amendments enacted in the 1991 legislature regarding combined receipts taxes. This is reasonable because it reflects current board policy and current industry practice.

(13) Taxes imposed on unrelated business income by Minnesota Statutes, section 290.05, subdivision 3.

(14) Real estate taxes and assessments on permitted gambling premises wholly owned by the licensed organization, provided the expenditure does not exceed:

(a) for organizations which conduct pull-tabs, tipboards, raffles, and/or paddlewheels, \$15,000 per year; or

(b) for organizations which conduct bingo, \$200 for premises of not more than 6,000 square feet, \$300 for owned bingo premises of not more than 12,000 feet, and \$400 for premises of more than 12,000 square feet times the number of bingo occasions conducted in a calendar year, based on the space actually used for bingo.

(15) A contribution to the United States, the state of Minnesota or any of its political subdivisions, or any agency or instrumentality thereof, provided:

~~(a) that for a contribution to a unit of government,~~ the contribution is documented by on a form prescribed by the board showing the request from or acknowledgment of the unit of government to expend gambling funds; ~~and~~

~~(b) that for expenditures involving environmental projects, the contribution is documented by a form prescribed by the board and attached to the monthly~~

~~schedule C showing prior review by the Department of Natural Resources~~ and attached to the monthly schedule C report.

The technical language changes in subitem (a) are necessary to clarify the existing language. This does not change content of the existing rule. The provision relating to environmental projects in subitem (b) is moved and restated under item D, subitem (5).

(16) A contribution to, or expenditure by, a nonprofit organization, church, or body of communicants gathered in common membership for mutual support and edification in piety, worship, or religious observances.

(17) Repair or maintenance of real property or capital assets when the property is or will be used extensively as a meeting place or event location by other nonprofit organizations or community or service groups and no rental fee is charged for the use, provided:

(a) "extensively" must be demonstrated by written documentation that the facility has been used free of charge by at least one group as described in this subitem and that the facility's availability for this purpose has been communicated to the community at large; this documentation shall include, but is not limited to, examples of public service announcements, public notices printed in local newspapers, and flyers displayed or distributed throughout the community;

This language is necessary because "extensively" is not clearly defined. This is clarifies what documentation could be used to support demonstrating that the facility has been used by other nonprofit organizations. It is reasonable because it imposes very little burden on the licensed organizations.

(b) a board-prescribed form is completed; and

(c) approval of the board is obtained before the expenditure.

(18) The erection or acquisition of a comparable building to replace a building owned by the organization which was destroyed or made uninhabitable by fire or natural disaster, provided the expenditure, mortgage payment, or other debt service payment is only for that part of the replacement cost not reimbursed by insurance and the building was insured at least at replacement cost value, and:

(a) a board-prescribed form is completed;

(b) board approval is obtained;

(c) the replacement structure:

i. is used for the same or similar purposes as the original building;

ii. has essentially the same square footage as the original building; and

(d) the following may be included:

i. additional costs for building code requirements enacted by the local unit of government after the original building was built; and

ii. additional costs for landscaping and parking lot code requirements enacted by the local unit of government after the original building was built.

(19) The erection or acquisition of a comparable building to replace a building owned by the organization taken by eminent domain or sold under the threat of eminent domain, provided the expenditure, mortgage payment, or other debt service payment is only for that part of the replacement cost that exceeds the compensation received by the organization for the building being replaced, and:

(a) a board-prescribed form is completed;

(b) approval of the board is obtained;

(c) the replacement structure:

- i. is used for the same purposes as the original building;
- ii. has the same square footage; and
- iii. cost is substantially the same as the value of the

original building except for additional costs for building code requirements enacted by the local unit of government after the original building was built and additional costs for landscaping and parking lot code requirements enacted by the local unit of government after the original building was built.

(20) An organization that has received board approval to make an expenditure of gambling gross profits for debt service or other payments under subitems (17), (18), or (19) of this item must obtain prior board approval for any increase in the expenditure, including any such increase due to a refinancing or other restructuring of a debt that results in an increase in the present value of the balance of the debt. Any equity withdrawn from real property or a capital asset as part of the refinancing or other restructuring of the debt constitutes gambling gross profits and must be deposited in the organization's gambling bank account. No closing costs are included within subitems (17), (18), or (19) of this item.

This language is necessary to clarify procedures for applying for board approval for lawful purpose expenditures of gambling funds as described in subitems (17), (18), or (19).

Currently the board approves projects for repair or maintenance of real property or capital assets as described under subitem (17) the erection and acquisition of comparable buildings to replace buildings owned by the organizations which were destroyed by fire under subitem (18) or taken by eminent under subitem (19).

This language clarifies that an organization must first obtain board approval for increased expenditures. This language also clarifies that any equity earned and withdrawn from that real property or capital asset as part of refinancing or restructuring the debt constitutes gambling gross profits and must be deposited in the gambling account.

This is reasonable because it provides flexibility for licensed organizations in completing the projects included in the above subitems. It is also reasonable because it does not impose an undue burden on licensed organizations but allows for effective regulation.

(21) Payment of one-half of the reasonable costs of an audit required in Minnesota Statutes, section 349.19, subdivision 9.

D. Lawful purpose expenditures do does not include any of the following:

- (1) an expenditure made or incurred for the purpose of influencing the nomination or election of a candidate for public office;
- (2) a contribution for promoting or defeating a ballot question;
- (3) a contribution for any activity intended to influence an election or a governmental decision-making process;
- (4) a direct contribution to a law enforcement or prosecutorial agency;
- (5) any contribution under subitem (15) of item C involving an environmental project or any contribution to or expenditure by a 501(c)(3) organization involving an environmental project, unless the contribution or expenditure is documented on a form prescribed by the board and attached to the monthly schedule C report showing prior review by the state agencies with authority over the project;

This provision was moved from part 7861.0120, subpart 5C(15). The language clarifies that expenditures involving environmental projects are not lawful purpose unless they are documented on a form provided by the board which shows prior review by the state agency with authority over that environmental project. This process is necessary to ensure that projects are not undertaken which would not be environmentally sound.

This is reasonable because it reflects current practice, does not unduly burden the contributing licensed organizations, and provides for effective regulation.

(6) interest on taxes, tax penalties, or interest on tax penalties;

This language is necessary because it clarifies that interest on taxes, interest on tax penalties, and tax penalties are not lawful purpose. Language under the rules for allowable expenses clarified that interest on taxes and on tax penalties for combined receipts taxes and those taxes which qualify as lawful purpose taxes is an allowable expense. It is reasonable because it does not impose any new burdens on licensed organizations.

(7) any expenditure, contribution, or other disposition of gambling gross profits by an organization after which the organization retains any control over the funds, except for expenditures by a 501(c)(3) organization pursuant to subitem (2) of item C;

This language clarifies that an organization other than a 501(3)(3) may not continue to retain control of gambling funds which it reports as expended. For example, an organization may not establish a fund to make a future expenditure such as build a swimming pool and still retain control of those funds. This requirement is necessary for effective auditing of gambling expenditures and regulation of licensed organizations.

It is reasonable because organization may use alternative means to provide support for long-term projects. For example, an organization may actually contribute the funds to its local unit of government to be held by the local unit of government under its control until the pool is built.

(8) a contribution to a 501(c)(3) organization that does not meet the criteria in subitem (1) of item C;

This language is necessary because the board is required by Minnesota Statutes, sections 349.12, subdivision 25(a)(1), and 349.154, to by rule prescribe standards for 501(c)(3) organizations. This language further provides that contributions to 501(c)(3) organizations would not be a lawful purpose if the 501(c)(3) did not meet the criteria established in item C, subitem (2).

This is reasonable because it does not impose additional burdens on 501(c)(3) organizations. The criteria established in item C, subitem (2), is actually based on other statutory requirements which must be met by 501(c)(3)'s.

(9) expenditures by a licensed organization that is a 501(c)(3) organization if the expenditures do not meet the criteria in subitem (2) of item C;

This language further clarifies that expenditures to 501(c)(3) organizations would not be a lawful purpose if the 501(c)(3) did not meet the criteria established in item C, subitem (2).

This is reasonable because it does not impose additional burdens on 501(c)(3) organizations. The criteria established in item C, subitem (2), is actually based on other statutory requirements which must be met by 501(c)(3)'s.

(10) any contribution or expenditure to the extent it results in any net monetary gain or other pecuniary benefit to the organization making the contribution or expenditure; and

This language clarifies that an organization may not make a contribution or expenditure which results in a net monetary or pecuniary benefit to the organization making that expenditure.

This is reasonable because it allows flexibility for contributions and expenditures of gambling funds while providing regulatory control to ensure that the funds are actually used for lawful purposes.

(11) any contribution or expenditure that is void or voidable under the conflict of interest provisions of the Minnesota Nonprofit Corporation Act, Minnesota Statutes, section 317A.255.

This language is necessary to conform the requirements of chapter 349 to the requirements of the Minnesota Nonprofit Corporation Act. It is reasonable because it merely states a requirement that nonprofits must already meet.

E. A contribution by a licensed organization to a parent organization, foundation, or affiliate of the contributing licensed organization is allowed under the following conditions: the contributing licensed organization must submit a written statement that the parent organization, foundation, or affiliate has not provided to the contributing licensed organization a contribution of any money, grants, property, or other thing of value within one year of the contribution.

F. Notwithstanding item E, a licensed organization may contribute gambling gross profits to a parent organization at the Minnesota state level provided:

(1) the parent organization has submitted to the board a comprehensive list of the lawful purposes for which the parent organization will use the contribution(s); and

(2) the parent organization uses the entire amount of the contribution(s) for one or more of the lawful purposes listed in item C.

This language is necessary to allow licensed organizations to make lawful purpose contributions to state-level parent organizations. It establishes the criteria under which those contributions may be made. This is reasonable because it limits the discretion the board has in determining that these expenditures will be allowed as lawful purpose.

G. A licensed organization may not contribute gross gambling profits to another licensed organization unless:

(1) the contributing organization receives the prior approval of the board;

(2) a board-prescribed form is completed; and

(3) the contributing organization demonstrates that the contribution meets one or more of the lawful purposes identified in item C and that the contribution is not for the purpose of avoiding taxes or circumventing the restrictions placed on lawful purpose expenditures by item C.

H. An organization shall maintain documentation sufficient to show that each of its expenditures constitute either an allowable expense or a lawful purpose under this subpart.

This language clarifies that an organization is responsible to maintain all necessary documentation to show that its expenditures are either allowable expenses or lawful purposes. This is reasonable because it does not impose additional burdens on licensed organizations.

7865.0021 REIMBURSEMENT.

The board may require an organization to deposit non-gambling funds in the organization's gambling bank account to reimburse the account for unlawful expenditures or expenses, to otherwise bring the account into compliance with Minnesota Statutes, section 349.15, or to reimburse the account for gambling receipts that the organization failed to deposit in the account. Subject to the provisions of parts 7861.0020, subpart 8, and 7861.0120, subpart 5, subitem 4(c), reimbursement is a contested case under Minnesota Statutes, chapter 349.

This language is necessary to clarify that the compliance review group and/or the board can require an organization to reimburse its gambling account for unlawful expenditures or expenses, to otherwise bring the account into the 50/50 or 60/40 expense calculation requirements, or to reimburse the gambling account for gambling funds the organization failed to deposit into the account.

IV. OTHER STATUTORY REQUIREMENTS

Minnesota Statutes, section 14.115 (1990), requires agencies, when proposing a new rule or amending an existing rule which may affect small businesses, to consider certain methods of reducing the impact of the rule on small businesses.

The proposed lawful gambling rules may impact certain small businesses. However, the rules do not affect small businesses from participating in the gambling industry. The Board has fully considered the impact of the rules on small businesses and has determined that because of the importance of maintaining integrity in the industry, the Board cannot be less rigorous in its regulation of one type of business over another.

Minnesota Statutes, section 14.11, subdivision 2, is inapplicable because the proposed rules will not have any direct and substantial adverse impact on agricultural land. Sections 115.43, subdivision 1; 116.07, subdivision 6; and 114A.29, subdivision 4, are not applicable. Likewise, a fiscal note is not required pursuant to section 3.892 as the rules will not force any local agency or school district to incur costs.

Minnesota Statutes, section 16A.128, requires that any rules setting fees receive the approval of the Commissioner of Finance prior to the promulgation of the rule.

Minnesota Statutes, section 349.161, subdivision 4, specifically prescribes a license fee of \$2,500 for a distributor license. Proposed rule part 7862.0010, subpart 10, reiterates the license fee.

Minnesota Statutes, section 349.163, subdivision 2, specifically prescribes a license fee of \$2,500 for a manufacturer license. Proposed rule part 7863.0010, subpart 9, reiterates the license fee.

Minnesota Statutes, section 349.164, subdivision 4, specifically prescribes a license fee of \$2,500 for bingo halls. Proposed rule part 7861.0010, subpart 9, reiterates the license fee.

Minnesota Statutes, section 349.165, subdivision 3, specifically prescribes premises permit fees of \$200 for a class A permit, \$125 for a class B permit, \$100 for a class C permit, and \$75 for a class D permit. Proposed rule part 7860.0040, subpart 7, reiterates those fees.

Minnesota Statutes, sections 349.166, subdivision 2(3), specifically prescribes a registration fee of \$25 for exempted lawful gambling. Proposed rule part 7860.0140, subpart 1, reiterates that fee.

Minnesota Statutes, section 349.167, subdivision 2(16), specifically prescribes a license fee of \$100 for a gambling manager's license. Proposed rule part 7860.0030, subpart 8, reiterates that fee.

However, because these fees were established by statute, the notice and approval provisions of section 16A.120 do not apply.

V. CONCLUSION

Based on the foregoing, the Board's proposed rules are both necessary and reasonable.

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Harry W. Baltzer, Executive Director
Minnesota Lawful Gambling Control Board