

REPORT
of the
Colorado Secretary of State
and the
Executive Director of the Department of Revenue

Pursuant to Section 12-9-103 (6), C.R.S.

Concerning:

**Findings and Recommendations on the
Desirability and Practicability of Transferring Responsibility for
Licensing and Enforcement of Bingo and Raffles
from the Secretary of State to the Department of Revenue**

Submitted to the House and Senate Committees on Finance and the
House and Senate Committees on State, Veterans, and Military Affairs

December 31, 2008

BACKGROUND

History: The Colorado Department of Regulatory Agencies (“DORA”) completed a Sunset Review of the Bingo-Raffles section of the Department of State, Licensing Division in October, 2007¹. That report made several observations and recommendations concerning moving the regulatory authority over charitable gaming from the Secretary of State’s office to the Department of Revenue.

DORA’s Recommendation: DORA made its presentation to the House State, Veterans, and Military Affairs committee on February 12, 2008. DORA and the Secretary of State presented testimony that separating the licensing and enforcement functions of charitable gaming would result in a weakened regulatory structure. Representative Weissmann, chair of the committee, requested that the sunset bill (H.B. 08-1273) be amended to require the SOS and the Executive Director of Revenue to confer regarding a move of the licensing and regulatory functions from the SOS to DOR.²

Consultation and Report: Pursuant to H.B. 08-1273, the General Assembly required the Secretary of State and the Executive Director of the Department of Revenue to confer and report to the appropriate committees:

12-9-103. Licensing authority - powers - rules - duties - license suspension or revocation proceedings - definitions. (6)(a) The secretary of state shall confer with the executive director of the department of revenue or his or her designee concerning:

(I) The desirability and practicability of transferring the responsibility for enforcement, licensing, or both under this article from the secretary of state to the department of revenue;

(II) The recommendations of the secretary of state and the executive director of the department of revenue for any other or additional constitutional or statutory changes to improve the regulation of bingo and raffles in Colorado.

(b) On or before December 31, 2008, the secretary of state and the executive director of the department of revenue shall jointly prepare and transmit a report of their findings and recommendations to the house and senate committees on finance and the house and senate committees on state, veterans, and military affairs, or their successor committees.³

¹ 2007 Sunset Review, Regulation of Bingo and Games of Chance including the Bingo-Raffle Advisory Board, October 15, 2007, Colorado Department of Regulatory Agencies Office of Policy, Research and Regulatory Reform, <http://www.dora.state.co.us/opr/archive/2007BingoaAndGamesOfChance.pdf>.

² Committee of Reference Report, HB1273_C.001, 12 February 2008

³ Session Laws, 2008, Ch. 97, p. 98

REPORT

Pursuant to the statutory provision cited above, the Secretary of State (“SOS”) and the Department of Revenue (“DOR”) have conferred. The SOS recommends that the General Assembly submit a referred measure to the voters in the 2010 election to amend the constitution to allow for the licensing and regulation of bingo games and raffles (hereinafter “charitable gaming”) to be put in an executive branch department of the General Assembly’s choice. Title 12, Article 9, Colorado Revised Statutes should be amended to transfer to a designated department, all licensing and regulatory functions over charitable gaming, along with any personnel, cash funds and sources of funding. The DOR is not opposed to a referred measure and would accept responsibility for the licensing and regulation of charitable gaming should such a measure pass and the General Assembly determines that DOR is the appropriate department for the oversight of charitable gaming.

The licensing of those entities that may conduct bingo games and raffles (hereinafter “charitable gaming”) is set forth in the Colorado constitution in Article XVIII, Section 2. All other licensing of for profit entities that provide support to nonprofit licensees and all regulation of nonprofit and for profit licensees is provided by statute in Title 12, Article 9, C.R.S.

There are a number of reasons for moving the licensing and regulation of bingo and raffles from SOS to DOR.

1. **DOR is better situated to regulate gaming.**

- a. **DOR regulates all other forms of gaming in the state.** Moving charitable gaming to DOR consolidates licensing and enforcement under one agency with more resources that are dedicated to gaming enforcement.
- b. **DOR has strong enforcement authority.** DOR investigators are peace officers and are capable of making arrests, investigating and impounding premises, serving warrants, etc. Investigators in the SOS’s office are considered “compliance investigators” and do not have the statutory authority of peace officers. Although SOS investigators could be converted and qualified under POST, the current fiscal environment makes this option not fiscally sound.
- c. **The for-profit side of charitable gaming is better regulated by DOR.** DOR is in a better position to conduct thorough background investigations on the suppliers, manufacturers and landlords that support the non-profit licensees.
- d. **DOR is better able to monitor assets of bingo-raffle licensees and uncover money laundering schemes.** Currently, SOS has jurisdiction over statutorily mandated charitable gaming accounts. The SOS has uncovered several instances of improper use of charitable gaming funds during the past few years. However, when licensees move funds to other accounts (possibly shell

accounts), the SOS does not have the expertise or resources to investigate assets beyond the original charitable gaming account. DOR has information sharing arrangements with the IRS that the SOS is precluded from establishing by federal law.

2. **Moving enforcement without licensing is uneconomical and inefficient.** Licensing and enforcement are interdependent. Having the licensing function in one department and enforcement in another necessarily involves a level of interdepartmental communication that is unrealistic in Colorado's governmental structure. Investigators rely on information from the licensing staff to alert them to potential areas for investigation when statutory reports show discrepancies that may indicate malfeasance or illegal activity. For the licensing and investigative functions to have synergy, they must be physically and organizationally close together.
3. **DOS is an inherently political department.** The SOS is in the position of licensing and regulating those individuals and entities that may contribute to his or her campaign. Those potential relationships can create awkward situations or the appearance of bias or favoritism when decisions are made concerning the imposition of sanctions. Even when the secretary of state does everything possible to create a "Chinese Wall" between the charitable gaming functions and the political office, the danger exists of a public perception that any regulatory sanctions or the failure to sanction is a function of the campaign contribution status of the licensee.

The SOS and DOR have reviewed two areas of concern.

1. **The cost of a statewide ballot initiative.** DORA recommended that the regulation of bingo and games of chance by the SOS be continued until 2017. It stated "A Constitutional amendment would require a ballot initiative on a statewide election. As such, the time, effort, and expense associated with statewide ballots suggest that an extremely compelling rationale be present to justify the resources needed to accomplish this suggested amendment. However, the rationale here falls far short of that which would justify such effort and expense."⁴ A referred measure by the General Assembly would not require the resources and expense that DORA refers to. Any expense, either for or against the ballot measure, would be born by those constituent groups that were consulted by DORA in the preparation of the report. The measure will either pass or fail on its merits. DORA's argument that there is no compelling rationale fails to address the issues raised in item 3 above.
2. **Program revenues are insufficient to cover program costs.** DOR is concerned that revenues may be less than expenditures due to a declining industry. The Sunset Review said that FY05-06 expenditures were \$760,000 while total revenues were \$775,310⁵. DOR uses an expenditure figure of \$806,692. The SOS increased the quarterly fees on gross revenue during 2008. It also increased the filing fees for

⁴ See Sunset Review, Recommendation 1, page 46.

⁵ See Sunset Review, Executive Summary.

certain licensees. Revenues should meet or exceed expenditures for the foreseeable future.

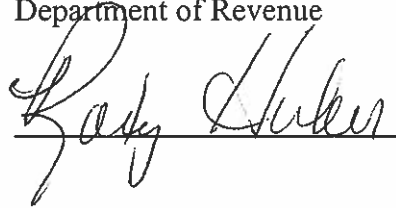
For the above reasons, The SOS recommends, and DOR concurs, that the General Assembly submit a referred measure to the voters in 2010 that would allow the General Assembly to put the licensing and enforcement duties over charitable gaming in the appropriate department. We further recommend that if the referred measure passes, the General Assembly pass appropriate amendments to Title 12, Article 9 that would move all functions, funding and personnel to the appropriate department. The SOS recommends that the appropriate department is the Department of Revenue. DOR agrees that the licensing and regulatory functions of charitable gaming should be in a single department and the appropriate department is DOR.

Respectfully Submitted this 31st day of December, 2008

Mike Coffman
Secretary of State

Handwritten signature of Mike Coffman in black ink, written over a horizontal line.

Roxy Huber
Executive Director
Department of Revenue

Handwritten signature of Roxy Huber in black ink, written over a horizontal line.