

# LEGISLATIVE AUDIT DIVISION

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## MEMORANDUM

**TO:** Legislative Audit Committee Members  
**FROM:** Angie Grove, Deputy Legislative Auditor  
**CC:** Al Carruthers, Chair, Board of Horse Racing  
Ryan Sherman, Executive Director, Montana Board of Horse Racing  
Angela Wong, Director, Montana Lottery  
**DATE:** June 2011  
**RE:** Performance Audit Follow up (11SP-12): Fantasy Sports Parimutuel Gambling (orig. 09P-02)  
**ATTACHMENT:** Original Performance Audit Summary

### Introduction

In September 2009, we presented our performance audit Fantasy Sports Parimutuel Gambling. The audit made one recommendation to the legislature and one recommendation jointly to the Montana Board of Horse Racing (the board) and the Montana Lottery (the Lottery). In April 2011, we began gathering preliminary information from the agencies on their progress in implementing recommendations. This memo summarizes the results of our follow-up work, in addition to presenting background information.

### **Overview**

Our audit addressing the involvement of the board and the Lottery in fantasy sports parimutuel gambling identified issues relating to the statutory authority for these activities and the manner in which the agencies implemented them. We made one recommendation to the legislature addressing changes in statute to allow the board to contract for the provision of fantasy sports parimutuel gambling. We also made a recommendation to the agencies addressing use of an inter-agency agreement to implement fantasy sports parimutuel gambling. Neither of these recommendations has been implemented.

### Background

In response to a request from the Economic Affairs Interim Committee, the Legislative Auditor prioritized a performance audit of the board and its implementation of fantasy sports parimutuel gambling. House Bill (HB) 616, passed during the 2007 Legislative Session, provided for fantasy sports gambling to be administered by the board. HB616 authorized extension of the board's authority over parimutuel gambling to fantasy sports leagues. In June 2008 the board entered into an inter-agency agreement with the Lottery to provide fantasy sports parimutuel gambling. The

Lottery introduced two weekly fantasy sports games based on professional football and auto racing. The games are offered by the Lottery through approximately 200 retail locations.

Our audit objectives addressed the board's implementation of fantasy sports gambling via administrative rule. We also addressed concerns over the legality of involving the Lottery. We found the board lacks full legal authority for adopting fantasy sports gambling rules under the Montana Administrative Procedure Act. Challenges to the legality of involving the Lottery in fantasy sports gambling focused on the agency's legal authority to offer gambling games that are different from conventional lottery-type products.

### **Follow-Up Audit Findings**

#### **RECOMMENDATION #1**

**We recommend legislation be enacted to provide the Board of Horse Racing authority to contract for services, rather than license provision of fantasy sports parimutuel gambling.**

#### **Implementation Status – Not Implemented**

Legislation has not been considered to implement this recommendation. In its response to both the audit report and our request for follow-up information, the board indicated its position is that no legislation is necessary. The board has made some changes to its inter-agency agreement with the lottery to address some of the issues identified in audit findings, but these revisions do not address the underlying concern over the provision of fantasy sports parimutuel gambling via licensure, rather than contracting.

#### **RECOMMENDATION #2**

**We recommend the Board of Horse Racing and the Montana State Lottery operate within their statutory authority and terminate their inter-agency agreement on fantasy sports parimutuel gambling with immediate effect.**

#### **Implementation Status – Not Implemented**

Neither agency concurred with this recommendation in their responses to the original audit report. The board and the lottery believe current statute supports the inter-agency agreement and the involvement of the lottery in fantasy sports parimutuel gambling. Legal analysis by the legislative branch and further review conducted as part of the audit found the involvement of the lottery was not appropriate given its existing statutory authority. Following the completion of audit work, the board requested an Attorney General's opinion relating to the legal definition of fantasy sports parimutuel gambling. The Attorney General's office issued a letter of advice, which supported the board's position on the definition of sports pools. The letter of advice from the Attorney General's office addressed a specific question relating to whether the fantasy sports games offered by the board through the lottery are a sports pool, but did not address the wider question of whether the lottery acted with proper legal authority in offering the fantasy sports games.

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