

PERFORMANCE AUDIT

Fantasy Sports Parimutuel Gambling

Department of Livestock

SEPTEMBER 2009

09P-02

REPORT SUMMARY

The involvement of the Montana State Lottery in the Board of Horse Racing’s fantasy sports parimutuel gambling program does not comply with statute; further legislative action is necessary to ensure this new form of gambling is administered in an equitable and transparent manner.

**Context**

In response to a request from the Economic Affairs Interim Committee, the Legislative Auditor prioritized a performance audit of the Board of Horse Racing (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. HB 616 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 Montana State Lottery (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.

Procedure Act. The rules that were adopted did provide a good basis for implementing the new program, but the board’s inter-agency agreement with the Lottery essentially negated these efforts. The board behaved like it was procuring services under contract, as opposed to granting licensure, but none of the procedures associated with the Montana Procurement Act were applied. The board’s actions were a hybrid of licensing and contracting procedures, but ultimately satisfied the requirements of neither. Had the board followed the Procurement Act, several problems could have been avoided. These problems relate to the transparency of the process, the ability of other market entrants to participate on an equitable basis, and the benefits that ultimately accrued to the Lottery and its main game contractor.

**Fantasy Sports Gambling  
Statutory Revenue Distribution**

Player’s Prize Pool	\$134,206
Board of Horse Racing	\$29,018
Montana State Lottery	\$10,882
Retailers	\$7,254
Total	\$181,360

Source: Compiled by the Legislative Audit Division from Montana State Lottery records.

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. The Montana State Lottery Act established the Lottery and outlined its legal authority. HB 616 did not refer to the Lottery or make any changes in the Lottery Act. Although HB 616 did not identify a specific means of implementing fantasy sports gambling, the involvement of the Lottery does not comply with statute. The board, the Lottery and the Governor’s Office have stated that involving the Lottery offered an expedient and effective means of implementing the legislation. Although the board and the Lottery obtained legal analysis, they did not seek a resolution of the issues through approach the Attorney General’s office or through legislation during the 2009 legislative session. Either course would have offered an opportunity to clarify legal interpretations regarding the Lottery’s scope of authority.

Our audit 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

## Results

In relation to the board's process for licensing fantasy sports gambling providers, we recommend legislation be enacted to provide the board authority to contract for services, rather than license provision of fantasy sports gambling. Revising statute to provide the board with authority to contract for services would ensure greater transparency in the process and greater confidence in the results. In relation to the Lottery's legal authority to offer fantasy sports gambling, we have little choice in how to approach non-compliance with state law. Activities that are outside of an agency's legal authority and are not in compliance with statute should cease. We recommend the Board of Horse Racing and the Montana State Lottery terminate their inter-agency agreement on fantasy sports parimutuel gambling with immediate effect.

Recommendation Concurrence	
Concur	0
Partially Concur	1
Do Not Concur	1

Source: Agency audit response included in final report.