

Sullivan, Erin

From: Walker, Jameson
Sent: Thursday, December 16, 2021 12:33 PM
To: Sullivan, Erin
Subject: FW: [EXTERNAL] Opinion/Advice on HB704 (2021 Legislative Session)

From: Representative Ed Buttrey <Ed.Buttrey@mtleg.gov>
Sent: Tuesday, November 16, 2021 2:23 PM
To: Walker, Jameson <jcwalker@mt.gov>
Subject: RE: [EXTERNAL] Opinion/Advice on HB704 (2021 Legislative Session)

Jameson,

Thanks for the copy. Great stuff.

Looks like I will be stuck in Kalispell and not able to make the meeting in person. I would like to speak either during the Emerging Issues portion or during the Public Comment thereafter. How do I get the Zoom link so that I can get access to the meeting to be able to speak?

Thanks,

Ed Buttrey

From: Walker, Jameson <jcwalker@mt.gov>
Sent: Monday, November 15, 2021 11:29 AM
To: Ed Buttrey <ed.buttrey@mtleg.gov>; Kenneth Bogner <Kenneth.Bogner@mtleg.gov>
Subject: RE: [EXTERNAL] Opinion/Advice on HB704 (2021 Legislative Session)

Good Afternoon,

I was asked to take a look at House Bill 704 and its requirements on the State Lottery. Specifically, I was asked whether the bill requires the State Lottery to conduct a game that is similar to the Montana Millionaire game for the benefit of the Board of Horseracing. Please note that I haven't spoken with the Lottery at the time of writing this email, so my review of House Bill 704 is based on the language of the bill itself, committee testimony, proposed administrative rules, and bill draft history.

History – Bill Draft Versions

In its introduced form, House Bill 704 was written to specifically require many elements resembling the Montana Millionaire game (https://leg.mt.gov/bills/2021/HB0799//HB0704_1.pdf). Indeed, the draft explicitly required certain prizes: “[t]he special raffle or lottery game, at a minimum, must pay four \$10,000 prizes, three \$100,000 prizes, one \$250,000 prize, one \$1,000,000 prize, and any additional prizes considered suitable.” This language was borrowed from the Montana Millionaire game rules.

After introduction, the bill was then amended to add some legislative intent by way of a preamble (https://leg.mt.gov/bills/2021/HB0799//HB0704_2.pdf). The amended bill removed the fixed prize money requirements from the language of the statute. Relating to the preamble, the language provides that House Bill 704 was written to authorize a Montana Millionaire-style game:

WHEREAS, it is the intent of this act to authorize the state lottery commission to conduct a game that is similar to its existing Montana Millionaire game for the purpose of assisting and promoting live horseracing in this state; and

WHEREAS, it is the intent of this act to use the state lottery's resources to promote live horseracing in this state in the promotion of this game; and

WHEREAS, nothing in this bill should interfere with any existing game conducted by the state lottery commission, including the Montana Millionaire game.

Although not in statute, a preamble is often used by courts to ascertain legislative intent. Here, the legislature has specifically included its statement that the bill is authorize the State Lottery commission to conduct a Montana Millionaire game.

Codified Version of HB 704

Section 1 of House Bill 704 was codified in section 23-7-314, MCA, which requires the lottery to conduct a game on behalf of the board of horseracing:

23-7-314. Montana millions raffle or lottery game -- proceeds transferred to board of horseracing -- rulemaking. (1) The commission shall by rule determine a special raffle or lottery game to maximize the net revenue paid to the state special revenue account statutorily appropriated to the Montana board of horseracing account under [23-4-105](#).

(2) After paying for costs by the commission and prizes, the commission shall transfer 50% of net revenue from the special raffle or lottery game tickets to the special revenue account in [23-4-105](#) administered by board of horseracing and used to promote live horseracing in this state.

(3) The lottery shall cooperate with the board of horseracing and promote live horseracing, including but not limited to posting dates of live horseraces, as part of the marketing of the special raffle or lottery game.

(4) The special raffle or lottery game is subject to the provisions of this chapter.

Again, while the codified statute does not specify what type of game, the preamble specifies that the lottery is to conduct a game “that is similar to its existing Montana Millionaire game.”

Committee Testimony

The committee testimony establishes that the game was intended to be a Montana Millionaire style game ([http://laws.leg.mt.gov/legprd/LAW0240W\\$CMTE.ActionQuery?P_SESS=20211&P_COM_NM=\(H\)+Business+and+Labor&P_ACTN_DTM=03/31/2021&U_ACTN_DTM=03/31/2021&Z_ACTION2=Find](http://laws.leg.mt.gov/legprd/LAW0240W$CMTE.ActionQuery?P_SESS=20211&P_COM_NM=(H)+Business+and+Labor&P_ACTN_DTM=03/31/2021&U_ACTN_DTM=03/31/2021&Z_ACTION2=Find)). The bill had several proponents – many of which spoke that the game would be in the style of the Montana Millionaire game.

Conclusion

While the codified statutory language did not specify what type of game that the Lottery was to conduct, the bill’s preamble and committee testimony provides insight into the legislative intent of House Bill 704. Specifically, the intent was to have the Lottery conduct a Montana Millionaire style game. At the very least, the statute compels the Lottery to conduct a game, establishing it through rule, for the benefit of the Board of Horseracing. As of the date of this analysis, there has not been any official rulemaking as required under 23-7-314. Since House Bill 704 became effective in October 1, 2021, the Lottery is now well within its authority to establish a game through rulemaking. I have not seen any notices of proposed agency rulemaking on this topic.

Jim

Jameson Walker
Legislative Attorney
Legislative Services Division
Capitol Building, Rm 125