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March 30, 2005

Senator Jim Vickerman
Chair, Senate Agriculture Veterans and Gaming Committee
226 State Capitol Building
75 Rev. Dr. Martin Luther King Jr., Blvd.
St. Paul, MN 55155

Dear Senator Vickerman:

Thank you for your letter dated March 18, 2005, a copy of which is attached as Exhibit 1, requesting an opinion of the Attorney General regarding the constitutionality of a bill pending before your committee. Specifically, you ask whether House File 1817, a bill relating to gambling and the operation of a State/tribal casino, is consistent with Minnesota's constitution.

A summary of the bill, a discussion of the constitutional issues and our conclusion are set forth below.

SUMMARY OF BILL.

A summary of House File 1817 prepared by the research division of the Minnesota House of Representatives is attached as Exhibit 2. To briefly summarize, Article 1 of the bill identifies the purpose of the Act. Article 2 authorizes the State to enter into a contract for the operation of a metropolitan area casino with a tribal entity comprised of tribal governments that have demonstrated financial need ("Tribal Entity"). The Tribal Entity will bear all facility-related costs and manage the day-to-day operations of the casino. The State will own and maintain "overall control" over the gaming machines and other lottery games but may delegate day-to-day management of the games to the Tribal Entity.

The contract between the State and the Tribal Entity will allow the Tribal Entity to receive 64% of adjusted gross revenue from gaming machines and other lottery games.

Article 3 establishes a system whereby the Commissioner of Public Safety will regulate the gaming facility. The Tribal Entity must secure a gaming facility license, contingent upon payment of a one-time \$200,000,000 licensing fee. The Tribal Entity, or another entity retained by the Tribal Entity to manage the facility, will be required to obtain a gaming management license and renew this license every two years. Employees and vendors at the facility are also subject to licensure.

Article 3 also authorizes the Tribal Entity to operate nonlottery casino games at the facility.

Article 4 requires that 26 percent of adjusted gross revenue from gaming machines and other lottery games be paid to the Commissioner of Revenue. A "gaming transaction fee" of 14 percent of nonlottery casino games' adjusted gross revenue is also required to be paid to the Commissioner. This money is to be deposited into a "gaming facility proceeds fund". Ten percent of the monies in the gaming facility proceeds fund are appropriated to a "community assets account" and 90 percent are to be transferred to the general fund.

Article 5 makes various changes to existing laws to make them consistent with the provisions of Articles 1 to 4.

CONSTITUTIONAL ISSUES.

I. Minnesota Constitution, Article XIII, Section 5.

Article XIII, section 5 of the Minnesota Constitution states:

The legislature shall not authorize any lottery or the sale of lottery tickets, other than authorizing a lottery and sale of lottery tickets for a lottery operated by the state.

In analyzing House File 1817, it must be determined whether the proposal set forth in the bill authorizes a lottery and, if it does, whether the lottery proposed is one permitted by the above language.

A. Whether House File 1817 authorizes a "lottery".

House File 1817 authorizes the operating of "gaming machines" and "other lottery games" at the casino to be operated by the Tribal Entity. Article 2, section 3 of the bill defines a "gaming machine" as:

Any machine, system, or device which, upon payment of consideration in order to play a game, may award or entitle a player to a prize by reason of skill of the player or application of the element of chance, or both.

Article 2, section 7 of the bill defines "other lottery game" to mean:

Any game operated by the lottery at the gaming facility other than a gaming machine, where money or property are distributed to persons selected primarily by chance from among participants who have paid for a chance of being selected and any other game or activity determined to constitute a lottery within the meaning of the Minnesota Constitution, article XIII, section 5 ...

In the press release announcing the proposed State/tribal casino, the Governor indicated that the proposed casino would have slot machines and offer additional table games such as craps and roulette. Ex. 2.¹ Slot machines appear to constitute “gaming machines” under House File 1817, and craps and roulette appear to constitute either “gaming machines” or “other lottery games”.

Until it was amended in 1988 to permit a state-run lottery, the Minnesota Constitution stated:

The legislature shall never authorize any lottery or the sale of lottery tickets.

Minn. Const. of 1859, art. IV, § 31.

Minnesota courts have consistently applied an expansive interpretation to the term “lottery.” As early as 1892, the Minnesota Supreme Court stated that “lottery” had no technical meaning but must be construed in the popular sense and with a view to remedy the mischief intended to be prevented. *State v. Moren*, 48 Minn. 555, 559, 51 N.W. 618 (1892). The court went on to declare a lottery to be a scheme for the distribution of property by chance among persons who have paid or agreed to pay a valuable consideration for the chance -- whether called a lottery, raffle or some other name. *Id.* In 1937, the court pronounced that public policy was against every scheme that includes the three essential features of a lottery -- prize, consideration, and chance. *State v. Stern*, 201 Minn. 139, 143, 275 N.W. 616 (1937). Justice Olson, in the dissenting opinion, stated that the courts generally construe prohibitions relating to lotteries liberally “so as to include all schemes which appeal to the gambling propensities of men.” *Id.* In a recent appellate holding, the Minnesota Court of Appeals followed longstanding precedent when it found that a lottery exists if (i) a prize is offered, (ii) chance determines who is awarded the prize and (iii) participants pay consideration for the chance to win the prize. *See Minnesota Souvenir Milkcaps, LLC v. State*, 687 N.W.2d 400 (Minn. Ct. App. 2004).

While the Minnesota Supreme Court has not been presented with the specific issue of whether slot machines are lotteries, a 1946 Minnesota Attorney General’s opinion addresses this precise issue. In applying the three essential elements of a lottery set down in *Stern*, Attorney General J.A.A. Burnquist opined that the legislature did not have the authority to pass a bill licensing slot machines, since slot machines are lotteries. Atty. Gen. Op. 733-D, December 23, 1946 (copy attached as Exhibit 3).

¹ “Craps” is a casino game played with a pair of six-sided dice where the objective is to bet whether a shooter throwing a pair of dice will be able to roll a winning combination. *See* Stanford Wong & Susan Spector, *The Complete Idiot’s Guide to Gambling Like a Pro*, (3d ed., Alpha, a Member of Penguin Group (USA) Inc. 2003). “Roulette” is played with a roulette wheel containing the numbers 1-36, the objective of which is to select the number which appears after the wheel is spun. *Id.*

Other state courts have consistently found slot machines to be lotteries. *See e.g., In re Advisory Opinion to the Governor*, 856 A.2d 320 (R.I. 2004); *State v. Nelson*, 210 Kan. 439, 502 P.2d 841, 847 (1972); *Idaho v. Village of Garden City*, 74 Idaho 513, 265 P.2d, 328, 332 (Idaho 1953); *State ex rel. Evans v. Brotherhood of Friends*, 41 Wash.2d 133, 247 P.2d 787, 796 (Wash. 1952); *Montana v. Marck*, 124 Mont. 178, 220, P.2d 1017, 1018 (Mont. 1950); *Thompson v. Ledbetter*, 74 Ga. App. 427, 39 S.E.2d 720, 721 (Ga. 1946). Similarly, other state courts have found craps and roulette wheels to also constitute lotteries. *See In re Advisory Opinion to the Governor*, 856 A.2d 320 (R.I. 2004); *Dalton v. Pataki*, 11 A.D.3d 62, 780 N.Y.S.2d 47 (2004). As stated by the Rhode Island Supreme Court:

...[S]ome of the casino games authorized by the Casino Act, including roulette, craps and slot machines specifically, "amount to nothing more than chance". ... It cannot seriously be disputed that all of these games fall squarely within the definition of a lottery. Skill and judgment play no part in roulette, craps and slot machines -- their outcome depends exclusively on chance.

In re Advisory Opinion at 328.

It is indisputable that roulette, craps, and slot machines are based on the payment of consideration for the chance to win money or a prize. As a result, it is a virtual certainty that a Minnesota court would conclude that the games authorized by House File 1817 -- slot machines, roulette and craps -- are lotteries.

B. Assuming that the proposed games are lotteries, are they lotteries permitted by Article XIII, Section 5.

As noted above, the 1988 amendment to the Minnesota Constitution permitted the legislature to "authorize[e] a lottery and sale of lottery tickets for a lottery operated by the state." Assuming that slot machines, craps and roulette constitute lotteries, the next issue is whether they constitute lotteries authorized by the constitution.

With respect to interpreting constitutional provisions, the Minnesota Supreme Court has stated:

The rules governing the courts in construing articles of the State Constitution are well settled. The primary purpose of the courts is to ascertain and give effect to the intention of the Legislature and people in adopting the article in question. If the language used is unambiguous, it must be taken as it reads, and in that case there is no room for construction. The entire article is to be construed as a whole, and receive a practical, common sense construction. It should be construed in the

light of the social, economic, and political situation of the people at the time of its adoption, as well as subsequent changes in such conditions.

Rice v. Connolly, 488 N.W.2d 241, 247 (1992), citing *State ex rel. Chase v. Babcock*, 175 Minn. 103, 107, 220 N.W. 408, 410 (1928).

1. The language of the amendment appears to limit the legislature's power to authorizing only a ticket-generating lottery.

The constitutional amendment permits the legislature to “authoriz[e] a lottery and the sale of lottery tickets for a lottery operated by the state.” If the word “and” in this authorization is used conjunctively, then a permissible lottery is one which includes the sale of lottery tickets. If the word “and” is used disjunctively, then the legislature is permitted to authorize either a lottery or the sale of lottery tickets for a lottery operated by the state.

It is a cardinal principle of construction that words used in statutes and constitutional provisions are ordinarily to be construed according to rules of grammar and their common and approved usage. See, e.g., Minn. Stat. § 645.08 (1); *Rice v. Connolly*, 488 N.W.2d 241 (Minn. 1992). Consistent with this principle, absent plain indications of contrary intent, the word “and” should be construed conjunctively, with the objects of the conjunction considered jointly, whereas the word “or” should normally be considered disjunctive, with each object taken separately. See, e.g., *State v. Kelly*, 218 Minn. 247, 15 N.W.2d 554 (1944); *Chisholm v. Davis*, 207 Minn. 614, 292 N.W. 268 (1940), 73 *Am. Jur.* 2d Statutes § 156.

Courts will, in certain circumstances, apply “and” in a disjunctive fashion when such construction is plainly necessary to accomplish legislative intent. See, e.g., *Maytag Co. v. Commissioner of Taxation*, 218 Minn. 460, 17 N.W.2d 37 (1944); *County of Benton v. Kismet Investors, Inc.*, 653 N.W.2d 193 (Minn. Ct. App. 2002). With respect to Article XIII, section 5, however, no such artificial construction is necessary or appropriate. The section, as amended, employs both the disjunctive and conjunctive in the same sentence. The prohibition is phrased in the disjunctive, while the exception is stated conjunctively. Given their proximity to one another, it must be presumed that each term was used in accordance with its ordinary meaning.

Further, if the word “and” were construed disjunctively, its objects would each be taken separately and independently. Under this interpretation, the constitutional amendment would authorize two separate things: (i) a lottery, or (ii) the sale of lottery tickets for a lottery operated by the state. Strikingly, if the two phrases were treated independently, lottery tickets could be sold only for a lottery operated by the state but all lotteries -- state-operated or non-state-operated -- would be permitted. This construction would also result in the absurdity of the constitutional amendment stating, in essence, that the legislature may not authorize a lottery ... except a lottery.

2. Legislative history demonstrates the legislature's intent to limit the scope of the amendment to ticket-generating lotteries.

In determining legislative intent, courts consider contemporaneous legislative history, including tapes of legislative hearings and proceedings; committee reports; conference reports and journal entries; and statements of the legislation sponsors. *Handle with Care, Inc. v. Department of Human Services*, 406 N.W.2d 518, 522 (Minn. 1987); *Stearns-Hotzfield v. Farmers Ins. Exchange*, 360 N.W.2d 384, 389 (Minn. Ct. App. 1985).

The legislative history of the bills² that would have allowed voters to decide whether to amend Minnesota's constitution to allow a lottery is instructive. Not surprisingly, there was considerable debate about the bills in committees, on the legislative floors and in conference committees. Testimony shedding light on what the legislature thought a lottery permitted by the constitutional amendment would be is helpful. In that regard, in a floor debate in the Minnesota Senate, Senator Frederickson stated:

This morning Senator Purfeerst and Senator Pehler and I were on a radio show on the subject and I think it was Senator Purfeerst or Senator Pehler, I forget which one now, who was talking about one of the great wonders of the lottery is going to be that little Mom and Pop grocery stores and dairy stores, and candy stores all over the State of Minnesota, are going to be selling lottery tickets. Isn't that great, isn't it terrific. ... but you can't tell me for a minute that by making the lottery available and gambling available in every corner grocery store in the State of Minnesota and having the state promote it, you're not going to lead more people into gambling....

Minnesota Senate, Floor Debate on S.F. 2, April 7, 1988.

Extensive discussion regarding the intent of Senate File 2 continued on the Senate floor. In responding to the need for lottery, the author of the bill, Senator Bob Lessard, stated:

...I think the people of this state want the opportunity, they want the right, they want the legislature to give them this opportunity to vote on whether or not the constitution should be amended... Beyond that, on a practical reality, and I guess I would have to say this, it is probably to prevent approximately \$140 to

² Senate File 2 and House File 4 were companion bills which proposed a constitutional amendment to permit a state-operated casino. Senate File 2000 and House File 2182 were also companion bills which proposed a constitutional amendment to authorize an environmental and natural resources trust fund. During the course of the session, House File 2182 was amended to include, among other things, the proposed constitutional amendment to permit a state-operated lottery. House File 2182 was ultimately enacted into law.

\$150 million from leaving this state. Cause that's what's going to happen when we are surrounded. ...

Id.

In response, Senator Bill Belanger stated:

...I would argue against the idea that we're going to have a mass, a mass exodus from the State of Minnesota to run across the state border and buy lottery tickets.

...

Id.

Senator Bernhagen later asked the author of the bill what some of the largest winnings an individual might get with their "purchase of a ticket". In response, Senator Lessard stated:

Mr. President, it depends on the type of the game. You know, if you have instant games which are smaller or if you allow the prize to become much larger depending on whether the previous winner did not, that there was not a previous winner. ... My personal preference, and apparently this is not the case in other states, you should have more smaller winners. ...

Id.

Representative Tom Osthoff, the chief author of House File 4, described in a committee hearing the lottery that would be permitted by his bill:

Lottery is a game of chance. There are three main types of lottery games ... the instant ticket that all of you are familiar with that are called a rub-off. Passive, because the player buys a pre-numbered ticket, checks it later on to see if they won a prize. This is like a raffle ticket. There is what's called the instant game, where the player uncovers hidden numbers or symbols to see if the ticket is a winner. Then there is the lotto game where players choose their own combination of numbers and hope that those numbers are picked in a drawing later that day or later in the week.

Minnesota House of Representatives, General Legislation, Veterans' Affairs and Gambling Committee, Hearing on H.F. 4, March 10, 1988.

When later asked what he believed was most important -- raising money from a lottery or giving voters the right to decide whether they wanted a lottery, Representative Osthoff responded:

I clearly think it is unconscionable that we have municipal liquor stores, and I clearly have a hard time with the compulsive gambling aspects of horse racing and certainly don't subscribe or submit that I will ever support a bill for a Las Vegas casino in our state. ... And, clearly, I think the advantage is that, yes, this can bring dollars to the state's treasury.

Id.

Discussion on the House floor with regard to the expected lottery proceeds is also instructive. In that discussion, Representative Bill Schreiber stated:

...I think you can expect something more than \$70 million in revenue in the first year that the lottery would start but based upon the experience of other states there's a fairly dramatic drop off in the second year because people find that they don't win. People find that they feed more money into a lottery than they are getting back and the fun is gone. And at that point the advertising campaign kicks in on the part of the State and you see more television ads and more newspaper ads and more radio ads encouraging state residents to buy a lottery ticket and people are persuaded to some degree by those advertisements and lottery sale go up. I think what you might expect in Minnesota is about \$200 million a year in lottery ticket sales. ...

Minnesota House of Representatives, Floor Debate on H.F. 2182, April 6, 1988.

Representative Schreiber later stated his concerns about a lottery:

...We appropriate more for the environment, on an annual basis, than what you're going to see out of this lottery tax and for the buyers of the lottery tickets, more false hope. In 1990, if this is adopted by the voters, it's more likely that people are going to be struck by lightning than to win a million dollars on this lottery. It's more likely to be hit in the head with a golf ball on a golf course than you will to win a million dollars out of this lottery.

Id.

Nowhere in the extensive legislative testimony on the lottery bills debated in the 1987-1988 legislative session is there any discussion of slot machines, craps or roulette wheels being authorized as a result of the constitutional amendment. In fact, the only type of lotteries that were discussed were those involving a ticket -- instant games and lotto-type lotteries.

3. Evidence of the understanding of the voters in adopting the 1988 constitutional amendment illustrates an understanding that only ticket-generating lotteries would be permitted.

In ascertaining the meaning of the amendment to Article XIII, section 5, a court must also consider the understanding of the voters in adopting the amendment. In that regard, a court considers the statement of the attorney general required by Minnesota statutes, section 3.21,³ articles and editorials published in newspapers and periodicals and other literature in determining the understanding of the people in voting for the constitutional amendment. *See State ex rel. Hennepin County Bar Ass'n v. Amdahl*, 264 Minn. 350, 119 N.W.2d 169, 172 (1962).

In accordance with Minnesota Statutes, section 3.21, the attorney general furnished a statement of the purpose and effect of the proposed constitutional amendment to the Minnesota Secretary of State. That statement, a copy of which is attached as Exhibit 4, discusses the purpose and effect of the ballot question which was to read:

Shall the Minnesota Constitution be amended to permit the legislature to authorize a lottery operated by the state?

The purpose and effect of this ballot question, as stated by the attorney general, was "that the legislature would be authorized to enact a statute authorizing a lottery and sale of lottery tickets for a lottery operated by the state."

The statement of the attorney general is significant because the language of the amendment presented to the people did not reference the sale of lottery tickets at all. Yet, the effect of the amendment was described as permitting a lottery operated by the state *and* the sale of lottery tickets for the lottery. It is apparent that the attorney general believed the lottery which would be permitted by passage of the constitutional amendment necessarily involved the sale of tickets.

Numerous articles and other documents discussing a potential lottery were written during the period leading up to the vote on the constitutional amendment. For example, in 1986, the Citizens League published a report, "It's Only a Game, A Lottery in Minnesota," which was cited in the legislative debate on the lottery bills. The report discusses, among other things, then-current lottery operations in other states. In discussing these lottery operations, only two types of lotteries were ever identified: instant games and on-line lottery games such as lotto. *See* "It's Only a Game, A Lottery in Minnesota," Citizens League Report, February 11, 1986.

³ Pursuant to this section, the attorney general is required to furnish a statement of the purpose and effect of all proposed constitutional amendments. Minn. Stat. § 3.21 (2004).

Articles about the proposed constitutional amendment appearing in the *Minneapolis StarTribune* and the *St. Paul Pioneer Press* during the 1987-1988 legislative session also focused exclusively on the traditional lottery where a ticket is issued with winning numbers or other designations. In an article in the *St. Paul Pioneer Press*, Senator Bob Lessard and Representative Tom Osthoff, the chief authors of the lottery bills in the Senate and House of Representatives, respectively, were interviewed about various issues regarding the proposed lottery. The article states, in part:

Osthoff also rejects the argument that lotteries prey on the poor. He offers statistics indicating that the poor do not spend proportionately more on lottery tickets than higher-income groups.

He and Lessard warn that if the state rejects the lottery, many Minnesotans will simply buy lottery tickets in adjoining states and Canada.

Gary Dawson, "Osthoff a Lonely Voice in Campaign for Lottery," *St. Paul Pioneer Press*, August 21, 1988.

On December 27, 1987, the *Minneapolis StarTribune* released the results of a poll that showed that two-thirds of Minnesota's adults favored a state lottery. In response to this poll, Wayne Olhoft, a former legislator opposed to the lottery, was interviewed. The article states:

Nearly two of every five respondents who said they disapprove of gambling favor the proposed lottery -- suggesting that for some people, a state lottery and gambling are two different things.

That's been one of the difficulties lottery opponents have faced in making their case, Olhoft said. "When people think of gambling, they think of the Mob. A lottery seems so much more innocent."

He maintains that it isn't innocent at all. Despite the odds, he'll carry to the Legislature an argument that the convenience and the availability of state lottery tickets will increase the incidence of compulsive gambling in the state, while teaching Minnesota children that "you can get something for nothing."

Lori Sturdevant, "Two-thirds of Adults Favor State-run Lottery," *Minneapolis StarTribune*, December 27, 1987.

The *StarTribune* also reported on former Governor Al Quie's opposition to a lottery. In describing why the former governor joined the list of lottery foes, the paper reported:

It was during a 1984 visit to Ethiopia that Al Quie made up his mind.

In a squalid section of Addis Ababa, where corrugated metal sheets passed for housing, people were forming a long line. Quie, Minnesota governor from 1978 to 1982, at first thought it was a feeding station for the poor.

Then he realized he was wrong. "They were queuing up for their lottery tickets there. Just seeing that offended me. I decided then, if it ever came to Minnesota, I would oppose it.

Robert Whereatt, "Quie Joins Lottery Foes/Forces Seeking to Build Alliances," *Minneapolis StarTribune*, May 4, 1988.

In a later *StarTribune* article, S. John Williams, a Minnesota House Researcher whose expertise included gambling legislation, was asked what kind of games Minnesota could expect from the lottery. Mr. Williams said that the first game would probably be an instant game. He defined an instant game as a ticket game -- scratch-off type tickets. When asked what other lottery games Minnesotans could expect, Mr. Williams said that there would probably be on-line games similar to lotto and numbers.⁴ See Robert Whereatt, "Expert Answers Question About Proposed Lottery," *Minneapolis StarTribune*, April 8, 1988.

It is apparent from the above that the legislature and the public thought that the approval of the constitutional amendment would allow for traditional ticket-generating lotteries. The authors of the bills which authorized the ballot question clearly considered a lottery to include only the sale of lottery tickets and the Lotto. Indeed, as noted above, one of the chief authors even indicated that he could not support any type of a "Las Vegas casino". Similarly, newspaper articles published at this time reflected the common understanding that the amendment being voted upon would simply permit scratch-off tickets and Lottos.

While the Minnesota Supreme Court has not had occasion to interpret the language which permits the legislature to authorize "a lottery and sale of lottery tickets for a lottery operated by the state", virtually identical language was interpreted in New York. In *Dalton v. Pataki*, 11 A.D.3d 62, 780 N.Y.S.2d 47 (2004), the language of the New York constitution, Article I, Section 9(1) was interpreted. That section states, in part:

⁴ Describing the difference between lotto and numbers, Mr. Williams indicated that numbers has a fixed payoff in most states while the payoff in lotto depends on the size of the jackpot. Robert Whereatt, "Expert Answers Questions About Proposed Lottery," *Minneapolis StarTribune*, April 8, 1988.

[E]xcept as hereinafter provided, no lottery or the sale of lottery tickets, pool-selling, bookmaking or any other type of gambling, *except lotteries operated by the state and the sale of lottery tickets in connection therewith* as may be authorized and prescribed by the [L]egislature, the net proceeds which shall be applied exclusively to or in aid of support of education in this state as a [L]egislature may prescribe ...

Id. at 78, 61 (emphasis added).

The question before the court was whether video lottery terminals (“VLTs”)⁵ constituted lotteries permitted under New York’s constitution. In analyzing the statute, the court noted that on its face, the constitutional exception contemplated that state-run lotteries involved the sale of tickets, *i.e.* lots or chances. *Id.* The court also noted that the senate debates on the lottery amendment indicated that the legislature conceived of the sale of tickets and multiple participation as integral elements of lotteries. *Id.* In rejecting the defendant’s claim that any game where the elements of consideration, chance and prize are present constitutes a permissible lottery, the court stated that, pursuant to that definition:

Any game of chance -- including such casino games as poker, blackjack, craps and roulette -- could be a lottery if operated by the state.

Such a broad interpretation would expand the constitutional exception permitting state-run lotteries to such an extent that it would swallow the general constitutional prohibition on gambling.

Id. at 69, 90.⁶

In light of the language of Article XIII, section 5, the legislative history and the public’s understanding of the amendment at the time of adoption, it is indisputable that the language was intended and believed to authorize a traditional ticket-generating lottery. At no time during the

⁵ To play video lottery, a player must insert paper currency or other consideration into a video display terminal to purchase one or more electronic instant lottery tickets. Upon the insertion of the currency, the next situated electronic ticket is dispensed from the site controller to the display terminal which shows the outcome associated with that ticket; the tickets are predetermined to be either winners or losers before the time of the purchase. Once a player has purchased a ticket, it is removed from the pool of available electronic tickets in a given series and cannot be selected or dispensed again. *Id.*

⁶ The court concluded that video lottery terminals could not be considered slot machines as a matter of law and constituted lotteries because they involved the elements of a lottery -- consideration, chance, prize, multiple participation and tickets. *Id.* at 95, 73. Other courts have found that video lotteries do not constitute permissible lotteries. *See Poppen v. Walker*, 520 N.W.2d 238 (S.D. 1994).

legislative debate or in the newspaper articles written at that time was there any discussion that slot machines, roulette wheels or craps would be permitted. Throughout the debate -- both in the legislature and amongst the public -- the only lottery that was discussed as resulting from passage of the amendment was one involving the sale of tickets. Further, to interpret the language in the 1988 amendment as authorizing slot machines, roulette wheels and craps would cause the exception to the lottery prohibition to subsume the prohibition.

Based on the above, it is our opinion that the operation of slot machines, roulette wheels or craps by the State would violate Article XIII, Section 5 of the Minnesota Constitution.

C. Whether the proposed games would be “operated by the state”.

A second issue is whether the slot machines, roulette, craps and other games of chance that are included in House File 1817 are “operated by the state” as required by Article XIII, Section 5.

Various provisions of House File 1817 discuss the operation of the casino and the games. Section 13 of the bill states that the Tribal Entity will own or lease the gaming facility and will also operate the facility. That section also states that the Tribal Entity bears the costs associated with “managing the day-to-day activity of gaming machines and other lottery games, including, but not limited to, routine and minor service and maintenance, security monitoring, verifying winners, paying winners, collecting money from gaming machines, collecting wagers from the operation of other lottery games, and advertising and marketing of other gaming machines and other lottery games.” Proceeds from the operation of gaming machines and other lottery games are to be collected by the Tribal Entity, held in trust, and subsequently divided in a manner set forth in the bill.

With respect to the involvement of the State, Section 13 states that “[a]ll gaming machines that are placed at a gaming facility or other lottery games conducted at the gaming facility must be operated and controlled by the director.” The section further states:

The director may authorize the tribal entity to manage the day-to-day operation of the gaming machines and the conducting of other lottery games at the gaming facility, provided that the director shall maintain overall control of the operation of the gaming machines and the conducting of other lottery games at the gaming facility.

H.F. 1817, Article 2, § 13.

In addition, while House File 1817 indicates that the Tribal Entity must operate the gaming facility, Article 3, Section 2 states that the Tribal Entity may form or engage another entity to manage the operations of the gaming facility.

To summarize the above provisions, the Tribal Entity will own and operate the gaming facility. It may contract with a third party to operate or manage the facility. While the Minnesota lottery director is required to maintain "overall control of the operation of the gaming machines and the conducting of other lottery games", the Tribal Entity may manage the day-to-day activity of the gaming machines and other lottery games including routine and minor service and maintenance, security monitoring, paying winners, collecting money from gaming machines, collecting wagers, and advertising and marketing.

The meaning of the term "operated by the state" as contained in Article XIII, section 5 was discussed in the Minnesota House Appropriation Committee meeting on March 22, 1988. Instructive excerpts from that discussion include:

Representative Kahn:

I know that other members of the committee have some other questions about other parts of wording in the bill, like do you really want a state-operated lottery or do we want the ability to contract? Do we want to decide constitutionally state operated lottery or do we want the ability to contract out to someone else to be able to do it ...

I would strike "owned and operated" so that it would just read as the legislature may authorize lotteries that are regulated by the state in the manner prescribed by law which would, of course, allow it to be owned and operated by the state. But I think that the constitutional determination that the state be the operator of the lottery, when in fact some of the experiences in other states has told us that this is not a good idea. ...

Chairman Anderson:

Representative Kahn, I believe there are lotteries in 27 states and I believe that each of them are state run.

Representative Kahn:

I don't, I think that they're state authorized but I don't, I think they are often contracted ...

You almost have to state to constitutionally determine ownership and operation no matter how incompetent the operation was we could never get rid of it because it was operated by the state. And I guess, I think with the word regulated, don't you

believe with the word regulated we would also have the ability of the state to own and operate it. I'm not objecting to the fact that you might want to have the state own and operate it. I'm just objecting to stating that in the constitution as opposed to being able to think it out. ...

Chairman Anderson:

That's kind of the theory behind this constitutional amendment, Representative Kahn, is that with a state-run lottery there would be some proceeds to divvy up. And I don't know if you farmed it out to somebody, GI Joe, they might work it so they're in the profits. ...

Minnesota House of Representatives, Appropriation Committee, Hearing on H.F. 2182, March 22, 1988.

The specific matter of a lottery "operated by the state" was also discussed in the House General Legislation, Veterans' Affairs and Gaming Committee where Representative Linda Scheid, one of the authors of the lottery bill, stated:

The word "operated" may have different shades of meaning I suppose, but I think I know the intent here is that it would be a state-operated lottery ... as opposed to the state overseeing or regulating a private entity.

Minnesota House of Representatives, General Legislation, Veterans Affairs and Gaming Committee, Hearing on H.F. 4.

No Minnesota court has interpreted the phrase "operated by state". Recently, however, the Rhode Island Supreme Court considered whether a proposed partnership for a casino involving the State, a Native American Indian tribe, and a casino corporation was consistent with Rhode Island's Constitution which required that any casino be "state-operated". *See In Re Advisory Opinion to the Governor*, 856 A.2d 320 (RI 2004). Like Minnesota, Rhode Island's constitution required that any permissible lottery be "operated by the state". At issue was a referendum question presented to the public which asked "Shall there be a casino in the Town of West Warwick operated by an Affiliate of Harrah's Entertainment in association with the Narragansett Indian Tribe?" The Rhode Island Supreme Court indicated that, to determine the prohibitive effect of the Rhode Island constitution, it first had to determine whether the proposed casino was a "lottery". The court concluded that because chance was the predominant factor in all the games that would be conducted at the casino, they were all forms of lotteries. *Id.* at 329. Emphasizing the overall nature of the activity to be conducted, the court found the casino itself to constitute a "lottery operation". *Id.*

In discussing the definition of the term “operate,” the court noted that to operate an enterprise means to be in actual control of the operation. *Id.* at 331. The court further explained that the word “control” indicates authority over the day-to-day functioning of an enterprise. The court then noted that Harrah’s would be making the day-to-day decisions pertaining to the functioning of the casino and further noted that, unlike proceeds generated from the sale of state lottery tickets, daily revenue at the casino would go directly to Harrah’s rather than to the state. The court concluded that the delegation of operational control to a private entity constituted an unconstitutional divestiture of operational control over a lottery. *Id.*

The definition of the term “owned and operated” as applied to a lottery was also at issue in *State v. West Virginia Economic Development Authority*, 214 W.Va. 277, 588 S.E.2d 655, (W.V. 2003). The court there found that “absolute” ownership and operation was not required by the West Virginia constitution, which authorized lotteries that are “regulated, controlled, owned and operated ... in the manner provided by general law.” The court concluded that the allocation of responsibilities by the legislature among the state, operators and manufacturers was consistent with the constitution, since the allocation was set out in West Virginia law. *Id.* at 669-70, 291-92

Finally, the Kansas attorney general opined in 1994 that the phrase “state-owned and operated” as contained in the Kansas constitution requires that the lottery be owned, as well as directed, controlled and managed by the state. Kansas Atty. Gen. Op. No. 94-26 (Feb. 23, 1994). The attorney general further concluded that the state could not lease the casino premises to a third party to operate the games of chance. *Id.* The attorney general did note, however, that a contractual arrangement with a private entity to operate the casino where the state retains ownership and control may be permissible. *Id.*

With respect to House File 1817, a Minnesota court could find, as did the Rhode Island court, that because various lottery games are to be played at the State/tribal casino, the casino itself, and not just the games in the casino, constitutes a lottery. If that analysis is followed, the operation of the casino by the Tribal Entity is inconsistent with Article XIII, section 5. Pursuant to House File 1817, the Tribal Entity, and possibly a management company retained by the Tribal Entity, is operating the casino. The Tribal Entity would own the casino, manage its affairs and also handle the day-to-day operation of slot machines and other lottery games, as well as all “nonlottery games”. Funds from the gaming machines and lottery games would flow directly to the Tribal Entity. As a result, many characteristics of the casino described in House File 1817 parallel those present in *In Re Advisory Opinion to the Governor*, which was found to be an impermissible lottery operation.

On the other hand, it could be argued that the gaming machines and other lottery games conducted at the casino must be “operated and controlled by the director” under House File 1817 and that, therefore, the individual lotteries would be operated by the State. No caselaw addressing this particular type of arrangement appears to exist. Other provisions of House File 1817, however, belie the level of control that would actually be retained by the State. As noted above, the day-to-day operations of the gaming machines and lottery games are to be

handled by the Tribal Entity. In this regard, the Tribal Entity, or its management company, is responsible for managing the day-to-day activity of gaming machines and other lottery games including service and maintenance, security monitoring, verifying winners, collecting money, paying winners and advertising and marketing the games. Considering this expansive list of responsibilities of the Tribal Entity, there is little left for the State to “operate.” Indeed, it appears that the State is responsible only for “major maintenance of the gaming machines.” It is unlikely that this level of activity rises to the level of operation contemplated by Article XIII, Section 5.

II. Minnesota Constitution Article XI, Section 14.

Article XI, Section 14 of the Minnesota Constitution states, in part:

Not less than 40 percent of the net proceeds from any state-operated lottery must be credited to the [environment and natural resources] fund until the year 2025.

Minn. Const., art. XI, § 14.

Under House File 1817, up to 10 percent of adjusted gross revenue from the operation of gaming machines and other lottery games may be credited to the lottery operations account. House File 1817, art. 2, § 10. “Adjusted gross gaming machine revenue” is defined as the “sum of all money received for gaming machine plays less the amount paid out in prizes and for gaming machine games and promotional allowances.” *Id.*, art. 2, § 6. “Other lottery games adjusted gross revenue” is defined as the sum of all money from the operation of other lottery games at the gaming facility less the amount paid out in prizes in the other lottery games and promotional allowances paid by the Tribal Entity.” *Id.*, art. 2, § 8. Sixty-four percent of the “adjusted gross gaming machine revenue” and “other lottery games adjusted gross revenue” is paid in the form of a “fee” to the Tribal Entity. *Id.*, art. 2, § 13. The remaining 26 percent of “adjusted gross gaming machine revenue” and “other lottery games adjusted gross revenue” is paid to the Commissioner of Revenue. *Id.*, art. 4, § 1.

The constitutional amendment establishing the Minnesota Environmental and Natural Resources Trust was approved by voters in 1988. The principal author of the bill which authorized a vote on the constitutional amendment, Representative Willard Munger, described the purpose of the environmental and natural resources trust fund as follows:

The purpose of the Minnesota environmental and natural resources trust fund is to ensure that the environment and natural resources of the State will be protected, conserved, preserved and enhanced for current citizens and for future generations. To undertake such activity properly, a long-term, consistent and stable source of funding must be provided. ... With the fund protected by a constitutional amendment, no governor, no legislature can take away money funded for environmental programs and transfer it into the general fund in times of [revenue] shortness. ...

Minnesota House of Representatives, Floor Debate H.F. 1821, April 6, 1988.

Under House File 1817, it does not appear that any proceeds from the "lottery" would be credited to the environmental and natural resources trust. As discussed above, 64 percent of adjusted gross revenues from lottery games are paid to the Tribal Entity, and up to 10 percent of such proceeds are to be deposited in the lottery operations account. Under Article 4 of the bill, 26 percent of the "adjusted gross gaming machine revenue and other lottery games adjusted gross revenue" must be transmitted to the Commissioner of Revenue. Funds transferred to the Commissioner are to be deposited in a "gaming facility proceeds fund," which is to be appropriated 90 percent to the general fund and 10 percent to a "community assets account". Under House File 1817, no funds, let alone 40 percent of net proceeds, are allocated to the environmental and natural resources trust fund. This allocation of "lottery" proceeds is clearly unconstitutional.

CONCLUSION.

The provisions of House File 1817 are inconsistent with Minnesota's Constitution. Accordingly, should the Governor and the legislature wish to pursue a state-operated casino, I recommend that they first seek approval of a constitutional amendment from the voters.

Very truly yours,



KRISTINE L. EIDEN
Chief Deputy Attorney General

Exhibit 1

JIM VICKERMAN

Senator 22nd District
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And
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Senate

State of Minnesota

March 18, 2005

Attorney General Mike Hatch
102 State Capitol
75 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

Dear Attorney General Hatch,

I'm writing this letter as the Chair of the Senate Agriculture, Veterans & Gaming Committee, to formally request a legal opinion regarding the constitutionality of a bill before our committee which would have the Minnesota State Lottery operate a casino.

House File 1817 is a bill relating to gambling, which provides for the operation of lottery gaming machines and the conduct of lottery and non-lottery games at a gaming facility; licensing the gaming facility and imposing a license fee; and imposing a gaming transaction fee on gaming at the gaming facility. The bill provides for the operation of a casino by the Minnesota State Lottery Director.

However, under the Minnesota Constitution, article XIII, section 5 it does not appear that there is any express authority for the State Lottery to operate a casino. Answering the question of constitutional authority is of vital importance to the state legislature. If the legislature passes a state budget that relies upon state casino revenue, and the court finds that the law authorizing a state casino is unconstitutional, then the legislature will have failed to meet its fiduciary responsibility to balance the state budget.

Your prompt response to this request would be most appreciated.

Sincerely,

A handwritten signature in black ink that reads "Jim Vickerman".

Senator Jim Vickerman
JV:DM



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COMMITTEES: Chair, Agriculture, Veterans and Gaming • State and Local Government Operations • Environment, Agriculture and Economic Development Budget Division • Rules and Administration • State Government Budget Division • Legislative Commission on Minnesota Resources (LCMR) • Legislative Audit Commission

Exhibit 2



Minnesota House of Representatives House Research

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House Research Bill Summary

File Number: H.F. 1817, delete everything (H1817DE1) **Date:** March 19, 2005

Version: Division Report (as amended)

Status: Regulated Industries Committee

Authors: Westerberg and others

Subject: Tribal-state casino

Analyst: Elisabeth A. Long, 651-296-5052

This publication can be made available in alternative formats upon request. Please call 651-296-6753 (voice); or the Minnesota State Relay Service at 1-800-627-3529 (TTY) for assistance. Summaries are also available on our website at: www.house.mn/hrd/hrd.htm.

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Article 1: Purpose

Overview

Article 1 identifies as the purpose of the act:

- recognizing the inequities created by current casino gaming in Minnesota;
- providing opportunities for increased economic development and self-sufficiency to tribal governments that have not benefited significantly from gaming;

- generating revenues to the state;
- establishing a structure that promotes tribal sovereignty and self-governance and provides casino gaming revenues to tribal governments for the development of programs to alleviate poverty and advance tribal goals.

Article 2: Lottery Operations

Overview

Article 2 authorizes the state to enter a contract for the operation of a metropolitan-area casino with a tribal entity comprised of tribal governments that have demonstrated financial need. The tribal entity would bear all facility-related costs and would manage the day-to-day operations of the casino. The state would own all gaming machines and have overall responsibility for the operation of the casino and the gaming machines.

Under the contract, the state would pay the tribal entity 64 percent of adjusted gross revenue from gaming machine games and other lottery games. The tribal entity would pay .5 percent of all adjusted gross revenues (capped at \$2,500,000) to the commissioner of human services for problem gambling treatment and programs. The tribal entity would also pay the city and county hosting the gaming facility 2 percent of all adjusted gross revenues, in lieu of city and county property taxes (though the tribal entity would still be responsible for paying local property taxes attributable to the relevant school district).

Section

- 1 **Lottery procurement contract.** Expands the definition of "lottery procurement contract" to include a contract to provide gaming machines, maintenance of gaming machines, computer hardware and software used to monitor gaming machine plays, and equipment used to conduct and monitor other lottery games at a gaming facility.
- 2 **Gaming facility.** Defines "gaming facility" as the site selected for the location of gaming machines and the conduct of other lottery games (section 7) and nonlottery casino games (article 3, section 5).
- 3 **Gaming machine.** Defines "gaming machine" as a machine, system, or device which, upon payment of consideration to play a game, may award or entitle a player to a prize by reason of skill, chance, or both.
- 4 **Gaming machine game.** Defines "gaming machine game" as a game operated by a gaming machine, as authorized by the director.
- 5 **Gaming machine play.** Defines "gaming machine play" as a record proving participation in a gaming machine game.
- 6 **Adjusted gross gaming machine revenue.** Defines the term as revenue from gaming machine plays less the amount paid out in prizes and for gaming machine games and promotional allowances (see section 13).
- 7 **Other lottery game.** Defines "other lottery game" as any game operated by the lottery at the gaming facility other than a gaming machine, where money or property are distributed (*prize*) to persons selected primarily by *chance* from among participants who have paid for a chance of being selected (*consideration*). Also includes any other game or activity determined to constitute a lottery within the meaning of the Minnesota

Constitution. Excludes from the term games operated by the lottery at the gaming facility that are also sold by lottery retailers.

8 **Other lottery games adjusted gross revenue.** Defines the term to mean all revenue from other lottery games, less prizes and promotional allowances (see section 13).

9 **Lottery game procedures.** Permits the director to adopt procedures for gaming machine games and other lottery games and to set the cost of gaming machine plays and other lottery games.

10 **Lottery operations.** Excludes amounts transferred to or retained by the tribal entity under a location contract (see section 13) for purposes of calculating the amount that can be credited to the lottery operations account (which is currently capped at 15 percent of gross revenue to the lottery fund each fiscal year). States that the amount credited to the lottery operations account cannot exceed 10 percent of adjusted gross revenue from the operation of gaming machines and other lottery games at the gaming facility.

11 **Budget; plans.** Excludes from the legislative determination of the lottery's annual budget for operating expenses and capital expenditures (1) amounts paid to an outside vendor to operate a central system for gaming machines and other lottery games; and (2) amounts paid to acquire and maintain gaming machines and equipment used to conduct other lottery games.

12 **Restrictions.** Permits the director to install or operate lottery devices operated by coin or currency in accord with section 13 .

13 **Gaming facility.**

Subd. 1. Definitions. Defines these terms as follows:

- "Tribal entity" means the corporation(s) or other legal entities owned by one or more tribal governments that are parties to the location contract (subd. 2);
- "Tribal government" means a federally recognized Indian tribe in Minnesota; and
- "Site" means a parcel or contiguous parcels of land, which may be enlarged by contiguous parcels over time.

Subd. 2. Location contract. Permits the director to contract with a tribal entity to operate gaming machines and other lottery games at one site in the seven-county metropolitan area, or in any contiguous county.

- Requires the director to select a site with the tribal entity and to notify the city where the site is located. Gives a city 60 days to adopt a resolution stating that it does not consent to consideration as a host city.
- Allows the director to enter a location contract with a tribal entity only if it meets the following criteria:
 - a. The entity is comprised of federally-recognized tribal governments that have gaming compacts with the state and operate casinos under IGRA;
 - b. The entity only allows a tribal government to participate if it can demonstrate that currently-available revenues are insufficient to meet the basic needs of tribal members;

- c. Each participating tribal government, within 30 days after enactment of this act, files a formal resolution from its tribal council stating intent to participate; demonstrating its eligibility to participate; waiving sovereign immunity with respect to disputes arising under the location contract; consenting to state court jurisdiction; making an additional limited waiver of sovereign immunity; and voicing intent to distribute revenues in a fair and equitable manner.
- States that the location contract will have no legal effect on existing compacts.
- Limits the duration of a location contract to 20 years, with provision for renewal negotiations every 15 years thereafter. Requires notice of intent not to renegotiate one year before the contract expires, if reasonably possible. Permits a tribal government to opt out of the entity without affecting the entity's ability to renew.
- Requires the contract to include the following provisions:
 - a. A waiver of sovereign immunity and limited waiver of sovereign immunity, as discussed above;
 - b. Liquidated damages to the tribe if a state statute or constitutional amendment revokes substantially all forms of gambling authorized under this section. This provision must expire within 10 years and cannot provide for damages greater than the unpaid balance of debt incurred by the tribal entity (after the location contract is executed) for (1) the gaming facility license, (2) initial construction, or (3) acquisition of the gaming facility (less the present market value of property and other related assets)
 - c. The tribal entity shall make good faith efforts to employ American Indians and other minorities at the facility and to hire American Indian and minority-owned businesses to construct, repair, and maintain the gaming facility.
 - d. The state must pay the tribal entity a fee equal to 64 percent of adjusted gross gaming machine revenue and other lottery games adjusted gross revenue.
 - e. The tribal entity bears all costs associated with day-to-day management.
 - f. The lottery bears all costs of purchasing or leasing gaming machines and major maintenance on gaming machines.
 - g. The tribal entity shall pay either .5 percent of all adjusted gross revenue or \$2,500,000, whichever is less, to the commissioner of human services for problem and compulsive gambling treatment and programs.
 - h. In lieu of the local property taxes attributable to the city and county where the gaming facility is located, the tribal entity shall annually pay 2 percent of all adjusted gross revenues to the city and county. (The tribal

entity is still responsible for local property taxes attributable to the relevant school district.)

- i. Any claim or controversy arising under the contract must be settled by arbitration, unless otherwise noted.
- Permits the tribal entity to establish standards for promotional allowances to players and, upon director approval, to be reimbursed for promotional allowances.
 - Allows the director to authorize a temporary facility (pending completion of a permanent facility) and establish conditions for its operation. Treats the operation of a temporary facility as if it were a permanent facility (i.e., a license is required).
 - Lets the director cancel or suspend the location contract if the tribal entity loses its license or if it materially breaches the contract and fails to cure in a reasonable time. Makes this a contested case under the Administrative Procedures Act (APA).
 - Allows the director to impose civil penalties or issue correction orders upon identifying any breach of contract by the tribal entity. Provides that this is a contested case under the APA.
 - Prohibits the transfer of location contract rights without the director's written approval.
 - Limits the authorization of the placement of gaming machines and conduct of other lottery games to a gaming facility leased or owned by the tribal entity.
 - Excepts the location contract from the requirements for procurement contracts (Chapter 16C).
 - Appropriates to the commissioner of human services the tribal entity's payment for problem gambling, to be used for treatment and programs, including programs focused on American Indian and minority communities.

Subd. 3. Operation. Specifies that the director must:

- operate and control all gaming machines and other lottery games at the gaming facility;
- own or lease gaming machines;
- control major maintenance of gaming machines or the vendor who handles major maintenance;
- have a central communications system to monitor activities on each gaming machine;

- own or lease equipment used to conduct other lottery games at the gaming facility;
- approve security arrangements for gaming machines and other lottery games;
- approve advertising and promotional material produced by the gaming facility (except for material related only to nonlottery casino games);
- maintain overall control over the gaming machines and other lottery games at the gaming facility (though the tribal entity can manage day-to-day operations).

Requires the lottery to bear the costs of (1) procuring and maintaining gaming machines and equipment for lottery games, and (2) acquiring, maintaining, and operating the central system used to monitor the gaming machines.

Provides that all proceeds from gaming machines and other lottery games are held in trust by the tribal entity until they are transferred to the director. Authorizes the director to require the deposit of all such proceeds in an account at a designated bank. Requires the tribe to pay interest if it fails to timely pay money due.

Permits the director to implement policies, procedures, and other controls necessary for gaming machines and other lottery games.

Subd. 4. Games. Directs the director to decide what games may be played on a gaming machine and how other lottery games shall be conducted.

Subd. 5. Specifications. Requires machines to: (1) have a permanent record, on a nonresettable meter, of all transactions on the machine; (2) be capable of being linked electronically to a central communications system; and (3) be accessible to individuals with disabilities.

Subd. 6. Examination of machines. Provides for examination of prototypes of gaming machines, with costs paid by the manufacturer. Allows the director to contract for testing.

Subd. 7. Prizes. Provides that players playing a game at the gaming facility are bound by the rules and procedures of the game. As with current lottery games, prize determinations would be made in accord with rules, procedures, claims procedures, and validation tests for a game. Prohibits persons under 18 years old from claiming prizes.

Subd. 8. Prohibitions. Prohibits persons under 18 years old from partaking of gaming machines or other lottery games.

Subd. 9. Compulsive gambling notice. Requires the tribal entity to prominently post the hotline number for department of human service's compulsive gambling program. Requires the tribal entity to develop, and the director to approve, a plan relating to problem and compulsive gambling.

Subd. 10. Local licenses; local fees. Prohibits political subdivisions from licensing, regulating, or taxing gaming machines, lottery games, or nonlottery casino games at the gaming facility.

- 14 **Lottery budget; gaming facility.** Directs the director to submit a budget for gaming facility operations, permits the director to expend amounts necessary for operations, and exempts FY06 and FY07 expenditures for the conduct of gaming at the gaming facility from the maximum amount set in law for lottery operations.
- 15 **Effective date.** Makes Article 2 effective the day following final enactment.

Article 3: Gaming Facility Regulation

Overview

Article 3 establishes a system by which the Commissioner of Public Safety (commissioner) would regulate the gaming facility. The tribal entity would need to secure a gaming facility license, contingent upon payment of a \$200,000,000 one-time licensing fee, which would be reviewed by the commissioner. The tribal entity, or another entity engaged by the tribal entity to manage the facility, would need to secure a gaming management license and renew this license every two years. Every employee and vendor at the facility would also need to obtain an appropriate license, subject to renewal every year.

Article 3 also authorizes the tribal entity to operate nonlottery casino games at the facility, in accordance with a plan of operation that has been approved by the commissioner.

1 **Gaming facility.**

Subd. 1. Definitions. Defines "direct financial interest," "lottery director," "tribal entity," and "management entity."

Subd. 2. License required. Requires the tribal entity that will own and operate the gaming facility to obtain a gaming facility license.

Subd. 3. Application. Requires application for a license to be made on a form prescribed by the commissioner; permits the commissioner to issue a gaming facility license to the tribal entity.

Subd. 4. License fee. Requires the tribal entity to pay a onetime gaming facility license fee of \$200,000,000 to the commissioner.

Subd. 5. License issuance. Makes issuance of a gaming facility license contingent upon the completion of a comprehensive background check. Only permits the commissioner to issue a license to a tribal entity that has given a valid limited waiver of sovereign immunity and is subject to Minnesota state court and administrative jurisdiction. Prohibits transfer of the license without commissioner approval.

Subd. 6. Background investigation. Requires comprehensive background and financial investigations of the tribal entity (including officers, directors, managers,

supervisory personnel, and persons with a direct financial interest in the entity - but not the tribal governments) prior to issuing a gaming facility license. Permits commissioner to charge the tribal entity an investigation fee.

Subd. 7. License refusal; suspension and revocation. Permits the commissioner to refuse to issue a gaming facility license, or to suspend or revoke a license, under certain circumstances. Requires written notice of the reason for a proposed suspension or revocation and an opportunity for cure (unless cure is impossible). Clarifies that revocation or suspension is a contested case under the APA.

Subd. 8. Other license actions. Permits the commissioner to refuse to issue a gaming facility license, or to impose a civil penalty, issue correction orders, or take other administrative action if the tribal entity engages in other specified conduct. Conduct meriting other license actions may be considered in deciding whether to suspend or revoke a license under subd. 7. Clarifies that revocation or suspension is contested case under the APA.

Subd. 9. Required notification. Requires the tribal entity to immediately report any substantial change in management or ownership. Mandates comprehensive background and financial investigations of new officers and directors and of individuals acquiring direct financial or management interests in the tribal entity. Requires these individuals to file appropriate license applications and requires the tribal entity to annually certify compliance with this provision.

Subd. 10. License review. Provides for the commissioner's review of the gaming facility license every five years and for a comprehensive background investigation.

Subd. 11. Audit; investigation. Requires the tribal entity to have an annual certified audit, to be filed with the commissioner. Permits the commissioner to conduct additional audits and investigations related to facility operations and to recover reasonable costs.

Subd. 12. Sale of intoxicating liquor. Requires the host community to issue an on-sale liquor license to the tribal entity for the sale of intoxicating liquor at the gaming facility.

Subd. 13. Detention of suspects. Permits the commissioner to select individuals who can detain persons suspected of gaming fraud or cheating at the gaming facility. Allows the exclusion or removal of a suspect from the gaming facility. Also permits the tribal entity to establish a self-exclusion program.

Subd. 14. Reimbursement of costs. Requires the tribal entity to reimburse the commissioner for the actual costs of licensing, regulation, enforcement, and oversight of the gaming facility and appropriates the money collected to the commissioner to pay the costs of regulating the gaming facility.

2

Gaming management.

Subd. 1. License required. Requires the tribal entity, or any entity formed or engaged by the tribal entity to manage gaming facility operations, to obtain a gaming management license.

Subd. 2. Application. Requires application to be made on a form prescribed by the commissioner; permits the commissioner to issue a gaming management license to the management entity that will manage or operate the gaming facility or gaming operations for the tribal entity.

Subd. 3. License issuance. Requires the commissioner to issue a gaming management license if:

- it would not be adverse to the public interest or the effective regulation of gaming; and
- it is issued to an entity that is subject to the Minnesota state court and administrative jurisdiction.

Makes the licenses non-transferable.

Subd. 4. Background investigation. Requires comprehensive background and financial investigations of the license applicant (including its officers, directors, managers, supervisory personnel, and persons with a direct financial interest in the management entity - but not the tribal governments). Allows the commissioner to use the background investigation conducted under for the gaming facility license if the tribal entity and the management entity are the same. Permits the commissioner to charge the tribal entity an investigation fee.

Subd. 5. License actions. Prohibits the commissioner from issuing a gaming management license, and permits the suspension or revocation of a license, under certain circumstances. Requires notice to the tribal entity of any license revocation, license suspension, or imposition of a civil penalty. Clarifies that revocation, suspension, or imposition of a civil penalty is a contested case under the APA.

Subd. 6. Required notification. Requires the gaming management licensee to promptly report any change in management or ownership. Requires comprehensive background and financial investigations of new officers and directors and of individuals acquiring direct financial or management interests in the tribal entity. Requires these individuals to file appropriate license applications and requires the licensee to annually certify compliance with this provision.

Subd. 7. License renewal. Requires the licensee to apply for renewal of the license every two years. States that review of a renewal application shall comply with the same requirements as review of a new application.

3 Employee licenses.

Subd. 1. Authority. Authorizes the commissioner to issue employees licenses for persons employed at the facility. Requires each employee at the facility to have an appropriate license and makes the tribal entity responsible for ensuring that each employee has a valid license prior to beginning work at the gaming facility.

Subd. 2. Application information. Requires application to be made on a form prescribed by the commissioner, accompanied by an affidavit attesting to felony

record, felony charges, connections with illegal businesses, conviction of fraud or misrepresentation in connection with gambling, and violations of gambling-related laws or rules.

Subd. 3. Background investigations. Directs the commissioner to investigate each employee license applicant and permits him to seek reimbursement for costs from the tribal entity. Requires fingerprints from each applicant.

Subd. 4. License issuance and renewal. Makes licenses effective one year. Permits issuance or renewal of a license when an applicant is qualified for the occupation and will not adversely affect the public health, safety, and welfare, or the integrity of gambling in Minnesota.

Subd. 5. Revocation and suspension. Permits the revocation of a license, suspension of a license for up to one year, or refusal to renew a license for an intentional false statement in a license application or for a violation of law or rule that adversely affects the integrity of gambling. Clarifies that revocation or suspension is a contested case under the APA. Under certain circumstances, permits summary suspension prior to the contested case hearing.

4

Vendor licenses.

Subd. 1. Issuance. Requires anyone who sells products, distributes products, or provides services at the gaming facility to have a vendor license. Authorizes the commissioner to issue vendor licenses. (Requires employees of vendors to have employee licenses under section 3.)

Subd. 2. Rulemaking. Authorizes the commissioner to prescribe rules for vendor licenses.

Subd. 3. Application information. Requires application on a form prescribed by the commissioner, accompanied by an affidavit attesting to felony record, felony charges, connections with illegal businesses, conviction of fraud or misrepresentation in connection with gambling, and violations of gambling-related laws or rules.

Subd. 4. Background investigations. Directs the commissioner to investigate each employee license applicant and permits him to seek reimbursement for costs from the vendor. Requires fingerprints from each applicant.

Subd. 5. License issuance and renewal. Makes licenses effective one year. Permits issuance or renewal of a license when an applicant is qualified for the occupation and will not adversely affect the public health, safety, and welfare, or the integrity of gambling in Minnesota.

Subd. 6. Revocation and suspension. Permits the revocation of a license, suspension of a license for up to one year, or refusal to renew a license for an intentional false statement in a license application or for a violation of law or rule that adversely affects the integrity of gambling. Clarifies that revocation or suspension is a contested case under the APA. Under certain circumstances, permits summary suspension (for up to 90 days) prior to the contested case hearing.

5

Nonlottery casino games.

Subd. 1. Definitions. Defines "nonlottery casino game" as any casino game the commissioner authorizes the tribal entity to conduct at the gaming facility that is not a gaming machine or other lottery game. Defines "nonlottery casino games' adjusted gross revenue" as revenue from the operation of nonlottery casino games, less prize and promotional allowances.

Subd. 2. Operation. Allows the operation of nonlottery casino games in accordance with a plan approved by the commissioner. Requires the plan to identify and define all nonlottery casino games and to address security and internal control systems. Also requires a plan for training nonlottery casino games personnel in problem gambling.

Subd. 3. Plan amendment. Requires commissioner approval of plan modifications.

Subd. 4. Actions. Permits the revocation, suspension, or refusal to renew a license (or the imposition of a civil penalty) for violations of the plan of operation. Makes this a contested case under the APA.

Subd. 5. Prizes. States that players playing a nonlottery casino game are bound by the rules and procedures of the game and that prize determinations are determined in accordance with relevant rules, procedures, claims procedures, and validation tests. Prohibits persons under 18 years of age from claiming prizes.

- 6 **Employment restrictions; civil penalty.** Prohibits individuals responsible for oversight, audits, or investigations at the gaming facility (through employment and for one year after leaving employment) from entering a contract with or receiving compensation from the tribal entity or management entity. Also prohibits the tribal entity and management entity from entering such a relationship. Establishes a maximum civil penalty of \$10,000 for violations by state employees. Permits license-related administrative action against the tribal entity or management entity for violating this section.
- 7 **Effective date.** Makes this article effective the day following final enactment.

Article 4: Gaming Transaction Fee

Overview

Article 4 imposes an in lieu of tax on adjusted gross revenues from the gaming facilities at the following rates: 26 percent of adjusted gross gaming machine revenue; 26 percent of other lottery games' adjusted gross revenue; and 14 percent of nonlottery casino games' adjusted gross revenue. This money would be deposited into a gaming facility proceeds fund and annually appropriated as follows: 10 percent to the community assets account, and 90 percent to the general fund.

- 1 **Gaming facility.** Requires transfer to the commissioner of revenue of:
- 26 percent of adjusted gross gaming revenue and other lottery games' adjusted gross revenue (from lottery); and
 - 14 percent of nonlottery casino games' adjusted gross revenue (from tribal entity).

Makes this transfer is in lieu of any state tax on wagering at the facility and any local tax fee on wagering at the facility.

2 **Deposit of revenues.** Directs the commissioner to deposit revenues received under section 1 in the gaming facility proceeds fund (section 3).

3 **Gaming facility proceeds fund.** Establishes a gaming facility proceeds fund in the state treasury. Annually appropriates 10 percent of the money in the fund to the community assets account and 90 percent to the general fund.

4 **Community assets account.** Establishes a community assets account in the state treasury. Provides that the money in the account may be spent to help finance capital projects for facilities such as athletic facilities, museums, theaters, recreational facilities, planetarium, and zoos.

5 **Effective date.** Makes this article effective the day following final enactment.

Article 5: Miscellaneous Provisions

Overview

Article 5 makes various changes to existing law to be consistent with the activities authorized in Articles 1 to 4.

1 **Gambling device possession.** Exempts gambling devices possessed by the state lottery from the general prohibition against possession of gambling devices.

2 **Gambling device distributors.** Allows licensed gambling device distributors and manufacturers to sell, lease, or rent gambling devices to the state lottery.

3 **Gambling in licensed liquor establishments.** Exempts gambling devices at the gaming facility from the prohibition against gambling devices at establishments licensed for retail liquor sales.

4 **Recovery of money lost.** Exempts gaming machine plays and the conduct of any lottery and nonlottery casino games at the gaming facility from the law that allows persons to sue to recover gambling losses.

5 **Commitments for gambling debt void.** Exempts gaming machine play from the law that makes gambling debts void.

6 **What are not bets.** Adds gaming machine plays and participation in any lottery or nonlottery casino game at a gaming facility to the list of gambling activities that are not bets in the context of state laws that prohibit gambling.

7 **Gaming facility.** Exempts from criminal prohibitions of gambling the manufacture, possession, sale, or operation of a gaming machine, or the conduct of a lottery or nonlottery casino game at a gaming facility.

8 **Severability; savings.** Provides that if part of the act is found invalid, all other provisions remain valid and all rights, remedies, and privileges otherwise accrued remain in effect.

9 **Effective date.** Makes this article effective the day following final enactment.

Exhibit 3

From: Jeff Falk [mailto:Jeff.Falk@state.mn.us]

Sent: Friday, March 04, 2005 10:47 AM

Subject: Gov. Pawlenty and tribal leaders announce historic gaming fairness partnership agreement -- March 4, 2005

NOTE: Attached are a FAQ sheet on the partnership agreement and a figure sheet/pie chart on estimated revenues.

FOR IMMEDIATE RELEASE:
March 4, 2005

Contact: Brian McClung
(651) 296-0001

**GOVERNOR PAWLENTY AND TRIBAL LEADERS ANNOUNCE HISTORIC GAMING FAIRNESS
PARTNERSHIP AGREEMENT**

~Governor, Tribal Leaders and legislative authors unveil tribal-state proposal ~

St. Paul – Moving forward with a proposal for gaming fairness in Minnesota, Governor Tim Pawlenty today announced a casino partnership agreement with the Leech Lake Band of Ojibwe, the Red Lake Nation and the White Earth Nation.

The Governor was joined at the announcement by Leech Lake Tribal Chairman George Goggeley, Red Lake Tribal Secretary Judy Roy, White Earth Tribal Chairwoman Erma Vizenor and tribal council members from each of the tribes. Also present were bill authors Senator Sandy Pappas (DFL-St. Paul) and Rep. Andy Westerberg (R-Blaine), labor and urban Indian leaders.

"The time for a better deal is here," Governor Pawlenty said. "This is about creating fairness – fairness for the

3/4/2005

people of Minnesota and fairness for the northern tribes who represent approximately 85% of tribal members in the state, but haven't benefited much from existing gaming operations. A strong majority of Minnesotans believe that gaming needs to change in this state. This proposal does so in a manner that is responsible and fair."

As part of his budget announcement on January 25, Governor Pawlenty outlined the "Gaming Fairness for Minnesota" proposal. Minnesota is estimated to have the third largest tribal gaming industry in the nation, surpassed by only California and Connecticut. In those states and others, revenues from the growing casino industry are shared with the state.

The proposal would allow any interested tribe in Minnesota to participate in the partnership. To this point, the Leech Lake, Red Lake and White Earth nations have agreed to do so.

Governor Pawlenty proposed partnering with the large northern Minnesota tribes in order to make the gaming industry fairer to them as well. While a few tribes with better locations have had extraordinary success, the 85% of Minnesota's enrolled tribal members in the Leech Lake, Red Lake and White Earth nations have seen little benefit from the Indian gaming industry. Governor Pawlenty believes it's in the best interest of the state to see that the northern tribes and surrounding rural communities have additional opportunities for economic success and self sufficiency.

The agreement announced today outlines the arrangement between the state and the tribes. Under the agreement, net proceeds from the partnership for the state and tribal entity are expected to be relatively comparable after costs are factored in. An estimated 66.87% of the total gaming revenues would flow to the newly formed tribal entity, which would own the facility. However, the tribal entity would finance the construction and operation of the new facility and would also make contributions to programs for problem gaming and an annual payment to the host community. The state would receive an estimated 33.13% of the total gaming revenues, including money for the Environment and Natural Resources Trust Fund and the newly established Community Assets Account.

Once the casino is fully operational, the state's gross revenues would be approximately \$164 million per year. Tribal entity gross revenues, including non-gaming revenue, would be approximately \$385 million per year.

The proposal retains the features outlined when the Governor unveiled his Gaming Fairness Proposal on January 25:

- The current tribal gaming compacts signed in 1989 and 1991 that established the existing tribal casinos will be respected
- The new arrangement will be mutually beneficial to participating tribes and the State of Minnesota
- The proposal does not select a site – the casino will be located in a willing host community that is selected by the Minnesota Lottery and the tribal entity
- The cost of land acquisition and construction will be financed by the tribal entity
- The Minnesota Lottery will operate the gaming machines and other lottery games
- A one-time license fee of \$200 million will be paid to the state and deposited in the general fund

The partnership casino could have higher slot machine payouts than are allowed under existing compacts in Minnesota and will offer additional table games, such as craps and roulette. A temporary facility would be operational within six months of passage of the bill. The permanent facility would take about two years and \$550 million to construct. It would employ at least 3,000 people.

Under the proposal, 10% of the state's general fund share, or approximately \$12 million a year, would flow to the Community Assets Account. The account could be used to fund facilities for professional or college sports, the arts or other community priorities such as museums, theaters, planetariums, amateur sports facilities and zoos.

The Minnesota State Lottery would be paid 10% of the adjusted gross revenue of the gaming machines and other lottery games played at the new facility. About half of that amount would be needed to pay the expenses of the games and the balance would be profit to the Lottery. This would result in about \$22 million a year in new net proceeds which would be divided 60% to the general fund and 40% to the Environment and Natural Resources Trust Fund. That means about \$9 million each year to the trust fund to help pay for projects of long-term benefit to Minnesota's environment.

"We have a number of important needs, including housing and improvements to schools that could be fulfilled through a tribal-state partnership" said Leech Lake Tribal Chairman George Goggeley. "We are pleased to have bipartisan support for this proposal and look forward to taking this concept to legislators."

"I don't think that anyone begrudges the tribes who have very successful gaming operations. We applaud them and we're happy for them," said Red Lake Tribal Secretary Judy Roy. "The problem is more of location. Our tribal nations will never achieve the kind of financial benefit with our locations and the sparse populations in northern Minnesota."

"We are all very pleased to be working with the Governor to help bring fairness to the gaming system that exists in our state," said White Earth Tribal Chair Erma Vizenor. "Our current casino operations do not address the economic issues we face on our Reservations. This partnership will help address those issues."

Governor Pawlenty reiterated that this proposal does not foreclose proposals for a "Racino" at Canterbury Park. "The legislature and public are engaged in a positive debate about how we can make gaming fairer for all Minnesotans," said Governor Pawlenty. "I believe that the racino is also a viable proposal."

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Jeff Falk
Deputy Press Secretary
Office of Governor Tim Pawlenty
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Saint Paul, MN 55155
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Gaming Fairness for Minnesota Frequently Asked Questions

Q. Why are Governor Pawlenty and the northern tribes proposing a gaming partnership?

A. To create fairness in the gaming market in Minnesota, both for tribal nations that have not seen the benefits of Indian gaming and for the State of Minnesota. As the executive director of the Minnesota Indian Gaming Association said last year before a Senate committee:

"Maybe 1,000 Indians in Minnesota currently truly benefit from Indian gaming in its current form, while 54,000 others are still waiting and struggling to make ends meet." Over 40,000 of the Indians who are struggling to make ends meet are enrolled members of the Red Lake, White Earth, and Leech Lake Nations. That's approximately 85% of the total population of tribal members in the state.

The proposal would allow any interested tribe in Minnesota to participate in the partnership. To this point, the Leech Lake, Red Lake and White Earth nations have agreed to do so.

Q: Does the proposed partnership change anything in the compacts signed in 1989 and 1991?

A: No. The tribal gaming compacts negotiated in 1989 and 1991 that established the existing tribal casinos are not affected by this proposal. Those compacts authorize gaming only on tribal trust land and will be fully honored. It should be noted that while those compacts did allow casinos to begin operating in Minnesota, they did not provide Indian tribes with any exclusive right to operate casinos in the state.

Q: Is it constitutional for the State of Minnesota to operate casino games?

A: Yes. The gaming machines and other lottery games at the facility would be operated by the state through the Minnesota Lottery. This is consistent with the Minnesota Constitution's requirement that any lottery be operated by the state. Additionally, state lottery operated casinos in Rhode Island, Delaware and West Virginia have been upheld by the court. Other games at the facility will be operated by the participating tribes. Those tribes will also own the facility. It is likely the facility will become a significant property asset for the participating tribes.

Q: Does the proposal require approval by the federal Bureau of Indian Affairs?

A: No. The proposed facility would not operate on tribal trust land and would not be an IGRA (Indian Gaming Regulatory Act) casino. The proposed facility would be a partnership with the participating tribes, but would be on private land subject to regulation by the state and would not need BIA approval.

Q: Is this an undue expansion of gaming in Minnesota?

A: There are currently 18 casinos operating in Minnesota. Surveys have consistently shown that most Minnesotans gamble in some manner. Last year 41% of adults in the state reported visiting one of the existing Indian casinos, 60% played the Minnesota lottery and 83%

participated in some form of gaming.¹ The overwhelming majority of those who visit Minnesota casinos go for entertainment and use the facilities responsibly. Most adults are capable of making appropriate decisions for themselves. There are some who develop problems with gambling. This proposal provides funding to make our strong state services for compulsive gaming even better.

Q: Does casino gaming lead to an increase in crime?

A: In reviewing crime data collected by the Minnesota Bureau of Criminal Apphension, there is no noted increase in crime in the communities where the existing 18 casinos are operated.

A study by the National Institute of Justice found that overall casinos do not have any systematic effect on crime. Data was collected from police departments in seven cities with gambling. Three communities experienced an increase in crime, three saw crime decreased significantly and in one city there was no change.²

Q: Does casino gaming prey on the elderly?

A: A 2003 study funded by the National Institute of Justice looked at the differences between elderly casino gamblers and younger gamblers in eight areas that had new casinos. The report said the data “do not support the view that casino gambling is a major threat to the elderly, preying on the aged and leading them to destructive gambling practices.” The study also said that the elderly “generally exercise better money management and experience proportionally fewer gambling problems than the general population.”³

A study here in Minnesota had similar results. Researchers at the College of St. Benedict/St. John’s University and St. Cloud State University wrote that there is “no evidence that casino gambling activities threaten [older Minnesotans’] well being. For most respondents the social benefits were the most salient parts of this activity and they were well aware of the danger signs of problem behaviors. ... Public concerns and media images may be based on socially constructed assumptions and fears.”⁴

Q: Does casino gaming prey on the poor?

A survey conducted by NFO WorldGroup found that casino customers are not poor, but have higher incomes than the average U.S. household. The median household income of U.S. casino customers is \$50,716, compared to \$42,228 for the overall U.S. population. According to the same survey, casino customers are more likely to have attended college and hold a white-collar job than the average American.

Q: What will the host community receive from the casino?

¹ Minnesota Lottery annual survey taken in April 2004, “Gambling in Minnesota: An Overview,” (September 2004)

² B. Grant Stitt et al., “Does the Presence of Casinos Increase Crime? An Examination of Casino and Control Communities,” *Crime & Delinquency* Vol.49 Issue: 2 (2003), 253-284

³ B. Grant Stitt et al., “Gambling Among Older Adults,” *Experimental Aging Research* 29 (2003): 189-203

⁴ Janet Hope and Linda Havir, “You Bet They’re Having Fun! Older Americans and Casino Gambling,” *Journal of Aging Studies* 16, no. 2 (May 2002): 177-97

A: The host community will receive a payment from the tribal entity that is equal to 2% of total gaming revenues. Once the casino is fully operational, that would be about \$10 million or more annually. The casino revenues could be used by a community for tax relief, police, fire, infrastructure or other community projects, as determined by the city council.

The proposed casino will be located in a willing host community that is selected by the Minnesota Lottery and the tribal entity. The state and the tribes will not force this facility on a community that does not want it.

Q: How much money will flow to the new Community Assets Account?

A: The new Community Assets Account will receive 10% of the state's general fund share – approximately \$12 million or more per year. The Community Assets Account could be used to fund facilities for professional or college sports, the arts or other community priorities such as museums, theaters, planetariums, amateur sports facilities and zoos at the direction of the legislature.

Q: How will construction of the facility be financed?

It is anticipated that the proposed project will be financed through a High Yield Taxable Bond Issuance via the capital markets (*not* a commercial bank loan), which is the typical financial structure utilized for new construction of Gaming operations with little to no equity or credit, where the market supports a substantial anticipated revenue stream. The Issuer will be an entity created by the tribes and wholly owned by the tribal governments.

Q: If the tribes have so little cash for so many tribal members now, how can they get lenders/credit to build such a large facility?

Bondholders lending into the gaming sector on an issuance of this scope are qualified and experienced institutional investors; lending will be based on the feasibility and attractiveness of the project. They will assess anticipated revenue stream, management, location, and lifespan of the gaming revenue and ancillary operations. Unlike a reservation facility, there will be the opportunity to assess a mortgage lien on the land and physical buildings of the facility in addition to the cash flow, furniture, fixtures and equipment. To be perfectly clear however, no security or credit from any of the tribes' existing operations on their existing reservations will be utilized.

Q: Who will the lenders/bondholders be?

Examples of qualified and experienced institutional investors who have historically invested in gaming sector bonds, both non-Indian and Indian are insurance funds, investment portfolios, and hedge funds.

Q: How will the tribes manage the facility?

The tribal governments, the State and the Bondholders will all demand that professional management operate the facility. It is anticipated that a highly experienced team will be hired through an RFP process. Whether these professionals will be secured via a management contract or individually hired is yet to be determined.

Gaming Fairness for Minnesota

NOTE: All figures are estimates based on average revenue per day per gaming machine of \$29!

Number of gaming machines		4,000
Estimated average revenue per day per gaming machine	\$	295
		365.00
Estimated table games % of slots		15%
Estimated gaming machine revenue	\$	430,700,000
Estimated table game revenue	\$	64,605,000
Estimated total gaming revenue	\$	495,305,000

Distribution of Revenue

	Rate	
Fee to the Lottery	10.00%	\$43,070,000
Gaming transaction fee on slot revenue	26.00%	\$111,982,000
Gaming transaction fee on table games	14.00%	\$9,044,700
Total fee to the State		\$164,096,700
Estimated % of Total Gaming Revenue		33.13%
Lottery fee		\$43,070,000
Total gaming transaction fee		\$121,026,700

Distribution to Tribal Entity

Gaming share for the Tribal Entity	\$	331,208,300
Other revenue for Tribal Entity (Hotel/Retail/Food/Entertainment)	\$	53,546,599
Total revenue for Tribal Entity	\$	384,754,899
Estimated contribution for Problem Gaming		2,476,525
Estimated contribution for Host Community Fee		9,906,100
Net Available for Debt Service on Land and Construction Costs, All Operational Expenses, Depreciation, and Distribution		372,372,274

Distribution of the State Revenue

Lottery Expenses @ 50% of the fee	\$21,535,000
Lottery Proceeds to the general fund	\$12,921,000
Lottery Proceeds to the Environment and Natural Resources Trust Fund	\$8,614,000
General fund portion of the gaming transaction fee	\$108,924,030
Total General Fund Revenue (estimated)	\$121,845,030
Community Assets Account	\$12,102,670

Overall Summary of State Revenue

Lottery Expenses	\$21,535,000
Environment and Natural Resources Trust Fund	\$8,614,000
General Fund	\$121,845,030
Community Assets Account	\$12,102,670
Total State and Minnesota State Lottery Revenues	\$164,096,700

Estimated Summary of State Revenues

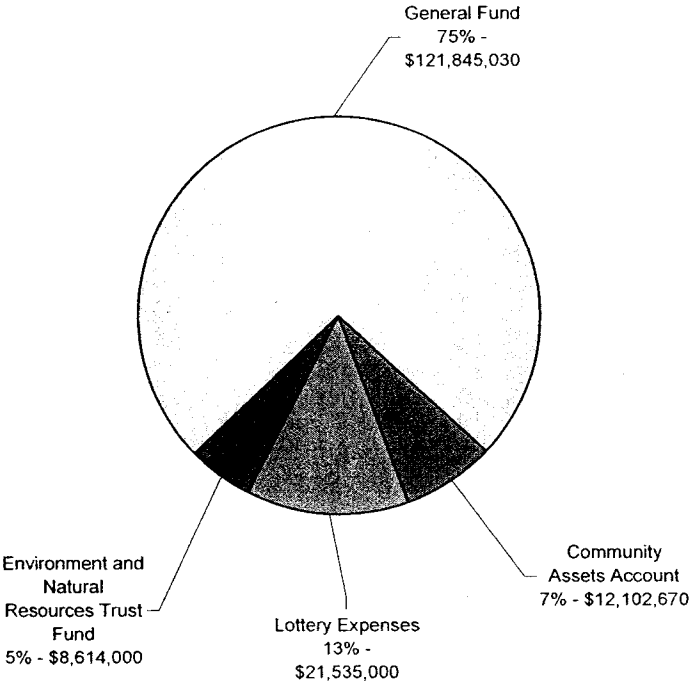


Exhibit 4

7.33-2
6.3.12.
CONSTITUTIONAL LAW: Lotteries - Slot machines - Legislature under present constitution has no power to authorize by law that slot machines be licensed in order to obtain revenue with which to pay soldiers' bonus. State Const. Art. IV, §§ 24, 31. 14A

82
==
December 23, 1946

Hon. Edwin Weihofer
548 Superior Street
St. Paul 2, Minnesota

Dear Sir:

You state that a proposal has been made by you that slot machines be licensed in order to obtain revenues with which to pay a soldiers' bonus, and inquire whether the operation of slot machines is prohibited by our constitutional provision relating to lotteries.

Article IV, Sec. 31 of the State Constitution to which you refer, reads as follows:

"The legislature shall never authorize any lottery or the sale of lottery tickets."

The wording of the above cited provision does not by itself appear to prohibit lotteries, but it deprives the legislature of the power to enact legislation authorizing lotteries or sale of lottery tickets.

However, in State vs. Stern, 201 Minn. 139, 143, our Supreme Court says:

"* * * Our Constitution bars lotteries. Art. 4, § 31, reads: 'The legislature shall never authorize any lottery or the sale of lottery tickets.' Not only have the legislatures heeded the command, but have enacted laws prohibiting all lotteries and gift enterprises dependent on chance. So it may be said that public policy is against every scheme that includes the three essential features of a lottery. * * *"

The three essential elements of a lottery to which the court refers are a chance to win, the distribution of property by chance and the payment of a consideration for such chance.

As to whether the legislature has the constitutional authority to pass a bill licensing slot machines to obtain revenue to pay a soldiers bonus depends upon the judicial construction of the word "lottery" as used in the constitution. If the operation of a slot machine is construed by the courts to constitute the conducting of a lottery within the meaning of the constitutional prohibition, the legislature, without an amendment to the constitution, would not, of course, have the power to enact the proposed legislation.

In 158 Ore. 102, the Supreme Court of that state held that the operation of a "nickel in the slot machine" constitutes a lottery in violation of the constitution of Oregon, which provides that "Lotteries and the sale of lottery tickets for any purpose whatsoever are prohibited, and the legislative assembly shall prevent same by penal law." In Nevada, where the constitutional provision is the same as Minnesota's, it was held that a slot machine "for the sale of cigars and drinks and no play-back allowed" is not a lottery within the purview of Article IV, Section 24 of the constitution of that state. *Ex Parte Periotti*, 43 Nev. 243.

Although the Supreme Court of Minnesota has not passed specifically upon the question here involved, I am of the opinion from the reading of its decisions, including the one above cited,

Hon. Edwin Mehofer

-3-

December 23, 1946

that it would hold, if it follows its past conclusions, that the legislature under our present constitution has no power to authorize by law the licensing of slot machines where they are so operated as to distribute moneys by chance and a consideration is paid for such chance.

Very truly yours

J. A. A. BURNQUIST
Attorney General

JAAB-sm

Exhibit 5

Official Notices

Pursuant to the provisions of Minnesota Statutes § 14.10, an agency, in preparing proposed rules, may seek information or opinion from sources outside the agency. Notices of intent to solicit outside opinion must be published in the *State Register* and all interested persons afforded the opportunity to submit data or views on the subject, either orally or in writing.

The *State Register* also publishes other official notices of state agencies, notices of meetings, and matters of public interest.

Proposed Amendments to the Minnesota Constitution

Statement of Purpose and Effect of Amendments

September, 1988

TO: The Voters of Minnesota

The following proposed amendments to the Constitution of the State of Minnesota will be submitted to the voters for their approval or rejection at the November 8, 1988 general election. Each amendment requires a separate vote. If a majority of all who vote in the November 8 election votes "YES", an amendment is adopted. A voter at the election who does not vote on an amendment is in effect voting "NO". Printed here are the proposed amendments as they will appear on the ballot. Following each question is a statement, prepared pursuant to M.S. 3.21 by Attorney General Hubert H. Humphrey III, of the purpose and effect of the proposed amendments.

Sincerely,
Joan Anderson Growe
Secretary of State

AMENDMENT NO. 1 — ENVIRONMENTAL TRUST FUND: TO ESTABLISH

YES ☐
NO ☐

"Shall the Minnesota Constitution be amended to establish a Minnesota Environment and Natural Resources Trust Fund for environmental, natural resource, and wildlife purposes?"

The purpose and effect of the amendment proposed in Minnesota Laws 1988, ch. 690, article 1, section 1, is:

1. A permanent Minnesota Environmental and Natural Resources Trust Fund would be established in the state treasury.
2. The Legislature would appropriate earnings from the Fund for protection, conservation, preservation and enhancement of the state's air, water, land, fish, wildlife and other natural resources.
3. The principal of the Fund would be perpetual and inviolate forever, except that appropriations could be made from up to 25 percent of the annual revenue deposited in the Fund until fiscal year 1997 and loans could be made of up to 5 percent of the principal of the fund for water system improvements as provided by law. Investments of the Fund could be sold at less than cost to the Fund, but losses not offset by gains would be repaid to the Fund from earnings.

In chapter 690, the Legislature also adopted statutory provisions which will be effective only if the people ratify the proposed amendment. The statutory provisions would, among other things, require that the Fund not be used as a substitute for traditional sources of funding environmental and natural resources activities, but supplement traditional sources; require certain proceeds from a state-operated lottery to be credited to the Fund; permit gifts and donations to be made to the Fund; create a Minnesota Future Resources Commission to develop a budget plan for expenditures from the Fund; create a citizens advisory committee to advise the Minnesota Future Resources Commission, and provide that money in the Fund may be spent only for specified types of programs.

If the amendment is adopted, a new section 14 of Article XI will read (additions indicated by underline):

Sec. 14. A permanent Minnesota environment and natural resources trust fund is established in the state treasury. The principal of the environment and natural resources trust fund must be perpetual and inviolate forever, except appropriations may be made from up to 25 percent of the annual revenue deposited in the fund until fiscal year 1997 and loans may be made of up to five percent of the principal of the fund for water system improvements as provided by law. This restriction does not prevent the sale of investments at less than the cost of the fund, however, all losses not offset by gains shall be repaid to the fund from the earnings of the fund. The net earnings from the fund shall be appropriated in a manner prescribed by law for the public purpose of protection, conservation, preservation, and enhancement of the state's air, water, land, fish, wildlife, and other natural resources.

AMENDMENT NO. 2 — JURIES: TO ALLOW LESS THAN TWELVE MEMBERS

YES ☐
NO ☐

"Shall the Minnesota Constitution be amended to allow the use of juries of less than 12 members in civil and non-felony cases?"

The purpose and effect of the amendment proposed in Minnesota Laws 1988, chapter 716, is:

1. The Legislature would be authorized to enact a statute providing for the number of jurors in a civil action, but the statute would have to provide for at least six jurors.

2. A person accused of a felony crime would have the right to a jury of twelve members. The Legislature would be authorized to enact a statute providing for the number of jurors in other criminal prosecutions, but the statute would have to provide for at least six jurors.

If the amendment is adopted, Article I, Section 4 will read (additions indicated by underline):

Sec. 4. The right of trial by jury shall remain inviolate, and shall extend to all cases at law without regard to the amount in controversy. A jury trial may be waived by the parties in all cases in the manner prescribed by law. The Legislature may provide that the agreement of five-sixths of a jury in a civil action or proceeding, after not less than six hours' deliberation, is a sufficient verdict. The legislature may provide for the number of jurors in a civil action or proceeding, provided that a jury have at least six members.

If the amendment is adopted, Article I, Section 6, will read (additions indicated by underline):

Sec. 6. In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury of the county or district wherein the crime shall have been committed, which county or district shall have been previously ascertained by law. In all prosecutions of crimes defined by law as felonies, the accused has the right to a jury of 12 members. In all other criminal prosecutions, the legislature may provide for the number of jurors, provided that a jury have at least six members. The accused shall enjoy the right to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor and to have the assistance of counsel in his defense.

AMENDMENT NO. 3 — STATE LOTTERY: TO PERMIT LEGISLATURE TO AUTHORIZE

YES ☐
NO ☐

"Shall the Minnesota Constitution be amended to permit the legislature to authorize a lottery operated by the state?"

The purpose and effect of the amendment proposed in Minnesota Laws 1988, chapter 690, article 1, section 2, is that the Legislature would be authorized to enact a statute authorizing a lottery and sale of lottery tickets for a lottery operated by the state.

In chapter 690, the Legislature also adopted statutory provisions which will be effective only if the people ratify the proposed amendment. The statutory provisions would, among other things, require that during the first five full fiscal years in which proceeds from the lottery are received, the net lottery proceeds from the state-operated lottery would be shared equally by the Minnesota Environment and Natural Resources Trust Fund and the Greater Minnesota Corporation Fund. Thereafter, as determined by law each biennium, up to one-half of the net proceeds of the state-operated lottery must be credited to each of the two funds.

If the amendment is adopted, Article XIII, section 5 will read (additions indicated by underline):

Sec. 5. The legislature shall not authorize any lottery or the sale of lottery tickets, other than authorizing a lottery and sale of lottery tickets for a lottery operated by the state.