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STATE OF NEBRASKA
OFFICIAL
JUL 7 1992
DEPT. OF JUSTICE

DATE: June 30, 1992

SUBJECT: Deputy State Sheriff's Commissions for Revenue State Agents

REQUESTED BY: Colonel Ron Tussing, Superintendent Nebraska State Patrol

WRITTEN BY: Don Stenberg, Attorney General
Barry Waid, Assistant Attorney General

The question posed by Colonel Tussing is whether Neb.Rev.Stat. § 9-1,101 (Reissue 1991) requires that the Deputy State Sheriff commissions issued to the investigators in the Charitable Gaming Division of the Department of Revenue be restricted to enforcement of only the charitable gaming laws.

The answer is yes. If the agents or investigators are appointed by the Tax commissioner to enforce the acts, as described in § 9-1,101(4), the Deputy State Sheriff's Commissions should be limited to enforcement of the revenue laws related to charitable gaming.

The chief executive officer of the Revenue Department is the Tax Commissioner. Neb.Rev.Stat. § 77-360 (Reissue 1990). The Tax Commissioner is charged with, among other duties, executing the revenue laws of the state. Neb.Rev.Stat. § 77-361 (Reissue 1990). The Commissioner's duties also include providing efficient and economical methods and systems for enforcement of revenue laws. Neb.Rev.Stat. § 77-361 (Reissue 1990). To accomplish these purposes, the Tax Commissioner "shall appoint and employ such deputies, inspectors, agents or other persons as he or she deems necessary to administer and effectively enforce all provisions of the revenue laws of this state." Neb.Rev.Stat. § 77-366 (Reissue 1990) (Emphasis added). Once appointed, "such deputies and

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officers are vested with the authority and power of a law enforcement officer to carry out the revenue laws of this state." Neb.Rev.Stat. § 77-366. (Reissue 1990) The officers are not empowered to "enforce any laws other than revenue." Neb.Rev.Stat. § 77-366(2) (Reissue 1990). The Tax Commissioner is also required to establish, consistent with the laws of the state, "divisions or bureaus" within the office of Tax Commissioner which he or she may find necessary or desirable to improve the administration of the tax laws of the state. Neb.Rev.Stat. § 77-365 (Reissue 1990).

One of the divisions of the office expressly authorized by statute is the Charitable Gaming Division. Neb.Rev.Stat. § 9-1,101 (Reissue 1991). The Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and Raffle Act, and Neb.Rev.Stat. § 9-701 (Reissue 1991) shall be administered and enforced by the Charitable Gaming Division of the Department of Revenue. Neb.Rev.Stat. § 9-1,101 (Reissue 1991). To accomplish this purpose, the Tax Commissioner "shall employ investigators and inspectors, who shall be appointed deputy state sheriffs by the Governor and who shall, upon qualifying for such office, possess all the powers which attach to such office, except that their powers and duties shall be restricted to the enforcement of the acts" Neb.Rev.Stat. § 9-1,101(4) (Reissue 1991) (Emphasis added).

When asked to interpret a statute, the supreme court must determine and give effect to the purpose and intent of the Legislature as ascertained from the language of the statute, considered in its plain, ordinary, and popular sense; it is the court's duty to discover the legislative intent from the statute itself if possible. Georgetowne Ltd. Partnership v. Geotechnical Service, Inc. 230 Neb. 22, 430 N.W.2d 34 (1988). In the absence of anything to the contrary, statutory language is to be given its plain and ordinary meaning. State v. Burke, 225 Neb. 625, 408 N.W.2d 239 (1987); State v. Carlson, 223 Neb. 874, 394 N.W.2d 669 (1986). It is not the province of the court to read meaning into a statute that is not warranted by legislative language; neither is it within the province of the court to read plain, direct, and unambiguous language out of a statute. Sorrenson v. Meyer, 220 Neb. 457, 370 N.W.2d 173 (1985). Where the words of a statute are plain, direct, and unambiguous, no interpretation is necessary or will be indulged to ascertain their meaning. State v. Rios, 237 Neb. 232, 465 N.W.2d 611 (1991). In construing a statute, all parts of the act relating to the same subject shall be considered together and not each by itself. State v. Jennings, 195 Neb. 434,

238 N.W.2d 477 (1976). In construing a legislative act, the provisions should be construed together and harmonized if possible. Tom and Jerry, Inc. v. Nebraska Liquor Control Commission, 183 Neb. 410, 160 N.W.2d 232 (1968).

When considering a series or collection of statutes pertaining to a certain subject matter which are in pari materia, they may be conjunctively considered and construed to determine the intent of the Legislature, so that different provisions of the act are consistent and sensible. Pump & Pantry v. City of Grand Island, 233 Neb. 191, 444 N.W.2d 312 (1989). Statutes relating to the same subject, although enacted at a different time, are in pari materia and should be construed together. Georgetowne Ltd. Partnership v. Geotechnical Services, Inc., 230 Neb. 22, 430 N.W.2d 34 (1988).

The statutory scheme at issue creates the Charitable Gaming Division of the Nebraska Revenue Department. Neb.Rev.Stat. § 9-1,101 (Reissue 1991). The legislation repeatedly provides in mandatory terms for the enforcement of six specific gaming laws. In construction of statutes, the term "shall" is considered mandatory and inconsistent with the idea of discretion. Moyer v. Douglas and Lomason, Co., 212 Neb. 680, 325 N.W. 2d 648 (1982); State v. Stratton, 220 Neb. 854, 374 N.W.2d 31 (1985). The statute requires that the five enumerated acts and § 9-701 (relating to gift enterprises) shall be enforced by the Charitable Gaming Division. Neb.Rev.Stat. § 9-1,101(1) (Reissue 1991) (Emphasis added). Forty percent of the taxes collected pursuant to four of the five enumerated acts shall be made available to the Charitable Gaming Division for administering and enforcing the acts. Neb.Rev.Stat. § 9-1,101(3) (Reissue 1991) (Emphasis added). In addition to requiring enforcement of the enumerated gaming laws by the Division and providing a funding mechanism, the statute mandates employment of investigators and inspectors for enforcement purposes. "The Tax Commissioner shall employ investigators and inspectors who shall be appointed deputy state sheriffs by the Governor and who shall . . . possess all powers which attach to such office, except that their powers and duties shall be restricted to the enforcement of the acts." Neb.Rev.Stat. § 9-1,101(4) (Reissue 1991) (Emphasis added). The plain language of the statute leaves no room for discretion. The Tax Commissioner must employ investigators and the powers and duties of the investigators must be restricted to the enforcement of the acts. Neb.Rev.Stat. § 9-1,104(4) (Reissue 1991).

When a statute is clear on its face, the court should apply the language of the statute without attempting to find the meaning elsewhere. Hatfield v. Bishop Clarkson Memorial Hospital, 679 F.2d 258 (C.A. Neb. 1982). While there would appear to be no need to look outside the statute for interpretation of its terms, the

intent of the legislature, ascertained from the legislative history, makes it clear that they meant exactly what they said. The legislature created the Charitable Gaming Division in 1986 with the passage of LB 1027. Neb.Rev.Stat. § 9-1,101 (Reissue 1987). The division was charged with enforcing five of the six gaming laws it is currently required to enforce. Neb.Rev.Stat. § 9-1,101(1) (Reissue 1987). A funding mechanism was also provided for the purpose of enforcing the gaming laws. Neb.Rev.Stat. § 9-1,101(2) (Reissue 1987). The stated purpose of the act was, "to get additional revenues to the Department of Revenue to enforce the bingo, pickle, lottery laws." LB 1027, Floor Debate, February 3, 1986, pp. 11399-11401. The statutory scheme did not provide for employment of enforcement personnel.

In 1988, the legislature passed LB 1232 which sought, among other objectives, to provide an enforcement mechanism. When introducing the bill before the Legislature's Committee on General Affairs, Deputy Tax Commissioner Roger Hirsch, explained the need for an enforcement mechanism in the area of charitable gaming as follows:

> "Today I am here to suggest to you that charitable gaming has little to do with charity and nothing to do with gaming. It is gambling. And it is gambling at ever increasing speeds on the road to the tune of good deeds. In the name of charity and good deeds, our law today is so open to the point that we have become virtually unique in the county. Today we are at a crossroads in our clash of values. Unless in the name of regulation of gambling we are willing to install reasonable and meaningful restrictions, rules of the road, if you will, we are going to be run off the map by violations and speeders. The regulation of charitable gaming today is like sending one officer to try to direct traffic at Memorial Stadium on a football Saturday when everybody shows up in go-cart. . .
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> . . . . . .
>
> As a regulator of charitable gaming the Department of Revenue has made an effort to bring to your attention the fact that the people of the State of Nebraska are close to being run off the road by continuing abuses in charitable gaming. Somewhere along the line of trying to aid legitimate charitable activities by permitting them to engage in gambling we have lost sight of the public

> purposes to be served by extending this privilege. Unless significant greater attention is given to the rules of the road we will be unable to effectively halt violations."

Introducer's Statement of Intent, LB 1232, Committee on General Affairs, February 8, 1988, pp. 4 and 18.

The legislature responded by passing the current statute providing for investigators and inspectors specially designated for the enforcement of charitable gaming laws. The response was in recognition of the "growth of gambling" in this state and in recognition of the need to establish a mechanism to enforce and control the laws relating to "gambling." LB 1232, Floor Debate, April 6, 1988, p. 11675.

It may be argued that the term "acts" as used in § 9-1,101 (4) authorizes charitable gaming investigators to enforce all revenue acts including the Tax Expenditure Reporting Act of 1979. See Neb.Rev.Stat. § 77-379 (Reissue 1990). Assuming for the purposes of argument that the term "acts" is ambiguous, one must resort to the rules of statutory construction to resolve the ambiguity. Referential and qualifying words in a statute, where no contrary intention appears, refer solely to the last antecedent. Iske v. Papio Natural Resources District, 218 Neb.39, 352 N.W.2d 172 (1984). Relative or qualifying words and phrases are to be applied to the words and phrases immediately preceding and are not extended to include other words, phrases, or clauses, more remote, unless the extension or inclusion is clearly required by the intent and meaning of the context, or disclosed by an examination of the entire act. State v. Jennings, 195 Neb. 434, 238 N.W.2d 477 (1976). If one assumes that the exact meaning of the term "acts" is not made clear by the express language of the statute, the rules of construction would require that one look to the language most immediately preceding the term for its definition rather than to the terms of more remote acts. Consequently, the term is most reasonably interpreted to refer to those acts referred to in Neb.Rev.Stat. § 9-1,101(1) (Reissue 1991).

There is no reference in the Charitable Gaming Act to using charitable gaming investigators to investigate the violations of other acts. There is no other reason suggested by the terms of the Charitable Gaming Act for looking outside the Act for interpretation. If the Legislature intended for the language of § 9-1,101(4) to allow officers designated under § 9-1,101(4) to investigate violations within other acts, it could have so specified.

If the agents or investigators are appointed by the Tax Commissioner to enforce the acts, as described in Neb.Rev.Stat. § 9-1,101(4) (Reissue 1991), the Deputy State Sheriff's Commissions should be limited to enforcement of the revenue laws related to charitable gaming.

Respectfully Submitted,

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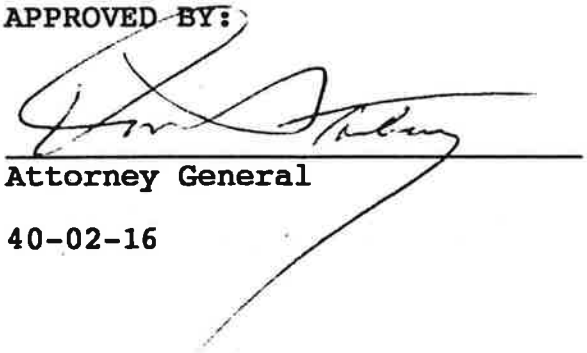

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