

Ken Lawson, Secretary

Rick Scott, Governor

January 9, 2012

The Honorable Pam Bondi
Office of Attorney General
State of Florida
The Capitol PL-01
Tallahassee, Florida, 32399-1050

Re: Request for a formal Attorney General Opinion

Dear Attorney General Bondi:

Pursuant to Section 16.01(3) of the Florida Statutes and in my capacity as the Secretary of the Florida Department of Business and Professional Regulation ("the Department"), I am requesting that you render a formal Attorney General Opinion regarding my official duties under Sections 551.102(4) and 551.104(2) of the Florida Statutes.

Because the Department's Division of Pari-Mutuel Wagering is responsible for licensing and regulating slot machine gaming in Florida, I am asking you to interpret a pertinent portion of Section 551.102(4). The statutory language at issue defines when a pari-mutuel wagering facility located in a non-charter county, other than Miami-Dade or Broward, may be eligible to apply for and obtain a license for slot machine gaming. The statutory language at issue reads as follows:

...any licensed pari-mutuel facility in any other county in which a majority of voters have approved slot machines at such facilities in a countywide referendum held **pursuant to a statutory or constitutional authorization after the effective date of this section** is the respective county, provided such facility has conducted a full schedule of live racing for 2 consecutive calendar years immediately preceding its application for a slot machine license, pays the required license fee, **and meets the other requirements of this chapter.** (Emphasis added).

This portion of Section 551.102(4) took effect on July 1, 2010, and several counties in Florida are taking steps to conduct referenda on whether to approve slot machine gaming at particular facilities. In fact two of these referenda are scheduled to occur on January 31, 2012, when the residents of Gadsden and Washington counties will vote on whether pari-mutuel wagering facilities in those counties may offer slot machine gaming. Other counties are considering holding similar referenda in November 2012.

However, if you think it necessary to apply the principals of statutory construction it is well-established that sections within the same chapter should be read *in pari materia*. See, Singleton v. Larson, 46 So. 2d 186, 190 (Fla. 1950)(noting:

“[i]t is a recognized rule of statutory construction that statutes which relate to the same person or thing or to the same class of persons or things, or to the same or a closely allied subject or object, may be regarded as *in pari materia*. Statutes which have a common purpose or the same common purpose, or are parts of the same general scheme or plan or aimed at accomplishing the same results, may be regarded as *in pari materia*.”).

Secretary Lawson’s second question is whether Section 551.104(2) constitutes another requirement of Chapter 551 that a pari-mutuel wagering facility must meet in order to be eligible under Section 551.102(4) to apply for and obtain a slot machine license?

His third question is whether Section 551.104(2) standing alone precludes the Department’s Division of Pari-Mutuel Wagering from issuing a slot machine license to any pari-mutuel wagering facility located outside of Miami-Dade or Broward counties absent a change in law by subsequent statute or constitutional amendment which authorizes a slot machine referendum?

With regard to the Secretary’s second and third questions, the last clause of section 551.102(4) requires an applicant for a slot machine license to meet “the other requirements of this chapter.” Section 551.104(2) mandates that “[a]n application may be approved by the division only after the voters of the county where the applicant’s facility is located have authorized by referendum slot machines within pari-mutuel facilities in that county as specified in Section 23, Article X of the State Constitution.”

When the legislature amended Section 551.102(4) and added the language at issue, it did not repeal or amend Section 551.104(2). Sections 551.102(4) and 551.104(2) should be read harmoniously. See, generally Mann v. Goodyear Tire & Rubber Co., 300 So. 2d 666, 668 (Fla. 1974)(noting “[i]t is an accepted maxim of statutory construction that a law should be construed together with and in harmony with any other statute relating to the same subject matter or having the same purpose, even though the statutes were not enacted at the same time.”).

Respectfully,



J. Layne Smith
General Counsel, Florida Department of
Business and Professional Regulation

Ken Lawson, Secretary

Rick Scott, Governor

MEMORANDUM

To: Pam Bondi, Attorney General

From: J. Layne Smith, General Counsel, Department of Business and Professional Regulation

Re: Request for a formal Attorney General Opinion regarding Sections 551.102(4) and 551.104(2), Florida Statutes (2011).

Date: January 9, 2012

As mentioned in the accompanying letter from Secretary Lawson, the Department is seeking a formal Attorney General Opinion regarding Sections 551.102(4) and 551.104(2), Florida Statutes (2011). Secretary Lawson's letter identifies the questions posed and the issues.

Secretary Lawson's initial question is whether a post-July 1, 2010 authorization by statute or constitutional amendment for a county referendum is a condition precedent to a pari-mutuel wagering facility's eligibility to apply for and obtain a slot machine license?

If you determine that the plain language of Section 551.102(4) requires that a county referendum for the approval of slot machines be held pursuant to a post-July 1, 2010 statutory or constitutional authorization, then there will be no need for any additional legal analysis or statutory construction. See, M.W. v. Davis, 756 So. 2d 90, 101 (Fla. 2000)(noting that "[w]hen the language of the statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction; the statute must be given its plain and obvious meaning."); Klonis v. State, Dep't of Revenue, 766 So. 2d 1186, 1189 (Fla. 1st DCA 2000)(noting a court must presume the Legislature stated in Chapter 760 what it meant and meant what it said and that "[i]f the statutory wording is unambiguous, then judicial inquiry is complete."). "[T]he rules of construction are reserved for cases in which a fair reading of the statute leaves the judiciary in genuine doubt about the correct application of the statute." Fajardo v. State, 805 So. 2d 961, 963-64 (Fla. 2d DCA 2001).

Specifically, the Department requests a formal Attorney General Opinion on the emphasized statutory language from Section 551.102(4) which reads "pursuant to a statutory or constitutional authorization after the effective date of this section." Neither the Gadsden County nor the Washington County referenda are being conducted pursuant to a statute or constitutional amendment that was enacted after July 1, 2010, expressly authorizing those referenda. The initial question is whether a post-July 1, 2010 authorization by statute or constitutional amendment for a county referendum is a condition precedent to a pari-mutuel wagering facility's eligibility to apply for and obtain a slot machine license?

Also, specifically, the Department requests a formal Attorney General Opinion on the emphasized statutory language from Section 551.102(4) which reads "and meets the other requirements of this chapter." In particular, Section 551.104(2) reads as follows: "Any application may be approved by the division only after the voters of the county where the applicant's facility is located have authorized by referendum slot machines **within that county as specified in s. 23, Art. X of the State Constitution.**" (Emphasis added).

Section 23, Article X of the State Constitution specifically only names Miami-Dade and Broward counties, and it only authorizes slot machine referenda in those two counties. A second question is whether Section 551.104(2) constitutes another requirement of Chapter 551 that a pari-mutuel wagering facility must meet in order to be eligible under Section 551.102(4) to apply for and obtain a slot machine license?

Alternatively, a third question is whether Section 551.104(2) standing alone precludes the Department's Division of Pari-Mutuel Wagering from issuing a slot machine license to any pari-mutuel wagering facility located outside of Miami-Dade or Broward counties absent a change in law by subsequent statute or constitutional amendment which authorizes a slot machine referendum?

Thank you in advance for your prompt consideration of these important issues.

Respectfully,



Ken Lawson
Secretary, Florida Department of
Business and Professional Regulation