Slot Machines, county referendum to authorize

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Subject:
Slot Machines, county referendum to authorize

Mr. Ken Lawson
Secretary, Florida Department of Business
and Professional Regulation
1940 North Monroe Street
Tallahassee, Florida 32399-1000

Dear Mr. Lawson:

As Secretary of the Florida Department of Business and Professional Regulation (Department) and in light of the responsibilities of the Department's Division of Pari-mutuel Wagering (Division) to license and regulate slot machine gaming in Florida, you ask substantially the following question:

Does the third clause of section 551.102(4), Florida Statutes, referring to the ability of voters to approve slot machines "at a countywide referendum held pursuant to a statutory or constitutional authorization after the effective date of this section," permit the Department to grant a slot machine license to a pari-mutuel facility in a county which holds a countywide referendum to approve such machines, absent a statutory or constitutional provision enacted after July 1, 2010,[1] authorizing such referendum?[2]

In sum:

The Department is not authorized to issue a slot machine license to a pari-mutuel facility in a county which, pursuant to the third clause of section 551.102(4), Florida Statutes, holds a countywide referendum to approve such machines, absent a statutory or constitutional provision enacted after July 1, 2010, authorizing such referendum. This conclusion is compelled by the plain language of the statute, canons of statutory construction, the statute's legislative history, and consideration of the statute in relation to the Legislature's contemporaneous ratification of the Seminole gaming compact.[3]

Section 551.104(1), Florida Statutes, provides in pertinent part that the Division "may issue a license to conduct slot machine gaming in the designated slot machine gaming area of the *eligible facility*." (e.s.) The term "eligible facility" is defined for purposes of your inquiry to mean:

"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 in 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 licensed fee, and meets the other requirements of this chapter."[4] (e.s.)

The italicized language quoted above was added to the statute in 2009 by section 19, Chapter 2009-170, Laws of Florida.[5] The amendment, however, was contingent upon ratification of the proposed gaming compact between the State and the Seminole Tribe of Florida and its approval by the U.S. Department of the Interior and was to take effect upon publication of the compact in the Federal Register.[6] In Chapter 2010-29, Laws of Florida, the Legislature refused to ratify the compact considered in Chapter 2009-170. Instead, the Legislature approved a new compact and amended Chapter 2009-170 to make all of the pari-mutuel provisions in that chapter effective July 1, 2010.[7]

In light of the amendment to section 551.102(4), Florida Statutes, a question has arisen as to whether the statute's third clause contemplates that a county may now hold a referendum to authorize slot machines, or, alternatively, whether the statute contemplates the necessity of additional statutory or constitutional authorization before such a referendum may be held. Based on my review of the statute, I conclude that additional statutory or constitutional authorization is required to bring a referendum within the framework set out in the third clause of section 551.102(4).

It is important to note that at the time the Legislature considered the 2009 amendments to the definition of "eligible facility," no constitutional or statutory provision of Florida law provided for a referendum to approve slots in any county other than Miami-Dade and Broward. Those counties — and only those counties — gained the authority to hold slots-approval referenda when the voters in 2004 adopted what is now Article X, section 23 of the Florida Constitution. Indeed, subject to certain limited exceptions not relevant here, slot machines are generally prohibited by law.[8] It is against this backdrop that the Legislature adopted the statutory language at issue here: "a countywide referendum held pursuant to a statutory or constitutional authorization after the effective date of this section in the respective county."

A critical issue in construing the above-quoted statutory text is whether the phrase "after the effective date of this section" modifies the words "constitutional or statutory authorization." Applying standard rules of statutory and grammatical construction, it is clear that the phrase "after the effective date of this section" modifies the words immediately preceding it, *i.e.*, "a statutory or constitutional authorization."[9] Specifically, under the last antecedent doctrine of statutory interpretation, qualifying words, phrases, and clauses are to be applied to the words or phrase immediately preceding, and are not to be construed as extending to others more remote, unless a contrary intention appears.[10] Here, all pertinent considerations confirm that the Legislature intended that any statutory or constitutional authorization for a slots-approving referendum must occur after July 1, 2010, the effective date of the relevant portion of section 551.102(4), Florida Statutes.

It is a maxim of statutory construction that a statute is to be construed to give meaning to all words and phrases contained within the statute and that statutory language is not to be assumed to be mere surplusage.[11] If the Legislature in section 551.102(4), Florida Statutes, had intended the phrase "after the effective date of this section" to qualify the time at which a slots-approving referendum would be held, such language would be superfluous. At the time it was

considering the pertinent amendment to section 551.102(4), no provision of Florida law authorized a slots-approving referendum outside of Miami-Dade or Broward counties. Since the first clause of section 551.102(4) expressly references pari-mutuel facilities in Miami-Dade and Broward counties and the language under consideration in the instant inquiry refers to pari-mutuel facilities "in any other county," clearly the Legislature did not consider Miami-Dade and Broward counties to be included within the scope of the provision under consideration. Thus, there were no pre-effective date referenda to be excluded from the ambit of this clause of the statute. To read the language as qualifying the time at which a slots-approving referendum would be held would render the language superfluous.

Similarly, if a county's existing powers were sufficient to authorize a slots-approving referendum, there would be no need to include the phrase "pursuant to a statutory or constitutional authorization."[12] Had the Legislature simply been referring to a county's existing statutory or constitutional authority, the following stricken language could have been omitted without causing any change in the meaning of the statute:

"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 in 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 licensed fee, and meets the other requirements of this chapter."

Instead, the Legislature chose to mandate that the referendum be held "pursuant to a statutory or constitutional authorization" — an explicit qualifier that appears to be unique in the Florida Statutes. Indeed, no other referendum provision in the Florida Statutes employs similar language.[13] Thus, I cannot conclude that the language "statutory or constitutional authorization" merely recognizes a county's authority in existence as of the effective date of the act. Rather, the Legislature's chosen language requires the adoption of a statute or constitutional amendment specifically authorizing a referendum to approve slot machines.

Legislative intent, the cornerstone of all statutory interpretation, may be illuminated by the comments of the sponsor or proponents of a bill or amendment.[14] The Senate bill sponsor, Senator Dennis Jones, gave the following explanation on second reading of the 2010 legislation in response to a question about the local referendum process for a county that wants to add slot machine gaming and how that process would work:

"Should we want to expand in the future, a Legislature would come back and . . . let's just say we wanted to go to Class III slots, we could not do that as a local bill but we could come up here and file it as a general bill and should that bill pass to allow [a county] to have a referendum of the people and then the people vote on it, if it was passed, we could get Class III slots but it [would] also break the compact with the Indians."[15]

In further clarification, Senator Jones stated:

"If they have a referendum in a county outside of Miami-Dade and Broward for the purpose of Class III gaming *and the Legislature passes the legislation to allow that county to have the*

referendum, the county has the referendum and that referendum passes, then that would effectively break the payments of the compact."[16] (e.s.)

The above explanation by a sponsor of the legislation clearly indicates that, under the pertinent language in section 551.102(4), Florida Statutes, a county referendum to approve slots must be specifically authorized by a statute or constitutional amendment enacted after July 1, 2010. Such an explanation is contrary to any assertion that the Legislature intended the provisions of section 551.102(4), in conjunction with a county's already-existing powers, to constitute authority for a county to hold a referendum on slot machine gaming.

Finally, the conclusion that additional legislative authorization is required for a slots-approving referendum gives due recognition to the context in which the Legislature adopted the relevant portion of section 551.102(4), Florida Statutes. The language in question took effect as part of legislation ratifying a gaming compact between the State and the Seminole Tribe of Florida, which contained provisions mandating a reduction or loss of revenue to the State in response to an expansion of slot machine gambling beyond that which existed at the time of the compact's adoption.[17] To read the pertinent language in section 551.102(4) as allowing counties other than Miami-Dade and Broward by referendum to authorize slot machines, absent specific legislative or constitutional authority, would be at odds with the legislation as a whole. Specifically, that interpretation of the statute would eliminate the State's control over its continued entitlement to a substantial amount of revenue from the Seminole Tribe.[18] In light of the intense consideration and debate that went into the Legislature's approval of the Seminole compact, it is virtually unthinkable that the Legislature would have intended to both undermine and ratify the compact in the same enactment. The basic canons of statutory interpretation require me to reject a reading of section 551.102(4) that would lead to such an absurd result.[19]

Based upon the foregoing analysis, I am of the opinion that the Department of Business and Professional Regulation is not authorized to issue a slot machine license to a pari-mutuel facility in a county which, pursuant to the third clause in section 551.102(4), Florida Statutes, holds a countywide referendum to approve such machines, absent a statute or constitutional provision enacted after July 1, 2010, authorizing such referendum.

Sincerely,

Pam Bondi
Attorney General

PJB/cm

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[1] The effective date of the amended statute is July 1, 2010. *See* ss. 4 and 5, Ch. 2010-29, Laws of Fla., amending s. 26, Ch. 2009-170, Laws of Fla.

[2] Section 551.102(4), Fla. Stat., defining "Eligible facility," contains three independent clauses: one relating to counties addressed in Art. X, s. 23, Fla. Const.; one relating to counties defined in s. 125.011, Fla. Stat.; and the one which is the subject of the instant inquiry. This opinion is limited to a consideration of the third clause in section 551.102(4); no comment is expressed

regarding the interpretation of the first and second clauses.

[3] In light of this conclusion, I need not address the other questions posed in your letter.

[4] Section 551.102(4), Fla. Stat.

[5] The language in question was proposed by a conference committee which stated in pertinent part that the language "[a]uthorizes Class III slot machines in a county that has had a *referendum approving slots or has had a referendum approving slots that was approved by law or the Constitution* provided that such facility has conducted 2 years of racing and complies with other requirements for slot licensure." (e.s.) Summary of Conference Committee Report on CS/CS/SB 788, dated May 6, 2009.

[6] Section 26, Ch. 2009-170, Laws of Fla.

[7] Sections 1 and 5, Ch. 2010-29, Laws of Fla.

[8] Section 849.15, Fla. Stat. *And see* s. 849.16, Fla. Stat., defining slot machine.

[9] If the phrase "after the effective date of this section" does not modify the words "constitutional or statutory authorization," a question would still arise whether the Legislature intended to require a specific statutory or constitutional authorization, or whether a county's generic home rule power to hold a referendum would constitute sufficient "statutory authorization" for purposes of s. 551.102(4), Fla. Stat. *See* n.14 *infra*. In light of the conclusion reached in this opinion, it is not necessary to address this issue.

[10] *See Kasischke v. State*, 991 So. 2d 803 (Fla. 2008); *Jacques v. Dep't of Bus. & Prof. Reg.*, 15 So. 3d 793, 795–96 (Fla. 1st DCA 2009); *City of St. Petersburg v. Nasworthy*, 751 So. 2d 772 (Fla. 1st DCA 2000). *And see Mendelsohn v. State, Dept. of Health*, 68 So. 3d 965 (Fla.1st DCA 2011) (a qualifying phrase will be read as modifying all items listed in a series unless there is no comma between the last of the series and the qualifying phrase).

[11] *See, e.g., Terrinoni v. Westward Ho!*, 418 So. 2d 1143 (Fla. 1st DCA 1982); *Unruh v. State*, 669 So. 2d 242 (Fla. 1996) (as a fundamental rule of statutory interpretation, courts should avoid readings that would render part of a statute meaningless); Op. Att'y Gen. Fla. 91-16 (1991) (operative language in a statute may not be regarded as surplusage).

[12] *See* s. 125.01, Fla. Stat., and *Speer v. Olson*, 367 So. 2d 207 (Fla. 1978), recognizing the home rule powers of a county. *But see* Art. VI, s. 5, Fla. Const. ("referenda shall be held as provided by law"); and *Holzendorf v. Bell*, 606 So. 2d 645 (Fla. 1st DCA 1992) ("Under the Constitution, the phrase 'as provided by law' means as passed 'by an act of the legislature'"). *Cf.* s. 125.01(1)(y), Fla. Stat., authorizing a county to place questions or propositions on the ballot "to obtain an expression of elector sentiment with respect to matters of substantial concern within the county."

[13] *See, e.g.*, ss. 100.041, 100.201, 125.0104, 125.0108, 125.64, 125.901, and 153.53, Fla. Stat.

[14] *See, e.g., Ellis v. N.G.N. of Tampa*, 561 So. 2d 1209 (Fla. 2d DCA 1990), quashed on other grounds, 586 So. 2d 1042 (Fla. 1991) (legislative intent may be illuminated by consideration of comments made by proponents of bill or amendment); Ops. Att'y Gen. Fla. 11-24 (2011), 11-16 (2011), 06-16 (2006), 05-42 (2005), 99-61 (1999), relying on sponsor's explanation of a bill or amendment to determine legislative intent.

[15] April 8, 2010, Senate Floor Debate on CS/SB 622, 2010 Regular Session.

[16] *Id.*

[17] *See* s. 2, Part XII, Ch. 2009-170, Laws of Fla., and Part XII of the compact entered into by the State and the Tribe on April 7, 2010, and ratified by the Legislature by Ch. 2010-29, Laws of Fla.

[18] *See* statement of Senator Jones, April 15, 2010, Senate Floor Debate on CS/SB 622, 2010 Regular Session, recognizing that "[t]he tribe has exclusivity for class III gaming throughout the state" and that "[i]f new games are authorized and gaming is expanded, the tribe stops making payments or pays a reduced amount depending on the type of game and location."

[19] *See State v. Iacovone*, 660 So. 2d 1371, 1373 (Fla. 1995), quoting *Williams v. State*, 492 So. 2d 1051, 1054 (Fla. 1986), to the effect that "[s]tatutes, as a rule, 'will not be interpreted so as to yield an absurd result.'"