

Montana Tavern Times

The Trouble(s) with Sports Pools – October 1, 2014

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Offering sports pools is a legal form of gambling in Montana, provided they are conducted according to statutory and regulatory rules. Sports pools were first made legal in Montana in 1973, following the constitutional convention of 1972 which, after nearly a century of absolute prohibition, allowed the legislature to legalize some forms of gambling. Article III, Section 9 of our constitution prohibits all forms of gambling unless they are made specifically legal by the legislature or by acts of the people through initiative or referendum....*Article III Section 9: All forms of gambling, lotteries, and gift enterprises are prohibited unless authorized by acts of the legislature or by the people through initiative or referendum.*

Mont. Code Ann. § 23-5-502 authorizes sports pools. However any legal gambling activity that is conducted in violation of rules set forth constitute an illegal gambling enterprise... Mont. Code Ann. §23-5-112 (20) "*Illegal gambling enterprise*" means a gambling enterprise that ***violates*** or is not specifically authorized by a statute or a rule of the department.

There have been multiple articles on the conduct of sports pools in The Tavern Times over the years and so we will not revisit those articles and issues in this one. The purpose of this article is to address the problems which continue to surface. Recently the department's investigation bureau has stepped up inspections of premises looking specifically at sports pools. The aim is to educate operators, dispel 'myths' and to offer assistance to the industry in how to properly utilize this known trade stimulator.

Based on visits to locations and observing sports pools in recent months, it is clear that not everyone is fully informed about what is authorized and what is not. For example, no sports pool chance may exceed the cost of \$25. The qualified exception is for a "series sports pool" based on a bona fide series of events, in which case no more than \$25 may be charged for each event of the series (i.e. a ten-event series could charge a participant no more than \$250). A sports pool on an individual sporting event, such as the Super Bowl, may not charges participants more than \$25. Under Montana law, any "illegal gambling enterprise" in which one gains anything of value in excess of \$750 is a felony offense (Mont. Code Ann. § 23-5-156).

Many of the discovered violations involve the rules which are required to be clearly posted on a sports pool card, regardless of what type of authorized variation of sports pool is being offered. The following rules, found in Mont. Admin. R. § 23.16.1702(4), must be listed on any sports pool or sports tab card:

- (a) rules for conducting the sports pool;
- (b) name of the sports event or series of events covered by the card;
- (c) name of the competitors in the sports event or series of events, if known;
- (d) date of the sports event or dates of the series of sports events;
- (e) total number of chances available in the pool;
- (f) cost to the participant for each chance;
- (g) total amount to be paid to each winner;
- (h) predetermined intervals, as provided in ARM 23.16.1705(3), for which a prize will be awarded, if any;
- (i) name of the person conducting the sports pool;
- (j) name or initials of participants who have purchased chances in the pool;
- (k) amount or value of each individual prize and the total value of all prizes; and
- (l) name of the competitors and the date of a sports event that will be substituted for the original sports event if it is cancelled.

These rules must be clearly visible on the face of the sports pool card so that any customer may easily read them. All sports pool cards must be retained by the sponsor for at least 90 days from the date of the sports event, or last event in a series of sports events.

Another issue of concern being found is that some sports pools being offered are not approved variations of sports pools as listed in Mont. Admin. R. 23.16.1705 which includes Traditional, Series, Multiple Way, Blackout, Selected Point, Multiple Competitor, Weekly Sweepstakes and Ladder sports pools. One recent example of an unapproved sports pool was one which awarded the prize to the participant(s) whose randomly assigned NFL football team scored more than 35 points. Another unapproved board was labeled a "Survivors" sports pool wherein a participant selects his or her own NFL team, pays the entry fee, and if that team continues to win (or lose) then he or she stands to win a prize. These are not among the authorized variations of sports pools and are, therefore, prohibited. No authorized sports pools allow patrons to select a team to wager on. All legal variations of traditional sports pools require that teams, or competitors, be randomly assigned to participants only AFTER all possible participant entries are in.

Some illegal pools did not list the teams on the sports board because the bar was not certain the board would be filled and, if the board did not get filled, the bar would transfer the selections and entry money to another sports event to be offered at a later time. This is strictly prohibited. Once sales of chances on a sports pool begin the pool MUST be conducted on the advertised sporting event to its conclusion and any unsold spaces at the time the sports event starts must be purchased by the person / location offering the sports pool and must be marked as such (Mont. Admin. R. § 23.16.1702 (1) (b)).

One of the more popular sporting events for which operators offer sports pools has become NASCAR races. The easiest, yet apparently most misunderstood sports pools is the Multiple Competitor Sports Pool. In this type of pool all of the competitors (drivers) must be listed on the sports pool card in a column (43 for a NASCAR event). Once 43 participants have paid the entry fee (\$25 maximum) then the drivers are randomly selected and assigned to the participants. The winner(s) of the pool is/are simply based upon the finish of the randomly assigned drivers.

If your beer distributors provide you with blank sports pools, do NOT simply trust that they are compliant with Montana laws and rules. While well intentioned, many boards printed and supplied to you do not comply with Montana law. As mentioned above, all rules must be included on the sports pool card.

Finally, the department and its agents stand ready to respond to your needs for training and education regarding sports pools or any other legal gambling activity being offered. If you would like training specific to any area of legalized Montana gambling, please contact the department.