

**MEMORANDUM**

TO: David Miran, Ohio Department of Agriculture

FROM: Sydney King, Regulatory Policy Advocate

DATE: January 3, 2017

RE: **CSI Review – Games and Concessions Five Year Rule Review (OAC OAC 901:9-2-01, 901:9-2-02, 901:9-2-03, 901:9-2-04, 901:9-2-05, 901:9-2-06, 901:9-2-07, 901:9-2-08, 901:9-2-09, 901:9-2-10, 901:9-2-11, 901:9-2-12, 901:9-2-13, 901:9-2-14, 901:9-2-15, 901:9-2-16, 901:9-2-18, 901:9-2-19, 901:9-2-20, and 901:9-2-21)**

On behalf of Lt. Governor Mary Taylor, and pursuant to the authority granted to the Common Sense Initiative (CSI) Office under Ohio Revised Code (ORC) § 107.54, CSI has reviewed the abovementioned administrative rules and associated Business Impact Analysis (BIA). This memo represents CSI's comments to the Agency as provided for in ORC § 107.54.

Analysis

On October 3, 2016, the Ohio Department of Agriculture (ODA) submitted a draft rule package consisting of one no-change, seventeen amended,¹ and two new rules to the CSI Office as part of the five-year rule review requirement contained in Ohio statute. The official public comment period closed on June 24, 2016 with no comments submitted.

The draft rule package establishes a regulatory framework for “concessions” at fairs and expositions operated by county and independent agricultural societies. According to the BIA, concessions are defined as shows, games, or novelty stands which take place at these county fairs. ODA provided a list of examples of these games that included milk bottle ball game, pop bottle ball game, and the bank-a-ball game.

Prior to the rules being submitting to CSI for review, a stakeholder group, the Greater Ohio Showmen's Association, reached out to the CSI Office to discuss ODA's regulatory drafting

¹ Rule 901:9-2-04 is being amended by more than 50 percent. Therefore, the Legislative Service Commission requires that the existing rule be rescinded and replaced by a new rule that has the same rule number.

process. The Association had concerns with a regulation that required the price of play for each game be listed on the license. Subsequently, the CSI Office communicated with ODA about its early stakeholder and the justification for requiring the price be listed in the game application compared against potentially less-impactful alternative regulations to satisfy the public purpose of protecting the public from predatory gaming practices. The draft language submitted to the CSI Office represents ODA and stakeholders work to find a regulation that allows flexibility while communicating the price of the game to the public through increased signage requirements.

The regulations are very prescriptive and require the business community, the concession game owners, to comply with specific details. An example of the specificity of the regulations is found in a rule regulation titled “football toss.” The language reads that the operator must “provide regulation-size footballs or similar objects to be thrown, and the clearance in the target shall be at least one inch measured from the largest part of the football or other object on one side.” ODA communicated to the CSI Office that the specific language is necessary because a change in the smallest detail of the game can decrease the likelihood of winning the game from probable to impossible. No comments were received to indicate that the language is problematic. Furthermore, the results of early stakeholder outreach demonstrate that ODA is committed to working through regulatory concerns with the stakeholder groups.

Recommendations

For the reasons discussed above, the CSI Office does not have any recommendations for this rule package.

Conclusion

Based on the above comments, the CSI Office concludes that the Ohio Department of Agriculture should proceed with the formal filing of this rule package with the Joint Committee on Agency Rule Review.