S T A T E O F T E N N E S S E E
OFFICE OF THE
ATTORNEY GENERAL
PO BOX 20207
NASHVILLE, TENNESSEE 37202

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Opinion No. 06-046

Legality of Leasing Equipment for and Conducting Poker Tournaments

QUESTION

Whether leasing equipment for and conducting poker tournaments that charge an admission fee to play "Texas Hold'Em" while being designated "for entertainment purposes only" is legal in Tennessee.

OPINION

If a participant who pays admission into the poker tournament may receive anything of value other than simply a return of his deposit, whether through obtaining another participant's "deposit" on chips or other equipment, side betting, or any valuable prize awarded, it is the opinion of this Office that the tournament is illegal. This Opinion is not based on an investigation of how a particular tournament has or will in practice be conducted, but is based solely on the facts provided in the opinion request.

ANALYSIS

This Office opined that poker tournaments charging an admission fee to play "Texas Hold'Em" for a chance to win a prize are illegal in Tennessee. Op. Tenn. Att'y Gen. No. 05-159, October 14, 2005, "Legality of Texas Hold'em Poker Tournaments With Jackpot Prize." As fully discussed in that opinion, this Office opined that those poker tournaments offering prizes constitute illegal "gambling" and could be considered an illegal "lottery" under Tennessee law.

The pending request outlines a scenario in which a Texas Hold'Em poker tournament, denominated "for entertainment purposes only," is conducted and each participant rents for an unspecified amount of money certain amenities necessary to play the game, such as a room, poker tables, poker chips, dealers, and cards. Each participant as "lessee" executes an "Equipment Lease Agreement." Each participant also pays a security deposit of an unspecified amount on this equipment, including the chips. This deposit may be refunded in full unless the equipment is returned in a condition beyond the normal wear and tear following the five hour basic lease period. Once the poker tournament starts it will continue uninterrupted for a period of approximately five hours and no participant can cancel his rental agreement. No deposits will be returned prior to the end of the tournament, when the equipment is collected. If a participant-lessee is not present to

receive his deposit at the conclusion of the tournament, that deposit is forfeited to the leasing company conducting the tournament, unless prior arrangements have been made for a second participant-lessee in the tournament to return the equipment and collect that first participant's deposit.

The proposed lease provides that the lessee "shall use the equipment lawfully." However, the lease does not otherwise specify what, if any, measures the lessor would take to prevent the equipment from being used in "gambling."

Under a similar proposed scenario, a "non-profit poker club" conducts a "for entertainment purposes only" poker tournament, with each club member paying an equal share of the rental fee and deposit for equipment, including chips, to be used in the tournament. Once this tournament is concluded and all equipment is returned, the "deposit" is returned to one person, who is a member of the club. Thereafter, fellow club members are responsible for collecting their deposits within a designated time frame, or else the deposit is forfeited. The request does not specify who receives these forfeited funds.

It appears that under both scenarios, a participant in the poker tournament plays with a certain number of chips received for his initial rental fee. Presumably, as the tournament progresses, chips are won from or lost to other participants. It is unclear how or if a participant can reclaim the chips he initially received at the start of the tournament to return them to the lessor in exchange for his deposit. It is unclear whether the return of a participant's deposit is in any way prorated or affected by the number of chips he possess at the end of the poker tournament. If the "deposits" for equipment, including the chips, are utilized as a means to provide anything of value to a winner or participant in the poker tournament above his own original deposit, there is illegal "gambling." For example, participants in the poker tournament could not make arrangements that "assign" their rights to receive a return of part or all of their deposits to other participants who won chips during the tournament. To be legal, the chips obtained through playing the tournament cannot have any value or be exchanged for any thing of value.

Furthermore, if there are any side bets, prizes, or other things of value provided to any participants, the poker tournaments would be illegal.

Section 39-17-501(1) of Tennessee Code Annotated defines "gambling" as "risking anything of value for profit whose return *is to any degree contingent on chance, or any games of chance associated with casinos, including but not limited to, slot machines, roulette wheels and the like* . . . ." (emphasis added). These proposed poker tournaments clearly include "consideration," i.e., the required rental fee that includes the chips to bet during the games, and the winners are determined in part by "chance." The broad definition of "gambling"includes the poker tournament scenarios presented, if a participant may receive any "profit"beyond his original deposit, such as discussed above. In order for a "for entertainment purposes only" tournament to be legal, the winners may only receive the satisfaction of proclaiming victory.

The same caveats regarding such a tournament would apply, if it was held at a sports bar,

where participants may consume alcohol provided by the bar.

If the poker tournaments are conducted such that a participant may receive any additional thing of value after paying the admission (rental) fee, including side bets, each item of equipment specifically utilized to conduct these tournaments is a "gambling device." A "gambling device" is defined in Tenn. Code Ann. § 39-17-501(3) as "anything designed for use in gambling, intended for use in gambling, or used in gambling." It is illegal to knowingly own, possess, rent, lease, store, or transport any gambling device. Tenn. Code Ann. § 39-17-505(a)(1). Moreover, any gambling device is "contraband . . . subject to seizure, confiscation, and forfeiture." Tenn. Code Ann. § 39-17-505(b)(1).

Persons conducting and promoting such an event could be found by an objective trier of fact to violate the state's prohibition against gambling or gambling promotion. Tenn. Code Ann. § 39-17-503 sets forth the following elements of a gambling promotion:

> (a) A person commits an offense who knowingly[1] induces or aids another to engage in gambling, and:
>
> (1) Intends to derive or derives an economic benefit other than personal winnings from the gambling; or
>
> (2) Participates in the gambling and has, other than by virtue of skill or luck, a lesser risk of losing or greater chance of winning than one (1) or more of the other participants.
>
> (b) The offense of gambling promotion is a Class B misdemeanor.

Furthermore, those regularly conducting such contests could be in violation of Tenn. Code Ann. § 39-17-504, which prohibits aggravated gambling promotion:

> (a) A person commits an offense who knowingly invests in finances, owns, controls, supervises, manages or participates in a gambling enterprise.
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> (b) For purposes of this section, "gambling enterprise" means two (2) or more persons regularly engaged in gambling promotion as defined

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[1]Tenn. Code Ann. § 39-17-302(b) specifies:

> "Knowing" refers to a person who acts knowingly with respect to the conduct or to circumstances surrounding the conduct when the person is aware of the nature of the conduct or that the circumstances exist. A person acts knowingly with respect to a result of the person's conduct when the person is aware that the conduct is reasonably certain to cause the result.

in Section 39-17-503.

(c) The offense of aggravated gambling promotion is a Class E felony.

In summary, if, in conducting the tournaments described in the above scenarios, participants have the opportunity to receive anything of value in addition to return of their own deposits, there is illegal "gambling" and possibly illegal "gambling promotion." Furthermore, each item of equipment used in such illegal tournaments constitutes a prohibited "gambling device" under Tenn. Code Ann. §§ 39-17-501(3) and 505.

Enforcement of the gaming statutes and the lottery prohibitions falls within the responsibility of the independent district attorneys general. The ultimate decision whether to prosecute under these statutes, based upon any particular factual situation, would rest with the district attorney general in the appropriate judicial district.

PAUL G. SUMMERS
Attorney General

MICHAEL E. MOORE
Solicitor General

STEVEN A. HART
Special Counsel

Requested by:

The Honorable Tim Burchett
State Senator
Room 310 A, War Memorial Building
Nashville, Tennessee 37243-0207