STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL

April 5, 2016

Opinion No. 16-13

Legality of Fantasy Sports Contests in Tennessee

Question

Do fantasy sports contests constitute illegal gambling under Tennessee law?

Opinion

Yes.

ANALYSIS

Fantasy sports contests are contests in which participants choose current athletes in a given professional or college sport to create a virtual sports team and then compete against other fantasy sports participants. The contests may take place over a variety of time periods ranging from one day to an entire season. The winners of the contests are determined on how the participants' chosen athletes individually perform in their actual professional or college sporting events.

The contests are generally offered by fantasy sports leagues via electronic device. Participants create accounts with the fantasy sports leagues and pay an entry fee to participate in one or more of a league's fantasy sports contests. The participants then select their respective teams of athletes in a certain sport, often under an imaginary salary limit or budget. Participants earn points based on the statistical performance of the athletes in the actual sporting events. Depending on the athletes' overall performances, a participant may win a share of a cash prize. Participants' entry fees help fund the prize, and a portion of these fees is paid to the fantasy sports league.

"Gambling" is illegal in Tennessee. A person who knowingly engages in "gambling" commits a punishable offense. Tenn. Code Ann. § 39-17-502. Similarly, a person commits a punishable offense when that person knowingly induces or aids another to engage in gambling, and intends to derive or derives an economic benefit other than personal winnings from the gambling. Tenn. Code Ann. § 39-17-503.

"Gambling" is broadly defined under Tennessee law. In 1989, the General Assembly revised the definitions of gambling offenses in this state and made known its intention to thereby depart from more narrow definitions found in prior law. See State v. Burkhart, 58 S.W.3d 694, 698 (Tenn. 2001).

Tennessee Code Annotated § 39-17-501(1) currently provides:

> Gambling is contrary to the public policy of this state and *means risking anything of value for a 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*. For the purposes of this chapter gambling does not include:
>
> (A) A lawful business transaction;
>
> (B) Annual events operated for the benefit of nonprofit organizations that are authorized pursuant to a two-thirds (2/3) approval of the general assembly, so long as such events are not prohibited by the state constitution; or
>
> (C) A state lottery of the type in operation in Georgia, Kentucky, and Virginia in 2000 and authorized by amendment to the Constitution of Tennessee, if the lottery is approved by the general assembly[.]

Tenn. Code Ann. § 39-17-501(1) (emphasis added).

The breadth of the definition of "gambling" is evidenced by the Sentencing Commission Comments, which provide in pertinent part: "The commission intends to include any scheme by which value is risked upon a chance for greater value as a 'gambling' offense. The definition of 'gambling' includes lotteries, chain or pyramid clubs, numbers, pinball, poker or any as yet unnamed scheme where value is risked for profit." These Comments confirm the General Assembly's intent to broadly define "gambling" because the General Assembly specifically approved the publication of these Comments. *See Burkhart*, 58 S.W.3d at 698 (citing 1989 Tenn. Pub. Acts, ch. 591, § 114).

As set forth above, the statutory definition of "gambling" is straightforward and unequivocal. In short, "gambling" in Tennessee means "risking anything of value for a profit whose return is to any degree contingent on chance," subject to the three stated exceptions. *See* Tenn. Code Ann. § 39-17-501(1). It is well established that clear and unambiguous statutes must be given effect as written. *See Montgomery v. Hoskins*, 222 Tenn. 45, 47, 432 S.W.2d 654, 655 (1968).

Fantasy sports contests fall within the broad definition of "gambling" under Tennessee Code Annotated § 39-17-501(1). The participants pay an entry fee in order to win a prize. A portion of the fees comprise the pot of funds that are paid out to the winning participants. By proffering these entry fees, participants agree to risk something of value for a profit – a portion of the pot. Hence, the only remaining consideration is whether a participant's ability to win a fantasy sports contest is to "any degree contingent on chance." While participants may use skill to select players for their teams, winning a fantasy sports contest is contingent to some degree on chance. Namely, the participants do not control how selected athletes perform in actuality on a given day. Athletes' performances are affected by many fortuitous factors – weather, facilities, referees, injuries, etc.

Thus, absent legislation specifically exempting fantasy sports contests from the definition of "gambling," these contests constitute illegal gambling under Tennessee law. The General Assembly has the power to exclude from the definition of "gambling" any fantasy sports contest that is not prohibited by the state constitution or the federal constitution. *See Perry v. Lawrence Cnty. Election Comm'n*, 219 Tenn. 548, 551, 411 S.W.2d 538, 539 (1967); *Williams v. Carr*, 218 Tenn. 564, 578, 404 S.W.2d 522, 529 (1966). *See, e.g., Secretary v. St. Augustine Church*, 766 S.W.2d 499 (1989) (finding statute permitting charitable bingo unconstitutional because bingo was "lottery" within the meaning of article XI, section 5 of the Tennessee Constitution).[1]

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[1] Lotteries are a species of gambling. *See France v. State*, 65 Tenn. 478, 481 (1873); *State v. Smith*, 10 Tenn. 272, 283 (1829).