



Legal Minute

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Texas Hold 'Em, Poker Runs, and Rubber Duck Races: Creative Nonprofit Fundraising or Illegal Gambling?

As Texas nonprofits seek new and more creative ways to raise funds, some organizations have hosted Texas Hold 'Em tournaments, poker runs, casino nights, or rubber duck races in order to raise funds for their organizations. The problem with these fundraising activities is that they may violate Texas gambling prohibitions, even if the activities support charitable purposes. A recent Attorney General opinion (Opinion No. GA-0355) makes clear that paying a fee to play in Texas Hold 'Em tournaments constitutes illegal gambling. The Attorney General ruled in 1992 (Opinion No. DM-112) that fees to participate in casino nights also constituted illegal gambling. Last year, the Potter County Attorney put the brakes on Poker Runs — even those sponsored by the Potter County Sheriff's Office. The Galveston County Criminal District Attorney has asked the Office of the Attorney General to issue an opinion regarding the legality of variations on the Poker Run if money is paid as a donation and not an entry fee.

How Do These Fundraisers Work?

Texas Hold 'Em is a card game that allows players to use any combination of seven cards to form the best possible five-card poker hand. After the final betting round, all of the players who have not folded and remain in the game reveal their hands. The player with the best hand wins.

A **Poker Run** is an organized event where motorcycle riders or drivers travel a designated course, stopping at different points to select a card. At the end of the run, the person with the best poker hand wins a prize.

A **Rubber Duck Race** is an event at which a person pays a certain amount to enter a rubber duck in a race. The person whose duck wins the final race gets a prize.

What Constitutes Illegal Gambling?

The Texas Penal Code §47.02(a) forbids persons from playing and betting for money or other things of value, on any game played with cards, dice, balls, or any other gambling device. There are exceptions to this statute if the game is held:

- (1) in a private place;
- (2) no person receives any economic benefit other than personal winnings; and
- (3) the chances of winning or losing are equal for all players except for the advantages of skill or luck.

What Constitutes A Private Place?

A private place is not defined. However, it is probably limited to a private home or small workplace setting where the game is played and players keep all of the winnings. An invitation-only event at a private club would not likely fall within this exception. If a person opened his or her private home and charged a small fee for an entrance into a tournament, according to lawyers in the Attorney General's office, this would transform their private home into a public place and fall under the definition of a "gambling place."

What Constitutes A Bet?

The more important question for nonprofits is how the Attorney General defines a "bet." According to the Penal Code, a "bet" is defined as "an agreement to win or lose something of value solely or partially by chance." Since the Attorney General ruled that poker is a game that has an element of chance, an event that requires payment of an entry fee to play poker constitutes a bet. In addition, the property on which the tournament or other gambling events is held falls under the definition of a "gambling place" and the activity would not be allowed under the gambling laws.

A bet does not include the following:

- contracts of indemnity or insurance;
- an offer of a prize, award, or compensation to the actual contestants in a bona fide contest for the determination of skill, speed, strength, or endurance or to the owners of animals, vehicles, watercraft, or aircraft entered in a contest;
- or an offer of merchandise, with a value not greater than \$25, made by the proprietor of a bona fide carnival contest. (Texas Penal Code §47.01).

Consequently, rubber duck races may fall within an exception to the definition of "bet". One could argue that since an offer of a prize is made to an owner of an animal entered in a contest, an entry fee paid to join the race would not constitute a bet. In addition, a rubber duck race does not appear to be a game played with cards, dice, balls or any other gambling device.

Do Nonprofits Have Options?

While a nonprofit may not be able to hold a tournament where an entry fee is charged, they are not altogether precluded from putting on such events. According to the Attorney General, organizations are allowed to hold tournaments where prizes are awarded to the winners, such as gift certificates or even trips to Las Vegas, as long as the organization charges no entry fee. They could then sell food and beverages, including alcoholic beverages, to make money. In addition, a nonprofit could solicit underwriters or sponsors for the tournament and give prizes to winners. Or, a nonprofit could charge an entry fee and not offer prizes, but offer door prizes open to all entrants, regardless of the poker hand they draw.

What Are The Penalties For Holding Illegal Gambling Events?

Both hosts and players of illegal Texas Hold 'Em tournaments and other gambling events can be charged with criminal offenses. Gambling is a Class C misdemeanor that carries a \$500 fine. Hosts can be charged with Class A misdemeanors, keeping a place of gambling or gambling promotion, both of which carry a fine of \$4,000 and a punishment of up to one year in jail.

Conclusion

This recent opinion by the Attorney General restricts the ability of nonprofit organizations to use the popularity of poker and some other games in order to facilitate their fundraising efforts. But keep those creative fundraising ideas flowing, and contact Texas C-BAR if you have any questions at info@texasbar.org.