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October 20, 2010

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OCT 22 2010

OPINION COMMITTEE

The Honorable Greg Abbott
Attorney General of Texas
P.O. Box 12548
Austin, TX 78711-2548

FILE # ML-46608-10
I.D. # 46608

RQ-0926-GA

Re: Whether a Resort and Conference Center May Operate a Card Room

Dear General Abbott:

One of my constituents has recently inquired as to whether his resort and conference center on Galveston Island may operate a card room without either violating relevant provisions of Chapter 47 (Gambling) of the Texas Penal Code or contravening applicable Attorney General opinions.

The constituent is seeking ways to improve business and increase the tourism industry in Galveston which took a hit after Hurricane Ike devastated the region in September 2008. The thrust of his proposal is to offer people in Galveston a place in his resort to play card games in a manner permitted under the law.

The constituent has proposed that the card room would operate as follows. The resort would provide both the physical space of a card room and dealers for the players. The dealers would not be paid out of any resort funds whatsoever, but players would be encouraged to tip the dealers at their discretion. Those players who are also overnight guests at the resort would not be charged anything for using the card room, but those who are not would be charged a modest fee (\$25-\$40). The resort would allow players to choose whether the games are "limit" games with maximum bets or "no limit" games with no cap on bets. The resort would not make a profit from the funds that the players use while playing in the card room, as is often the case with casinos. The card room would provide soft drinks and appetizers, but would not serve alcoholic beverages of any kind. The constituent would like to consider allowing players to bring their own alcoholic beverages, but would be willing to forgo this policy if it would be decisive in whether he could operate such a card room.

In my research of statutory law and opinions from the Attorney General's Office, I encountered Section 47.04 the Penal Code on Gambling and Attorney General Opinion No. GA-0335. Section 47.04(a) of the Penal Code provides that:

A person commits an offense if he knowingly uses or permits another to use as a gambling place any real estate, building, room, tent, vehicle, boat, or other property whatsoever owned by him or under his control, or rents or lets any such property with a view or expectation that it be so used."



District 23

Galveston & Chambers Counties

Appropriations, Insurance, & Select Committee on Federal Economic Stabilization Funding

However, section 47.04(b) provides that:

It is an affirmative defense to prosecution under this section that:

- (1) The gambling occurred in a private place;
- (2) No person received any economic benefit other than personal winnings; and
- (3) Except for the advantage or skill or luck, the risks of losing and the chances of winning are the same for all participants.

In holding out his private resort as a place for people to play card games, games for which the chances of winning are the same for all participants, my constituent does not propose to receive any direct economic benefit. Although the resort would charge a modest fee to non-guests of the resort to use the card room, and would make money from the guests who use the card room by charging them for staying in the room, these costs are incidental and tangential to the operation of the card room. My constituent indeed hopes that operating a card room will increase the traffic at his resort, which will correspondingly result in improved business. However, my constituent does not purport to profit from any card game. Thus, his proposal seems squarely to fall within the affirmative defense available in section 47.04(b).

Additionally, Opinion No. GA-0335 provides that:

A holder of an on-premises alcoholic beverage permit may not, without violating both section 47.04(a) of the Penal Code and Rule 35.31 of the Alcoholic Beverage Commission, host a poker tournament in which participants risk money or any other thing of value for the opportunity to win a prize.

Although my constituent's proposal involves hosting card games in which participants risk money to win a prize, the proposal does not involve the resort's furnishing of alcoholic beverages in any manner.

I kindly request that your office direct me to any other relevant opinions that might impact this project. As is mentioned in the second paragraph above, the thrust of my constituent's proposal is to offer people in Galveston a place to play card games in a manner permitted under the law. Thus, if the specific proposal stated in the third paragraph above does not comply with the law, I would ask that you please indicate whether there are any means by which a resort may offer a card room without facing potential criminal and/or civil liability.

Thank you very much for your time and consideration.

Sincerely,



Craig Eiland