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Chris Turner

State Representative, District 101
Chair, Committee on Business & Industry

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I.D.# 49057

The Honorable Ken Paxton
Office of the Attorney General
ATTN: Opinion Committee
PO Box 12548
Austin, Texas 78711-2548

Re: Request for an opinion regarding what constitutes an economic benefit under Sec. 47.02(b)(2) of the Penal Code, assuming the players are betting for money or other things of value and all games are part of a private event

Dear Attorney General Paxton:

I am respectfully requesting your opinion on the following question:

Question:

What constitutes an economic benefit under Sec. 47.02(b)(2) of the Penal Code, assuming the players are betting for money or other things of value and all games are part of a private event?

Background:

Section 47.02 of the Penal Code reads as follows:

- (a) A person commits an offense if he:
 - (1) makes a bet on the partial or final result of a game or contest or on the performance of a participant in a game or contest;
 - (2) makes a bet on the result of any political nomination, appointment, or election or on the degree of success of any nominee, appointee, or candidate; or
 - (3) plays and bets for money or other thing of value at any game played with cards, dice, balls, or any other gambling device.
- (b) It is a defense to prosecution under this section that:
 - (1) the actor engaged in gambling in a private place;
 - (2) no person received any economic benefit other than personal winnings; and
 - (3) except for the advantage of skill or luck, the risks of losing and the chances of winning were the same for all participants.
- (c) It is a defense to prosecution under this section that the actor reasonably believed that the conduct:

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(1) was permitted under Chapter 2001, Occupations Code;
(2) was permitted under Chapter 2002, Occupations Code;
(3) was permitted under Chapter 2004, Occupations Code;
(4) consisted entirely of participation in the state lottery authorized by the State Lottery Act (Chapter 466, Government Code);
(5) was permitted under Subtitle A-1, Title 13, Occupations Code (Texas Racing Act); or
(6) consisted entirely of participation in a drawing for the opportunity to participate in a hunting, fishing, or other recreational event conducted by the Parks and Wildlife Department.

(d) An offense under this section is a Class C misdemeanor.

(e) It is a defense to prosecution under this section that a person played for something of value other than money using an electronic, electromechanical, or mechanical contrivance excluded from the definition of "gambling device" under Section 47.01(4)(B).

There are many fees which may be considered to provide an "economic benefit" under Sec. 47.02(b)(2), depending on the scope and definition of the term. Assuming participants are wagering during an activity, a list of fees considered to provide an economic benefit by Sec. 47.02(b)(2) could include the following:

- A membership fee at a country club if two golfers were wagering during a round of golf
- A lane rental at a bowling alley
- A table and ball rental at a pool hall
- A seat rental at a cardroom
- A target/lane rental at an axe throwing bar

It is my understanding, however, that Sec. 47.02(b)(2) is intended to keep third parties to any wagering activities from taking a commission from those not personally involved in the wagering activity. This would, for example, include taking a cut of an individual's winnings from a hand of poker or their winnings from a sports bet.

Given the prevalence of businesses with fees that could be interpreted to constitute economic benefits, under some definitions, I request that you provide clarity on the definition of "economic benefit." This would allow Texas business to continue operating in line with the intent of Sec. 47.02(b)(2) and settle any questions about the legality of such operations.

I appreciate your time and consideration of this request. Please contact me with any questions and let me know if my office may ever be of assistance in this matter or any others.

Sincerely,



Chris Turner