

Opinion_Committee

RQ-0071-KP

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Subject: Rep. Crownover Request for OAG Opinion
Attachments: OPINION COMMITTEE AttyGenOpn Request Fantasy Sports.docx

FILE # M1-47867-15
D. # 47867

Attached is a request from Rep. Myra Crownover for an OAG Opinion. Please contact me if you have any further questions.

Sincerely,

Craig Holzheuser
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NOV 12 2015

OPINION COMMITTEE

FILE # ML-47867-15
ID. # 47867

Recent events in New York and Nevada concerning the status of websites like FanDuel.com and DraftKings.com have brought up questions and I am seeking a formal Attorney General Opinion on whether:

1. Daily fantasy sports leagues such as DraftKings.com and FanDuel.com are permissible under Texas law, and
2. It is legal to participate in fantasy sports leagues where the house does not take a "rake" and the participants only wager amongst themselves.

Factual Background

Please assume the following facts, as more fully explained in an October 16, 2015 memo from the Nevada attorney general's office to the Nevada Gaming Control Board. DraftKings.com and FanDuel.com provide daily fantasy sports contests, which track the performance of a player over a single game. Owners of simulated or fantasy teams compete against each other using metrics determined in advance by the provider. Once the games begin, the lineups are locked and the owners cannot make changes. Contests can be head-to-head or involve more than one player. Providers take a rake in different ways depending upon the particular type of contest. These providers also have a limited portion of their websites dedicated to daily fantasy sports where no betting is involved.

Long before providers like DraftKings.com and FanDuel.com were established, individuals would play fantasy sports on platforms that did not facilitate betting. Participants would often still bet amongst themselves, but the provider does not take a rake because it does not take money from participants.

Legal Framework

The Legislature has generally criminalized gambling, which can involve making 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." TEX. PEN. CODE SEC. 47.02(a). A bet is "an agreement to win or lose something of value solely or partially by chance." *Id.* SEC. 47.01(a). Attorney General Opinion GA-0335 states: "If an element of chance is involved in a particular game, it is embraced within the definition of 'bet.'" Tex. Att'y Gen. Op. GA-0335 (2005). A bet does not include "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." *Id.* Sec. 47.01(1)(B).

It is a defense to prosecution that: (1) the defendant was gambling in a private place, (2) "no person received any economic benefit other than personal winnings," and (3) "except for the advantages of skill or luck, the risks of losing and the chances of winning were the same for all participants." *Id.* Sec. 47.02(b).