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OPINION COMMITTEE



FILE # ML-48301-18  
48301

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CAPITOL OFFICE:  
P.O. BOX 2910  
AUSTIN, TEXAS 78768-2910  
(512) 463-0456  
(512) 463-0158 fax  
DISTRICT OFFICE:  
P.O. BOX 4642  
VICTORIA, TEXAS 77903  
(361) 572-0196  
fax (361) 576-0747

GEANIE W. MORRISON

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RQ-0209-KP

SELECT COMMITTEE ON TEXAS PORTS, INNOVATION & INFRASTRUCTURE

January 26, 2018

The Honorable Ken Paxton  
Attorney General of Texas  
209 W. 14th Street  
Austin, TX 78701

Via email: [opinion.committee@oag.texas.gov](mailto:opinion.committee@oag.texas.gov)

Dear General Paxton:

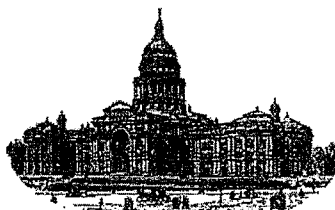
Texas law generally prohibits gambling, but provides an affirmative defense for limited social gambling under certain conditions. In particular, Sections 47.02(b) and 47.04(b) of the Penal Code provide an affirmative defense to gamblers and the owners of places where gambling occurs if three prongs are met: (1) the gambling must occur in a private place; (2) no person may receive 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 must be the same for all participants.

A gambling establishment would clearly fail the second prong by taking a "rake," defined as a fee or a percentage of the value at risk in gambling. It has been brought to my attention that some poker gambling enterprises in this state, while not taking a "rake," are nevertheless compensated by charging poker gamblers fees such as per-seat or time-based fees, membership fees, subscription fees, and entry fees. These enterprises often advertise to the public and conduct their business in commercial, non-residential areas. Pursuant to Section 402.042(b)(7) of the Government Code, I am writing to request your opinion on the following question: Are poker gambling enterprises that charge membership or other fees or receive other compensation from gamblers playing poker—but do not receive a "rake"—permitted under Texas law?

Sincerely,

*Geanie W. Morrison*

Geanie Morrison  
Chair, Transportation Committee



EMAIL: [Geanie.Morrison@house.texas.gov](mailto:Geanie.Morrison@house.texas.gov)