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By Opinion Committee at 2:45 pm, Sep 22, 2023

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September 15, 2023

Office of the Attorney General
Attention: Opinion Committee
P.O. Box 12548
Austin, Texas 78711-2548
VIA CERTIFIED MAIL

RE: Request for Attorney General Opinion regarding Gambling Equipment

Opinion Committee Members:

I was asked to review the proposed use of equipment in a facility within the city limits of Gainesville, Texas by Chief of Police Kevin Phillips since a violation would be prosecuted by my office.

On August 23, 2023, the proponents of the equipment made a presentation at Police Headquarters that I attended. The presentation then proceeded to the proposed facility for a demonstration of the equipment itself. I reviewed the promotional brochure, which is attached to this request, which was provided to me.

After observing the machine being demonstrated I believed that for the payment of a "play" the opportunity to obtain anything of value, in this operation cash, the award is determined solely or partially by chance.

The proponents of the enterprise suggested that there is a fixed amount determined that can be won and that the player can elect between plays and choose the games they seek to play. Essentially, they are suggesting that this activity is a "sweepstakes" or tantamount to a lottery. I disagree with that assessment.

The machine demonstration did not make this aspect of the equipment clear to me; and if the player exercises "some skill" that still does not negate the definition of "gambling device" being applicable to these machines.

After I researched the applicable law and opinions regarding gaming devices and have gone to the source statutes, I do not believe that the equipment that was demonstrated is exempted (under paragraph 4(B)) from the prohibition of Texas Penal Code Section 47.01 defining a gambling

device as described below:

(4) “Gambling device” means any electronic, electromechanical, or mechanical contrivance not excluded under Paragraph (B) that **for a consideration affords the player an opportunity to obtain anything of value, the award of which is determined solely or partially by chance, even though accompanied by some skill, whether or not the prize is automatically paid by the contrivance.** The term:

(A) includes, **but is not limited to, gambling device versions of bingo, keno, blackjack, lottery, roulette, video poker, or similar electronic, electromechanical, or mechanical games, or facsimiles thereof, that operate by chance or partially so,** that as a result of the play or operation of the game award credits or free games, and that record the number of free games or credits so awarded and the cancellation or removal of the free games or credits; and

(B) **does not include** any electronic, electromechanical, or mechanical contrivance designed, made, and adapted **solely for bona fide amusement** purposes if the contrivance rewards the player exclusively with noncash merchandise prizes, toys, or novelties, or a representation of value redeemable for those items, that have a wholesale value available from a single play of the game or device of not more than 10 times the amount charged to play the game or device once or \$5, whichever is less.

I further believe that the operation of these devices in any location in Gainesville falls under the definition contained in Texas Penal Code Section 47.01 (3) operating a gambling place:

(3) “Gambling place” means **any real estate, building, room,** tent, vehicle, boat, or other property whatsoever, one of the uses of which is the making or settling of bets, bookmaking, or the conducting of a lottery **or the playing of gambling devices.**

I am requesting your opinion as to whether this equipment as portrayed and the proposed use in a commercial facility, properly falls within the exception of the Texas Penal Code cited above.

Thank you for your assistance in this regard.



Edmund J. Zielinski
Cooke County Attorney

Proponents’ brochure attached as noted

CC: Chief Kevin Phillips
Gainesville Police Department
VIA Electronic Mail