

BINGO, RAFFLES, GAMING ROOMS AND OTHER GAMBLING ISSUES UNDER TEXAS LAW

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The  symbol indicates sections that have been updated since the previous publication.

Introduction

This publication addresses certain of the exceptions to the general prohibition against gambling set out in Chapter 47 of the Texas Penal Code, including game rooms, charitable raffles, local option bingo, and pari-mutuel wagering on horse and dog racing as authorized under the Texas Racing Act.

GENERAL

1. Is gambling generally legal in Texas?

Article III, Section 47(a) of the Texas Constitution requires the Legislature to pass laws prohibiting “lotteries and gift enterprises.” Section 47.02 of the Penal Code provides that a person commits an offense if he or she 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, makes a bet on the result of a political nomination, appointment, or election or the success of a nominee, appointee, or candidate, or plays or bets for money or another thing of value at any game played with cards, dice, balls, or any other gambling device. A violation of Section 47.02 is a Class C misdemeanor.

2. What are exceptions to this general rule?

Under Section 47.02(b) of the Penal Code, it is a defense to prosecution that the actor engaged in gambling in a private place, no person received any economic benefit other than personal winnings, and except for the advantage of skill or luck, the risks of losing

or winning were equal for all participants. It is also a defense that the person played for something other than money using an electronic, electromechanical or magnetic contrivance excluded from the definition of a gambling device.

3. What is a “bet” under Texas law?

As defined in Section 47.01(1) of the Penal Code, a bet is an agreement to win or lose something of value solely or partially by chance. A bet does not include contracts of indemnity or guaranty, or life, health, property or accident insurance, nor does a bet include an offer of a prize, award, or compensation to the contestants in a bona fide contest for the determination of skill, speed, strength, or endurance.

FANTASY SPORTS

Fantasy sports have grown from the familiar league organized in an office or among friends to an industry of online daily fantasy sports leagues awarding huge cash prizes to players. As fantasy sports have become commercialized, questions have arisen as to whether they violate state gaming prohibitions.

1. What are fantasy sports?

Fantasy sports “allow individuals to simulate being a sports team owner or manager. Generally, an individual assembles a team, or lineup, often under a salary limit or budget, comprising actual players from the various teams in the particular sports league, i.e., National Football League, National Basketball League, or National Hockey League. Points are garnered for the individual’s “team” based on the actual game performance of the selected player’s performance in the game where actual performance statistics or measures are transformed into fantasy points. Each participant owner competes against other owners in the fantasy league.” KP-0057 at pg. 1-2.

2. Are fantasy sports permissible under Texas law?

It depends. In a recent opinion, the attorney general made a distinction between paid daily fantasy sports leagues and traditional fantasy sports leagues. The opinion suggests paid daily fantasy sports leagues would likely be determined to be illegal gambling under Texas law because they constitute betting on the performance of a participant in a game as opposed to being a contest of skill. Because the organizing gaming site takes a portion of the money collected from players as a fee, the defense to

prosecution for illegal gambling that no person received a benefit other than personal winnings is not available. In contrast, in traditional fantasy sports leagues, the organizer or “commissioner” might not take a fee from the collected money. If so, the above defense to prosecution may be available. KP-0057 (2016).

GAME ROOMS

There is no general prohibition against game rooms in Texas, so long as they do not have illegal gambling devices as defined in Section 47.01(4) of the Penal Code. The Legislature has carved out the so-called “fuzzy animal exception” exception to the definition of gambling device for electronic, electromechanical, or mechanical contrivances designed, made, or adapted solely for amusement purposes if players are rewarded exclusively with non-cash merchandise prizes, toys, or novelties that have a wholesale value available from a single play of not more than 10 times the amount charged to play the game or \$5, whichever is less. Tex. Penal Code §47.01(4)(B). Many game room establishments purport to operate under this “fuzzy animal” exception.

1. What is a game room?

A game room is a for-profit business located in a building or place that contains six or more amusement redemption machines or electronic, electromechanical, or mechanical contrivances that, for consideration, afford a player the opportunity to obtain a prize or thing of value, the award of which is determined solely or partially by chance, regardless of whether the contrivance is designed, made or adopted solely for bona fide amusement purposes. ¹ The game rooms often feature eight liner machines which have the appearance of electronic slot machines.

2. What is an eight liner machine?

An “eight liner machine” is an “electronic device, resembling a slot machine, on which a person wins by matching symbols in one of eight lines—three horizontal, three vertical, and two diagonal.” Tex. Att’y Gen. Op. No. GA-0527 (2007).

¹ Section 234.131 of the Local Government Code

3. May a commissioners court regulate game rooms within the county?

Yes. A county may restrict game room locations to specified areas of the county, prohibit locations within a distance prescribed by the commissioners court to a school, place of worship, or residential neighborhood, or restrict the number of game rooms that may operate within a specified area of the county.² Local Gov't Code §234.133.



4. May a county require the owner or operator of a gaming room to obtain a license and pay a fee?

Counties that are authorized to regulate gaming rooms may adopt regulations requiring a license or permit. Local Gov't Code §234.134. The county may also impose a fee not to exceed \$1,000 for a license or license renewal. Local Gov't Code §234.135. However, the fee must be based on the cost of processing the application and investigating the applicant.

5. May a county inspect gaming rooms located in the county?

Yes. A peace officer or county employee may inspect a business in the county to determine how many amusement redemption machines subject to regulation are located on the premises and if the business is in compliance with state law and local regulations. Local Gov't Code §234.136.

6. Are there other types of gambling devices that may be used in a game?

A “gambling device” is broadly defined in Section 47.01(4) of the Penal Code as:
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

² HB 892, 86th Leg. Session, 2019, effective September 1, 2019, repealed Section 234.132 of the Local Government Code which had limited game room regulatory authority to certain counties.

(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.

7. What is the “fuzzy animal” exception?

Added to the Penal Code in 2013, the exception in the definition of gambling devices for those that solely reward players with noncash merchandise prizes and toys worth not more than 10 times the amount charged to play the game or \$5 whichever is less, is commonly called the “fuzzy animal” exception. Tex. Penal Code §47.01(4)(B).

8. Does an eight-liner which dispenses bingo tickets violate state prohibitions against gambling?

Yes. The Attorney General determined that a gambling machine or eight-liner which dispenses bingo cards, card-minding devices, or pull-tab bingo or gift certificates, is effectively encouraging players to play other bingo games. To the extent the machines were designed, made, and adopted for the purpose of encouraging play, they are not solely for amusement and do not qualify for the exception to the prohibition against gambling devices for devices made *solely* for bona fide amusement purposes. Tex. Att’y Gen. Op. No. GA-0812 (2010).

9. Does an eight-liner that provides the winner with a gift certificate or stored value card violate state prohibitions against gambling?

Yes. The Attorney General reviewed a gambling machine or eight-liner which required a player to create an electronic account and provided the player a stored-value card in the amount of his or her accumulated winnings from which merchandise could be purchased. Tex. Att’y Gen. Op. No. GA-0527 (2007). The Attorney General determined that a stored-value card, like a gift certificate, is a money equivalent and does not fall under the non-cash merchandise prizes exemption in Section 47.02(e) of the Penal Code.

10. Does the county have enforcement authority to prohibit a violation?

Yes, the county may sue in district court for an injunction and also seek a civil penalty of not more than \$10,000 for each violation. Local Gov't Code §234.137. A person who intentionally or knowingly operates a game room in violation of county regulation is also subject to prosecution for a Class A misdemeanor. Local Gov't Code §234.138.

11. How may a county dispose of seized gambling equipment?

The Attorney General was asked to opine on whether seized eight-liner slot machines could be disposed of by sale to private investors by means other than through a private auction. The rationale for the request was that this method would allow the county to ensure the devices did not remain in the county or were not removed to another location where their use was illegal. The Attorney General determined the method of disposal depended in part on the court's order of forfeiture. If, under the order, the county was the owner of the equipment, it could qualify as salvage under Chapter 263 of the Local Government Code. The Attorney General also concluded the county could require bidders to contractually agree to take the equipment to a jurisdiction where its use is not illegal. Op. Att'y Gen. GA-0533 (2007).

RAFFLES

In 1989, Texas voters amended the state constitution in order to permit the Legislature to pass laws authorizing charitable raffles. Tex. Const. art. III, §47(d). This activity is regulated under Chapter 2002 of the Occupations Code which is also known as the Charitable Raffle Enabling Act ("Act"). The Act allows qualified organizations to operate a number of raffles during a calendar year for charitable purposes.

In November 2015, an amendment the Texas Constitution was approved that authorizes a professional sports team's charitable foundation to conduct charitable raffles as of January 1, 2016. This activity is regulated under Chapter 2004 of the Occupations Code.

1. What is a raffle?

For purposes of the Act, a raffle is defined in Section 2002.002, Occupations Code, as the award of one or more prizes by chance at a single occasion among a single pool or group of persons who have paid or promised a thing of value for a ticket that represents a chance to win a prize.

The Attorney General opined that a nonprofit charitable organization qualified to conduct a raffle under the Act may award bottles of donated alcohol as a raffle prize. Tex. Att’y Gen. Op. No. KP-0153 (2017)

2. What, if anything, must the raffle operators file with the county?

Generally, there is no filing requirement with the county. However, if the raffle organizers do not have the prize in their possession, they are required to post a bond with the county clerk of the county in which the raffle will be held for the full amount of the prize’s money value. Tex. Occupations Code §2002.065(d).

3. Does the county attorney have authority to enjoin unauthorized raffles?

The county attorney (in addition to the district attorney, criminal district attorney, or attorney general) has authority to bring action in county or district court for a permanent or temporary injunction to prohibit an unauthorized raffle that violates state law. Tex. Occupations Code §2002.058 and Tex. Occupations Code §2004.010.

BINGO

Texas voters approved an amendment to the Texas Constitution in 1989, authorizing the Legislature to allow and regulate bingo games conducted by churches, synagogues, religious societies, volunteer fire departments, fraternal organizations and certain non-profit organizations. The law to be enacted by the legislature was required to contain a local option component for counties, justice precincts, and municipalities. Tex. Const. art. III, §47. The Texas Legislature adopted Chapter 2001 of the Occupations Code, the Bingo Enabling Act, including provisions setting out the local option process.

1. What is the process to legalize or prohibit bingo within a county or justice of the peace precinct?

The commissioners court on its own authority may order a bingo local option election. Occupations Code §2001.651. Additionally, upon receipt of a petition signed by registered voters of the county equaling at least 10% of the vote for governor in the county at the preceding gubernatorial election, the commissioners court is *required* to order a bingo local option election, either legalizing or prohibiting bingo. Occupations Code §2001.652. The election may be held countywide or within a justice precinct.

If the election is the result of a petition, the commissioners court must forward the petition to the county clerk (or elections administrator) for review no later than the 5th day after the date of filing. Occupations Code §2001.653. The county clerk then has 30 days to verify the petition and certify to the commissioners court whether or not it has the requisite number of valid signatures.

If the petition is valid, the commissioners court orders an election to be held within the county or justice precinct on a uniform election date not later than the 60th day after the certification of the petition. Occupations Code §2001.654. If no uniform election date falls within the 60-day period, the election will be held on the next uniform election date. The commissioners court must forward notice to the Texas Lottery Commission that a bingo election has been ordered.

If a majority of qualified voters voting at the legalization election vote in favor of legalization, bingo is legalized within the applicable political subdivision beginning on the 14th day after the date of the canvass. Occupations Code §2001.656. If a majority of qualified voters voting at the election in a prohibition election vote in favor of prohibiting bingo, the prohibition takes effect on the 14th day after the date of the canvass. If a majority of the voters at a legalization election do not vote in favor of legalization, the election has no effect on status in the applicable political subdivision. The same is true if a majority of voters do not vote in favor of prohibition - the status of the applicable political subdivision is not impacted by the election result.

- 2. If two bingo local option authorization elections are held simultaneously in a municipality and a justice of the peace precinct containing territory within the municipality and the election is successful in the justice of the peace precinct but fails in the municipality, what is the local option status of the portion of the municipality that lies within the justice precinct?**

Ordinarily, the status of a municipality prevails over a contrary status determined in a justice precinct or countywide election. Occupations Code §2001.657. However, the failure of the bingo legalization election in a municipality does not confer a status on the municipality. An affirmative vote for legalization or prohibition is required to confer status. Therefore, in this scenario, the area of the municipality within a justice precinct that approved a local option election legalizing bingo shares the status of the justice precinct. Tex. Sec'y State Op. No. DAD-58 (1982).

3. What is the effect of annexation on local option bingo status in a municipality?

Territory annexed by a municipality after the municipality's bingo status has been established gains the municipality's status. Territory that is disannexed assumes the status the territory would have had if it had never been part of the municipality. Occupations Code §2001.657(e).

4. Which bingo status prevails between a justice precinct and a different county-wide status?

A justice precinct's status prevails over a differing county status. Occupations Code §2001.657. Similarly, if two or more local option elections held at the justice precinct level would impact the same territory, the most recent election prevails.

5. What is the county share of bingo proceeds?

It depends. If the county held an election before November 1, 2019 to impose the prize fee, each quarter the county in which a licensed bingo organization conducts a game shall be entitled to 50% of the fee collected on cash prizes during the quarter. The percentage is reduced if any municipalities within the county also voted to impose the prize fee at an election prior to November 1, 2019. If neither entity imposed the prize fee, the remainder of the prize fees on cash prizes is deposited in the general charitable fund of the organization.³



6. Are there limits or guidelines on the use of the county's share of the bingo fees received from the Lottery Commission?

The county's share may be used for any purpose for which the county's general funds may be used. Occupations Code §2001.507.

7. When must a new bingo license holder notify the county?

The Lottery Commission is required to notify the sheriff within 10 days of issuing a license if bingo will be conducted in the county outside the boundaries of a municipality. The Commission is also required to send a copy of the license to the

³ Section 2001.502(b), Occupations Code, amended by HB 914, 86th Leg. Session, effective January 1, 2020.



commissioners court, which shall keep the licenses in a central file. Occupations Code §2001.305.⁴

8. May the commissioners court review records of a bingo establishment?

Yes. The commissioners court has authority to examine or cause to be examined the records of a licensed bingo organization on issues related to the maintenance, control, and disposition of net proceeds derived from bingo. Occupations Code §2001.560. It may also examine a manager, officer, director, agent, member, or employee of the organization under oath concerning the use of the premises, the conduct of the bingo, and the disposition of the proceeds.

9. May the commissioners court seek injunctive relief against bingo parlor operators?

Yes. The commissioners court has authority to petition for injunctive relief if the court believes there has been or is about to be a violation of a provision of the Bingo Enabling Act. Occupations Code §2001.558. Proper venue is in Travis County district court. If the reviewing court determines the chapter has been knowingly violated, the court shall order all proceeds from the illegal bingo to be forfeited to the appropriate governing body.

10. What authority does the sheriff or other county peace officers have to inspect bingo facilities?

A county peace officer may enter and inspect premises where bingo is being conducted or intended to be conducted or equipment for conducting bingo is found. Occupations Code §2001.557.

11. What are the penalties for violating the provisions of the Bingo Enabling Act?

Generally, it is a third degree felony to conduct, promote, or administer bingo without a license. Occupations Code §2001.551. Unsurprisingly, the Legislature has provided a number of exceptions, including: (1) the game is conducted at a home for amusement, no more than 15 players are involved, and the prizes are nominal; (2) the game is operated on behalf of a senior citizens organization, a senior citizens community center program operated or funded by a governmental entity, patients in a nursing home or hospital or retirement home, or patients at a military hospital or Veterans

⁴ Section 2001.305, Occupations Code, amended by H.B. 914, 86th Leg. Session, effective January 1, 2020.

Administration medical center solely for their amusement with nominal prizes; or (3) a business is conducting the game for advertising through a media outlet as long as participation is open to the general public, playing materials are furnished without charge, and players are not required to furnish anything of value to participate.

It is also a third degree felony to knowingly participate in the award of prizes to players in a manner disregarding to any extent the random selection of numbers or symbols. Occupations Code §2001.552.

A person who sells or attempts to sell bingo equipment without a license commits a Class A misdemeanor. Occupations Code §2001.553.

Finally, it is a Class C misdemeanor to (1) make false statements in an application for a bingo license; (2) fail to maintain required records; or (3) divert some of the net bingo proceeds for other than a lawful purpose. Occupations Code §2001.554. If a person has been convicted of a violation of this section previously, further violations are Class B misdemeanors.

12. May eight liner machines be used at a bingo hall to provide gift certificates redeemable only at the hall?

No. Section 47.01(4)(B) of the Penal Code contains an exemption to the general prohibition if the device “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.” However, the Attorney General concluded eight-liner machines that would provide winners with gift certificates redeemable only at a bingo hall did not fall under the exception because gift certificates effectively operate the same as cash at the establishment and therefore do not qualify as non-cash merchandise prize, toy or novelty items. Tex. Att’y Gen. Op. No. GA-0913 (2012).

HORSE AND GREYHOUND RACING (PARI-MUTUEL)

The Texas Racing Act was enacted in 1986 with a provision that required voter approval in a statewide referendum. Tex. Rev. Civ. Stat. Ann. Art. 179e. In November 1987, Texas voters voted in favor of authorizing horse and greyhound racing in the state on a county



by county local option basis. The Act was added as Title 13, Subtitle A-1 of the Texas Occupations Code in the 85th Legislative Session as a non-substantive codification.⁵

1. What does “pari-mutuel” mean?

Pari-mutuel is a term describing the form of betting in which winners who backed the first three places split the losers’ stakes minus the share taken by the operator and the government.

2. What is the process to legalize pari-mutuel gambling in a county?

Chapter 2035 of the Texas Occupations Code sets out the local option process. A racetrack license may not be issued until the county certifies approval of legalization election to the secretary of state. Occupations Code §2035.001. The commissioners court may order the election on its own and must do so after receipt of a petition signed by at least 5% of the number of votes cast in the county for all candidates for governor in the most recent gubernatorial election. Occupations Code §§2035.003, 2035.008.

The petition process is similar to the process for a local option liquor election. The county clerk (or elections administrator) issues a petition on receipt of an application signed by 10 or more registered voters of the county. Occupations Code §2035.004. The completed petition must be filed with the county clerk not later than the 30th day after the date of issuance. Occupations Code §2035.008. Once filed, the clerk has 40 days to review the petition, excluding weekends and legal holidays. Occupations Code §2035.010. On request of any person, the clerk shall check each name but the requestor must pay the clerk a sum equal to 20 cents per name before clerk begins review. Occupations Code §2035.009.

3. What notice to the state is required after the election is held?

If the election is successful, commissioners must certify result to Secretary of State not later than 10th day of canvass. Occupations Code §2035.016. The timing component of the certification is directory. Tex. Att’y Gen Op. No. GA-0286 (2004).

⁵ S.B. 1969, 85th Leg. Session, effective April 1, 2019.

4. After an election under the Racing Act, is there an interval before another election may be held?

Yes. In general, Section 2035.017 of the Occupations Code provides that no election may be held in the county under the Racing Act until five years have elapsed from the date of the preceding election. However, under Section 2035.102 of the Occupations Code, an election to rescind approval of legalization of racing may not be held earlier than two years after the date of the approval election.

5. What is the county's portion of the proceeds?

A commissioners court may collect admission fees not to exceed 15 cents from a licensed racetrack in the county. Occupations Code §2028.251. If the track is not located within an incorporated city, the court may collect an additional 15 cent fee for allocation among the incorporated cities of the county. The county may not impose additional fees on admissions to or wagers placed at a licensed racetrack. The commissioners court shall collect the additional fee on request of the governing bodies of a majority of the incorporated cities and towns of the county and allocation must be based on the population of the cities and towns.

If the racetrack is a Class 1 track, which may operate only in a county with a 1.3 million or more population, the commissioners court of each county adjacent to the county in which the track is located may also collect the fee. Occupations Code §2028.252.

6. Is there a limit on how the county uses the fees?

No. Prior law had required the funds to be used to enforce the provisions of the Texas Racing Act, but a county may now use the collected funds at its discretion.

7. Are there provisions in the law for racing at county fairs and expositions?

Yes. A race meeting in connection with livestock shows or exhibits may not exceed 16 racing days. Occupations Code §2023.001. A county fair in a county with a Class 4 racetrack license may conduct an annual race in connection with a livestock show or exhibition not to exceed 5 racing days. Occupations Code §2023.002. The race must be conducted on one of the fair days. A county may contract with an agent to conduct race. Occupations Code §2023.002.