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June 19, 2018

Integrity Vending, Inc.
733 North King Street
#400-261
Layton, Utah 84041
Atten: Tom Gartman

Re: No Chance based games for Kansas

Dear Mr. Gartman:

You asked our office to review the various Kansas statutes and case law for indications on the legality of a game that has no chance. I have reviewed all applicable case law and appropriate statutes and conclude that the game you have described would be legal for use in Kansas and should not be considered to be gambling devices.

We reviewed the following statutes:

Kansas Statute 21-6403 et. seq.

Kansas Statute 21-4303 et. seq.

These statutes are the penal statutes that detail what is gambling in Kansas. Section 21-6403 has definitions dealing with gambling, which are as follows:

(a) "Bet" means a bargain in which the parties agree that, dependent upon **chance**, one stands to win or lose something of value specified in the agreement.

(b) "lottery" means an enterprise wherein for a consideration the participants are given an opportunity to win a prize, the award of which is determined by **chance**.

(c) "consideration" means anything which is a commercial or financial advantage to the promoter or a disadvantage to any participant.

(e) (1) "gambling device" means any:

(A) So-called "slot machine" or any other machine, mechanical device, electronic device or other contrivance an essential part of which is a drum or reel with insignia thereon, and:

(i) Which when operated may deliver, as the result of **chance**, any money or property; or

(ii) by the operation of which a person may become entitled to receive, as the result of **chance**, any money or property;

(B) other machine, mechanical device, electronic device or other contrivance including, but not limited to, roulette wheels and similar devices, which are equipped with or designed to accommodate the addition of a mechanism that enables accumulated credits to be removed, is equipped with or designed to accommodate a mechanism to record the number of credits removed or is otherwise designed, manufactured or altered primarily for use in connection with gambling, and:

(i) Which when operated may deliver, as the result of **chance**, any money or property; or

(ii) by the operation of which a person may become entitled to receive, as the result of **chance**, any money or property;

We also reviewed various Attorney General Opinions that all seem to follow the same line of discussion that gambling contains three elements, consideration, chance and prize. We reviewed Kansas Attorney General Opinion No. 96-31 (1996), Kansas Attorney

General Opinion No. 87-140(1987), Kansas Attorney General Opinion No.2005-4 (2005) and Kansas Attorney General Opinion 95-19 (1995). These opinions all dealt with gambling in certain forms. All stand for the proposition that gambling in Kansas is like all other states, consideration, chance, and prize.

Also, the Courts in Kansas have been universal in stating that there are three elements to gambling/lottery, (1) consideration, (2) a prize, and (3) the award of the prize is based upon chance. See State v. Finney, 867 P.2d 1034 (Kan. 1994).

GAME TO BE REVIEWED:

The games in question have the same basic function. A game is played on a video screen that displays the game theme. Each game board has five different game themes that have different icons or characters. The game allows a player prior to the player having to risk any money to view what the player will win on the upcoming play of the game. This function eliminates any chance that the player will risk his money without knowing the outcome of that play. The player may also use another function of the game that allows the player to see the next sequence of game plays prior to risking any money. A player may see several hundred plays before even attempting a play on the game. The ability to view plays prior to playing the game takes any risk out of the game. A player knows what he will be awarded before he hazards any of his money. These games are created to entertain a player and not for gambling purposes.

The question then is how will a Kansas court approach the idea of what is chance? I feel that based on the opinions from the Kansas Attorney General and the Kansas Statutes that chance will hold the same meaning it has for virtually every other court that has addressed the issue. Some early courts dealing with the issue stated that chance is

the hazard that causes people to play the game, the element that draws people to play. Chance has been stated to be “the evil principle against which all gambling laws are aimed.” State v. Shorts, 32 N.J.L. 398, 401 (N.J. 1868). Another early case grappling with the issue stated, that chance is found when a game result is issued without a person having any opportunity to use his choice or will, nor any form of human reason, foresight, sagacity or design, to enable him to affect the outcome. People v. Elliott, 41 N.W. 916, 917 (Mich. 1889).

These cases are the basis on which many of the later decisions involving gambling and its many statutes have been based upon. One Kansas Court that discussed some of the issues of gambling was State v. Cooke, (an unpublished opinion). The Court in Cooke was reviewing the conviction of a man who was running a fraudulent scheme to sell a worthless product and told customers they had a chance to win a prize, but in fact no prizes were ever awarded. The Court stated on p. 4 of the decision that “ the fact Cooke’s disclaimer stated no real chance was involved, that this was irrelevant because the victims did not have notice of the disclaimer and believed chance was involved.” The Court in essence stated that the players knowledge is the venue from which chance will be reviewed. A Mississippi court examined this same issue and stated basically the same, that “the element of chance is considered from the player’s point of view, what the machine knows does not affect the player’s gamble.” See Mississippi Gaming Commission v. Six Electronic Video Gambling Devices, 792 So. 2d. 321, 326 (Miss. Ct. App. 2001) Other Courts in Alabama and Texas have adopted a similar sentiment towards what the player knows versus the machine or device.

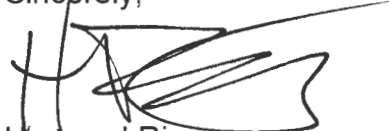
Should a Court follow the majority view that chance is the unknown quantity in a game, then it seems basic that the game you have presented would be determined to be a game that has no element of chance, and thus not a gambling device.

CONCLUSION:

After reviewing the various statutes, case law and attorney general opinions, I feel that a Court reviewing the games as presented, would conclude they are not gambling devices under Kansas law. All of the statutes and case law are clear that chance must be accompanied by consideration and a prize to be gambling in Kansas, and chance is just not present.

Should you have any questions with regards to this opinion please do not hesitate to contact the undersigned. This opinion is intended for use by the addressee.

Sincerely,



Hayward Rigano