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August 30, 2018

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

Atten: Tom Gartman

Re: No Chance based games for Missouri

Dear Mr. Gartman:

You asked our office to review the various Missouri 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 Missouri and should not be considered to be gambling devices.

We reviewed the following statutes:

Missouri Statute § 572.010 et. seq.

Missouri Statute § 434.030 et. seq.

These statutes are the penal statutes that detail what is gambling in Missouri.

Section § 572.010 has definitions dealing with gambling, which are as follows:

As used in this chapter the following terms mean:

(1)“Advance gambling activity”, a person advances gambling activity if, acting other than as a player, he or she engages in conduct that materially aids any form of gambling activity. Conduct of this nature includes but is not limited to conduct directed toward the creation or establishment of the particular game, lottery, contest, scheme, device or activity involved, toward the acquisition or maintenance of premises, paraphernalia, equipment or apparatus therefor, toward the solicitation or inducement of persons to participate therein, toward the actual conduct of the playing phases thereof, toward the arrangement or communication of any of its financial or recording phases, or toward any other phase of its operation. A person advances gambling activity if, having substantial proprietary control or other authoritative control over premises being used with his or her knowledge for purposes of gambling activity, he or she permits that activity to occur or continue or makes no effort to prevent its occurrence or continuation. The supplying, servicing and operation of a licensed excursion gambling boat under sections 313.800 to 313.840 does not constitute advancing gambling activity;

(3)“Contest of chance”, any contest, game, gaming scheme or gaming device in which the outcome depends in a material degree upon an element of chance, notwithstanding that the skill of the contestants may also be a factor therein;

(4)“Gambling”, a person engages in gambling when he or she stakes or risks something of value upon the outcome of a contest of chance or a future contingent event not under his or her control or influence, upon an agreement or understanding that he or she will receive something of value in the event of a certain outcome. Gambling does not include bona fide business transactions valid under the law of contracts, including but not limited to contracts for the purchase or sale at a future date of securities or commodities, and agreements to compensate for loss caused by the happening of chance, including but not limited to contracts of indemnity or guaranty and life, health or accident insurance; nor does gambling include playing an amusement device that confers only an immediate right of replay not exchangeable for something of value. Gambling does not include any licensed activity, or persons participating in such games which are covered by sections 313.800 to 313.840;

(5)“Gambling device”, any device, machine, paraphernalia or equipment that is used or usable in the playing phases of any gambling activity, whether that activity consists of gambling between persons or gambling by a person with a machine. However, lottery tickets, policy slips and other items used in the playing phases of lottery and policy schemes are not gambling devices within this definition;

(6)“Gambling record”, any article, instrument, record, receipt, ticket, certificate, token, slip or notation used or intended to be used in connection with unlawful gambling activity;

(7)“Lottery” or “policy”, an unlawful gambling scheme in which for a consideration the participants are given an opportunity to win something of value, the award of which is determined by chance;

(8)“Player”, a person who engages in any form of gambling solely as a contestant or bettor, without receiving or becoming entitled to receive any profit therefrom other than personal gambling winnings, and without otherwise rendering any material assistance to the establishment, conduct or operation of the particular gambling activity. A person who gambles at a social game of chance on equal terms with the other participants therein does not otherwise render material assistance to the establishment, conduct or operation thereof by performing, without fee or remuneration, acts directed toward the arrangement or facilitation of the game, such as inviting persons to play, permitting the use of premises therefor and supplying cards or other equipment used therein. A person who engages in “bookmaking” as defined in subdivision (2) of this section is not a player;

(11)“Slot machine”, a gambling device that as a result of the insertion of a coin or other object operates, either completely automatically or with the aid of some physical act by the player, in such a manner that, depending upon elements of chance, it may eject something of value. A device so constructed or readily adaptable or convertible to such use is no less a slot machine because it is not in working order or because some mechanical act of manipulation or repair is required to accomplish its adaptation, conversion or workability. Nor is it any less a slot machine because apart

from its use or adaptability as such it may also sell or deliver something of value on a basis other than chance;

(12)“Something of value”, any money or property, any token, object or article exchangeable for money or property, or any form of credit or promise directly or indirectly contemplating transfer of money or property or of any interest therein or involving extension of a service, entertainment or a privilege of playing at a game or scheme without charge;

(13)“Unlawful”, not specifically authorized by law.

The criminal aspect of gambling in Missouri are codified in the following sections:

§ 572.020.

1. A person commits the crime of gambling if he knowingly engages in gambling.

2. Gambling is a class C misdemeanor unless:

(1) It is committed by a professional player, in which case it is a class D felony; or

(2) The person knowingly engages in gambling with a minor, in which case it is a class B misdemeanor.

Promoting gambling in the first degree.

§ 572.030.

1. A person commits the crime of promoting gambling in the first degree if he knowingly advances or profits from unlawful gambling or lottery activity by:

(1) Setting up and operating a gambling device to the extent that more than one hundred dollars of money is gambled upon or by means of the device in any one day, or setting up

and operating any slot machine; or

(2) Engaging in bookmaking to the extent that he receives or accepts in any one day more than one bet and a total of more than one hundred dollars in bets; or

(3) Receiving in connection with a lottery or policy or enterprise:

(a) Money or written records from a person other than a player whose chances or plays are represented by such money or records; or

(b) More than one hundred dollars in any one day of money played in the scheme or enterprise; or

(c) Something of value played in the scheme or enterprise with a fair market value exceeding one hundred dollars in any one day.

2. Promoting gambling in the first degree is a class D felony.

Promoting gambling in the second degree.

§ 572.040.

1. A person commits the crime of promoting gambling in the second degree if he knowingly advances or profits from unlawful gambling or lottery activity.

2. Promoting gambling in the second degree is a class A misdemeanor.

Possession of gambling records in the first degree.

§ 572.050.

1. A person commits the crime of possession of gambling records in the first degree if, with knowledge of the contents thereof, he possesses any gambling record of a kind used:

(1) In the operation or promotion of a bookmaking scheme or enterprise, and constituting, reflecting or representing more than five bets totaling more than five hundred dollars; or

(2) In the operation, promotion or playing of a lottery or policy scheme or enterprise, and constituting, reflecting or representing more than five hundred plays or chances therein.

2. A person does not commit a crime under subdivision (1) of subsection 1 of this section if the gambling record possessed by the defendant constituted, reflected or represented bets of the defendant himself in a number not exceeding ten.

3. The defendant shall have the burden of injecting the issue under subsection 2.

4. Possession of gambling records in the first degree is a class D felony.

Possession of gambling records in the second degree.

§ 572.060.

1. A person commits the crime of possession of gambling records in the second degree if, with knowledge of the contents thereof, he possesses any gambling record of a kind used:

(1) In the operation or promotion of a bookmaking scheme or enterprise; or

(2) In the operation, promotion or playing of a lottery or policy scheme or enterprise.

2. A person does not commit a crime under subdivision (1) of subsection 1 of this section if the gambling record possessed by the defendant constituted, reflected or represented bets of the defendant himself in a number not exceeding ten.

3. The defendant shall have the burden of injecting the issue under subsection 2.

4. Possession of gambling records in the second degree is a class A misdemeanor.

Possession of a gambling device.

§ 572.070.

1. A person commits the crime of possession of a gambling device if, with knowledge of the character thereof, he manufactures, sells, transports, places or possesses, or conducts or negotiates any transaction affecting or designed to affect ownership, custody or use of:

(1) A slot machine; or

(2) Any other gambling device, knowing or having reason to believe that it is to be used in the state of Missouri in the advancement of unlawful gambling activity.

2. Possession of a gambling device is a class A misdemeanor.

Also of importance is the interesting law that Missouri has which is § 434.030 which states "Any person who shall lose any money or property at any game, gambling device or by any bet or wager whatever, may recover the same by a civil action."

The key to understanding all gambling is to understand the game you are using and the interpretation of what chance is in Missouri.

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 Missouri court approach the idea of what is chance? I feel that based on the opinions from the Missouri Attorney General and the Missouri 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. The Missouri Supreme Court discussed some of the issues with regard to gambling and stated as follows:

“This Court has repeatedly held that the elements of a lottery are consideration, chance, and prize. *MobilOil Corp.*, 455 S.W.2d at 507; *State v. McEwan*, 343 Mo. 213, 120 S.W.2d 1098, 1099 (Mo. banc 1938); *McKittrick*, 110 S.W.2d at 713; *State ex rel. HomePlanners Depository v. Hughes*, 299 Mo. 529,

253 S.W. 229, 230 (Mo. banc 1923). The Constitution itself adopts this definition: the term "lottery ... shall mean only those games or contests whereby money or something of value is exchanged directly for the ... chance to participate in the game...." Mo. Const. Art. III, (39(9). The parties do not dispute that "consideration" and "prize" are present in all riverboat games. The parties have focused principally on the relative role of "chance," as opposed to "skill," in riverboat games. This Court has long held that a game escapes the constitutional bar against lotteries if skill is predominant. McKittrick, 110 S.W.2d at 713; State ex rel. Igoe v. Joynt, 341 Mo. 788, 110 S.W.2d 737, 740 (Mo. banc 1937).

Recently, however, this Court stated that horse racing is not a "lottery" within the meaning of the Constitution. Barnes v. Bailey, 706 S.W.2d 25, 32 (Mo. banc 1986). Barnes particularly noted that the lottery prohibition was not intended to reach all gambling. Id.

Harris emphasizes McKittrick and its progeny. The defendants stress Barnes and its implications. However, reading McKittrick and Barnes together, a line exists to distinguish those forms of gambling that are lotteries, and those, like horse racing, that are not lotteries. Lottery, when defined solely by consideration, chance, and prize, sweeps too broadly and does not distinguish between lotteries and other forms of gambling. While "prize" and "consideration" are not at issue, "chance" is central and is defined as "something that happens unpredictably without any discernible human intention or direction...." Webster's Third New International Dictionary 373 (1976). Therefore, if skill is present in a game, there is human intention or direction and pure chance is not present.

The Constitution specifically recognizes games of skill, as opposed to games of chance. Mo. Const. Art. III, (39(9) (defining games of "skill or chance.")

From an individual player's perspective, a lottery is a form of gambling in which consideration is paid for an opportunity at a prize, where skill is absent or only nominally present. No player's choice or will has any part in the lottery's result, nor can human reason, foresight, sagacity, or design enable a player to affect the game. Skill does not affect the probability of "winning." No one can be a better lottery player than anyone else (though players may buy more opportunities).

Games that are not "lotteries" have an element of skill. Skill increases the probability of "winning." In skill games, one person can be a better player than others."

Harris v. Missouri Gaming Comm'n, 869 S.W.2d 58, 62 (Mo. 1994).

This ruling basically brings Missouri in line with most other states that simply state gambling consist of consideration, chance and prize. The chance element is described by the Harris court simply by its Webster Dictionary definition as something that happens unpredictably without any discernible human intention or direction. In the game that you have proposed to use in Missouri, the game allows a player to see what the next result is with out having to risk any of his or her money. So using the definition that the Court used in Harris, it seems pretty evident that the game at issue would not be a game of chance. The outcome is presented to the player before risk of money. Nothing in this game is unpredictable. Every outcome is decided prior to the player spending his money.

One court in Mississippi stated 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.

The Missouri Attorney General issued an opinion on "Las Vegas Nights". Which is a way that charities use gambling to raise money for their cause. The Attorney General of Missouri stated in Opinion 78-1980:

An examination of your description of a "Las Vegas Night" indicates. that a participant pays or risks an amount of money with the expectation that at the end of the night he can, if he is lucky, redeem his play money for an item of value . Thus, your description fits the definition of gambling as defined above. See State v. One Jack Jill Pinball Machine, 224 S.W.2d 854, 860 (Mo.App. , -spr.D. 1949~hich states that gambling has three necessary elements: (1) consideration or risk, (2) chance and (3) reward or prize.

The opinion stands for the proposition that even though a charity is not profiting from the gambling it is still gambling if all three elements of it are present.

It is the same process to review if one of the elements is missing then it's not gambling. Here in your game clearly the element of chance is not present. I would expect a Missouri court to rule that chance is not present in your game.

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 Missouri law. All of the statutes and case law are clear that chance must be accompanied by consideration and a prize to be gambling in Missouri, 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