



TENNESSEE

I. Definition of Gambling

1. Definition

Tennessee defines gambling according to the “any chance” scheme. “Gambling means risking anything of value for a profit whose return is *to any degree contingent on chance*, or any games of chance associated with casinos, including, but not limited to, slot machines, roulette wheels and the like.” Tenn. Code Ann. § 39-17-501 (2006) (emphasis added). Profit means anything of value in addition to the gambling bet. Tenn. Code Ann. § 39-17-501(6) (2006). “The Sentencing Commission Comments state that the commission intends to include any scheme by which value is risked upon a chance for greater value as a ‘gambling’ offense.” 02 Op. Att’y Gen. 054 (2002).

The gaming statutes historically have been found to prohibit prize giveaways restricted to purchasers of products (commonly known as “gift enterprises”). See, e.g., *Painter v. State*, 163 Tenn. 627, 45 S.W. 2d 46 (1932)(mint vending machine that delivered in addition to mints an unknown number of chips with value constituted a “gaming device”); *Eubanks v. State*, 50 Tenn. 488 (1871)(sale of ten cent candy for fifty cents in a box with a prize of unknown value constituted “gaming”); and *Bell v. State*, 37 Tenn. 507 (1857)(prize giveaway only for purchasers of books constituted “gaming”). 06 Op. Att’y Gen. 046 (2006) (opining that poker is illegal based on the ‘any chance’ language found in Tenn. Code Ann. § 39-17-501).

Prior Version : TCA § 39-2033 (repealed) exempted bona fide contests of skill. But at least one court has held that an element of chance makes a machine illegal. *Ferguson v. State*, 628 S.W.2d 37 (Tenn. Ct. App. 1981).

2. Exemptions

The following are not gambling under Tennessee law: a lawful business transaction, authorized annual events operated by charitable organizations, and the state lottery. Tenn. Code Ann. § 39-17-501(1)(a) (2006). “Lawful business transaction” includes any futures or commodities trading. Tenn. Code Ann. § 39-17-501(4) (2006).

It is also not considered gambling to contend for premiums offered at public fairs. Tenn. Code Ann. § 39-17-508 (2006). These premiums are listed in Tenn. Code Ann. § 43-21-106 (2006).

State v. Vance, No. E2003-00110-CCA-R3-CD, 2004 WL 746296 (Tenn.Crim.App. Apr. 8, 2004): \$1 baseball card “free-spin” machine is illegal; it could accumulate credits on machine and player could cash out from store clerk. The company also offered forms where you could send away for a free

play; this alternative free method of entry did not save the game from being illegal.

A machine that upon payment of a fee dispenses a short term prepaid telephone or “psychic reading” card connected to a scratch-off type card, which, in turn, provides the opportunity to instantly win cash or other prizes, violates Tennessee's lottery or gambling prohibitions. 02 Op. Att’y Gen. 089 (2002). Opinion distinguishes it from other promotions, such as at fast food chains, because those products are often sold without the promotion, while these phone cards are only sold with the attached promotion; the alternative free method of entry did not save it from being illegal.

II. Definition of Bookmaking

Tennessee does not appear to have any statutory, attorney general opinions, or case law defining bookmaking.

III. Specific Gaming Device Definitions

There is a general definition of what a gambling device is, but no specific items are listed or defined. “Gambling device or record means anything designed for use in gambling, intended for use in gambling, or used for gambling.” Tenn. Code Ann. § 39-17-501(3) (2006).

When a device is present, the cases either characterize it as an illegal lottery, or as a gaming device. “A gambling device is defined as anything designed for use in gambling, intended for use in gambling, or used for gambling. This definition is sufficiently clear to provide notice that a slot machine is a gambling device. A slot machine is designed for use in gambling and normally intended for use in gambling. The outcome of a game on Burkhart's machines is contingent upon chance. Skill is not required to play the slot machines. The confiscated machines were equipped with knock-off switches and retention meters. The number of games or credits won by the player could be recorded by the machines. The knock-off switch on the machines allowed credits won to be removed from the screen but remain recorded within the machine. Unlike standard arcade games, the settings on the slot machines could be changed to manipulate the odds of winning. The characteristics of the machines demonstrate their design for use in gambling. “The evidence showed that the operation of the Free Spin machines fell within the definition of ‘gambling’ because the machines were used to risk credits worth five cents apiece for a profit whose return was contingent on chance. The fact that the Free Spin machines dispensed a sports card for every dollar inserted does not change the gambling characteristics of the machines.” *Id.*

“Whether a device is a gambling device by design turns upon whether the device is principally designed for use in gambling based upon the objective features that the manufacturer has incorporated into the device. This construction narrows the definition by limiting it to devices principally designed for gambling. It also provides guidance for determining the device's principal use by directing that we look to the device's objective features. The Attorney General has adopted this construction of the ‘designed for use’ language in § 39-17-501(3), recognizing that the determination of whether an item is a

gambling device depends ‘upon the particular aspects of the device, as it is designed to actually be played.’ Op. Att’y Gen. 94-129 (Nov. 2, 1994).” *State v. Burkhart*, No. 01C01-9804-CC00174, 1999 WL 1096051 (Tenn.Crim.App. Dec. 6, 1999); *State v. Burkhart*, 58 S.W.3d 694 (Tenn. 2001) (upholding the constitutionality of Tenn. Code Ann. §§ 39-17-501 and -505).

IV. Bucket Shop Laws

The most recent case to recognize the illegality of bucket shop transactions is *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Schriver*, 541 S.W.2d 799 (Tenn. Ct. App. 1976). But that case relied on an old statute, Tenn. Code Ann. § 39-2023, that is no longer in existence. “39--2023 sets up a two-fold test to determine the illegality of a particular transaction, namely, that the parties to the contract intended simply to settle on the margin And to do so without effecting a bona fide buy and sell transaction on a board of trade or exchange. It requires the presence of both elements to render the transaction illegal as a bucket shop transaction. The intent of the parties to make or receive delivery is immaterial....” *Id.*

V. Prohibition of Games of Skill

The attorney general recognizes the following as games of skill: chess, checkers, bowling, baseball, archery, golf and spelling contests. 05 Op. Att’y Gen. 161 (2005). This is not necessarily an exhaustive list, but these games can be considered ‘safe.’ The opinion discusses the ‘dominant factor’ test, but does not say whether it would apply in the state. By the plain terms of the gambling definition statute, that test would not apply. *See also*, 99 Op. Att’y Gen. 084 (1999) (fishing tournament in which entrants pay fees with an opportunity to receive cash and other prizes constituted gambling under Tenn. Code Ann. § 39-17-502(a)).

Under the older statute, which allowed an exception for some skill games, video blackjack was still illegal because it contained an element of chance. *Ferguson v. State*, 628 S.W.2d 37 (Tenn. Ct. App., 1981).

1. Poker/Card Games

It is the opinion of the attorney general that poker is illegal in Tennessee. “If a participant who pays admission into the poker tournament may receive anything of value other than simply a return of his deposit, whether through obtaining another participant’s ‘deposit’ on chips or other equipment, side betting, or any valuable prize awarded, it is the opinion of this Office that the tournament is illegal.” 06 Op. Att’y Gen. 046 (2006). This is consistent with the ‘any chance’ definition of gambling adopted by the legislature. *See* 06 Op. Att’y Gen. 046 (2006) (opining that poker is illegal based on the ‘any chance’ language found in Tenn. Code Ann. § 39-17-501).

2. Dice

Tennessee law contains no statutory, attorney general opinions, or case law regarding games using dice.

3. Billiards

Tennessee law contains no statutory, attorney general opinions, or case law regarding billiards.

4. Bowling

Tennessee law contains no statutory, attorney general opinions, or case law regarding bowling games.

5. Darts

Tennessee law contains no statutory, attorney general opinions, or case law regarding games using darts.

VI. Express Exemptions

1. Social

Tennessee law contains no statutory authority, attorney general opinions, or case law regarding social gaming exemptions.

2. Charity

Tennessee's Charitable Gaming Implementation Law is contained in Tenn. Code Ann. §§ 3-17-101 to -116 (2006). A Charitable Gaming Oversight Committee is created by Tenn. Code Ann. § 3-15-1001 (2006) to oversee the operation of the Charitable Gaming Implementation Law. Only a tax-exempt organization under I.R.C. § 501(c)(3) (2005) is eligible for the charity gambling sections. Tenn. Code Ann. § 3-17-102 (2006). The charitable sections allow an annual event conducted with a single type of lottery game. *Id.* There is an extensive application process, and the state house and senate must approve the event.

The charitable organization must be at least 5 years old. The event must be approved by two-thirds vote of all members elected to each house of the general assembly. A single type of game is allowed at the event which may be raffles, reverse raffles, cakewalks and cakewheels, but expressly NOT pulltabs, punchboards, bingo, instant bingo, video lottery, instant and on-line lottery games of a type operated by the Tennessee education lottery corporation, keno and games of chance associated with casinos including, but not limited to, slot machines, roulette wheels, and the like. Definitions for some of those games are also found in this section. Tenn. Code Ann. § 3-17-102 (2006).

The annual event period is July 1 to June 30; an application must be submitted by December 31 of the year prior to the beginning of the annual event period the organization wishes to participate in. The deadlines have changed frequently and some years contain special provisions for advance deadlines; check the statute before relying on any particular deadline. No more than two events may be held at a location in the same county in any one month. Joint events are possible, but additional application procedures are required. There are restrictions on who may run the event and whether the organization may have outside assistance. The cops must be notified 130 days in advance of the event. Raffle tickets may be sold 120 days before the event. Tenn. Code Ann. § 3-17-103 (2006).

Required materials for the application process include organizational

documents, tax documents, contact information for organization president or chair and much more. The section also explains how to get an application form. The application fee has a statutory cap of \$700. Tenn. Code Ann. § 3-17-104 (2006).

Upon application denial, a request for rehearing is available. The claims commission reviews on a clearly erroneous standard. Tenn. Code Ann. § 3-17-105 (2006).

Financial accounting data is required after the event. This includes gross revenues, lists of all winners over \$50, itemized expenses and more. Tenn. Code Ann. § 3-17-106 (2006).

No prizes can be paid to most people associated with the event. This includes employees of the organization that runs the event and their family members. Other categories are also excluded. Tenn. Code Ann. § 3-17-109 (2006).

Total prize value is limited to \$250,000. But there is an exception for real property, and where real property is offered, an alternate cash prize may also be offered if disclosed in the rules. Under certain circumstances, the total prize value can be much less (\$25,000 in some cases). No prize may be paid out in cash; this includes checks payable to cash. Tenn. Code Ann. § 3-17-110 (2006).

Violating these sections, or certain other code sections disqualifies a person from filing an application for a charity event. Tenn. Code Ann. § 3-17-111 (2006).

The penalty for violation of these sections is up to \$50,000 at the secretary's discretion. Tenn. Code Ann. § 3-17-113 (2006).

Criminal background checks are required and must be paid for by the organization. Tenn. Code Ann. § 3-17-114 (2006).

The Tennessee Claims Commission has power to make rules related to charity events under these sections. Tenn. Code Ann. § 3-17-116 (2006).

3. Chucky Cheese

Tennessee law contains no statutory authority, attorney general opinions, or case law regarding "chucky cheese" exemptions.

4. Commercial

Tennessee law contains no statutory authority, attorney general opinions, or case law regarding commercial gaming exemptions.

5. Lottery

The Tennessee constitution forbids lotteries, but makes an exception for a state-run lottery. Tenn. Const. Art. XI, § 5. There is also an exception for annual events run by a charitable organization. The lottery implementation law is found in Tenn. Code Ann. §§ 4-51-101 to -135 (2006). These sections create the Tennessee Education Lottery Corporation, which runs the state lottery. Retailer contracts, ultimate payout percentage, usage of funds, background checks, and every other aspect of the lottery is regulated in these statutes.

The TELC is a corporation, not a state agency. Though every aspect of it is regulated through these statutes, it also has power to set up and amend its own by-laws through its seven-member board of directors.

The board may choose the types of games to be conducted, including, but not limited to, instant lotteries, online games, and other games traditional to the lottery. Such games may include the selling of tickets or shares, or the use of electronic or mechanical devices; provided, however, that the board shall not approve, and the corporation shall not operate, a video lottery as defined in § 4-51-102(8)(B). Tenn. Code Ann. §§ 4-51-108 (2006).

Bingo games in which cash prizes are awarded to winners from payments "donated" from some or most of the participants constitute lotteries and are subject to the prohibitions in Tennessee's gambling statutes. 99 Op. Att'y Gen. 191 (1999).

Managing a lottery pool (buying tickets and distributing wins amongst all members) for a fee is illegal in the state. 04 Op. Att'y Gen. 042 (2004).

6. Horseracing

In 1987, the legislature created the Tennessee State Racing Commission. Horse tracks were to be built after approval by local referendum voting. Tenn. Code Ann. §§ 4-36-101 through 4-36-402 (2006) contain the racing legislation. No track was ever built and the statute had a sunset provision that disbanded the Racing Commission on June 30, 1998. Tennessee courts have ruled that in the absence of the existence of the Racing Commission, racing is illegal in the state. *Tennessee Downs, Inc. v. Gibbons*, 15 S.W.3d 843 (Tenn. Ct. App. 1999).

7. Other Pari-mutuel

Tennessee law contains no statutory authority, attorney general opinions, or case law regarding pari-mutuel gaming exemptions.

VII. Specific Internet Prohibition

Tennessee does not have any statutory authority, attorney general opinions, or case law regarding internet gaming prohibitions.

VIII. Gaming Crimes & Penalties for Unlawful Gaming

A mere player of a game can be found guilty of gambling in Tennessee. "A person commits an offense who knowingly engages in gambling." Tenn. Code Ann. § 39-17-502(a) (2006). "The offense of gambling is a Class C misdemeanor." Tenn. Code Ann. § 39-17-502(c) (2006).

Gambling promotion is also an offense; "a person commits an offense who knowingly induces or aids another to engage in gambling, and ... derives an economic benefit other than personal winnings ... or [p]articipates" and has a greater chance of winning than the other participants. Tenn. Code Ann. § 39-17-503 (2006). Gambling promotion is a Class B misdemeanor. Tenn. Code Ann. § 39-17-503(b) (2006).

Aggravated gambling promotion is a class E felony. Tenn. Code Ann. § 39-17-504(c) (2006). A person commits this offense where he “knowingly invests in, finances, owns, controls, supervises, manages or participates in a gambling enterprise. [G]ambling enterprise means two (2) or more persons regularly engaged in gambling promotion...” Tenn. Code Ann. § 39-17-504(a-b) (2006).

The 2 defendants in *State v. Vance* were convicted of this offense for operating 29 ‘free spin’ machines. It is much more common to see this offense charged than to see gambling promotion of the non-aggravated kind.

Possession of a gambling device or record is a Class B misdemeanor. Tenn. Code Ann. § 39-17-505(c) (2006). A person “who knowingly owns, manufactures, possesses, buys, sells, rents, leases, stores, repairs, transports, prints, or makes any gambling device or record” is guilty of this offense.

“A person commits an offense who knowingly makes or aids in the making of any lottery.” Tenn. Code Ann. § 39-17-506(a) (2006). The penalties under this section vary according to the amount of money involved:

\$1 - \$50: Class C misdemeanor

\$50 - \$250: Class B misdemeanor

\$250 - \$10,000: Class A misdemeanor

\$10,000+: Class E felony

Tenn. Code Ann. § 39-17-506(c) (2006). The attorney general has said that a poker tournament falls under this offense. 05 Op. Att’y Gen. 161 (2005). Bingo is also a lottery and so the state has no power to authorize it under the state constitution. *Secretary of State v. St. Augustine Church/St. Augustine School*, 766 S.W.2d 499 (Tenn. 1989).

Illegal gambling falls within the definition of nuisance in Tennessee. Tenn. Code Ann. § 29-3-101 (2006). Anything used in connection with maintaining a nuisance is subject to seizure and forfeiture to the state. *Id.* In some cases, this can be much harsher than the criminal penalties mentioned above. This may be especially true where, as mentioned above, prosecuting a player is not worth the time, but taking his money is.

IX. Statute of Anne/ Recovery of Debts

“All contracts founded, in whole or in part, on a gambling or wagering consideration, shall be void to the extent of such consideration.” Tenn. Code Ann. § 29-19-101 (2006). A person winning something at gambling may not commence suit to recover it. Tenn. Code Ann. § 29-19-102 (2006). Just bringing such a suit results in a forfeiture of \$100, one half to the prospective defendant. Tenn. Code Ann. § 29-19-103 (2006). A loser who pays may recover such losses or their value by suit if commenced within 90 days. Tenn. Code Ann. § 29-19-104 (2006). The family or a creditor of the losing gambler may also sue to recover the losses. Tenn. Code Ann. §§ 29-19-105 and -106 (2006).

The attorney general confirms that the Statute of Anne is alive and well, living through Tennessee’s statutes; and in some ways it is stricter now than the

original English statute. 04 Op. Att'y Gen. 046 (2004).

X. Lawful Commercial Casino Gaming

Tennessee does not have any statutory authority, attorney general opinions, or case law granting authority for commercial casino gaming.
