Op-Ed/Editorials – Nevada A.G. Finds Free Internet Gambling Is Still Gambling

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Nevada is the only state in the United States, and probably the only government in the world, to conclude that players are making wagers — when they are not making wagers.

Everyone knows what gambling is. Judges and lawyers may use words such as prize, chance and consideration. But you do not have to have studied gaming law to know that gambling occurs when players risk something of value, with the understanding that they will be paid if they are correct in predicting the outcome of an uncertain event.

If one of those three — elements, prize, chance and consideration — is missing, it simply is not gambling.

If there is nothing to win, how can it be gambling?

There are some old statutes and even older cases in a few states which held that amusement games could be gambling, even if the prize is simply more time at the game. Slick operators would set up gambling games, even video poker machines, and say that players could only win free replays.
Pity the poor winner of a video game jackpot in a bar, when a cop is standing nearby. He cannot cash in the credits with the bartender, as he normally would have done. Instead, he has to stand there, probably quietly weeping, watching his jackpot shrink away as he is forced to play game after game.
If you eliminate the next element, chance, how can it be gambling? People bet on horse races, not on taped replays of races that have just been run.

We have names for individuals who know what will happen when opposing bettors do not. "Cheat" is the nicest term for someone who rigs a game.

Of course, the game could be a legal game of skill. There still is a risk of losing. Even chess tournaments cannot be predicted with 100 percent certainty. But the law recognizes that if chance is not the predominant factor, the game is not gambling.

The third element, consideration, is the most difficult for non-lawyers to understand. In gaming law, consideration means risking something of value, usually money. But there are old cases, usually involving promotional sweepstakes, where courts have found consideration when players have had to expend time and effort to enter. There are even older cases where courts have decided consideration was present because the game promoter got more customers by running the free sweepstakes.

Today, consideration for gambling almost always means betting money. This is particularly true when it comes to Internet gambling. Even if players have to spend time at a web page and effort in filling out a form or playing a game, and the website operator gets more eyeballs looking at its banner ads, there is no consideration. If participants get prizes based on chance, but they do not risk any money, it is not gambling.

The Attorney General of Nevada agrees. But, she has also declared that betting nothing for something still can be an illegal wager.

The issue arose when the State Gaming Control Board asked for advice on Internet promotional games proposed by MGM Mirage ("MGM") for its websites. Attorneys from the Board and Attorney General’s office had meetings and conference calls with representatives of MGM and the game designers, Silicon Gaming and its subsidiary, WagerWorks. Frankie Sue Del Papa, as Attorney General, issued the formal Opinion, although it was actually written by Jeffrey R. Rodefer, Senior Deputy Attorney General, Gaming Division.

The A.G. Opinion explicitly held that "instant incentives," which entitle website patrons to receive randomly awarded prizes or sweepstakes tickets, are not gambling. MGM can also offer redeemable "casino points," based on time spent at the site.

But the Opinion declares that it is "a wagering activity" if prizes are given to winners of free,
"for-fun" casino games online, like "virtual blackjack, roulette or some other

traditional casino game."
Here is how the Attorney General justified the rather startling idea that a player can be making a wager without the possibility of losing anything.

In 1997, in response to some tax and bankruptcy cases, the Nevada Legislature amended the definition of "wager." A "wager" now includes risking not only money, but also a "representative of value." A "representative of value"was defined to mean "any instrumentality used by a patron in a game whether or not the instrumentality may be redeemed for cash." Sounds like a gaming chip to me.

The Legislature and casino lobbyists were probably thinking of chips that were redeemable for merchandise, but not for cash. Also, the change enabled casinos to deduct jackpots awarded on free-play slot promotions as losses when they calculated gross gaming revenue for taxes. And it helped to ensure that casinos would not have to pay back money they had received from a person who then declares bankruptcy.

Of course, it is also possible that the Nevada Legislature intended, in 1997, to prohibit free casino games on the Internet, while allowing free online lotteries.

Right.