

Op-Ed/Editorials - When Is Poker Legal?

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When, exactly, is it legal to run a poker game?

Opening a card room without a license is obviously illegal. But what if the operator doesn't rent seats or rake the pot?

Enforcement actions are beginning against bar-owners and others who have set up poker tables like this. For example, the Louisiana Office of Alcohol and Tobacco Control is trying to close down the no-limit Texas Hold 'Em tournaments that have become common in barrooms throughout the state. Whether it succeeds will depend upon subtle and complex questions of state law, such as, "Is a bar owner 'profiting from gambling?' if he takes no direct cut, but increases his business by having poker tournaments."

Most casinos can spread poker under state law. California, the biggest poker jurisdiction, also has "local option," meaning clubs must have licenses from their local cities or counties. Some states, like Florida, allow commercial poker, but put severe limits on how much can be bet.

But, the law for licensed operators and tribes can be very complicated. For example, California has a statute that allows a club to rake the pot only three times. An operator who takes money out of the pot four times is committing a misdemeanor. And so, unknowingly, are all the players at that table.

Tribes in states with legal poker can operate their own games. But in a little-known twist in the federal Indian Gaming Regulatory Act, poker is one of the very few forms of gambling where the tribes must follow state law on stakes and hours of operation. So, any high-stakes poker game you see in a tribal casino in Florida

is illegal. Florida tribes could run games with limits higher than state law, but only if they first have compacts with the state.

Operators in a few states have found obscure exemptions from the general prohibitions on operating poker games for profit. In Kentucky, it is apparently perfectly legal for a licensed charity to run poker games, as long as they are limited to six-hour stretches. In New Hampshire, entrepreneurs run up to ten poker tournaments a year for nonprofit organizations.

Many states have express exemptions for social games played in private homes. In California, there is no state prohibition on a home poker game, where no one can make any money other than what they win. Note, this still could violate a city or county ordinance, although you have a better chance of winning the World Series of Poker than of being arrested.

Poker could also be legal if it lacked one of the elements of gambling: prize, chance or consideration.

Games where players pay, but can win nothing of value, are usually legal as amusement games. I believe it is possible to run poker tournaments as contests of skill. And operators are taking the “no purchase necessary” approach, and opening poker games which can cost nothing to enter.

The only way to be sure your plan is legal is to have a lawyer apply your state’s laws to your idea. It is very difficult, but not impossible, to operate poker games that won’t get you thrown in jail But the next problem is figuring out how to be both legal and still make money.

What do you think? Comments on this article can be addressed to Prof. I. Nelson Rose.

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