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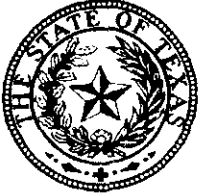
DEC 22 2004

OPEN RECORDS DIVISION

**JOHN W. SMITH**

*District Attorney  
Ector County*

70th, 161st, 244th, 358th Judicial Districts  
Room 305, 300 North Grant  
Odessa, Texas 79761  
A.C. 432-498-4230 • Fax 432-498-4293



CHIEF DEPUTY DISTRICT ATTORNEY  
Linda Deaderick

DEPUTY DISTRICT ATTORNEYS  
Rod Price  
Dan Wade  
Susan Redford  
Leonard J. Bruce  
Lee McClendon

**RQ-0305-GA**

December 17, 2004

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DEC 29 2004

OPINION COMMITTEE

The Honorable Greg Abbott  
Attorney General of Texas  
P. O. Box 12548  
Austin, TX 78711-2548

FILE # MC-44065-04  
I.D. # 044065

Dear Sir:

Attached is a Request for Attorney General Opinion regarding Texas Hold-Em Tournaments.

The applicable law is shown in such request as well as the questions raised after our research.

Please call me if you have any questions.

Very truly yours,

A handwritten signature in black ink, appearing to read "John W. Smith".

JOHN W. SMITH

JWS/jbw  
attachment



# JOHN W. SMITH

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December 30, 2004

To the Honorable Greg Abbott  
Attorney General for State of Texas  
P. O. Box 12548  
Austin, TX 78711-2548

RE: AMENDED Request for Attorney General Opinion Regarding a "TEXAS Hold-Em Tournament" held in a public place.

Dear Attorney General Abbott:

I am the elected District Attorney for the 70<sup>th</sup> Judicial District of Texas, which involves Ector County, Texas. My office respectfully requests an Attorney General's Opinion as to whether or not a person or company in our case, that holds an on-premises alcoholic beverage permit can hold or participate in a "Texas Hold-Em" Poker Tournament without violating the gambling statutes of the State of Texas.

The applicable statutes include the following: TEXAS PENAL CODE Sec. 47.01 (1)(B), Sec. 47.02(a)(3) and to the following cases: MILLER V. STATE 874 S.W.2d 908, 912 (Tex.App.-Houston[1st Dist.] 1994 pet.ref'd), EX PARTE ELLIOT 746 S.W.2d 762, 764 (Tex.Crim.App.1988).

A question has been asked of our office about whether or not a company that holds an on premises alcoholic beverage permit could hold a "Texas Hold-Em" Poker Tournament on the premiss that are covered under the Alcoholic Beverage Permit on several nights a week to generate additional attendants at the club. The club intends for the following scenario to occur:

Persons of an unknown number would pay a nominal fee to enter the "Texas Hold-Em" Tournament. The fee is probably negotiable but would be in the range of Twenty Five to Fifty Dollars (\$25 to \$50) per person. A "Texas Hold-'Em" Poker Tournament would ensue with the registered players participating at various tables and using chips that although have a money denomination, actually represent

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no money changing hands. (For the Fifty Dollars (\$50.00) buy-in the player would receive One Thousand Dollars (\$1,000.00) in chips that have no actual cash value.) As the Tournament progresses, the players that accumulate the most chips will by skill force out the less skilled players and at the end of the evening the winners at each table will accumulate and play a final table at which a certain number of prize places will be paid by the establishment to those persons winning the Tournament. The house intends to take no cut of the entry fee of each player and the entire prize pool that is generated by the number of players times their entry fee will be paid back to the winner players at the end of the night, either in a first through third, or first through fifth or first through eighth combination depending on the number of players.

On its face a poker tournament is probably considered gambling under the Penal Code Sec.47.02(a)(3) because it is playing a game with cards, dice, balls or other gambling devices. However, Sec.47.02(a)(3) requires a person to play and BETS for money or other thing of value. We then have to go back to the definitions contained in Sec.47.01(1)(B). Certainly an argument can be made that the payoff at the end of the evening is the payment of a prize, award or compensation to the actual contestants who win a bonafide contest for the determination of skill.

Assuming that the bar owner or alcoholic beverage premises permittee takes no cut of the prize money pool generated and assuming that no other money changes hands, would a tournament of this type violate the gambling statutes under Chapter 47 of the Texas Penal Code? Although under the traditional notions of gambling at first blush it would seem to appear that a poker tournament such as this would be gambling, this tournament could certainly be argued to be nothing more than other tournaments that are routinely typically held in all other such events such as a golf tournament and all other forms of sporting tournaments where teams enter, pay an entry fee and than are paid cash prizes for winning the tournament.

In addition, a question has arisen about retailers, bars and restaurants who hold Texas Hold-'Em Poker tournaments. In these tournaments, consumers do not pay to play and do not risk any of their own money at any time during the tournament. Chips are assigned point values and those players with the most points at the end of the tournament are provided prizes, anywhere from t-shirts to gift certificates. In progressive tournaments, winners are awarded a chance to play at the next level tournament with an

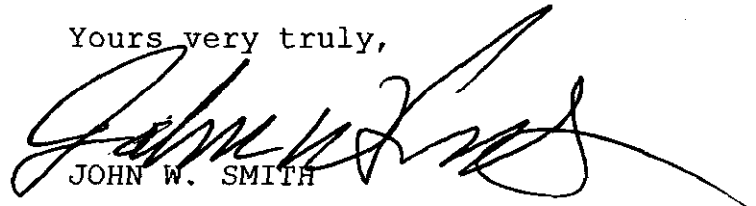
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opportunity to win even greater prizes such as vacations to Las Vegas, Nevada, and entry into World of Poker Tour events (\$10,000 value). Since participants are not betting or risking their money or anything of value during the game and nothing is lost by participants, do these tournaments constitute gambling under Texas Penal Code Ann.Sec.47.02?

It is respectfully requested that the Attorney General's Staff prepare an Opinion and after careful research and reading of the statute, opine on whether or not this type of tournament would be considered legal under Chapter 47 of the Texas Penal Code. Certainly, if your office wishes to have additional help in briefing or has other questions, please contact me.

Thank you for your time and attention to this request.

Yours very truly,



JOHN W. SMITH

JWS/jbw