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OPINION COMMITTEE



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COMMITTEE ON LICENSING AND ADMINISTRATIVE PROCEDURES

RQ-1011-GA

October 21, 2011

The Honorable Greg Abbott
The Attorney General of Texas
Attn: Nancy Fuller
Opinion Committee
P.O. Box 12584
Austin, Texas 78711-2548

RE: Request for Attorney General Legal Opinion regarding whether it is a violation of the Texas Penal Code for visitors to pay an entry fee to a website for an opportunity to take a quiz that will test their knowledge, skill and speed to complete a quiz. The contestants with the best overall scores, as a result of their accuracy, skill and speed, will be awarded prizes.

Dear General Abbott:

I request your assistance in issuing a legal opinion addressing the legality of a website's proposed contest rules. The website in question is based out of Texas¹ by a small businessman that developed it as a new e-commerce site. This new website would permit visitors to pay an entry fee for an opportunity to take a quiz that would test their knowledge, skill and speed. Contestants with the best overall scores could win valuable prizes². A portion of the proceeds would be given to various charitable organizations. Based on these facts, I request that your office issue a legal opinion on the following question:

Is it a violation of Texas law for an e-commerce site to permit visitors to pay an entry fee for an opportunity to take a quiz that would test their knowledge, skill and speed, if the contestants with the best overall scores were awarded valuable prizes?

Facts

The Texas Penal Code (TPC) makes it a Class C misdemeanor to make, "A bet on the partial or final result of a game or contest." The statute does not define "game" or "contest." However, the statute does define bet. A "bet" is, "An agreement to win or lose something of value solely or

¹ All about HoleyKow.com, "Our home base being located in Dallas, Texas gives us a centralized location with easy access to any other part of the country." <<http://holeykow.com/index.php?action=help/6>>.

² How our contests work, <<http://holeykow.com/index.php?action=help/3>>.

partially by chance.” The statute also excludes what is not a bet. “A bet does not include an offer of a prize, award or compensation to the actual contestants in a bona fide contest for the determination of skill, speed, strength or endurance...”³ One can argue that an “entry fee” to a contest is a bet; however, merely paying a fee for the opportunity to compete is probably not a bet. In addition, since the compensation provided to contestants derives directly from the performance in a quiz of knowledge (skill) and speed, the compensation is also not a bet, as it is defined.

The Texas Occupation Code (TOC) also addresses certain types of gaming, including bingo and raffles. The statute defines “bingo” as a, “Specific game of chance . . . in which prizes are awarded on the basis of designated numbers or symbols conforming to randomly selected numbers or symbols.” A “raffle” is defined as, “The award of one or more prizes by chance” among a group of persons that have paid for a, “Ticket that represents a chance to win a prize.”⁴

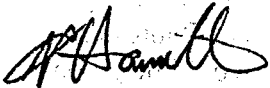
Analysis

Although it is possible for someone to answer correctly a question partially by chance, the timed quiz is in fact a test of knowledge, skill and speed. Therefore, the above cited codes could be interpreted to mean that participating in an e-commerce site, as explained in the Rules and Regulations⁵, is not a bet, game of bingo or raffle, and therefore does not violate Texas law.

Conclusion

Please issue an opinion in response to the question raised above. If you have questions or need further information, please contact this office.

Sincerely,



Mike Hamilton

³ Texas Penal Code, §47.01 (B).

⁴ Texas Occupation Code, Chapters 2001, 2002.

⁵ Our Official Rules, Regulations and Disclaimers, <<https://holeykov.com/index.php?action=help/8>>.