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THE LEGAL STATUS OF GAMBLING IN AMERICA'S SENIOR COMMUNITIES

Marc J. Randazza* and Daniel Russell**

INTRODUCTION

The landscape of gambling in America is changing. Games that were once played only in casinos are now available online to anyone with a computer, and advertisements for casino-style games are on television nearly twenty-four hours a day, seven days a week. In 2005, Americans spent an estimated six billion dollars gambling online.¹ Casino-style chips are sold in stores like Bed, Bath, and Beyond, Toys 'R Us, and The Sports Authority. The FBI estimates that America wagers more than \$2.5 billion on the NCAA basketball tournament each year.² According to a study by *Forbes*, "Americans lose more [money] gambling than they spend on movie tickets, theme parks, spectator sports and videogames combined."³ America has a

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1. Mike Vogel, *House Odds: Will Florida Become a Vegas State*, FLORIDA TREND, May 2006, at 90.

2. *By the Numbers: Statistics Address the Who, What and Why Not of Gambling*, METRO: SILICON VALLEY'S WKLY. NEWSP., Feb. 7-13, 2002, available at <http://www.metroactive.com/papers/metro/02.07.02/gambling2-0206.html> (last visited Mar. 24, 2007).

3. Richard C. Morais, *Casino Junkies*, FORBES, Apr. 29, 2002, at 66-67.

market for gambling, gaming paraphernalia, online gaming, home games, and every type of gambling-related activity.

At the same time, the legal status of gambling in America continues to become more conservative. Recent arrests of the foreign internet gambling website CEOs,⁴ combined with legislation making it illegal for American banks to process transactions with off-shore gaming sites, makes this tightening of the gambling reigns even clearer.⁵ American laws do not seem to match up to the ever-growing population of gamblers in this country.

At the center of these divergent forces is the American senior citizen, the person who may be interested in gambling but is more interested in avoiding fines or jail. Seniors striving to remain on the proper side of the law need to know what is legal and illegal in their state.

GAMBLING AND SENIORS

Anyone who has entered a casino can tell you that many senior citizens enjoy gambling. But what makes gambling so attractive to the elder generation? Doyle Brunson, the seventy-three-year-old poker legend, said, "Once I accepted the fact my career in sports was over, I started playing poker to support myself."⁶ Perhaps it is the ability to participate at a highly competitive level without fear of injury, or maybe it is the idea that they have worked and saved their entire lives and now are able to enjoy the fruits of past labors. Whatever the reason, senior citizens

4. Jane Wardell, *Online Bet Firms Sell U.S. Operations*, INT'L BUS. TIMES, Oct. 13, 2006, available at <http://www.ibtimes.com/articles/20061013/sportingbet-plc-gambling-restrictions-us-bill.htm> (last visited Mar. 18, 2007).

5. NELSON ROSE, *GAMBLING AND THE LAW: THE UNLAWFUL INTERNET GAMBLING ENFORCEMENT ACT OF 2006 ANALYZED* (2006), www.gamblingandthelaw.com/columns/2006_act.htm (last visited Mar. 10, 2007).

6. Nolan Dalla, *From Longworth to Las Vegas and 70 Years in Between: Poker Legend Doyle Brunson Tells His Story and Shares His Views on Life as a Gambler (Part One of a Two-Part Series)*, POKERPAGES.COM: THE REAL DEAL, May 2003, <http://pokerpages.com/articles/interviews/interviews-brunson01.htm> (last visited Mar. 20, 2007).

gamble and gamble at a high level.⁷

A survey by the National Opinion Research Center (NORC) recently revealed that the number of American seniors who answered that they had gambled within the past year rose from twenty-three percent in 1975 to fifty percent in 1998, an increase unmatched by any other age group.⁸ Another survey indicated that bingo is the most common form of entertainment for seniors, while going to casinos was a close second place.⁹ Both playing bingo and casino gaming surpassed other activities, such as playing golf, having lunch with friends, going to movies, and shopping.¹⁰

The National Council on Problem Gambling (NCPG) cites several reasons why seniors are at a high risk to become problem gamblers.¹¹ Emotional pains, such as loss of a spouse, retirement, and dwindling finances, are often so stressful that seniors search for a type of release.¹² The NCPG also notes that the social stigma once associated with gambling is gone.¹³ It is now common for senior centers and even church groups to arrange outings for seniors at local casinos.¹⁴ Also, churches and other groups host casino and bingo nights to raise money for charitable groups.¹⁵ Now, people, including seniors, are actually invited to gamble.¹⁶

To avoid potential legal issues, seniors interested in gambling must know what is legal and illegal where they live.

7. DEAN GERSTEIN ET AL., GAMBLING IMPACT AND BEHAVIOR STUDY: REPORT TO THE NATIONAL GAMBLING IMPACT STUDY COMMISSION 9 (Apr. 1, 1999), <http://govinfo.library.unt.edu/ngisc/reports/gibstdy.pdf> (last visited Mar. 2, 2007).

8. *Id.* However, part of this increase is due to unusually low gambling rates among seniors in 1975. *Id.*

9. NAT'L COUNCIL ON PROBLEM GAMBLING (NCPG), ISSUE BRIEF ON SENIOR GAMBLING AND PROBLEM GAMBLING 1 (Jan. 2003), <http://www.nasua.org/informationandreferral/pdf/seniorgambling.pdf> (last visited Mar. 6, 2007).

10. *Id.*

11. See NATIONAL COUNCIL ON PROBLEM GAMBLING, *Why Do Seniors Gamble?*, http://www.azccg.org/a_seniors/seniorsrisk.htm (last visited Mar. 10, 2007.)

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.*

The governance and regulation of gambling varies by state. Gambling laws in Wisconsin are going to be different than those in Nevada. This article provides interested seniors, their advocates, and senior communities with helpful information regarding gambling regulation in several states. However, this article is not a solution for any potential litigation. For example, issues such as Indian casinos, "cruise-to-nowhere" offshore gambling boats, as well as the ever-changing nature of statutory laws must also be considered before seniors, or their communities, decide to enter into any gambling-related area. This article is a guidance tool, not a replacement for sound legal counsel, which is highly recommended to avoid potential penalties.

ENFORCING THE LAW

We must keep in mind that legislatures generally pass statutes for specific reasons. People have been, and continue to be, tried and convicted for violating gambling statutes across the country.¹⁷ The sentences handed down once people are convicted are sometimes quite heavy.¹⁸ *Gaudio*, a 1994 Texas criminal case, illustrates the potential legal trouble faced when breaking the law.¹⁹

Richard Gaudio, a Texas resident, rented an apartment where he and others played poker three nights per week.²⁰ On Monday, Thursday, and Saturday nights, the participants in the poker game used portions of the winnings to hire a dealer, hire a cocktail waitress, pay rent, and provide alcohol, food, and

17. See, e.g., *U.S. v. Iacoboni*, 363 F.3d 1 (1st Cir. 2004) (defendant ordered to forfeit money paid to gamblers after conviction for conducting an illegal gambling business and conspiracy); *Dept. of Bus. Regulation, Div. of Alcoholic Beverages & Tobacco v. Rains*, 477 So. 2d 1029, (Fla. App. 1985) (defendant guilty of ownership of slot machine under Florida statutes).

18. See, e.g., *Gaudio v. State*, No. 05-91-01862-CR, 1994 WL 67733, at *1 (Tex. App. Mar. 7, 1994) (upholding sentence of two year's confinement, probated to three years, and \$1000 fine).

19. *Gaudio*, 1994 WL 67733, at *1.

20. *Id.*

cigarettes.²¹

Police executed a search warrant at the apartment during one of the poker games.²² A jury later convicted Gaudio of unlawfully keeping a gambling place, and the court sentenced him to two years of confinement, which was probated for three years, and a \$1000 fine.²³ Gaudio appealed his conviction arguing that he did not keep a "gambling place" because he received no economic benefit from the poker games.²⁴

Under Texas law, Gaudio had to prove that: "(1) the gambling occurred in a private place; (2) no one received an economic benefit other than personal winnings; and (3) each participant has an equal chance of winning."²⁵ Section 47.04 of the Texas Penal Code states that a person keeps a "gambling place" if that person "knowingly uses or permits another to use as a gambling place any real estate, building, room, tent, vehicle, boat, or other property whatsoever owned by him or under his control."²⁶

The appellate court interpreted the statute's plain language to mean that no person can receive an economic benefit from the game other than personal winnings.²⁷ Because the dealer and cocktail waitress received benefit in the form of wages, and Gaudio received benefit when poker proceeds paid his rent, the appellate court upheld his conviction.²⁸

Gaudio is one example of how the court system deals with those who break the law. However, laws regulating gambling vary greatly depending on the state. Based on those differences, this article provides an outline of the law in five states. This article outlines gambling laws in Florida, Arizona, and

21. *Id.* at *1, *4.

22. *Id.* at *1.

23. *Id.*

24. *Id.*

25. *Id.*

26. TEX. PENAL CODE ANN. § 47.04(a) (Vernon 1989), *quoted in Gaudio*, 1994 WL 67733, at *2.

27. *Gaudio*, 1994 WL 67733, at *3.

28. *Id.*

California because the large population of seniors in those states are impacted by the laws. The gambling laws of Wisconsin and Nevada represent the polar opposites of gambling regulation.

GAMBLING REGULATION BY STATE

Florida, Arizona, and California law present variations on fairly restrictive gambling regulation, and these states all have a large population of senior citizens. Wisconsin is an example of one of the most restrictive gambling regulations. Finally, Nevada's less restrictive gambling laws present a contrast to the preceding states' laws.

FLORIDA

Gambling in Florida is governed by section 849.08 of the Florida Statutes.²⁹ "Whoever plays or engages in any game at cards, keno, roulette, faro or other game of chance, at any place, by any device whatever, for money or other thing of value, shall be guilty" of gambling.³⁰ The phrases "any game," "at any place," and "by any device whatsoever" makes it clear that the legislature intended to encompass a wide variety of activities.³¹

The Florida Supreme Court stated that "gambling," as used in the statute, and "gaming" are synonymous.³² They are defined as "an agreement between two or more to risk money on a contest of chance of any kind, where one must be the loser and the other the gainer."³³ The legal definition of gambling is broad enough to encompass almost any wagering activity.³⁴ As the old saying goes, if it looks like gambling, then it probably is.

29. FLA. STAT. ANN. § 849.08 (West 2000).

30. *Id.*

31. *See id.*

32. *Bellamy v. State*, 347 So. 2d 419, 420 (Fla. 1977).

33. *Id.* (citing *Creash v. State*, 179 So. 149 (Fla. 1938) (defining gambling as "anything which induces risk of money or property without any other hope of return than to get for nothing any given amount").

34. *See id.*

LEGAL EXCEPTIONS: PENNY-ANTE GAMES

Florida generally is considered a "fairly strict state in prohibiting gambling."³⁵ However, there are exceptions to the general rule.

"Penny-ante" games are defined as "a game or series of games of poker, pinochle, bridge, rummy, canasta, hearts, dominoes, or mah-jongg in which the winnings of any player in a single round, hand, or game do not exceed \$10 in value."³⁶

Further restrictions to the penny-ante games include:

- 1) The game must be conducted in a dwelling.
- 2) A person may not receive any consideration or commission for allowing a penny-ante game to occur in his or her dwelling.
- 3) A person may not directly or indirectly charge admission or any other fee for participation in the game.
- 4) A person may not solicit participants by means of advertising in any form, advertise the time or place of any penny-ante game, or advertise the fact that he or she will be a participant in any penny-ante game.
- 5) A penny-ante game may not be conducted in which any participant is under 18 years of age.³⁷

This nuance in the law allows for a "home game" of cards or poker to be conducted provided the aforementioned requirements are met.³⁸ This exception, along with an explanation of legislative intent with regard to card rooms at pari-mutuel facilities such as dog racing tracks, shows the

35. Chris Tisch, *Here's a Game Tip: Don't Wager on It*, ST. PETERSBURG TIMES, Jan. 28, 2001, at 1, available at <http://pqasb.pqarchiver.com/sptimes/access/67475782.html?dids=67475782:67475782&FMT=FT&FMTS=ABS:FT&date=Jan+28%2C+2001&author=CHRIS+TISCH&pub=St.+Petersburg+Times&edition=&startpage=1&desc=Here%27s+a+game+tip%3A+Don%27t+make+any+bets+on+it> (last visited Mar. 6, 2007) (quoting Michael Siegel, Associate Dean for the University of Florida Levin College of Law).

36. FLA. STAT. ANN. § 849.085(2)(a) (West Supp. 2007); see also *PPI, Inc. v. Dep't of Bus. & Prof'l Regulation, Div. of Pari-Mutuel Wagering*, 698 So. 2d 306 (Fla. Dist. Ct. App. 1997) (holding that tournament containing multiple rounds in which player could win more than \$10 overall fails to meet definition of penny-ante game).

37. FLA. STAT. ANN. § 849.085(3).

38. See *id.*

compassionate, less-abrasive side of what is an otherwise strict set of statutes.³⁹ "It is the intent of the Legislature to provide additional entertainment choices for the residents of and visitors to the state"⁴⁰

BINGO

The Florida bingo statute is a detailed rulebook governing when, by whom, and how bingo games may be conducted or played.⁴¹ Florida law restricts bingo games to certain premises, including property contained in a condominium association, a cooperative association, a homeowner's association, a mobile homeowner's association, or a recreational vehicle park.⁴² The statute states that a community's right to conduct bingo is "conditioned upon the return of the proceeds from such games to the players in the form of prizes."⁴³

Important portions of the statute's relation to common-ownership communities states that organizers must be residents of the community where the bingo game is held as long as the net proceeds from the games are returned to the players in the form of prizes.⁴⁴ In the event of excess prizes or cash at the conclusion of a game, "the organization conducting the game shall at the next scheduled day of play conduct bingo games without any charge to the players and shall continue to do so until the proceeds carried over from the previous days played have been exhausted."⁴⁵

The bingo statute also prohibits associations from holding bingo games more than two days per week, and no jackpots are to exceed \$250 in cash or the equivalent amount in prizes.⁴⁶ There shall also be no more than three jackpots in any given

39. See FLA. STAT. ANN. §§ 849.085, 849.086 (West Supp. 2007).

40. FLA. STAT. ANN. § 849.086(1).

41. See FLA. STAT. ANN. § 849.0931 (West Supp. 2007).

42. FLA. STAT. ANN. § 849.0931(11)(e).

43. FLA. STAT. ANN. § 849.0931(3).

44. See FLA. STAT. ANN. § 849.0931(4).

45. FLA. STAT. ANN. § 849.0931(3).

46. FLA. STAT. ANN. § 849.0931(5)-(6).

"session,"⁴⁷ which is defined as a "designated set of games played in a day or part of a day."⁴⁸

ASSOCIATIONS' LIABILITY

Florida's community associations must be just as aware of gambling statutes as the citizens themselves. A community faces liability for allowing its residents to use the common areas for illegal gambling activities. Associations must be cautious of potential liability under section 849.01, which prohibits the keeping of a "gambling house."⁴⁹ Florida defines keeping a gambling house as:

Whoever by herself or himself, her or his servant, clerk or agent, or in any other manner has, keeps, exercises or maintains a gaming table or room, or gaming implements or apparatus, or house, booth, tent, shelter or other place for the purpose of gaming or gambling or in any place of which she or he may directly or indirectly have charge, control or management, either exclusively or with others, procures, suffers or permits any person to play for money or other valuable thing at any game whatever, whether heretofore prohibited or not⁵⁰

The statute imposes liability on *agents and employees* of a keeper of a gambling house.⁵¹ An association's allowance of such activity thus exposes the association, its employees, and even members of the board to criminal liability.⁵²

However, community associations may escape liability for illegal conduct that occurs at an otherwise legal "penny-ante" game.⁵³ For penny-ante games conducted in common areas, the association, dwelling owner, or unit owner who was not a participant in the game is not civilly liable for damages arising

47. FLA. STAT. ANN. § 849.0931(5).

48. FLA. STAT. ANN. § 849.0931(1)(g).

49. See FLA. STAT. ANN. § 849.01 (West 2000).

50. *Id.*

51. See *id.*

52. See *id.*

53. FLA. STAT. ANN. § 849.085(5) (West Supp. 2007).

from the penny-ante game.⁵⁴

SPORTS TOURNAMENTS

The law looks differently upon a sporting event in which contestants pay an entry fee to compete for prizes. For example, a Florida attorney general opinion states:

There is no stake, bet or wager, and therefore no violation of gambling statute where contestants in a golf or bowling tournament pay entry fees and have the opportunity to win valuable prizes by the exercise of skill, provided that the entry fees do not specifically make up the purses, prizes or premiums contested for.⁵⁵

The key distinction between illegal "gambling" and a legal sports tournament is that the entry fee should not serve as a purse or prize intended to be awarded to the winners of the tournament.⁵⁶ For example, a golf tournament in which the contestants pay an entry fee, a portion of which creates a prize pool, would be illegal.⁵⁷ However, a golf tournament in which players pay an entry fee for the chance to win a set of golf clubs that were not purchased with entry fee funds would be legal.⁵⁸

ARIZONA

Gambling in Arizona is governed by sections 13-3301 and 13-3302 of the Arizona Statutes, which define how the state determines what type of gambling is regulated and identify what are legal activities within the state.⁵⁹ An opinion from the attorney general states that:

Except where specifically authorized by law, any gambling operated as a business, for direct or indirect benefit, is illegal. The key is the "benefit" concept. Use of such gambling to attract customers for otherwise-

54. *Id.*

55. Op. Fla. Att'y. Gen. 066-41 at 294 (1967).

56. *See id.*

57. *Id.*

58. *See id.*

59. ARIZ. REV. STAT. ANN. §§ 13-3301, 13-3302 (2001).

lawful activities such as food and beverage sales is also unlawful because it provides a benefit to the establishment.⁶⁰

The Arizona legislature established fairly lenient guidelines for those wishing to gamble. The statutes specifically define "amusement gambling" and "social gambling" and create exceptions for these forms of gambling.⁶¹

AMUSEMENT GAMBLING

"Amusement gambling" involves a device, game, or contest that is played for entertainment and is legal if all of the following apply:

- 1) the players actively participate in the game;
- 2) the outcome is not in the control of anyone other than the players;
- 3) prizes are not offered to separate the players from their money;
- 4) any of the following:
 - a) the only benefit to a player is an immediate right to replay;
 - b) the game is an athletic event and only participants derive a profit;
 - c) the game is an "intellectual contest";
 - d) the reward is a merchandise prize of less than \$4, and no more than \$35 in total prizes is available.⁶²

This exception is similar to Florida's penny-ante games exception discussed above.⁶³

According to a 1997 opinion from the Arizona attorney general:

Card games might satisfy the first two elements of the amusement gambling exclusion . . . if the players actively participate and the outcome is not controlled by any non-player. However, if the gaming facility receives any benefit from the

60. Op. Ariz. Att'y Gen. I97-010 (R97-015) at 7 (Aug. 8, 1997).

61. See ARIZ. REV. STAT. ANN. § 13-3301(1), (7).

62. ARIZ. REV. STAT. ANN. § 13-3301(1).

63. See *supra* notes 35-40 and accompanying text.

players, the card games could not meet the third element . . . , which requires that prizes not be offered as a lure to separate the players from their money.⁶⁴

The broadly applicable language of the exception's elements makes this a narrow exception, such as the exception for private card games.⁶⁵ Because of the difficulty in meeting all four requirements, communities should not rely on this exception when allowing gambling activities on their premises.

SOCIAL GAMBLING

Another alternative for those who seek to gamble or participate in gambling-related activities is the "social gambling" exception.⁶⁶ Social gambling is defined as "gambling that is not conducted as a business and that involves players who compete on equal terms with each other in a gamble if all of the following apply":

- 1) no player receives any direct or indirect benefit other than the player's winnings;
- 2) no other person receives any benefit from the activity, such as "benefits of proprietorship, management or unequal advantage or odds in a series of gambles";
- 3) all players are over twenty-one years of age;
- 4) players "compete on equal terms with each other" in the sense that "no player enjoys an advantage over any other player in the gamble under the conditions or rules of the game or contest."⁶⁷

This exception essentially allows for any type of home game where there is no "house" or odds-making that would put a certain player at a distinct advantage over another.⁶⁸

Social gambling becomes illegal if it is run as a business (in

64. Op. Ariz. Att'y Gen. 197-010 (R91-015) at 4.

65. See ARIZ. REV. STAT. ANN. § 13-3301(1).

66. ARIZ. REV. STAT. ANN. § 13-3301(7).

67. *Id.*

68. See *id.*

other words, if it is operated with the object of gain, benefit, or advantage).⁶⁹ For example, taking a percentage of winnings, charging an entrance fee, or renting chairs or equipment to players would constitute a benefit.⁷⁰ Benefiting indirectly by using gambling to attract customers to a place of business would make this exception unavailable.⁷¹ The key to the exception is that non-players may not receive any benefit, direct or indirect, from the gambling.⁷²

BINGO

It is illegal to hold or operate any game of bingo without prior written approval from the licensing authority.⁷³ This approval comes from the state's Department of Revenue, which holds the power to grant licenses to applicants interested in holding games of bingo on their property.⁷⁴

The history of bingo operations in Arizona began in 1972 as a means for non-profit organizations to raise money.⁷⁵ The law in those days said that all profits must go to charitable purposes and that only charity members could work at the games.⁷⁶ Between 1972 and 1989, the bingo industry grew into a forty-million-dollar-a-year gambling industry, and payouts had changed.⁷⁷ What was once a "charitable purpose" payout had grown into a cash payout system with alleged skimming and mob-like elements.⁷⁸

Perhaps the Director of the Department of Revenue, J.

69. *Id.*

70. *See id.*

71. *See* ARIZ. REV. STAT. ANN. § 13-3301(7)(b).

72. *See id.*

73. *See* ARIZ. REV. STAT. ANN. § 5-406(A) (2002).

74. *Id.*

75. *Walker v. State*, 780 P.2d 454, 455 (Ariz. Ct. App. 1989) (quoting press conference by J. Elliott Hibbs, director of department of revenue, discussing the history of bingo in Arizona as well as beginning the process of making the play of bingo more restrictive).

76. *Id.* (quoting press conference by J. Elliott Hibbs).

77. *Id.*

78. *See id.*

Elliott Hibbs, said it best in a 1989 press conference: “[t]he situation has become intolerable, and we aim to put an end to it. We are initiating, today, a two pronged assault on bingo corruption.”⁷⁹ Hibbs also stated that “we will go through the bingo laws with a fine-toothed comb to strengthen the statutes to fight bingo corruption.”⁸⁰

Any community interested in participating in, conducting, or hosting bingo games should be wary of the fine-toothed-comb approach taken by the legislature in its dealings with bingo regulation in Arizona. The statutes make it clear that there is a no-nonsense policy, and even seemingly harmless activity could run the risk of legal trouble.

ASSOCIATIONS' LIABILITY

Under Arizona law, an association could face liability for illegal gambling activities on its premises through the powers granted to city councils.⁸¹ The “common council” has the power, for example, to “lay out and improve new streets” and to “provide regulations for the prevention and extinguishment of fires.”⁸² City councils also have the power “to suppress and prohibit gambling and the operating of gambling houses and to punish the owners, managers and employees thereof and players at such games.”⁸³ This potentially leaves the door open for communities to face prosecution whenever illegal gambling takes place within the bounds of the property if residents or employees of the community are involved.⁸⁴

79. *Id.*

80. *Id.*

81. ARIZ. REV. STAT. ANN. § 9-240(B) (Supp. 2006).

82. *See* ARIZ. REV. STAT. ANN. § 9-240(B)(3)(d), (7)(a).

83. ARIZ. REV. STAT. ANN. § 9-240(B)(17)(c).

84. *See id.*

CALIFORNIA

Gambling in California is governed under section 330 of the California Penal Code.⁸⁵ "Gaming" is defined as "any game of faro, monte, roulette, lansquenet, rouge et noire, rondo, fan-tan, seven-and-a-half, twenty-one, hokey-pokey, or any banking or percentage game played with cards, dice, or any device, for money, checks, credit or other representative of value."⁸⁶ Through this laundry list, the California legislature essentially legalized every form of gaming.⁸⁷

Along those same lines, the legislature enacted another statute that further outlines what the state deems as illegal activity.⁸⁸ The "draw poker" statute makes it illegal for "[e]very person who deals, plays, or carries on, opens, or causes to be opened, or who conducts, either as owner or employee, whether for hire or not, any game of draw poker, including lowball poker."⁸⁹ The statute targets "counties with a large, concentrated population, [where] problems incident to the playing of draw poker are, in part, qualitatively, as well as quantitatively, different from the problems in smaller counties."⁹⁰

An interesting nuance of this section is that it originally applied only to counties with a population of more than four million residents.⁹¹ Based upon population tables from the California Association of Counties, this statute would apply only to the nearly ten million residents of Los Angeles County, while residents of Orange, San Diego, and San Bernadino Counties (with populations between 1.9 and 3 million) would not need to consider this statute.⁹² However, the statute permits counties

85. CAL. PENAL CODE § 330 (West 1999).

86. *See id.*

87. *See id.*

88. *See* CAL. PENAL CODE § 337s (West 1999).

89. CAL. PENAL CODE § 337s(b).

90. CAL. PENAL CODE § 337s(e).

91. *Id.*

92. California State Association of Counties, CA County Population, <http://www.csac.counties.org/default.asp?id=399> (last visited Mar. 24, 2007).

with fewer than four million residents to allow citizens to vote to allow this statute to "become operative" in their county.⁹³ The statute also dictates the exact format and wording of the ballot proposition.⁹⁴

This section authorizes counties to decide whether they will prohibit poker rooms.⁹⁵ A 1990 holding from the Court of Appeal of California stated that Texas Hold 'Em, currently one of the most popular card games, was not outlawed by section 330 of the California Statutes because it is not a form of stud poker.⁹⁶ To date, the legislature has not updated the wording of section 330; therefore, card rooms that allow players to participate only in games of Hold 'Em are legal in California.⁹⁷

ASSOCIATIONS' LIABILITY

California law states that those who knowingly allow others to participate in illegal games may face prosecution.⁹⁸ "Every person who knowingly permits any of the games [prohibited by statute] to be played, conducted, or dealt in any house owned or rented by such person, in whole or in part, is punishable," as are those who participate in the games.⁹⁹

For example, if a person knows there is a game of cards or dice being played within the confines of his condo in Malibu and does nothing to prevent the game, he or she is as guilty as the people who played. Interestingly, section 331 makes no mention of an association specifically.¹⁰⁰ Therefore, a game of twenty-one played in a recreation hall on an association's property would not necessarily make the board of directors or unit owners within the association liable for such activities. Nonetheless, seniors should proceed with caution whenever they allow others

93. CAL. PENAL CODE § 337s(c).

94. *See id.*

95. *See id.*

96. *Tibbetts v. Van de Kamp*, 271 Cal. Rptr. 792, 796 (Ct. App. 1990).

97. *See* CAL. PENAL CODE § 330 (West 1999).

98. CAL. PENAL CODE § 331 (West 1999).

99. *Id.*

100. *See id.*

to use their property if there is a possibility that others may gamble there.

BINGO

California's bingo games are governed by section 326.5, which states that the statute and its potential punishments do not apply to any bingo game conducted in a city or county pursuant to an ordinance enacted under Section 19, Article IV of the State Constitution.¹⁰¹ The ordinance enacted by the city or county may allow games to be conducted by mobile home park associations and senior citizen organizations.¹⁰² However, any profits from these games must be used only for charitable purposes.¹⁰³

If a city or county enacts specific ordinances to allow associations to have bingo games, then those games are exempt from section 326.5 only if any potential earnings are used for charitable purposes.¹⁰⁴ Additionally, these associations must conduct the games on property owned or leased by the association or on property whose use is donated to the organization.¹⁰⁵

However, those games governed by section 326.5 (or stated differently, those who do not live in a county that allows exceptions to section 326.5) must follow fairly strict regulations listed in the statute. For example, the total value of prizes awarded must not exceed \$250 for each game.¹⁰⁶ Also, all proceeds derived from a bingo game must be kept in a special fund or account and cannot be commingled with any other fund or account, and the games must be open to the public.¹⁰⁷

In order to avoid potential legal trouble, an association

101. CAL. PENAL CODE § 326.5(a) (West 1999).

102. *Id.*

103. *Id.*

104. *Id.*

105. CAL. PENAL CODE § 326.5(f).

106. *See* CAL. PENAL CODE § 326.5(n).

107. *See* CAL. PENAL CODE § 326.5(k).

should contact local government officials to determine whether the city or county in which it is located has made local exceptions to section 326.5.

CHARITABLE POKER NIGHT: LEGAL?

A 1988 opinion by the attorney general answered whether a charitable organization could lawfully sponsor a "casino night" to raise funds for charitable purposes.¹⁰⁸ The proposed event entailed an evening where tickets were to be sold to the public and those attending would be given chips with which to play casino games and try to win more chips.¹⁰⁹ Chips could then be used either to acquire raffle tickets or to bid at an auction.¹¹⁰ The merchandise being auctioned and raffled was to be donated to the organization by local merchants.¹¹¹

The attorney general applied statutory language to the "casino night" and determined that "those who propose, prepare, set up, furnish chips with the 'casino night' tickets, transfer raffle tickets for chips, assist in the raffle drawing, or in some other manner participate" would be guilty and could be prosecuted as such.¹¹² Specific language in the opinion makes it clear that the "only exception in California's gambling laws for charities is that provided in section 326.5 authorizing cities and counties to authorize certain organizations to conduct bingo games for charitable purposes only."¹¹³

The attorney general stated that the charitable purposes behind the activities, combined with donated gifts and prizes, did not change the essence of the law, which outlaws such activities.¹¹⁴

108. 1988 Ops. Cal. Att'y Gen. 167, 167-68 (1988).

109. *Id.* at 167.

110. *Id.*

111. *Id.* at 168.

112. *See id.* at 183.

113. *Id.*

114. *Id.*

WISCONSIN

Gambling in Wisconsin is illegal under section 945.02 of the Wisconsin Statutes, which defines "gambling" as making a bet or entering "a gambling place with intent to make a bet."¹¹⁵ Bet is defined as "a bargain in which the parties agree that, dependent upon chance even though accompanied by some skill, one stands to win or lose something of value."¹¹⁶ This definition essentially eliminates the old gambler's adage that although luck plays a role in success, skill is what ultimately decides who wins.

The statutes further clarify the meaning of a gambling place.¹¹⁷ "A gambling place is any building or tent, any vehicle . . . or any room within any of them, one of whose principal uses is any of the following: making and settling bets"¹¹⁸ Evidence of frequent visits by professional gamblers to a particular location is admissible evidence on the issue of whether a gambling place exists.¹¹⁹ Although the statute's intention is clear, this language makes it difficult for a Wisconsin resident to have such socialites as Doyle Brunson, Johnny Chan, or Phil Hellmuth over for an occasional dinner without fearing that this information could be used against them in a later prosecution.¹²⁰

The "commercial gambling" statute makes it a felony to "intentionally" "[f]or gain, maintain[] . . . any record, paraphernalia, tickets, certificates, bills, slip, token, paper, writing or other device used . . . or designed for use in gambling."¹²¹ In other words, people and groups organizing gambling or gambling-related activities for profit can be charged with felonies, while those placing bets can be charged with

115. WIS. STAT. ANN. § 945.02 (West 2005).

116. WIS. STAT. ANN. § 945.01(1) (West 2005).

117. See WIS. STAT. ANN. § 945.01(4).

118. WIS. STAT. ANN. § 945.01(4)(a).

119. WIS. STAT. ANN. § 945.01(4)(b).

120. See *id.*

121. WIS. STAT. ANN. § 945.03(1m)(f) (West 2005).

misdeemeanors.¹²²

RIVERBOAT GAMBLING

Riverboat gambling is illegal in Wisconsin,¹²³ but what about a casino boat which is registered in Iowa, and then floats across the Mississippi River into the portion of the river governed by Wisconsin? A similar question was posed to the attorney general of Wisconsin in 1990.¹²⁴ The response, "the criminal code, including its gambling provisions, extend at least to the main channel of the Mississippi River."¹²⁵

This leads to the question, what if the Iowa-registered boat leaves its Iowa port, does not conduct any gaming activities, and then docks in Wisconsin to pick up passengers, only to begin gambling once in Iowa waters? The boat would still violate the state's legal definition of a gambling place.¹²⁶ The attorney general specifically stated that "[t]he docking and embarking of passengers is an integral function to the operation of the riverboat and its gambling purpose."¹²⁷ Thus, this too would be illegal.

The attorney general answered other questions regarding riverboat gambling in a similar fashion.¹²⁸ The basic answer is that if a Wisconsin resident would like to board and gamble on a boat from Iowa (or any other state), he or she must drive across the river and board from the dock there.¹²⁹ Every other possibility posed to the attorney general was found to violate Wisconsin law.¹³⁰

122. See WIS. STAT. ANN. §§ 945.02, 945.03 (West 2005).

123. See WIS. STAT. ANN. §945.01(4)(a).

124. See 79 Op. Wis. Att'y Gen. 206, 208 (1990).

125. *Id.* at 207.

126. See WIS. STAT. ANN. § 945.01(4)(a).

127. 79 Op. Wis. Att'y Gen. at 210.

128. See *id.* at 210-11.

129. See *id.*

130. See *id.*

ASSOCIATIONS' LIABILITY

In Wisconsin, it is illegal for anyone to "permit[] any real estate owned or occupied by him or her or under his or her control to be used as a gambling place."¹³¹ This section creates liability for an association that owns or controls property on which gambling activities take place.¹³²

Directors, board members, unit owners, and others who share an interest in property within a senior community should be aware of this. If anyone who has any control of the property has knowledge that the property is being used as a gambling place, this person must use best efforts to prevent the use to escape potential liability.¹³³

BINGO

The bingo statute contains a laundry list that explains the who, what, where, and when of bingo games allowed in Wisconsin.¹³⁴ Only a person with a valid license to conduct a bingo game may do so, the aggregate amount of prizes during a single game must not exceed \$500, and all participants must be at least eighteen years old unless they are accompanied by a parent, guardian, or spouse.¹³⁵ The statute also outlines very specific rules for playing the games, identifying and verifying winning cards, and hours of operation for bingo halls.¹³⁶

The statute also lists the types of groups eligible for licensing.¹³⁷ These groups include religious, charitable, fraternal, community-based residential facilities, and senior citizen community centers.¹³⁸ Eligible groups must meet other criteria, such as having at least fifteen members in good standing,

131. WIS. STAT. ANN. § 945.04(1m)(a) (West 2005).

132. *See id.*

133. *See id.*

134. *See* WIS. STAT. ANN. § 563.51 (West 2006).

135. WIS. STAT. ANN. § 563.51(1), (9), (13).

136. *See* WIS. STAT. ANN. § 563.51(22), (24), (26).

137. *See* WIS. STAT. ANN. § 563.11 (West 2006).

138. WIS. STAT. ANN. § 563.11(1).

conducting activities within the state other than bingo, operating without profit to its members, and receiving and using funds other than from conducting bingo games.¹³⁹

NEVADA

Needless to say, Nevada's gaming laws are slightly different from the others mentioned in this article. Almost all gaming activity allowed in Nevada would lead to convictions, fines, and imprisonment in other states. From the outside, Nevada seems to allow for almost any type of gambling. Bright lights advertise from miles away (even to outer space where the light beam from the Luxor casino in Las Vegas can be seen) that gambling is permitted within the state.

TAX REVENUE

Lavish expenditures in Nevada are related to the unimaginable sums of money people lose in the state's casinos. For example, in March 2006, casinos within the state collected more than one billion dollars from losing gamblers, many of whom were seniors.¹⁴⁰ Earnings of one billion dollars in a single month was no fluke considering the state also broke the one-billion-dollar mark in the two preceding months.¹⁴¹ Nevada's gaming tax revenue for the 2004-2005 fiscal year was more than \$700 million.¹⁴² That amount reflects only taxes on casino losses (or gains if you are on the casino's side of the bet) and does not reflect taxes on hotel rooms, restaurants, and rounds of golf.¹⁴³ Clearly, gaming is important to the Nevada state budget.

Without a license, however, there can be no black jack tables, roulette wheels, or slot machines to generate this

139. WIS. STAT. ANN. § 563.11(2)(a).

140. Howard Stutz, *Gaming Wins Top \$1 Billion*, LAS VEGAS REV.-J., May 10, 2006, at 1D.

141. *Id.*

142. *Id.*

143. *See id.*

revenue.¹⁴⁴ Based on the number of statutes relating to licensure, Nevada's legislature is very interested in collecting revenue from licenses and fees and slightly less interested in regulating smaller home games.

LICENSE REQUIREMENTS

It is unlawful for any person, as an owner, lessee, or employee, to "deal, operate, carry on, conduct, maintain or expose for play in the State of Nevada any gambling game" without a license.¹⁴⁵ An exception allows a person to own or lease a gaming device (for example, a slot machine) for display or use in a private residence without procuring a state gaming license.¹⁴⁶

This language, although not overly detailed or as comprehensive as other states, leaves open the door for associations to be liable for illegal activities that take place on their property.¹⁴⁷ However, it is unlikely that seniors or groups of seniors would set up a gambling place on their own property because the sheer number of alternative places to gamble in Nevada would speak to any sensible citizen of the state.

Seniors interested in gambling in Nevada should do so at casinos. This is the easiest way to avoid legal issues. Once inside the casino, however, senior citizens should be aware of laws regulating casino gambling.

CHEATING

Nevada legislators, unlike those in other states, are particularly concerned about cheating inside casinos, and the term is defined in three different statutes.¹⁴⁸ The first statute

144. NEV. REV. STAT. ANN. § 463.160(1) (LexisNexis Supp. 2005).

145. NEV. REV. STAT. ANN. § 463.160(1)(a).

146. NEV. REV. STAT. ANN. § 463.160(4).

147. See NEV. REV. STAT. ANN. § 463.160.

148. See NEV. REV. STAT. ANN. §§ 465.015(1), 465.083 (LexisNexis 2001); NEV. REV. STAT. ANN. 465.070 (LexisNexis Supp. 2005).

defines "cheat" as altering the elements of chance, method of selection, or criteria that determines the result of a game, amount of pay, or value of a wager.¹⁴⁹ The second statute makes it unlawful "for any person, whether he is an owner or employee of or a player in an establishment, to cheat at any gambling game."¹⁵⁰

The third statute outlines in great detail what is a "fraudulent act" while gambling.¹⁵¹ For example, claiming or attempting to claim money with intent to defraud the casino, collecting an amount greater than the amount won, and increasing a bet after acquiring knowledge of the outcome of the game are all deemed illegal.¹⁵² Every conceivable form of cheating, all of which likely have been attempted and discovered in a casino, is outlined in this section.¹⁵³

Seniors also should know that the casino itself is held to the same legal standard as the patrons who walk in.¹⁵⁴ For example, a casino patron who believed he was defrauded by a casino's use of "loaded dice" (dice which are altered to land on certain sides) has a civil cause of action against the casino to recover money lost in the game.¹⁵⁵ The Ninth Circuit Court of Appeals stated that Nevada's public policy allows casino patrons to play the games as they were meant to be played and that any casino acting to defraud its customers would face legal action.¹⁵⁶

BINGO

Considering the number of alternative games in Nevada, bingo may be slightly less popular than it is in more gambling-restrictive states. That being said, Nevada does have laws that

149. NEV. REV. STAT. ANN. § 465.015(1).

150. NEV. REV. STAT. ANN. § 465.083.

151. NEV. REV. STAT. ANN. § 465.070.

152. NEV. REV. STAT. ANN. § 465.070(3).

153. See NEV. REV. STAT. ANN. § 465.070.

154. See NEV. REV. STAT. ANN. § 465.083.

155. *Berman v. Riverside Casino Corp.*, 323 F.2d 977, 979 (9th Cir. 1963).

156. *Id.*

limit an organization's ability to operate bingo games.¹⁵⁷ For example, section 463.4094 outlines the requirements for charitable organizations that operate a bingo game without a gaming license.¹⁵⁸ The bingo game is regulated differently depending on the value of prizes awarded to participants.¹⁵⁹ For example, if prizes awarded in a calendar year do not exceed \$500,000, the organization must be approved by the state's executive director.¹⁶⁰ If the value of the prizes is less than \$50,000, the organization must register with the executive director.¹⁶¹ If the total value of prizes offered does not exceed \$2500 per calendar quarter, no approval or registration of any kind is required as long as the group qualifies as a charitable organization.¹⁶²

The guidelines for an organization to register with or request approval from the executive director are found in section 463.4095.¹⁶³ Included in the laundry list of requirements are the name, address, and nature of the organization, as well as a description of all prizes to be offered.¹⁶⁴ Further, the organization must describe the intended use of any proceeds of charitable bingo games and state the address where the games will be conducted.¹⁶⁵ Once the form is completed, a ten or twenty-five dollar fee must be paid with the registration or request for approval, respectively.¹⁶⁶

The organization must not compensate any person for prizes or supplies if such payment exceeds the fair market value of the prizes.¹⁶⁷ Additionally, the organization may not

157. *Id.*

158. NEV. REV. STAT. ANN. § 463.4094 (LexisNexis 2001).

159. *See id.*

160. NEV. REV. STAT. ANN. § 463.4094(1). Prizes over \$500,000 are not allowed.
Id.

161. NEV. REV. STAT. ANN. § 463.4094(2).

162. NEV. REV. STAT. ANN. § 463.4094(3).

163. NEV. REV. STAT. ANN. § 463.4095 (LexisNexis Supp. 2005).

164. NEV. REV. STAT. ANN. § 463.4095(1)(a)(1), (1)(a)(4).

165. *See* NEV. REV. STAT. ANN. § 463.4095(1)(a)(5)-(6).

166. *See* NEV. REV. STAT. ANN. § 463.4095(1)(b).

167. NEV. REV. STAT. ANN. § 463.4096(1) (LexisNexis 2001).

compensate a person who is not a regular employee nor make additional payments to regular employees for services in organizing or operating a bingo game.¹⁶⁸

CONCLUSION

The number of senior citizens participating in gambling is growing at a faster rate than any other age group. For whatever reason, be it entertainment or excitement, seniors are involved in many gaming activities. Anyone involved in potentially illegal activities should know his or her rights and what is outlawed in his or her locale.

Hopefully, this article provides senior communities with an explanation of the limits of gambling. Without familiarity with the boundaries of legal gambling, the number of seniors running afoul of the law will grow just as quickly as the number of seniors who are gambling. You can bet on it.

168. See NEV. REV. STAT. ANN. § 463.4096(2).