

Attorney general declines to offer opinion about poker houses

July 14, 2018

AUSTIN—The Texas attorney general's office declined to offer an opinion about the legality of poker houses that charge a fee, citing a pending lawsuit.

Texas law permits limited social gambling if it occurs in a private place, nobody receives any economic benefit other than personal winnings and the risks are the same for everyone who participates. Any establishment that receives a 'rake'—a fee or percentage of the value at risk in gambling—is not permitted under Texas law, but some lawmakers questioned the legal status of poker clubs that charge fees.

In January, Rep. Genie Morrison, R-Victoria, asked the attorney general's opinion on the question: "Are poker gambling enterprises that charge membership or other fees or receive other compensation from gamblers playing poker—but do not receive a 'rake'—permitted under Texas law?"

Austin poker club sues San Antonio poker club

Virginia Hoelscher, chair of the opinion committee in the office of Attorney General Ken Paxton, sent a letter to Morrison July 6, declining to offer an opinion.

"It is the policy of this office to refrain from issuing an attorney general's opinion on a question that we know to be the subject of pending litigation,"

Hoelscher wrote. She noted the policy has been in place more than 60 years, and an attorney general's opinions are advisory in nature.

"By contrast, court decisions are binding unless and until they have been modified or overturned by a higher court or until the law they construe has been amended. Consequently, when a legal matter is being litigated, the courts are generally the appropriate forum for resolving the issue," Hoelscher wrote.

The litigation she cited involves a poker club in Austin that sued another poker club in San Antonio, alleging unfair competition. The case, *Austin Card Room v. FSS Venture*, is pending in the [345th District Court in Travis County](#).

'Inherently illegal operation'

In March, Texans Against Gambling, also known as Stop Predatory Gambling Texas, sent a letter to Paxton's office presenting a [legal rationale](#) for finding private poker houses violate the Texas Penal Code.

The letter brief argued because state law defines "economic benefit" broadly, owners or operators of gambling establishments clearly receive financial gain from gamblers' membership or entrance fees to poker clubs.

When asked to comment on the pending litigation involving the Austin-based and San Antonio-based poker clubs, Texans Against Gambling Chairman Rodger Weems said, "We have no comment on the lawsuit because we believe it describes an inherently illegal operation."