

Attorney general opinion requested on gambling law

November 26, 2021

An Arlington legislator has asked Texas Attorney General Ken Paxton for an opinion that could affect how—and whether—commercial poker clubs operate in the state.

Rep. Chris Turner, D-Arlington, wrote to the attorney general Nov. 18 requesting an opinion on what constitutes an “economic benefit” under a section of the Texas Penal Code concerning gambling.

Section 47.02 of the Penal Code stipulates it is a defense to prosecution if a person is engaged in gambling “in a private place,” if “no person received any economic benefit other than personal winnings,” and if the risks of losing and chances of winning are the same for all participants “except for the advantage of skill or luck.”

In his letter to the attorney general, Turner asserted various fees could be considered an “economic benefit” under the Penal Code, such as a seat rental in a card room, a table and ball rental in a pool hall, or a lane rental in a bowling alley or axe-throwing bar.

He also questioned whether a membership fee at a country club would fall into that category if players wagered on a round of golf.

Turner stated he understands the law is “intended to keep third parties to any wagering activities from taking a commission from those not personally involved in the wagering activity.”

“This would, for example, include taking a cut of an individual’s winnings from a hand of poker or their winnings from a sports bet,” he wrote.

‘Crystal clear’



Rodger Weems

Rodger Weems, chairman of Texans Against Gambling, asserted the meaning of “economic benefit” is clear, and commercial poker clubs should be prosecuted when they violate the law.

“Both the law and the plain meaning of the words are crystal clear. An ‘economic benefit’ is anything of financial value that changes hands,” Weems said.

“Commercial poker clubs skirt the law authorizing ‘kitchen-table poker’ by charging membership fees or seat fees, and claiming they fall under the friendly poker exception because they do not take a rake or cut at the end of the game. These establishments are mistaken. It is past time that Texas had some serious law enforcement on these establishments.”

[In 2018](#), Rep. Genie Morrison, R-Victoria, asked Paxton to offer an opinion on whether poker clubs that don’t receive a rake—a set amount or percentage of the value at risk in gambling—but charge a membership fee or receive other compensation from gamblers playing poker are operating legally.

At that time, Paxton’s office [declined to offer an opinion](#), citing a pending lawsuit. The suit —*Austin Card Room v. FSS Venture*—involved a poker

club in Austin that sued another poker club in San Antonio, alleging unfair competition.

A [September 2019 article in *The New Yorker*](#) noted after the lawsuit was filed, “it went dormant, with neither side pushing for a trial.” The writer reported “many in the Texas poker community” viewed the suit as a “canny product of ... [an] alliance among competitors.”