

# Commentary: Don't tell poker clubs to 'cease and desist.' Just raid them.

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I couldn't make up this stuff, even if I tried. Just when I thought I had seen gambling operators pull every trick in the book, a commercial poker club in Austin sued another commercial poker club in San Antonio. The plaintiff, Austin Card Room, essentially told the defendant, San Antonio-based FSS Venture, "You're not doing it right."

One thing is certain. The lawsuit stopped the Texas Attorney General's office from addressing the legality or illegality of commercial poker clubs. The Attorney General's office doesn't issue opinions on matters that are subjects of pending litigation—a policy that's been in place seven decades.



Incidentally, some organizations representing Texas poker houses were invited to file briefs with the Attorney General addressing their legality or illegality, but those organizations did not do so. No great surprise there. The Texas Constitution prohibits most gambling, with just a few limited exceptions—the Texas Lottery, charity bingo, charity raffles and pari-mutuel betting on horse and greyhound races.

Texas law provides a limited defense to prosecution for "kitchen-table poker"—social poker games that occur in a private place. Texas Penal Code Section 47.01 defines a "private place" as a place to which the public does not have access. Texas commercial poker clubs claim this exception,

unlawfully in our view, by holding themselves out as “private clubs.” But in reality, these commercial operations are anything but private. Any adult with identification and money can join. What’s private about that? One poker club—not a party in the lawsuit—operates from a commercial building on Interstate 35 in Austin. It’s hard to think of a more public location anywhere in the state.

Another element required to claim an exemption from prosecution is that no one associated with the game may receive any economic benefit, except each player’s own personal winnings. In commercial poker, the house usually receives a cut—generally called a “rake”—of the proceeds at the end of each hand or game. To attempt to get around this, some Texas commercial poker houses do not take a rake at the end of the game but find ways to charge participants before or during the game. These include membership fees and hourly or half-hourly “seat charges.” The legal term “economic benefit” is more than broad enough to cover all fees the poker houses charge, and many law enforcement officials recognize it.

Unfortunately, some municipalities, including Abilene and Webster, have sent the poker houses “cease and desist” letters asking them to close their doors voluntarily. Polite requests seldom have resulted in voluntary closure. The typical response is for the poker houses to stall by going to court to try to invalidate the “cease and desist” letter or simply to ignore it. Either way, delayed closure allows the establishments to continue operating until the cases are resolved.

There is no legal requirement to send a “cease and desist” letter. It is merely a courtesy. In cities including Dallas and Plano, law enforcement has not wasted time with “cease and desist” letters. Instead, they have conducted raids. That sends a strong message, resulting in far fewer of these establishments than in localities where polite-but-mostly-ineffective “cease and desist” letters have been the principal law enforcement tool.

We note from the court-filed pleadings that Austin Card Room alleges a violation of the Texas Penal Code against the San Antonio-based card room, and the San Antonio group in reply pleads “unclean hands” and “illegality” among its defenses against the Austin group. We agree with both parties on those pleading points.

With that in mind, Texans Against Gambling has a respectful suggestion for local law enforcement: Skip the mostly useless “cease and desist” letters, and just raid the joints. That approach has worked in Dallas and Plano. It can work in the rest of the state.

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