

Illegal Gaming: A Mississippi Tradition

By Louis Frascogna¹

Each year many in the State join the nation in completing their March Madness brackets. Even the President of the United States participates. Despite the office bracket betting pool seeming like a national pastime and a presidential tradition, it is still illegal in this State to bet on the outcome of a sporting event. However, in Mississippi, sports betting is only a part of the State's illegal gaming.

Pursuant to *Mississippi Code Annotated* § 97-33-1, Mississippi law allows for the construction of licensed casinos within 800 feet of the waters south of the three most southern counties and on the Mississippi River, but gaming is strictly forbidden outside those gaming floors. What constitutes gaming is generally defined in the Mississippi Gaming Control Act, *Miss. Code Ann.* § 75-76-1, *et. seq.*, but also specifically listed are 21 other games like poker, blackjack, craps, etc. The mere playing of these games, with or without wagers, outside of a licensed casino is considered illegal. Some States, such as Florida, do allow for “penny” games wherein a friendly private poker game could be conducted with nominal wagers and winnings. However, in Mississippi casino games are illegal with friends, as a fund raiser, or for charity; and despite a million proposals to circumvent the law (i.e. no wagers, no winnings, etc.), there is simply no way to get around the fact that the game itself is illegal.

It would sell the industrious criminals of Mississippi short to think of the State's illegal gaming as limited to office pools and friendly poker games. Large sports book operations exist, as do high stakes poker games. Additionally, throughout Mississippi, slot machines continue to pop-up in service stations, restaurants, and sometimes even dedicated retail spaces. Unlike our gaming brethren in Louisiana, these machines are illegal. A trip to any of Mississippi's licensed casinos would reveal a wide range of slot style games, but ultimately a slot machine is any machine or device which accepts a wager directly or indirectly in exchange for the chance of winning a prize. Even the innocuous looking “quarter-pusher” device, a machine that literally accepts quarters until the “pusher” pushes the pile of quarters off for the user to collect, falls into this category. *Mississippi Gaming Com'n v. Henson*, 800 So.2d 110 (Miss. 2001). About the only slot machine that won't see you charged with a crime is the vintage kind, and even those machines need to be inoperable and over 25 years old.

There are some games of chance that legally exist outside of the licensed casinos. Bingo licenses are issued by the Gaming Commission, but are restricted to registered charities. Some non-profit organizations may hold a raffle without having to get any approval from the State if the raffle is conducted by and solely for the benefit of that organization. The annual Dream

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Home raffle falls into this category. A sweepstakes is legal if the chance of winning is free or if it is associated with another product so long as the product sold isn't more expensive because of the associated sweepstakes entry. Also, scratch-and-win cards often sold at convenience stores are legal in Mississippi because they actually offer long distance phone time and are therefore considered sweepstakes. It is legal for Mississippians to purchase and play out-of-state lotteries, but reselling those tickets in the State would be illegal.

Finally, the newest horizon in illegal gaming operations in the State attempts to operate somewhere between illegal slot machines and legal sweepstakes. The so-called internet sweepstakes games run off of standard desktop computers in alleged internet cafes. These machines allow patrons to buy internet time and receive "sweepstakes" points that may be used for play in a simulated slot machine game. The argument that the machines actually used a finite number of entries akin to a sweepstakes was invalidated in *Moore v. Mississippi Gaming Com'n*, 64 So.3d 537 (Miss. Ct. App. 2011), and an update to the criminal statutes in 2013 sought to clarify the illegality of these machines. *Miss. Code Ann.* §97-33-8. Despite efforts across the country to reel in these operations, the American Gaming Association estimates that they continue to operate in at least 12 states with annual revenue of almost \$10 Billion.²

Legalized gaming began as a way to effectively regulate and cut down on the corruption associated with illegal gaming. In the future, many of the forms of illegal gaming might again find their way to legal casino floors as the State and the Industry continue to monitor developments in online gaming and New Jersey's attempts to challenge federal law with respect to sports betting. Mississippi law does not authorize gaming, but has created exceptions to the general prohibition to allow for it. Should New Jersey be successful in its legal arguments, Mississippi may only need to amend its criminal statute and create an additional exception for sports betting. This distinction may prove important as discussed in the Third Circuit's opinion in *Nat'l Collegiate Athletic Ass'n v. Governor of New Jersey*, 730 F.3d 208 (3d Cir. 2013). Until then, it might be best if you hold off on collecting your March Madness winnings.

² David O. Stewart. "Internet Sweepstakes Cafes:Unregulated Storefront Gambling in the Neighborhood." American Gaming Association. 2012.