



CHIEF DEPUTY
Jeffrey A. DeLand

PRINCIPAL DEPUTIES
Joe Ayala
Cindy Merten Cardullo
Amy Jean Haydt
Thomas J. Kerbs
Kirk S. Louie
Robert A. Pratt
Patricia Gates Rhodes
Janice L. Thurston

Sergio E. Carpio
Lisa C. Goldkuhl
Baldev S. Heir
Michael R. Kelly
Romulo I. Lopez
Fred A. Messerer
William E. Modellmog
Gerardo Partida
Aaron D. Silva

DEPUTIES
Jennifer Klein Baldwin
Jennifer M. Barry
Vanessa S. Bedford
Eric V. Bender
Ann M. Burastero
Daniel J. R. Calvert
Emilio Camacho
William Chan
Elaine Chu
Byron D. Damiani, Jr.
Stephen G. Dehrer
Sharon L. Everett
Krista M. Ferns
Nathaniel W. Grader
Mari C. Guzman
Jacob D. Heninger
Stephanie Elaine Hoehn
Russell H. Holder
Cara L. Jenkins
C. David Johnson, Jr.
Valerie R. Jones
Lori Ann Joseph
Aliza R. Kaliski
Naomi Kaplowitz
Christina M. Kenzie
Michael J. Kerins
Eunice Kim
Eve B. Krottinger
L. Erik Lange
Felicia A. Lee
Jason K. Lee
Kathryn W. Londenberg
Anthony P. Márquez
Christine P. Maruccia
Abigail Maurer
Sheila R. Mohan
Natalie R. Moore
Lara Bierman Nelson
Kendra A. Nielsen
Yooli Choi O'Brien
Sue-Ann Peterson
Lisa M. Plummer
Cameron Rhudy
Robert D. Roth
Stacy Saechao
Michelle L. Samore
Melissa M. Scolari
Stephanie Lynn Shirkey
Jessica L. Steele
Mark Franklin Terry
Josh Tosney
Daniel Vandekoolwyk
Marta R. Vanegas
Joanna E. Varner
Joyce L. Wallach
Bradley N. Webb
Rachelle M. Weed
Genevieve Wong
John Wright
Armin G. Yazdi
Jenny C. Yun
Jack Zorman

LEGISLATIVE
COUNSEL
BUREAU

LEGISLATIVE COUNSEL BUREAU
925 L STREET
SACRAMENTO, CALIFORNIA 95814
TELEPHONE (916) 341-8000
FACSIMILE (916) 341-8020
INTERNET WWW.LEGISLATIVECOUNSEL.CA.GOV

August 26, 2014

Honorable Tom Berryhill
Room 3076, State Capitol

INTERNET POKER: LICENSING - #1419612

Dear Senator Berryhill:

QUESTION

If the Legislature enacted a statute validly authorizing and regulating nonbanked, nonpercentage, intrastate Internet poker, could the Legislature authorize a licensed horse racing association to obtain a license to offer Internet poker in California?

OPINION

It is our opinion that if the Legislature enacted a statute validly authorizing and regulating nonbanked, nonpercentage, intrastate Internet poker, the Legislature could authorize a licensed horse racing association to obtain a license to offer Internet poker in California.

ANALYSIS

Internet poker is not currently authorized under existing law in California. For purposes of this opinion, you have asked us to assume that the Legislature has validly authorized a form of Internet poker with the following elements: (1) a player physically located in California would play poker games on the Internet against other players physically located in California; (2) the game would include only players who are real persons; and (3) the game would be subject to the same rules currently authorized for poker games played at card clubs in California, including rules allowing only nonbanked, nonpercentage games.¹

¹ Under the California Constitution, card clubs may offer only nonbanked, nonpercentage games. (See *Hotel Employees and Restaurant Employees Intern. Union v. Davis* (1999)

(continued...)

In order to determine whether the Legislature may authorize a licensed horse racing association to obtain a license to offer Internet poker in California, we must first consider the authority of the Legislature to regulate Internet poker and horse racing associations. In the absence of a specific statutory scheme authorizing and regulating Internet poker, we consider the question generally.

The California Constitution is not a grant of authority, but rather a limitation on the powers of the Legislature. (*Pacific Legal Foundation v. Brown* (1981) 29 Cal.3d 168, 180.) Thus, the Legislature may exercise any and all legislative powers that are not expressly or impliedly denied to it by the Constitution. (*Ibid.*) The Legislature may therefore authorize and regulate gambling in connection with any game that is not prohibited by the Constitution or by federal law. If the Legislature validly enacted a statute authorizing and regulating Internet poker, that statute may establish a licensing scheme.

With respect to whether such a licensing scheme may include horse racing associations, we turn to the Legislature's authority to regulate those associations. The California Constitution allows the Legislature to regulate horse racing and wagering on the results. (Cal. Const., art. IV, § 19, subd. (b).) Pursuant to that authorization, the Legislature has enacted the Horse Racing Law in chapter 4 (§ 19400 et seq.) of the Business and Professions Code,² which, among other things, provides for the licensing and regulation of racing fairs, racing associations, and satellite wagering facilities. Therefore, there is nothing in the California Constitution prohibiting the Legislature from including horse racing associations in a licensing scheme for Internet poker.

As there is no existing law authorizing Internet poker, there is no law restricting or authorizing horse racing associations from operating an Internet poker service. There is, however, a restriction in the Gambling Control Act (§ 19800 et seq.) on the eligibility of specified racing associations to operate gaming establishments. In that regard, section 19863 provides as follows:

“19863. A publicly traded racing association or a qualified racing association shall be allowed to operate only one gaming establishment, and the

(...continued)

21 Cal.4th 585, 592-594.) A “banked” game is one in which the “house has a stake in the outcome of the game.” (*Flynt v. California Gambling Control Com'n* (2002) 104 Cal.App.4th 1125, 1130, fn. 5; hereafter *Flynt*.) It is a game conducted by one or more persons from a fund against which everyone has the right to bet, with the bank responsible for payment of all of the funds. The fund is generally called the bank and the person who conducts it is the banker. (*Western Telcon, Inc. v. California State Lottery* (1996) 13 Cal.4th 475, 487.) A “percentage” game is one in which the “house collects a given share of the amount wagered.” (*Flynt, supra*, at p. 1130, fn. 6.)

²All further section references are to the Business and Professions Code unless otherwise provided.

gaming establishment shall be located on the same premises as the entity's racetrack.”³

Thus, section 19863 restricts the number and location of gaming establishments that may be operated by a publicly traded racing association or a qualified racing association. Regardless of whether holding a license to offer Internet poker would implicate this statutory restriction, section 19863 would not prohibit the Legislature from authorizing either of those types of racing association to obtain such a license because the Legislature could repeal, amend, or otherwise address by statute the restriction imposed by that section.⁴

Accordingly, it is our opinion that if the Legislature enacted a statute validly authorizing and regulating nonbanked, nonpercentage, intrastate Internet poker, the Legislature could authorize a licensed horse racing association to obtain a license to offer Internet poker in California.

Very truly yours,

Diane F. Boyer-Vine
Legislative Counsel



By
Jason K. Lee
Deputy Legislative Counsel

JKL:sjk

³ “Publicly traded racing association” means a corporation licensed to conduct horse racing and simulcast wagering whose stock is publicly traded. (§ 19805, subd. (ah).) “Qualified racing association” means a corporation licensed to conduct horse racing and simulcast wagering that is a wholly owned subsidiary of a corporation whose stock is publicly traded. (§ 19805, subd. (ai).) “Game” means any controlled game and “controlled game” includes any poker or Pai Gow game, and any other game played with cards or tiles, or both, approved by the Department of Justice. (§ 19805, subds. (g) & (k); see Penal Code, § 337j, subd. (e)(1).) An “establishment” is “one or more rooms where any controlled gambling or activity directly related thereto occurs.” (§ 19805, subd. (o).)

⁴ If the Legislature authorized a horse racing association to obtain a license to offer Internet poker and did not amend, repeal, or otherwise address section 19863, a court would seek to harmonize that section with the licensing provision. (See *In re C.H.* (2011) 53 Cal.4th 94, 100.) In the absence of a specific licensing provision to consider, we cannot address how section 19863 would affect the construction of any such licensing provision.