DIVISION OF GAMBLING CONTROL

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"Jackpot Poker"

The Division of Gambling Control (Division) has received reports that a number of gambling establishments throughout the State are operating games that are entitled "Jackpot Poker," contain the phrase "Jackpot Poker" in their name, or bear a name that is substantially similar to "Jackpot Poker."[1] The Division has also been advised that there exists substantial confusion regarding the lawfulness of such games.

ADVICE: It is the view of the Division that each such game must be reviewed on a case by case basis to determine its legality. While the game of Jackpot Poker, as it was generally understood to be played prior to July 1995, was determined to be an unlawful lottery scheme within the meaning of Penal Code section 319,[2] simply naming a game "Jackpot Poker," or a variant thereof, does not, in and of itself, make the game unlawful. A review must be made of the rules of each game.

DESCRIPTION: Prior to July 1995, Jackpot Poker was played as a card game similar to regular poker in most respects, except that in Jackpot Poker a fixed sum of money was withdrawn from the pot in each game played and then placed in a separate fund known as a "jackpot" by the operator of the gambling establishment. In some cases, the operator would add money to the jackpot from other sources, especially when the jackpot was low. The money in the jackpot accumulated until a player in a game achieved a hand with a particular combination of cards under specified circumstances, which then made the player the winner of all the funds in the jackpot.[3, 4]

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[1] Some variations include: "Cashpot Poker" and "Bad Beat Jackpots."

[2] *See* ***Bell Gardens Bicycle Club* v. *Department of Justice*** (1995) 36 Cal.App.4th 717.

[3] *See* ***Bell Gardens Bicycle Club* v. *Department of Justice*** (1995) 36 Cal.App.4th 717, 720-721.

[4] For example, in the game of "Lowball Poker" the best possible lowball hand is a five-four-three-two-ace, often called a "wheel." The second best lowball hand is a six-four-three-two-ace, often referred to as a "sixty-four." Under the Jackpot Poker rules, as applied to Lowball Poker, the winner of the jackpot is the player who holds a "sixty-four" hand when another player has a "wheel." The jackpot feature did not interfere with the regular Lowball Poker play, except for the withdrawal from each pot of money for the jackpot. Although Jackpot Poker was also appended to other games, the essential elements of all jackpot poker games were the same. (*See* 72 Ops. Cal. Atty. Gen. 143.)

The current versions of this game each have rules which purportedly differ from those described above.

ANALYSIS: If the rules of play for the game being reviewed are the same as those described above for the pre-July 1995 game, then clearly the game is an unlawful lottery scheme within the meaning of Penal Code section 319.[5]

However, if the rules differ, then those rules must by analyzed to determine if the game constitutes an unlawful lottery scheme. A lottery has three essential elements: (1) a prize; (2) distributed by chance; and (3) consideration.[6] If all three elements are not present, then the game is not an unlawful lottery scheme.

The rules of each game must also be examined to determine if the game constitutes an unlawful banking or percentage game, within the meaning of Penal Code section 330.

Finally, even if the game does not violate the Penal Code, the gambling establishment that is offering the game is required to report it to, or obtain approval from, the Division of Gambling Control, before it is offered to patrons for play, pursuant to Title 11, California Code of Regulations, sections 1701.2 and 1701.4.

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[5] *See* ***Bell Gardens Bicycle Club* v. *Department of Justice*** (1995) 36 Cal.App.4th 717. However, there is presently pending legislation which, if enacted, would change this analysis. (*See* AB 1517 (Firebaugh).)

[6] See ***Western Telecon, Inc.* v. *California State Lottery*** (1996) 13 Cal.4th 475, 490; ***California Gasoline Retailers* v. *Regal*** (1958) 50 Cal.2d 844, 851; and Penal Code section 319.

For more information regarding this advisory, contact the California Department of Justice, Division of Gambling Control, at (916) 263-3408.

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