



Should Texas put a hold on Texas Hold 'Em?

Popularity of tournaments raises questions about game's legality.

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For Ken Robinson, playing in free Texas Hold 'Em tournaments a couple of nights a week is good, clean fun.

On Wednesday night, the 63-year-old Texas Alcoholic Beverage Commission agent sat down to a poker game at Baby Acapulco on Interstate 35, his badge glinting from his belt.

"I'm not sweating blood or losing the rent or the car payment," Robinson said. "It's basically just a fun thing."

Over the past few months, the entertainment explosion that is Texas Hold 'Em has spilled from living rooms and kitchens into bars and restaurants, where gambling is illegal.

And though fledgling poker companies, restaurant and bar managers, and some officials such as Robinson, think the games are structured in a way that makes them legal, many law enforcers and prosecutors say the tournaments aren't square with Texas law.

"Up here in Odessa, they call that gambling," said John Smith, the Ector County district attorney. Smith said he got so many calls from charities and other establishments wanting to capitalize on the Texas Hold 'Em fad that he requested a legal opinion from Texas Attorney General Greg Abbott. He expects an answer within a few months.

The recent and unexpected popularity of televised poker, including ESPN's "World Series of Poker" and

Bravo's "Celebrity Poker Showdown," has helped launch Texas Hold 'Em to national fame and rejuvenated the old poker night in millions of homes.

Calls about Texas Hold 'Em recently spurred Williamson County Attorney Jana Duty to issue a statement saying that she will prosecute those who play poker in public.

But confusion about exceptions to gambling laws has caused other officials to wait until Abbott weighs in on the issue to take action, said Markus Kypreos, a research lawyer for the Texas District and County Attorneys Association.

"Most prosecutors are playing the wait-and-see game," Kypreos said.

At issue is a snippet of the penal code that forbids playing cards or betting "for money or other thing of value." Cash games in a private setting are an exception, as long as the host doesn't take a cut of the pot or charge a cover.

In public places, gambling is illegal.

But in the past six months, bars and restaurants such as Mother Egan's Irish Pub started holding free "just for fun" Texas Hold 'Em tournaments with no cover charge and no cash bets, which bar owners say transforms a poker game into the equivalent of darts or karaoke.

Others pay a company to bring in tables, cards, chips and a dealer. The games are free, but participants accumulate points that give them a chance to advance to regional tournaments, where they could win a Las Vegas vacation or a \$10,000 entry fee into the "World Series of Poker."

This is where it gets complicated, said Lt. Robert Saenz, TABC district supervisor in Austin.

The presence of a prize makes it betting for "a thing of value," according to the law, he said.

And though the participants do not pay to play, the companies, such as the Amateur Poker League, which runs the game at Baby Acapulco, and the Fantasy Poker League, charge the bar or restaurant to run the games.

So if the bar pays the company \$100 for a poker table that seats four, then the bar is paying \$25 for each customer to play, Saenz said.

And if the points truly have no value, he said, then "why am I wasting my time playing poker?"

People play to meet each other and have a good time, said Alan Widman, owner of the Omaha, Neb.-based Fantasy Poker League.

Fantasy Poker runs tournaments at 16 sites in the Austin area, where you can find a game almost every night of the week, Widman said.

"Poker is the hottest thing in the country right now, and people are having so much fun playing," Widman said.

With Fantasy Poker, "all you are gambling with is your ego," he said. "You can't lose a penny."

Widman said he started his company in July and now has 43 locations in Nebraska and Texas.

"We bring people out of their houses and into bars and restaurants, helping the economy," he said. "It is a social club, is what it has become."

Widman said the company's lawyers think the tournaments are completely legal. But he knows that some officials do not agree.

"That is the frustrating part, that there are people who see everyone out having a great time and want to shut it down," he said.

Travis County Attorney David Escamilla said he thinks the games are illegal and has counseled many charities that want to raise money with Texas Hold 'Em tournaments.

"They have really been suffering after September 11, and they are looking for new ideas," Escamilla said.

Paying \$50 to go to a charity casino night or Texas Hold 'Em tournament is usually OK, he said, as long as the players cannot redeem their chips for prizes. In a couple of instances, charities have been forced to change tournament rules at the last minute, he said.

"If you take the value out of the chips, it is pure entertainment," Escamilla said.

Saenz said he has issued some warnings but has not broken up any of the free tournaments. Officers must approach them on a case-by-case basis, he said.

Escamilla said he would rather get the word out than prosecute unsuspecting players on misdemeanor gambling charges.

The recent history of eight-liners and video poker machines is proof that people will always come up with a new gimmick to get around gambling laws, he said.

"There are as many ideas as there are enterprising people out there," Escamilla said. "It's never-ending. Texas Hold 'Em is a new phase, and there is always a time lag with making sure we are on the law."

Is your game of chance legal?

According to Texas law, you're not gambling unless you are playing for money or something of value. If the game is free and the chips you collect cannot be redeemed for any kind of prize, gift certificate or jumbo margarita, you are not gambling.

If you are playing for cash, the following must apply:

- You must play in a private setting (not a bar or restaurant).
- No one may receive economic benefit other than personal winnings. For example, your friend may not charge a cover for poker night or take a cut of the pot, even to buy refreshments.
- Other than the advantage of skill or luck, everyone must have the same chance of losing or winning.

This rule includes games such as Texas Hold 'Em but not others such as craps and blackjack, which are weighted toward the house.

Charities may charge a cover for Texas Hold 'Em tournaments, but they may not allow players to redeem chips for prizes. If the charity wants to auction prizes, players must pay for them with cash.

Source: Texas District and County Attorneys Association