Fishing Tournaments -- Gambling

Number: INFORMAL

Date: January 29, 2014

Mr. Harold G. Vielhauer
Florida Fish & Wildlife Conservation Commission
Legal Office
620 South Meridian Street
Tallahassee, Florida 32399-1600

Dear Mr. Vielhauer:

As General Counsel to the Florida Fish and Wildlife Commission, you have requested this office's opinion on how Florida's gambling laws may relate to participation in fishing tournaments. More specifically, you have asked:

Whether a contest of skill, such as a fishing tournament including tagged fish, where contestants pay an entry fee which does not directly make up the prize, for an opportunity to win a valuable purse or prize violates the gambling laws of Florida?

While this office cannot review the facts presented by individual games or contests and pass on their legality[1], I can provide the Commission with direction regarding this general question.

It appears that you are primarily concerned about the provisions of section 849.14, Florida Statutes, which states:

"849.14 Unlawful to bet on result of trial or contest of skill, etc.—Whoever stakes, bets or wagers any money or other thing of value upon the result of any trial or contest of skill, speed or power or endurance of human or beast, or whoever receives in any manner whatsoever any money or other thing of value staked, bet or wagered, or offered for the purpose of being staked, bet or wagered, by or for any other person upon any such result, or whoever knowingly becomes the custodian or depositary of any money or other thing of value so staked, bet, or wagered upon any such result, or whoever aids, or assists, or abets in any manner in any of such acts all of which are hereby forbidden, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083."

As you are aware, Florida's gambling laws generally apply to games of chance and not to contests of skill. For example, section 849.09, Florida Statutes, prohibits lotteries, other than those operated by the state.[2] While the term "lottery" is not defined, it has generally been held by the courts to include three elements: 1) a prize, 2) awarded by chance, 3) for consideration.[3]

While the elements of a prize and consideration are present in a contest of skill in which the contestants pay an entry fee for the opportunity to win, it is the skill of the contestant, rather than chance, that is the predominant element in the selection of the winner. This office has stated that contests in which the skill of the contestant predominates over the element of chance do not

constitute lotteries.[4]

However, section 849.14, Florida Statutes, by its terms makes it unlawful to "stake, bet or wager" money or other thing of value on the result of any trial or contest of skill.[5] In *Creash v. State*,[6] the Florida Supreme Court, considered the terms "stake, bet or wager," for purposes of the state's gambling laws and stated:

"In gamblers' lingo, 'stake, bet or wager' are synonymous and refer to the money or other thing of value put up by the parties thereto with the understanding that one or the other gets the whole for nothing but on the turn of a card, the result of a race, or some trick of magic. A 'purse, prize, or premium' has a broader significance. If offered by one (who in no way competes for it) to the successful contestant in a fete of mental or physical skill, it is not generally condemned as gambling, while if contested for in a game of cards or other game of chance, it is so considered. . . . It is also banned as gambling if created . . . by paying admissions to the game . . . or otherwise contributing to a fund from which the 'purse, prize, or premium' contested for is paid, and wherein the winner gains, and the other contestants lose all."[7]

Your letter states that the sponsor of the fishing tournament does not compete for the prize. In addition, your letter indicates that the entry fees do not make up the prize and that the prize is not contingent on the amount of funds earned from the contest entry fees. Thus, the payment of an entry fee to participate in a contest of skill when the sponsor of the contest does not participate and where the prize money does not consist of entry fees would not appear to be a "stake, bet or wager."[8]

I would, however, caution that you have suggested that section 849.14, Florida Statutes, prohibits the giving away of cash. In fact, section 849.14, Florida Statutes, refers to "money or *other thing of value*" being staked, bet or wagered. (e.s.) The statute does not merely prohibit the wagering of money, but extends the prohibition to other things of value.[9]

In a more recent case, *Faircloth v. Central Florida Fair, Inc.*,[10] the court considered the application of section 849.14, Florida Statutes, to the players of games of skill for prizes:

"We turn next to F.S.A. s. 849.14 which prohibits betting on the result of a trial or contest of skill. It is the [Attorney General's] contention that the playing of [games of skill] falls unquestionably within the bounds of this provision. Defendant's position is arguable. But the more logical interpretation is that the legislature intended by enacting F.S.A. s. 849.14 to proscribe 'wagering' on the results of ball games, races, prize fights and the like as opposed to 'playing' games of skill for prizes. . . . To adopt defendant's construction we would have to find all contests of skill or ability in which there is an entry fee and prizes to be gambling. The list could be endless: golf tournaments, dog shows, beauty contests . . . to name a few. No one seriously considers such activities to be gambling. . . ."[11]

As was noted by the *Faircloth* court however, there may be instances in which so-called games of skill are manipulated so as to cease to qualify as such. In these cases, the gambling laws of this state would be implicated.

In sum, I am of the opinion that a contest of skill (and you assert that a fishing tournament is a

contest of skill), where the contestant pays an entry fee, which does not make up the prize, for the opportunity to win a valuable prize by the exercise of skill, does not violate the gambling laws of this state.

I trust that these general comments will be of assistance to you in advising the Commission.

Sincerely,

Gerry Hammond
Senior Assistant Attorney General

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[1] Violations of Florida's gambling laws, codified in Chapter 849, Florida Statutes, are criminal offenses and are investigated and prosecuted by Florida's law enforcement agencies. *See, e.g.,* s. 849.14, Fla. Stat., making it a misdemeanor of the second degree to bet on the result of a trial or contest of skill.

[2] *See* Art. X, ss. 7 and 15, Fla. Const.

[3] *See Little River Theatre Corporation v. State ex rel. Hodge*, 185 So. 855 (Fla. 1939); *Dorman v. Publix-Saenger-Sparks Theatres*, 184 So. 886 (Fla. 1938).

[4] *See* Ops. Att'y Gen. Fla. 90-35 (1990) and 55-189 (1955). *Cf.* Op. Att'y Gen. Fla. 89-05 (1989) concluding that a crane game in which the element of chance predominated over the skill of the player constitutes a slot machine in violation of Ch. 849, Fla. Stat.

[5] Section 849.14, Fla. Stat., provides in pertinent part:

"Whoever stakes, bets or wagers any money or other thing of value upon the result of any trial or contest of skill, speed or power or endurance of human or beast . . . or whoever knowingly becomes the custodian or depositary of any money or other thing of value so staked, bet, or wagered upon any such result . . . shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083."

[6] 179 So. 149 (Fla. 1938).

[7] *Id.* at 152.

[8] *See* Ops. Att'y Gen. Fla. 90-58 (1990) and 66-41 (1966) and 38 C.J.S. *Gaming* s. 28 "Games, Sports, and Contests for Purse, Prize, or Premium" at p. 142, which states that:

"[T]he contest does not become a wager by the mere fact that the contestants are required to pay an entrance fee, where the entrance fee does not specifically make up the purse or premium contested for, or by the fact that the purse offered consists in part of entrance fees and in part of an added sum. However, if the entrance fees collectively constitute a prize to be won by one of

the contestants, the scheme will be found to be a wagering transaction. A competition will also become a wager if the one offering the prize may compete to win it."

[9] *See* 38 C.J.S. *Gaming* s. 4b. "Other Terms Descriptive of Acts" at p. 104, which states that "[t]he phrase 'thing of value' or 'valuable thing' has been held to include amusement generally and particularly that afforded by the 'free game' feature of some gaming devices."

[10] 202 So. 2d 608 (Fla. 4th DCA 1967).

[11] *Id.* at 609. *Cf.* Op. Att'y Gen. Fla. 66-41 (1966), stating that where the payment of an entrance fee by each competitor in a golf tournament does not specifically make up the purse or prize, the gambling laws are not violated.