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To: Joint Appropriations Committee

From: Michael T. Kahler, Senior Assistant Attorney General

Subject: Interim Topic #1: Comprehensive Review of Gaming in Wyoming,
Wyoming's Gambling Laws

Wyoming's gambling laws are found in Title 6 (criminal offenses), Title 9 (online sports wagering), and Title 11 (pari-mutuel wagering and skill based amusement games) of the Wyoming Statutes. In general, gambling in Wyoming is prohibited unless it falls under one of many exceptions. The purpose of this brief memo is to highlight some of the more common types of gambling in Wyoming and identify potential areas that could be addressed with respect to Wyoming's gambling laws in terms of regulatory mechanisms and consumer protections.

Wyoming law defines gambling as:

“[R]isking any property for gain contingent in whole or in part upon lot, chance, the operation of a gambling device or the happening or outcome of an event, including a sporting event, over which the person taking a risk has no control[.]”

Wyo. Stat. Ann. § 6-7-101(a)(iii).

Wyoming statutes provide multiple exceptions to gambling, including:

1. Bona fide contests of skill, speed, strength or endurance;
2. Bona fide business transactions valid under the law of contracts;

3. Bingo games;
4. Pull tabs;
5. Any game, wager or transaction which is incidental to a bona fide social relationship, is participated in by natural persons only, and in which no person is participating, directly or indirectly, in professional gambling;
6. Calcutta wagering;
7. Display or private use of antique gambling devices in the owner's residence;
8. Raffles conducted for charitable purposes;
9. Any lottery game authorized and run by the Wyoming Lottery Corporation;
10. Hunting license raffle;
11. Activities authorized by the Gaming commission under Title 11, Chapter 25 of the Wyoming statutes (Pari-mutuel wagering and skill based amusement games);
12. Online sports wagering; and
13. Fantasy sports contests.

Wyo. Stat. Ann. § 6-7-101(a)(iii)(A)-(O).

Bona Fide Social Relationship

Although the “bona fide social relationship” exception is rarely discussed as compared to others, the Commission sees many forms of gambling operate under this exception. Examples include, but are not limited to: poker, super bowl squares, March Madness or other sports pools, friendly bets between friends and family, etc. so long as there is a bona fide social relationship.

Wyoming statutes do not define “bona fide social relationship,” nor has the Wyoming Supreme Court interpreted the term. There has been uncertainty over the years statewide as to whether a social relationship must exist prior to the gambling activity taking place, or whether the social relationship can arise between strangers because they are present for the purposes of gambling.

The Colorado Court of Appeals, under a similar statutory exception to gambling has interpreted the term to look at these gambling situations on a case-by-case basis, focusing on the nature of the relationship between the participants. It is possible that games and wagers take place in Wyoming that may lack a bona fide social relationship. Given the increase in gambling under this exception, and given potential differing views across Wyoming's 23 counties, it may be helpful for the Legislature to provide guidance and clarification as to what is required for a bona fide social relationship.

Simulcasting – Historic Horse Racing

Historic Horse Racing first arrived in Wyoming following a Pari-Mutuel Commission rule change to allow the terminals (known as “Instant Racing” at the time). The games were in operation for approximately two years before the Cheyenne Police Department issued a cease and desist letter, ordering that the terminals be shut down. The case worked its way up to the Wyoming Supreme

Court who concluded in a 2006 opinion that the Pari-Mutuel Commission exceeded its authority when it authorized the terminals.

Approximately 7 years later in 2013, the Wyoming Legislature specifically authorized historic horse racing, and gave the Commission rulemaking authority to regulate them. Since 2013, the Commission promulgated rules and began authorizing historic horse racing terminals at various off track betting facilities throughout the State.

In 2015, the Commission had a potential concern about terminals operating in Wyoming, and whether they complied with Wyoming law. Specifically, the Commission was concerned about the presence of “bonus rounds” present in the terminals’ software. The Attorney General’s Office issued a 2015 informal opinion concluding that the terminals did not comply with Wyoming law. Subsequently the Commission shut down all historic horse racing terminals until such time that they became compliant with the law. Shortly after the shutdown, the two simulcast operators introduced new terminals with new software that complied with Wyoming law.

Since that time, historic horse racing in Wyoming has operated largely without compliance issues. Like other states, the gaming industry has influenced legislation that authorizes historic horse racing. The Commission has been in the position of reacting to games that were already in existence as opposed to the industry designing games based upon Wyoming statutes and Commission rules. While the Commission has since addressed the issues from 2015, there are still potential areas that could be addressed by future legislation.

Unlike Skill Based Amusement Games, Wyoming Statutes do not address any limitation on locations or the number of historic horse racing terminals allowed at each location. With skill based amusement games, they are limited to four games per licensed liquor establishment, truck stop, or smoke shop.

Additionally, historic horse racing does not have a limit on maximum wager per play, or maximum jackpot. Conversely, skill based amusement games have a maximum \$3 wager per play, and a \$3,000 maximum jackpot. By its nature, pari-mutuel pools may not be able to be capped like other forms of gambling, but this issue has been a topic of discussion in recent legislative sessions.

Finally, historic horse racing and other pari-mutuel wagering is lawful for those 18 years and older, as compared to skill based amusement games and online sports wagering, which requires individuals to be 21 years or older.

Over the years, there has been a debate as to whether the Legislature or the Commission is the proper body to consider these questions. It may be beneficial to consider these questions and provide guidance to the Commission as to the Legislature’s intent with respect to regulatory consistency.

Skill Based Amusement Games

Skill based amusement games started to appear in Wyoming in or around 2017 or 2018. Vendors and operators offering those games believed that the games were lawful under existing Wyoming law at the time. In 2018, Natrona County District Attorney Michael Blonigen asked the Attorney General's Office for an opinion as to whether the games complied with Wyoming law. In December 2018, the Attorney General's Office issued a formal opinion concluding that the games at issue were illegal gambling devices.

In 2020, the Wyoming Legislature grandfathered the games already in existence and legalized them on a trial basis with a June 30, 2021 sunset provision. The Commission licensed a vast majority of those games, but determined a small percentage of the games to be non-compliant under Wyoming law.

One year later, the Legislature removed the sunset provision and legalized skill based amusement games going forward, so long as they were operated at licensed liquor establishments, truck stops, or smoke shops. The Commission has since promulgated skill based amusement game rules, approved approximately 900 games, and any additional legal issues have been minimal.

Online Sports Wagering

In 2021, the Legislature authorized online sports wagering, which given the comprehensive statutory scheme put in place at the beginning, had fewer issues at its conception. Unlike skill based amusement games, (where the games were in operation first and the legislation followed) online sports wagering laws were written prior to allowing operators to offer sports wagering.

The Legislature looked at other states in drafting their sports wagering laws, and the Gaming Commission did the same in promulgating their rules. This proactive and comprehensive approach to online sports wagering has provided certainty for the industry and resulted in minimal legal issues. Further, by adopting legislation and rules similar to states operating online sports wagering, operators have certainty and consistency regarding regulatory requirements in the state.