

Not Social But Amusement Gambling



The **amusement** gambling exclusion provides a paradigm shift away from social gambling for intellectual games such as poker. In 2010, poker was

inducted into the International Mind Sports Association, which governs international bodies for contract bridge, chess, checkers, Go and more.

Poker is predominantly a game of skill, as demonstrated in *NY v. DiCristina* (2012), citing an array of skills that are intellectual in nature: understanding rules, game theory, math, psychology, negotiation, deception, etc. In 2017, the Global Association of International Sports Federations granted observer status to the International Federation of Poker, the first step toward joining the Olympic program.

The amusement exclusion isn't without questions:

- The prizes are not **offered as a lure** to separate the player or players from their money.
- "...the money paid to gamble is **part of an established purchase price for a product**",
- "...no **increment has been added** " to the price in connection with the gambling event".

The Attorney General's office rejected our initial attempts to register a poker tournament as an amusement (2013 to 2015). But in 2015, on appeal, the chief of the Special Investigations Section explained that "**not everyone who pays the \$100 entry fee receives the \$15K WSOP vacation package** (product)". Thus, we sought out examples of intellectual contests that did not award every participant the grand prize, and the 116th U.S. Open Chess Championship at the Arizona Biltmore jumped out at us immediately. We notified the AG, DPS and ADoG about this chess-for-cash event, with a \$190 registration fee, and an \$8,000 1st place prize based on a projected \$50K prize pool with 500 entrants.

Because not everyone receives the \$50K prize pool, the tournament had the appearance of an illegal chess-for-cash contest in Arizona.

Public records show that after making pointed inquiries, ADoG's Public Information Officer e-mailed the Arizona Assistant Attorney General assigned to act as ADoG's counsel, suggesting this response: "*Your notice of concerns about the USCF's plan to hold a conference and tournament here in August led us to **contact them and investigate their event**. After they were able to secure legal representation we have been provided sufficient details by them to determine that this does not fall under illegal gaming activity.*"

After the Attorney General's office edited the response, the final version stated, "*Your concerns about the USCF's 116th Annual U.S. Open Chess Championship scheduled for August 1-9 led us to contact counsel for the USCF. After discussions, the Arizona Department of Gaming has determined that the **conference and championship does not fall within Arizona's statutory definition of illegal gambling***".

After an **epiphany**, bolstered by the fact that the intellectual amusement exclusion works for chess, we registered identical chess and poker tournaments with the "**entertainment event**", aka ADoG's "conference and championship", as the "product" – not the cash prize pool. **Midweek during the 116th U.S. Open, the AG's office issued "green light" letters for both of our registrations.** We successfully registered another AGPT in 2016. As a 501c7 organization we are not required to register our events, but we continue to do so each year as a form of **civil notice** to the State through the Attorney General's office.

In the 2015 New Times Article "*US Open Chess Championship Is Illegal, Poker Advocate Contends*", ADoG's Public Information Officer, Amanda Jacinto, contradicts her internal memo about the investigation, and outright **lies to the reporter** saying "the department didn't actually determine whether or not the chess event wasn't illegal."



"The department did respond to Schnaubelt's notice," Amanda Jacinto continued "but told him only that concern over the chess event 'doesn't rise to a level where it needs an investigation.' The gaming department has to use its resources 'wisely'. Investigating whether the US Open Chess Championship is illegal, she goes on, was deemed an unnecessary use of resources and therefore wasn't done."

Did ADoG lie to us, and to themselves, as shown in the accidental disclosure of internal attorney-client privileged information?

Why doesn't ADoG take a \$50K chess-for-cash event as serious as they would poker? And not just the high profile U.S. Open Championship, but the dozens of USCF affiliate clubs offering regular chess tournaments touting "**80% returned via the prize pool**"? Why is ADoG the only public authority that takes umbrage with off-rez poker?

In a public records sweep after the New Times article was distributed internally at ADoG, Senior Manager Warren Nichols responded via e-mail to a couple of his cohorts in the "old boys network" at ADoG: "**Does our PIO have foot in mouth disease?** It would cost any of us that have dealt with these types of questions about \$10 in time value to tell the reporter that this type of contest of skill is exempted from ARS 13-33 as every jurisdiction in the world has determined chess to be a contest of skill (which is not the case with Poker)..."

While it is true that poker, as a game of skill, has not been tested in an Arizona court, the question of skill or chance doesn't directly apply to the intellectual exclusion.

But incredibly, Nichol's believes "skill" gambling is automatically excluded in Arizona. Nothing could be further from the truth. In fact, the "skill" exclusion (ARS 13-3301.1.d.iv) only allows merchandise prizes up to \$550 in value.

Only the intellectual gambling exclusion could work for the U.S. Open, and only then if the "conference and championship" – not the "prize pool" – is considered the "product",

as in "the money paid to gamble is part of the established purchase price for a product".

There is little case law or AG opinions about the amusement exclusion, the lure analysis, or the increment language. A person of ordinary intelligence must have a reasonable opportunity to understand what the law means, or it may be **void for vagueness**.

Real Poker's AGPT events are modeled after similar event products in which the the State took



no **umbrage**, including ADoG's public record determination that the U.S. Open chess-for-cash tournament was "not illegal gambling".

By structuring Real Poker AGPTs like the U.S. Open, "the money paid to gamble" is "part of" the "established purchase price" (or value, i.e., revenue less overhead) of the "the [event] product" related to the gambling activity [tournament].

AGPT prizes are not "lures". Event fees include a seat in a traditional poker tournament with a \$200 guaranteed cash prize pool, and lower projected return ratios than other amusement gambling exclusions: Athletic contests award \$1.2M on a \$10K entry (**102:1**). Intellectual contests award \$8K on a \$190 entry (**42:1**). Skill contests can award up to \$550 prizes, and single wins worth up to \$40, on a \$0.25 entry (**160:1**). AGPTs target a **10:1** return and rarely see above a **20:1** ratio, 50% "less lure" than the U.S. Open Chess event.

At the start of a chess match, a coin toss determines who plays white. White **wins 10% more often!** Poker is a game of incomplete information, but all players in a hand have that same information.

There is never a 10% advantage randomly assigned to a player at a poker table! ■

