

MAINE

I. Definition of gambling

1. Definition

Maine defines "gambling" as "staking or risking something of value upon the outcome of a contest of chance or a future contingent event not under his control or influence, upon an agreement or understanding that he or someone else will receive something of value in the event of a certain outcome." Me. Rev. Stat. Ann. tit. 17-A, § 952(4) (2009). Maine defines a contest of chance as any game, contest, scheme, or device in which (a) a person stakes or risks something of value for the opportunity to win something of value;(b) the rules of operation or play require an event the result of which is determined by chance, outside the control of the contestant or participant; and(c) chance enters as an element that influences the outcome in a manner that can not be eliminated through the application of skill. Me. Rev. Stat. Ann. tit. 17-A, § 952(3) (2009).

Even if a game does have elements of chance, it will not be illegal in Maine unless the participant gives consideration, or something of value, for the opportunity to win a bigger prize. Me. Rev. Stat. Ann. tit. 17-A, § 952(3) (2009).

1a. Consideration: Gambling versus Sweepstakes

Something of value under Maine Law is defined to mean (a) any money or property;(b) any token, object or article exchangeable for money, property, amusement or entertainment; or(c) any form of credit or promise directly or indirectly contemplating transfer of money or property, or of any interest therein, or involving extension of a service, entertainment or a privilege of playing at a game or scheme without charge. Me. Rev. Stat. Ann. tit. 17-A, § 952(10) (2009).

Maine courts have held that a "thing of value," to be subject of gaming, may be anything affording the lure necessary to indulge gambling instinct. *See State v. Baitler* 131 Me. 285 (Me. 1932). But recently, the Maine Supreme Court has held that if a promotional contest does not require a purchase it is not an illegal lottery or game of chance because consideration is absent. *See Classic Oldsmobile-Cadillac-GMC Truck, Inc. v. State*, 704 A.2d 333, 334 (Me. 1997) (contest not gambling if entrance fee does not form the prize and promoter does not receive a benefit from fees charged); *State v. Bussiere*, 154 A.2d 702, 706 (Me. 1959) (no risk of valuable consideration if participant is not required to make a payment or purchase to play).

Although *Bussiere* allowed a completely free game in which all contestants enter for free, a game did not avoid the consideration element if *any* participant paid "a consideration, however small, for the privilege of having an advantage or seeming advantage over any other." *Id.* at 706. Some ambiguity exists whether this case is merely restating the equal dignity rule or infers that an alternative method of entry will not save a game from illegality. Despite the loose language, the former seems more likely.

In *Bussiere*, the court dealt with a grocer who had given away cash awards through a drawing that required no money or purchases from the store to enter. Though the State of Maine argued that consideration was not a necessary requirement to have an illegal game of chance, the court was persuaded that it was due to the plain statutory language. *Id.* at 705-06. Therefore, this drawing could not meet all the enumerated requirements for a lottery and was held to be legal. *Id.* at 707

In *State v. Baitler*, 131 Me. 285, 161 A. 671 (1932), a vending machine would distribute a varying number of tokens that could be used to play an attached baseball game. Because these tokens could be exchanged for amusement purposes, the playing of the baseball game, they were held to be things of value. *Id.*

2. Chance: Gambling versus Contests of Skill

Maine appears to apply the predominance test with regard to whether a game may be classified as a game of chance or skill. In Maine, a contest of chance means any game, contest, scheme or device in which: (a) a person stakes or risks something of value for the opportunity to win something of value; (b) the rules of operation or play require an event the result of which is determined by chance, outside the control of the contestant or participant; and (c) chance enters as an element that influences the outcome in a manner that cannot be eliminated through the application of skill. Me. Rev. Stat. § 952(2)(2009).

For the purposes of this discussion, "an event the result of which is determined by chance" includes but is not limited to a shuffle of a deck or decks of cards, a roll of a die or dice or a random drawing or generation of an object or objects that may include, but are not limited to, a card or cards, a die or dice, a number or numbers or simulations of any of these. A shuffle of a deck or decks of cards, a roll of a die or dice, a random drawing or generation of an object or objects or some other event the result of which is determined by chance that is employed to determine impartially the initial order of play in a game, contest, scheme or device does not alone make a game, contest, scheme or device a game of chance. Me. Rev. Stat. § 952(2)(2009).

A person engages in gambling if he stakes or risks something of value upon the outcome of a contest of chance or a future contingent event not under his control or influence, upon an agreement or understanding that he or someone else will receive something of value in the event of a certain outcome. Me. Rev. Stat. § 952(3)(2009).

A statute in Maine specifies that the "Chief of the State Police shall provide a mechanism for individuals and businesses to request a determination from the State Police as to whether a particular contest, scheme or device qualifies as a game of chance or a game of skill." 17 Me. Rev. Stat. § 343 (2009).

The applicable statute gives some guidance as it defined a game of skill as a "game, contest, scheme or device in which a person stakes or risks something of value for the opportunity to win

something of value and that is not a game of chance." The statute then defines a game of chance as the result of which was determined outside the control of the player. Chance influences the outcome in a way that may not be eliminated by skill of the player. The statute clarifies that a random drawing, shuffle, roll of dice or other chance event that determined the initial order of a game is not conclusive that a game is a game of chance. *See* 17 Me. Rev. Stat. § 330(2) (2009).

A case decided in 1932 held that a machine entitled "Play Ball" is not a game of skill. The player starts three reels which would play an imaginary game of baseball upon the player's insertion of a token. The player could start or stop the reels, but the court concluded that the mechanics of the machine and not the player's skill control the device. *State v. Baitler*, 131 Me. 285, 161 A. 671 (1932). Although the court recognized the presence of skill, the court also concluded that it was important that chance predominated over skill. *Id.*

In *Classic Oldsmobile-Cadillac-GMC Truck, Inc., v. State*, 704 A.2d 333 (1997), the court examined the legislative intent of the "chance" element. In that case, a car dealership ran a month-long promotion where anyone that leased a new vehicle would receive free lease payments for a year if the temperature exceeded ninety-six degrees at a later date at the Portland International Jetport. *Id.* at 333-34. The court held the temperature aspect of the promotion contained elements of chance, outside the control of the lessees, and would not be eliminated through any exercise of skill. *Id.* This promotion was consequently held to be an illegal game of chance. *Id.*

II. Definition of Bookmaking

Bookmaking is defined as "advancing gambling activity by unlawfully accepting bets from members of the public as a business, rather than in a casual or personal fashion, upon the outcomes of future contingent events." Me. Rev. Stat. Ann. tit. 17-A, § 952(2) (2009).

Advancing gambling activity is defined as materially aiding in the activity of gambling, and bookmaking is specifically mentioned as an activity that would fall under this umbrella definition. Me. Rev. Stat. Ann. tit. 17-A, § 952(1) (2009).

Accepting bets on future contingent events incorporates many situations. In *State v. Goldman*, 281 A.2d 8 (1971), the defendant's illegal bookmaking business included taking bets on sporting events, horse races, and a numbers game.

III. Specific Gaming Device Definitions

Under Maine law, a gambling device is:

"any device, machine, paraphernalia or equipment that is used or usable in the playing phases of any gambling activity, whether that activity consists of gambling between persons or gambling by a person involving the playing of a machine. However, lottery tickets and other items used in

the playing phases of lottery schemes are not gambling devices within this definition." Me. Rev. Stat. Ann. tit. 17-A, § 952(5) (2009).

An Illegal gambling machine means any machine, including electronic devices, however operated where:

A. The internal mechanism or components of which when set in motion or activated may deliver or entitle the person playing or operating the machine to receive cash, premiums, merchandise, tickets or something of value;

B. That is used to advance gambling activity;

C. That is not a machine that a person may lawfully operate pursuant to a license that has been issued under Title 17, chapter 14 or that is operated by the Department of Administrative and Financial Services, Bureau of Alcoholic Beverages and Lottery Operations; and

D. That is not a slot machine registered pursuant to Title 8, section 1020 and owned by a slot machine distributor licensed pursuant to Title 8, section 1013. Me. Rev. Stat. Ann. tit. 17-A, § 952(5-A) (2009).

Subsection C refers to an electronic video machine, which is a machine containing games that may allow the player to play again for free, but not to receive any cash, merchandise, or tickets that could be redeemed for either. Me. Rev. Stat. Ann. tit. 17, § 330(1-A) (2009). Licenses for these machines can be granted to bona fide charitable, educational, political, etc. organizations that have been organized under the laws of that State for two or more years. Me. Rev. Stat. Ann. tit. 17, § 332(3-B) (2009).

Pinball machines have been defined as a gaming device in the State of Maine. In *State v. Livingston*, 135 Me. 323, 196 A. 407 (1938), a pinball machine that randomly selected a target for the player to shoot for and distributed tickets exchangeable for prizes if that target was hit, was held to be a gaming device due to the amount of chance present in the game.

In *State v. Baitler*, 131 Me. 285, 161 A. 671 (1932), an automatic candy vending machine was held to be a gaming device. After individuals inserted money for the candy, they were given anywhere from two to twenty tokens that could be used to play an attached baseball game of chance. *Id.* Because these tokens were distributed randomly and were considered to be something of value, the court held that this machine was a gambling device. *Id.* at 672.

Punch boards have also been declared a gaming device under Maine law. *Grove Mfg. v. Jacobs*, 117 Me. 163, 103 A. 14 (1918). A punch board is a card that contains a number of holes with numbers under each one. The card will dictate how many holes an individual is allowed to punch out. If after punching out a hole the individual finds a number that the card has declared a winner, the person will win whatever amount of money is indicated on the card for that number.

IV. Bucket Shop Laws

According to Me. Rev. Stat. Ann. tit. 17, chp. 27 (2009), Maine's Bucket Shop laws contained in Me. Rev. Stat. Ann. tit. 17, §§651-654 have been repealed.

V. Prohibition of games of skill

1. Poker/Card games

Maine specifically has listed events it holds to be determined by chance. Me. Rev. Stat. Ann. tit. 17-A, § 952(3) (2009). That section reads "an event the result of which is determined by chance" includes but is not limited to a shuffle of a deck or decks of cards, a roll of a die or dice or a random drawing or generation of an object or objects that may include, but are not limited to, a card or cards, a die or dice, a number or numbers or simulations of any of these. A shuffle of a deck or decks of cards, a roll of a die or dice, a random drawing or generation of an object or objects or some other event the result of which is determined by chance that is employed to determine impartially the initial order of play in a game, contest, scheme or device does not alone make a game, contest, scheme or device a game of chance. Me. Rev. Stat. § 952(3) (2006).

This definition includes the shuffle of a deck or decks of cards. Because Poker and most other card games involve shuffling, these games seem to be illegal under this definition.

2. Games using Dice

Maine considers a roll of a die or dice as an event determined by chance as shown above. Me. Rev. Stat. Ann. tit. 17-A, § 952(3) (2009). Games involving dice would be considered a game of chance and illegal.

3. Billiards

In Maine, one must have a license to keep a billiards or pool room. Me. Rev. Stat. Ann. tit. 8, § 2 (2009). Businesses with billiards cannot use it for gambling purposes. Me. Rev. Stat. Ann. tit. 30-A, § 3833 (2009).

4. Bowling

Similarly, one must have a license to have a bowling alley. Me. Rev. Stat. Ann. tit. 8, § 2 (2009). However, there is no mention of any gambling prohibitions.

5. Darts

Maine does not have any statutory authority, attorney general opinions, or case law regarding games using darts.

VI. Express Exemptions

1. Social Gaming

"Players" are exempt from the category of advancing gambling activity. Me. Rev. Stat. Ann. tit. 17-A, § 952(1) (2009). "Players" are those that compete in social gambling and only receive value from the game in the form of their personal gambling winnings (ex. Guy's Poker Night). Me. Rev. Stat. Ann. tit. 17-A, § 952(8) (2009). Social gambling is gambling where one profits only from their winnings as a player in that game, and no one profits for arranging or hosting the game at their premises or for supplying food or drink. Me. Rev. Stat. Ann. tit. 17-A, § 952(8) (2009). Social gambling does not require a license. Me. Rev. Stat. Ann. tit. 17, § 331 (2009).

In *Chenard v. Marcel Motors*, 387 A.2d 596 (1978), the court stated that the relevant gambling criminal provisions in the state deal exclusively with professional and organized gambling, essentially excluding friendly, small-time games. Another social gaming exception exists for the elderly. While a license is required to conduct a bingo or beano game, groups that are ninety percent comprised of individuals over the age of 62 can conduct these activities without a license if the game is not run for profit. Me. Rev. Stat. Ann. tit. 17, § 313-A (2009).

2. Charity Gaming

Charity organizations may obtain licenses to conduct "beano" or bingo games at its premises even though this is a game of chance and would be considered illegal in other contexts. Me. Rev. Stat. Ann. tit. 17, § 314 (2009).

Also, Charitable organizations are not required to get a license to hold a raffle where the winning prize is less than \$10,000 dollars in value. Me. Rev. Stat. Ann. tit. 17, § 331(6) (2009).

Charitable organizations also can receive one special exempt raffle license per year to hold a raffle where the winner receives something of value worth more than 10,000 but not worth more than 25,000. Me. Rev. Stat. Ann. tit. 17, § 331(7-A) (2009). Charitable organizations can also receive one special exempt raffle license per year to hold a raffle where the winner receives something of value worth more than 10,000, but not worth more than 75,000. Me. Rev. Stat. Ann. tit. 17, § 331(8-A) (2009).

Charitable organizations are one of the few enumerated organizations that can receive a license to operate games of chance. Me. Rev. Stat. Ann. tit. 17, § 332(1) (2009). However, slot machines, roulette, or any games known as policy or numbers are prohibited regardless if a license is obtained or not. Me. Rev. Stat. Ann. tit. 17, § 332(3) (2009). Charitable organizations can get a license to have electronic video machines. Me. Rev. Stat. Ann. tit. 17, § 332(3-B) (2009). Charitable organizations can get a license to conduct a livestock raffle for fund-raising purposes. Me. Rev. Stat. Ann. tit. 17, § 332(6) (2009).

3. Chucky Cheese Exemptions

There are no express exemptions for prize games below a certain dollar amount.

4. Slots

The Maine Gambling Control Board can issue a license for operation of slot machines. Me. Rev. Stat. Ann. tit. 8, § 1011 (Supp. 2009). The Board will only accept applications from those that operate a commercial track, defined in Me. Rev. Stat. Ann. tit. 8, § 275-A(2009) as a licensed harness horse racing track with pari-mutuel wagering. Me. Rev. Stat. Ann. tit. 8, § 1011(2) (Supp. 2009). These commercial tracks must meet certain criteria which are:

A. The commercial track is located at or within a 5-mile radius of the center of a commercial track that conducted harness racing with pari-mutuel wagering on more than 25 days during calendar year 2002; and

B. The operation of slot machines at the commercial track is approved by the voters of the municipality in which the commercial track to be licensed is located by referendum election held at any time after December 31, 2002 and before December 31, 2003. Me. Rev. Stat. Ann. tit. 8, § 1011(2) (Supp. 2009).

If the license is granted, it must be maintained continuously by the commercial track. Me. Rev. Stat. Ann. tit. 8, § 1011(3) (Supp. 2009).

4. Lottery

Maine has a state lottery commission that sets the rules and standards for the state lottery, including the types of lotteries, the number and size of the prizes, the number of drawings. Me. Rev. Stat. Ann. tit. 8, § 374 (1997 and Supp. 2009). They are also in charge of licensing lottery sales agents. Me. Rev. Stat. Ann. tit. 8, § 375 (1997 & Supp. 2009).

Maine entered into a Tri-State Lotto Compact with Vermont and New Hampshire where the three states will have common tickets, common advertising, and a common prize pool. Me. Rev. Stat. Ann. tit. 8, § 402 (1997 & Supp. 2009).

5. Horseracing

Maine does have a State Harness Racing Commission that adopts state wide rules for operating and conducting harness horse races in the state. Me. Rev. Stat. Ann. tit. 8, § 268 (1997 & Supp. 2009). They also adopt rules for licensing and operating off-track betting facilities. *Id. See also* Me. Rev. Stat. Ann. tit. 8, § 275-D (1997 & Supp 2009).

6. Greyhound Racing

Greyhound Racing is prohibited in the state of Maine. Me. Rev. Stat. Ann. tit. 8, § 301 (2009).

VII. Specific Internet Prohibition

Maine does not have any statutory authority, attorney general opinions, or case law regarding internet gaming prohibitions.

VII. Gaming Crimes and Penalties for unlawful gambling

"Unlawful Gambling" is any gambling not expressly authorized by Maine Statute. Me. Rev. Stat. Ann. tit. 17-A, § 952(11) (2009).

A person is guilty of aggravated unlawful gambling if he intentionally or knowingly *advances or profits from unlawful gambling activity* by:

- A. Engaging in bookmaking to the extent that the person receives or accepts in any 24-hour period more than 5 bets totaling more than \$500; or
- B. Receiving in connection with a lottery or mutual scheme or enterprise, money or written records from a person other than a player whose chances or plays are represented by such money or records; or
- C. Receiving in connection with a lottery, mutual or other gambling scheme or enterprise more than \$1,000 in any 24-hour period played in the scheme or enterprise.

Aggravated gambling is a Class B crime. Me. Rev. Stat. Ann. tit. 17-A, § 953(2009) (emphasis added).

Also, any person is guilty of unlawful gambling if he intentionally or knowingly *advances or profits* from unlawful gambling activity. Me. Rev. Stat. Ann. tit. 17-A, § 954(2009). This is a lesser offense and is classified as a Class D crime. *Id.*

It seems that with these two crimes it is only the operator that is charged, not the player. Both these crimes state that the person must "knowingly advance" or "profit" from unlawful gambling activity. The "advancing gambling activity" definition found in Me. Rev. Stat. Ann. tit. 17-A, § 952(2009) provides an exception for "players", meaning those that only receive consideration in the form of their own personal gambling winnings. However, those that run the games or that are involved with any phase of the operation of the game are considered to be advancing gambling activity. Me. Rev. Stat. Ann. tit. 17-A, § 952(1)(2009). Alternatively, profiting from gambling activity does not encompass one's personal winnings in a game. This term explicitly excludes "players" and their winnings. Me. Rev. Stat. Ann. tit. 17-A, § 952(9)(2009).

Other gaming crimes include possession of gambling records which are to be used in the operation of unlawful gambling activity. Me. Rev. Stat. Ann. tit. 17-A, § 955(2009). This crime once again provides an exception for "players." *Id.* This is a class D crime. *Id.*

Also, one can be punished for possessing gambling devices if these devices will be used in the advancement of unlawful gambling activity. Me. Rev. Stat. Ann. tit. 17-A, § 956(2009). This is also a class D crime. *Id.*

In *State v. Ferris*, 284 A.2d 288, 290 (1971), the court held that betting slips and records of betting do not constitute gambling devices. The court classified these as "aids," but not devices which in it of them determine the outcome of the wager. *Id.* However with the enactment of Me. Rev. Stat. tit. 17-A, § 955(2009), it seems that these would be considered gambling records and one would be subject to punishment under that statute.

IX. Statute of Annes/recovery of debts

Under Maine law, it seems that the recovery of gambling debts is unenforceable. In *Chenard v. Marcel Motors*, 387 A.2d 596, 600 (1978), the court held that a gambling contract is unenforceable. The court stated that if the promisor had to pay a winning promisee, the promisor would receive nothing of equal value for his performance. *Id.* The court's decision was in line with the Restatement of Contracts § 520 (1932) which states that "a bargain in which a promisor undertakes that, upon the existence or happening of a condition he will render a performance (a) for which there is no agreed exchange . . . is a wager and is illegal." *Id.*

X. Lawful Commercial Casino Gaming

Maine does not have any statutory authority, attorney general opinions, or case law granting authority for commercial casino gaming.