

August 22, 2016

The Honorable Brian Sandoval, Chairman
Gaming Policy Committee
State Capitol Building
101 North Carson Street
Carson City, Nevada 89701

Dear Governor Sandoval and Members of the Committee:

This letter is written to provide you with the undersigned companies' position on daily fantasy sports and, more specifically, on the Nevada Daily Fantasy Sports draft legislation submitted to the Committee on behalf of Draft Kings and Fan Duel (the "Proposed Legislation"). Initially, it is important to note that the undersigned companies encourage innovation and invite competition and would welcome the fantasy sports operators as licensees in Nevada—provided they are licensed and regulated under the same rigorous regulatory standards as other gaming licensees. The statutes and regulations that govern the licensing and operation of gaming in Nevada have been refined over decades in order to protect the honesty and integrity of gaming in our state. Without these standards being applied to all who conduct gaming in our state, we are at risk of losing the reputation that has made Nevada the gold standard for gaming regulation in the world.

Our position on the intersection between Nevada law and fantasy sports, including daily fantasy sports contests, starts with the well-reasoned memorandum prepared by the Nevada Attorney General's office for the Nevada Gaming Control Board issued on October 16, 2015. In short, the memorandum provides multiple reasons justifying the conclusion that fantasy sports constitutes wagering under Nevada law. The following excerpt explains why, under Nevada law, fantasy sports operators are, in fact, operating a sports pool:

Nevada Revised Statute 463.0193 defines a "sports pool" as "the business of accepting wagers on sporting events or other events by any system or method of wagering." In order to determine if daily fantasy sports operators are operating a sports pool, one must determine (1) whether a wager is present; (2) whether the wagering is done on sporting events or other events by any system or method of wagering; and (3) whether daily fantasy sports operators are in "the business" of accepting wagers.

Daily fantasy sports meet all of these requirements and, thus, constitute “sports pools” under Nevada law.

<http://www.legalsportsreport.com/wp-content/uploads/2015/10/Nevada-AG-DFS.pdf> page 8.

The Attorney General’s memorandum concludes as follows:

In summary, pay-to-play daily fantasy sports constitute sports pools and gambling games under Nevada law. They may also constitute lotteries, depending on the test applied by the Nevada Supreme Court. As a result, daily fantasy sports cannot be offered in Nevada without licensure.

The Attorney General’s opinion helped form the basis for the Notice to Licensees issued by Chairman A.G. Burnett on October 15, 2015. In that notice, Chairman Burnett states as follows:

I, along with the Board staff, have concluded that DFS constitutes gambling under Nevada law. More specifically, DFS meets the definition of a game or gambling game pursuant to Chapter 463 of the Nevada Revised Statutes. Moreover, because DFS involves wagering on the collective performance of individuals participating in sporting events, under current law, regulation and approval, in order to lawfully expose DFS for play within the State of Nevada, a person must possess a license to operate a sports pool issued by the Nevada Gaming Commission. Further, a licensed operator who offers DFS must comply with all laws and regulations that apply to a licensed sports pool.

Since it is clear from Chairman Burnett’s Notice to Licensees and the Attorney General’s memorandum that daily fantasy sports contests constitute sports pools and gambling games under Nevada law, we believe that daily fantasy sports operators should be licensed in accordance with the regulatory requirements for other non-restricted gaming operators. In particular, NRS 463.170 is the bedrock for determining whether or not companies and individuals are suitable to carry on gaming operations in Nevada. That statute provides in pertinent part:

NRS 463.170 Qualifications for license, finding of suitability or approval; regulations.

...

2. An application to receive a license or be found suitable must not be granted unless the Commission is satisfied that the applicant is:

(a) A person of good character, honesty and integrity;

(b) A person whose prior activities, criminal record, if any, reputation, habits and associations do not pose a threat to the public interest of this State or to the effective regulation and control of gaming or charitable lotteries, or create or enhance the dangers of unsuitable, unfair or illegal practices, methods and activities in the conduct of gaming or charitable lotteries or in the carrying on of the business and financial arrangements incidental thereto; and

(c) In all other respects qualified to be licensed or found suitable consistently with the declared policy of the State.

3. A license to operate a gaming establishment or an inter-casino linked system must not be granted unless the applicant has satisfied the Commission that:

(a) The applicant has adequate business probity, competence and experience, in gaming or generally; and

(b) The proposed financing of the entire operation is:

(1) Adequate for the nature of the proposed operation; and

(2) From a suitable source.

Any lender or other source of money or credit which the Commission finds does not meet the standards set forth in subsection 2 may be deemed unsuitable.

4. An application to receive a license or be found suitable constitutes a request for a determination of the applicant's general character, integrity, and ability to participate or engage in, or be associated with gaming or the operation of a charitable lottery, as appropriate....

We believe that any person who wishes to conduct gaming in Nevada, regardless of the type of gaming product being offered, should be held to the criteria set forth in NRS 463.170 and the other Nevada licensing requirements that have been in effect for many years and have yielded exemplary results.

The Proposed Legislation

Rather than submit daily fantasy sports operators to Nevada's gaming licensing and regulatory scheme, the Proposed Legislation seeks to circumvent the Nevada statutes by defining fantasy sports as something other than gambling. It then goes on to propose separate licensing, taxation and regulatory criteria that ignore many of the important requirements that are imposed on every other Nevada gaming licensee. The Proposed Legislation does not propose a not a minor change to Nevada law to accommodate a new gaming product, it totally contradicts Nevada's public policy on gaming as defined by state statutes and regulations governing the licensing and conduct of gaming under the Nevada Gaming Commission and the Nevada Gaming Control Board.

The Proposed Legislation attempts to avoid the conclusions of the Attorney General's memorandum by seeking a provision stating:

NRS 463. < > Classification of fantasy games.

1. A paid fantasy game conducted under this chapter does not constitute:

- (a) A sports pool as defined in NRS 463.0193;
- (b) A gambling game as defined in NRS 463.0152; or
- (c) A lottery as defined in NRS 462.105(1).

Although the Proposed Legislation sets forth a list of criteria for licensure as an operator of a fantasy game including, among other things, the filing of a \$500 application fee, submission of a written plan demonstrating how the operator will operate certain aspects of the fantasy games, providing information on equity owners who own more than 15% of the entity, and providing for an annual audit, the Proposed Legislation falls far short of the standards expected of a Nevada gaming licensee.

Nowhere in the Proposed Legislation is there any requirement that:

1. An applicant is of good character, honesty and integrity (NRS 463.170(2)(a));
2. An applicant is not a person whose prior activities, criminal record, if any, reputation, habits and associations do not pose a threat to the public interest of this State or to the effective regulation and control of gaming or charitable lotteries, or create or enhance the dangers of unsuitable, unfair or illegal practices, methods and activities in the conduct of gaming or charitable lotteries or in the carrying on of the business and financial arrangements incidental thereto. (NRS 463.170(2)(b));
3. An applicant has adequate business probity, competence and experience in gaming or generally. (NRS 463.170(3)(a));
4. The proposed financing for the entire operation is adequate for the nature of the proposed operation and from a suitable source. (NRS 463.170(3)(b)).
5. That substantially all equity owners of the fantasy sports operation must be licensed.

In addition to an absence of criteria to insure that the individuals involved are suitable, the Proposed Legislation also establishes a different minimum age for participants (18 years old as opposed to 21 years old, which is a widely-accepted standard in the United States), fails to prohibit contests based on high-school sporting events and sets forth a separate tax structure for fantasy sports contests. While non-restricted licensees are required to pay gaming taxes of up to 6.75% on sports pool revenues on a monthly basis, the Proposed Legislation exempts fantasy sports operators from the payment of taxes and limit the “licensing fees” they must pay to the lesser of 5% of their revenue or \$10,000 on an annual basis.¹ Recognizing that the taxes generated by the gaming industry are a critical component of our State budget, it is difficult to understand why the operators of one type of gaming would be allowed to operate under a different tax structure that will produce virtually no revenue for the state.

¹ **NRS 463. < > Annual license fee based on revenue from operating fantasy gaming; renewal fee.**

1. For the privilege of conducting paid fantasy sports games under this chapter, a game operator shall pay to the Board an initial licensure fee that shall be the lesser of:
 - (a) Ten thousand dollars (\$10,000); or
 - (b) Five percent of the Operator’s gross fantasy game revenues for the preceding 12 months.
2. On the anniversary date of the payment made under subsection 1, a game operator shall annually pay to the Board an annual licensure renewal fee which shall be the lesser of:
 - (a) Ten thousand dollars (\$10,000); or
 - (b) Five percent of the game Operator’s gross fantasy sports game revenues for the preceding 12 months of licensure.
3. All fees associated with paid fantasy games collected by the Board shall be deposited in the State General Fund.
4. The payments of fees shall be provided to the Board and paid in a manner provided by the Board and on forms, electronic or otherwise required by Board.
5. There shall be no refunds of any annual license fees collected by the Board.

Finally, the Proposed Legislation places significant limitations on Nevada's gaming regulators. It compels the Nevada Gaming Commission to issue a license if an applicant submits the necessary application and pays a \$500 licensing fee, precludes the Commission from issuing regulations concerning contests, contest operations and betting platforms, and removes the Commission's discretionary licensing powers. While non-restricted licensees may be subject to substantial fines for gaming violations, the Proposed Legislation limits the amount a daily fantasy sports operator can be fined by the Nevada Gaming Commission to \$1,000 per violation. Limiting the discretion of Nevada's gaming regulators as to licensing, crafting regulations and fines pertaining to fantasy sports operators would raise serious questions about the ability to enforce our gaming laws and regulations against such operators.

In summary, the Proposed Legislation seeks to create a wholly-new and separate regulatory system for operators of daily fantasy sports contests. That system would allow daily fantasy sports operators to accept wagers on sporting events without the investment required for a sports book, without their ownership or management being subject to review for good character, honesty and integrity, without paying taxes, and without the threat of being severely sanctioned in the event they violate the law. Such a system is a significant departure from the existing Nevada statutory scheme which has operated so well for so long to protect the integrity of the Nevada gaming industry. If the current regulatory structure is not accommodative to the daily fantasy sports wagering model, then perhaps regulations can be adopted to facilitate such wagering - so long as they adhere to the requirements of Nevada's statutory structure. The Proposed Legislation clearly fails to do so and therefor the undersigned companies are opposed to such legislation.

The success of the Nevada statutory scheme has created the highest standard for gaming regulation in the world and that statutory scheme should not be changed unless those changes both uphold the integrity of our gaming regulatory system and benefit Nevada's economy.

Thank you for your consideration of our position on this important issue.



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