



NEWS RELEASE

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Attorney General Jackley Statement on Fantasy Sports Wagering

PIERRE, S.D. – Attorney General Marty Jackley releases this statement and summary of South Dakota law based upon actions occurring across the United States on fantasy sports betting. Presently both the Nevada and New York Attorneys General have taken action to enforce their respective state laws. Federal law, the state in which a wager is made, and the state in which a wager is received, may have jurisdiction over the matter.

“I recognize that fantasy sports betting has gained national attention due to its popularity and concerns about potential federal and state law violations. In the hope of avoiding having South Dakotans placed into potential harm’s way, I am taking this opportunity to provide a summary of our state gaming law. It is also important to understand that fantasy sports that so many law abiding South Dakotans enjoy that do not involve exchanging money or items of value are not a violation of state law,” said Jackley.

Before taking any action as South Dakota’s Attorney General, it will be my intent to await potential guidance from the South Dakota Gaming Commission that has placed the issue of fantasy sports betting on its November 18 Commission meeting agenda. As the Chairman of the nation’s Attorneys General, I supported forming the National Gaming Subcommittee that is chaired by Arizona Attorney General Mark Brnovich (R) and Mississippi Attorney General Jim Hood (D) to provide guidance on Gaming Law issues. I will also be looking to the insight of the Attorney General Gaming Committee to gain the collective experience of our nation’s Attorneys General for potential guidance on how to best address this national issue.

My legal analysis for South Dakota law begins with the South Dakota Constitution which provides that the South Dakota Legislature may only authorize roulette, keno, craps, limited card games and slot machines within the city limits of Deadwood. *See* South Dakota Constitution, Article III, § 25.

The South Dakota Legislature has enacted a general criminal prohibition against gaming where anything of value is wagered. *See* SDCL Ch. 22-25. It has traditionally been the position of the South Dakota Attorney General’s Office that pursuant to South Dakota law, games of skill are exempted from the state law prohibition. In 2000, the Legislature enacted laws that specifically prohibit using the internet to accept or pay wagers at any location within the State. *See* SDCL Ch. 22-25A (see attached). The Legislature defined a bet or wage as follows:

To directly or indirectly take, receive or accept, money or any valuable thing with

the understanding or agreement that the money or valuable thing will be paid or delivered to a person if the payment or delivery is contingent upon the result of a race, contest, or game or upon the happening of an event not known to be certain. Bet or wager does not include the purchase, sale, or trade of securities or commodities under state or federal law.

The Legislature set the penalty for the first violation as a Class 6 felony punishable up to two years in the State Penitentiary and a four thousand dollar fine and for a second or subsequent violation as a Class 5 felony punishable up to five years in the State Penitentiary and a ten thousand dollar fine. *See* SDCL 22-25A-10. Finally, the Legislature authorized the Attorney General or the State's Attorney of any county in which a violation occurred, to prosecute the violations of said statutory scheme.