



STATE OF ARKANSAS
ATTORNEY GENERAL
LESLIE RUTLEDGE

Opinion No. 2021-096

December 30, 2021

The Honorable Jonathan Dismang
State Senator
P. O. Box 475
Beebe, AR 72012

Dear Senator Dismang:

This is in response to your request for my opinion regarding Amendment 100 to the Arkansas Constitution. Your request states that Amendment 100 defines casino gaming as “dealing, operating, carrying on, conducting, maintaining, or exposing for play any game played with cards, dice, equipment, or any mechanical, electromechanical, or electronic device or machine for money, property, checks, credit, or any representative value. Casino gaming shall also be defined to include accepting wagers on sporting events.” Amendment 100, § 2(c). Your request further sets out the amendment’s definition of a casino licensee as “any individual, corporation, partnership, association, trust, or other entity holding a license issued by the Arkansas Racing Commission to conduct casino gaming at a casino.” Amendment 100, § 2(f).

In light of the foregoing, you have asked the following questions:

1. Is it a violation of Amendment 100 for a casino licensee to contract with a third-party vendor to assist in the operation of a certain function of casino gaming, such as an online sports pool, wherein the third-party vendor retains a majority of the revenue generated from assisting in the operation of casino gaming?
2. Would a revenue share agreement wherein a third-party vendor retained a majority of the revenue generated from assisting in a certain function of casino gaming violate the terms of a licensee’s casino gaming license to conduct casino gaming in the state?

RESPONSE

With respect to your first question, the answer is “no.” Amendment 100 is completely silent regarding such contractual arrangements. As to your second question, neither Amendment 100 nor the rules promulgated by the Arkansas Racing Commission on casino gaming address the scenario you have outlined in the question.

DISCUSSION

Question 1: Is it a violation of Amendment 100 for a casino licensee to contract with a third-party vendor to assist in the operation of a certain function of casino gaming, such as an online sports pool, wherein the third-party vendor retains a majority of the revenue generated from assisting in the operation of casino gaming?

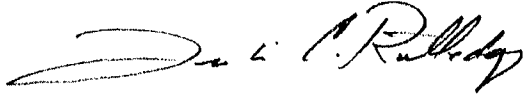
No, Amendment 100 is silent about such contracts or contractual arrangements. It is well-established that the Arkansas Constitution is not a grant of enumerated powers or an enabling act, but instead is a limiting, restraining document.¹ Because Amendment 100 does not speak about—much less prohibit—the kinds of contracts or contractual terms you have described, I cannot say that they would violate Amendment 100.

Question 2: Would a revenue share agreement wherein a third-party vendor retained a majority of the revenue generated from assisting in a certain function of casino gaming violate the terms of a licensee’s casino gaming license to conduct casino gaming in the state?

¹ See *Jones v. Mears*, 256 Ark. 825, 510 S.W.2d 857 (1974).

Again, Amendment 100 is silent about such agreements. Moreover, the General Assembly has not enacted any legislation on the topic, as it clearly may do.² Nor do the rules promulgated by the Arkansas Racing Commission³ speak to this issue.

Sincerely,

A handwritten signature in black ink, appearing to read "Leslie Rutledge", written in a cursive style.

LESLIE RUTLEDGE
Attorney General

² Ark. Const., amend. 100, § 3(c) (Repl. 2019).

³ Rules of the Arkansas Racing Commission, Casino Gaming, *found at* <https://www.dfa.arkansas.gov/images/uploads/racingCommissionOffice/ArkansasCasinoGamingRules.pdf> (last accessed December 12, 2021).