

October 22, 2015

## Nevada Gaming Control Board Concludes Daily Fantasy Sports Is Gambling

Anyone who has watched football this season has seen the ubiquitous advertising and promotion for pay-to-play daily fantasy sports (“DFS”) sites such as DraftKings and FanDuel. On Oct. 15, 2015, the Nevada Gaming Control Board (the “Board”) issued a notice concluding that DFS is gambling under Nevada law. The Board ordered all unlicensed DFS operators to “cease and desist” until the requisite gaming approvals are obtained or until applicable gaming laws are changed by the Nevada Legislature.

The Board reached its conclusion based on a comprehensive legal memorandum prepared by the Office of the Nevada Attorney General that was released on Oct. 16, 2015. According to the Board, because DFS involves wagering on the collective performance of athletes participating in a sporting event, DFS operators are running a “sports pool” under Nevada law, which is defined as “the business of accepting wagers on sporting events or other events by any system or method of wagering.” Additionally, DFS constitute gambling games under Nevada law and may constitute illegal lotteries. Based on these conclusions, the Board warned existing sports pool licensees to exercise discretion in offering DFS for play and to use caution in associating with DFS operators that are not licensed in Nevada.

Although Nevada is not the first state to weigh in on the legality of fantasy sports, the Board’s notice comes at a time when DFS has come under increased scrutiny from both federal and state regulators and lawmakers. Given the number, type, and scale of gambling operations overseen by the Board, its notice may have significant influence as other jurisdictions seek to eliminate ambiguity and provide clarity and guidance to industry players. As examples, the Illinois Gaming Board recently announced that it is seeking a legal opinion to determine if DFS operators in Illinois are violating state law and both the New York State Attorney General and the U.S. Attorney for the Southern District of New York, the same U.S. Attorney who indicted online poker operators in April 2011, have opened investigations into the operations of DraftKings and FanDuel. The New York Attorney General’s inquiry focuses on consumer protection issues and the U.S. Attorney’s inquiry is analyzing whether the DFS business model violates federal law.

Nevada gaming licensees, DFS operators, and other interested companies should contact experienced gaming counsel along with government relations professionals to determine legal impacts and to monitor continuing developments in this fast-changing environment.

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*This document is intended to provide you with general information regarding Nevada law for pay-to-play daily fantasy sports. The contents of this document are not intended to provide specific legal advice. If you have any questions about the contents of this document or if you need legal advice as to an issue, please contact the attorney listed or your regular Brownstein Hyatt Farber Schreck, LLP attorney. This communication may be considered advertising in some jurisdictions.*