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CLERK OF THE SUPREME COURT
STATE OF WASHINGTON

No. 82845-8

SUPREME COURT
OF THE STATE OF WASHINGTON

INTERNET COMMUNITY & ENTERTAINMENT CORP.,
dba BETCHA.COM,

Respondent,

v.

THE STATE OF WASHINGTON, a government entity,
and the WASHINGTON STATE GAMBLING COMMISSION,
a Commission of the State of Washington,

Petitioner.

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RESPONDENT'S ANSWER TO
PETITION FOR REVIEW

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A. IDENTITY OF ANSWERING PARTY

Internet Community & Entertainment Corporation, d/b/a Betcha.com (“Betcha.com”), the prevailing party before the Court of Appeals in its declaratory judgment action, asks this Court to deny the petition for review filed by the State of Washington and its Gambling Commission (collectively, “the State”).

B. COURT OF APPEALS DECISION

The Court of Appeals reversed the trial court’s grant of summary judgment to the State and remanded for entry of summary judgment in favor of Betcha.com. *Internet Cmty. & Entm’t Corp. v. State*, 201 P.3d 1045 (2009) (Houghton, J., filed dissenting opinion).¹

C. ISSUE PRESENTED FOR REVIEW

Whether the Court of Appeals correctly construed the Washington State Gambling Act, chapter 9.46 RCW, to hold that (1) bettors were not “gambling” where the express terms of bets made on Betcha.com’s website gave bettors the right to opt out, even after they lost, and (2) Betcha.com was not “bookmaking” where it did not take any position on bets.

¹ A copy of the opinion is included in the Appendix at A-2. Respondent cites to the opinion as “Op.”

D. STATEMENT OF THE CASE

Betcha.com is the creation of its founder and CEO, Nicholas Jenkins. CP 43, 464. In 2004, Jenkins conceived an idea for a Web-based platform to connect people who like to bet. CP 44. Although Jenkins first thought betting over the Internet was per se illegal, he later concluded it is gambling, rather than betting per se, that has been restricted by law. *Id.*

According to an expert on gambling law, gambling has three elements – consideration (players pay something of value to participate), chance (outcome not determined by skill), and prize (anything of value). CP 55-56. Jenkins reasoned that he could avoid gambling if he eliminated one of these elements.² CP 44.

Jenkins ultimately created an honor-based betting exchange – a meeting place where bettors could offer and accept non-binding betting propositions. CP 46. What distinguishes Betcha.com's operations from gambling is that, under the terms clearly posted on its website, bettors retain the right to opt out of their bets, even after they lose.³ CP 48-49, 499. Using the website is conditioned on accepting these terms. CP 48, 86.

² The Commission's own publication on Internet gambling defines gambling in terms of prize, chance, and consideration, stating as follows: "If one of these elements is removed, it is no longer a gambling activity." CP 40.

³ Since bettors are not obliged to pay, the prize element is missing. Betcha.com's users are betting without gambling. CP 22.

Bettors can bet on anything they can think of – such as sports, politics, or pop culture – and they can create their own odds and terms. CP 15, 89. Losing bettors can decide, for whatever reason, not to pay. CP 87. When bettors renege, their opponents' recourse is to leave negative feedback. CP 44-45. Unlike bookmakers, Betcha.com takes no position on bets. CP 17.

Jenkins secured investors, incorporated the business, applied for a patent, hired employees, and leased office space in Seattle. CP 14-15. Betcha.com's website was launched on June 8, 2007. CP 6, 465. Thirteen days later, special agents of the Washington State Gambling Commission instructed Jenkins to shut down operations immediately because the Commission considered Betcha.com to be engaged in professional gambling. CP 49-50.

When Betcha.com did not comply, the Commission served Jenkins with a formal cease-and-desist letter. CP 469. The Commission then obtained a search warrant, and agents seized computers and business records from Betcha.com's office. CP 108, 114, 469. Within days, the Commission sought forfeiture of the seized property. CP 138, 469-70. Under threat of arrest, Jenkins closed the website on July 11, 2007. CP 8, 18.

Betcha.com served the Commission with a complaint, seeking a declaratory judgment that the operation of its website "is

not in violation of Washington state laws” and that its matching of prospective bettors through the website “does not violate any Washington statute, rule, or ordinance.”⁴ CP 8.

Both Betcha.com and the State moved for summary judgment. CP 11-38, 484-85. The matter was heard before the Honorable Gary R. Tabor, Judge of Thurston County Superior Court, on November 9, 2007.

The trial court determined that the rule of lenity, under which an ambiguous statute is to be strictly construed against the State and in favor of a criminal defendant, does not apply in this case because declaratory judgment is a civil matter. RP (Nov. 9, 2007) 54. The court then held that Plaintiff Betcha.com violated the provisions of the Gambling Act as follows:

1. Persons placing bets on Plaintiff's Internet gambling website are engaged in “gambling” as that term is defined in RCW 9.46.0237.

2. Plaintiff, through its website promotes and facilitates gambling, and in doing so, it transmits and receives gambling information by means of the Internet in violation of RCW 9.46.240.

⁴ Just after the Commission was notified of the declaratory judgment action, a single bettor named Matt Sinanan began betting on the website. Sinanan accepted four bets altogether, for a total of \$35, under the username “Robster.” Betcha.com grossed seventy cents from the transactions. As it turned out, Sinanan was a trooper with the Louisiana State Police Gaming Enforcement Division. The Louisiana State Police later issued a press release, claiming to have been working with the Washington State Gambling Commission on the Betcha.com matter. Based on Sinanan's bets, the State of Louisiana issued felony fugitive arrest warrants for Jenkins and two other Betcha.com employees. CP 504-505, 530-31.

3. Plaintiff makes money by charging bettors fees when they place wagers on Plaintiff's Internet gambling website. Plaintiff charges its bettors a commission (or "vigorish") consisting of a percentage of the amount bet on each matched wager on their website. These activities meet the definition of "bookmaking" as that term is defined in RCW 9.46.0213.

4. Plaintiff is engaged in "professional gambling" as that term is defined under RCW 9.46.0269(d) (defining professional gambling to include instances when "[t]he person engages in bookmaking").

5. Plaintiff is not a player. Plaintiff's activities are not authorized under RCW 9.46 *et seq.* Plaintiff knowingly engages in conduct that materially aids unauthorized gambling activities and receives money pursuant to an agreement whereby it participates in the proceeds of gambling activities, therefore, Plaintiff's activities satisfy the definition of "professional gambling" set forth in RCW 9.46.0269(a) & (c).

6. Plaintiff has created, possessed and used gambling records in violation of RCW 9.46.217.

CP 541.⁵

The trial court dismissed the case with prejudice, denying Betcha.com's motion for summary judgment and granting the State's cross-motion. CP 541. Betcha.com appealed the trial court's ruling. CP 538.

⁵ RCW 9.46.010 (Legislative declaration), 9.46.0213 ("Bookmaking"), 9.46.0237 ("Gambling"), 9.46.0269 ("Professional gambling"), 9.46.217 (Gambling records), and 9.46.240 (Gambling information, transmitting or receiving) are included in the Appendix.

The Court of Appeals reversed the trial court's grant of summary judgment to the State and remanded for entry of summary judgment in favor of Betcha.com. Op. 10. The State's petition for review followed.

E. ARGUMENT WHY REVIEW SHOULD BE DENIED

1. The State presents no valid grounds for review.

A petition for review will be accepted by this Court only if:

(1) the decision of the Court of Appeals conflicts with a decision of the Supreme Court or with another decision of the Court of Appeals; (2) a significant question of law under the Constitution of the State of Washington or of the United States is involved; or (3) the petition involves an issue of substantial public interest that should be determined by the Supreme Court. RAP 13.4(b).

Of the criteria for acceptance, the State addresses only "substantial public interest."⁶ Pet. 8, 20. And it fails to establish that this case has any broad impact or application.

Washington's public policy on gambling is to keep out the criminal element and to promote the social welfare "by limiting the

⁶ The State claims the Court of Appeals decision "conflicts with settled case law and established constitutional and statutory interpretations," but it identifies no such cases or conflicts. Pet. 8. The State also asserts the decision "will significantly impair the state's ability to enforce statutes that were promulgated to protect the public from organized crime and other corrupt influences." *Id.* This is hyperbole.

nature and scope of gambling activities and by strict regulation and control.” RCW 9.46.010.

It is the legislature’s policy (1) to restrain those who would seek a profit from professional gambling activities, (2) to restrain those who would patronize professional gambling activities, and (3) to safeguard the public against those engaged in professional gambling. *Id.*

The State addresses both policies, but ignores the statute’s counterbalancing provision: “[A]t the same time, both to preserve the freedom of the press and to avoid restricting participation by individuals in activities and social pastimes, which . . . are more for amusement rather than for profit, do not maliciously affect the public, and do not breach the peace.” *Id.*

The State recites many evils associated with uncontrolled gambling – including social and economic problems, organized crime, and terrorism. Pet. 19-20. But it offers no meaningful connection between such a parade of horrors and Betcha.com’s activities.⁷

The State presents no valid grounds for review under RAP 13.4(b).

⁷ Similarly, the dissent makes the unfounded statement that Betcha.com’s activities “undoubtedly will result in unpaid wagers being collected through unlawful means.” *Internet Cmty. & Entm’t Corp. v. State*, 201 P.3d 1045, 1053 (2009) (Houghton, J., dissenting).

2. The Court of Appeals decision is consistent with Washington law.

Instead of identifying any issue of substantial public interest, the State simply reiterates the arguments that the Court of Appeals found unpersuasive. Dissatisfaction with an outcome is not a proper basis for review. And, in any event, the Court of Appeals correctly resolved the issues presented:

First, the Act defines “gambling” as “staking or risking something of value upon the outcome of a contest of chance or a future contingent event not under the person’s control or influence, upon an agreement or understanding that the person or someone else will receive something of value in the event of a certain outcome.” RCW 9.46.0237.

Wagering on Betcha.com’s website does not constitute gambling under the statute because users must acknowledge and agree that the bets they make are non-binding.⁸ “There is no logical basis for concluding that bettors have either an agreement or understanding that winners *will* be paid. Accordingly, there is nothing risked, which is the essence of both the common law and statutory definition of ‘gambling.’” Op. 9. Neither Betcha.com nor its users engaged in gambling as defined by the statute.

⁸ The Court of Appeals notes many website pages where Betcha.com pointed out that bets were non-binding. Op. 3-4. See also CP 48-49, 86-92.

Next, the Act defines “bookmaking” as “accepting bets, upon the outcome of future contingent events, as a business or in which the bettor is charged a fee or ‘vigorous’ for the opportunity to place a bet.” RCW 9.46.0213. When the rule of lenity is applied to interpret the statute, “the definition of bookmaking requires one to ‘accept bets,’ meaning to take a position in the bet.”⁹ Op. 9. Because Betcha.com did not accept bets as either a player or a stakeholder with an interest in the outcome, it did not engage in bookmaking as defined by the statute.

Finally, all the other violations asserted against Betcha.com rely on elements of either gambling or bookmaking. Because those foundational elements are absent, the trial court erred in ruling (1) that Betcha.com’s activities amounted to professional gambling under RCW 9.46.0269, (2) that Betcha.com transmitted and received gambling information over the Internet in violation of RCW 9.46.240, and (3) that Betcha.com made, possessed, or stored gambling records in violation of RCW 9.46.217. Op. 10.

⁹ The Court of Appeals recognizes that the provisions of the Gambling Act define and prohibit criminal conduct. Op. 6. The trial court erred by declining to apply the rule of lenity when RCW 9.46.0237 and .0213 were construed in the declaratory judgment action. RP (Nov. 9, 2007) 54. The rule of lenity is applicable when construing a criminal statute, even in a civil context: “Where two possible constructions are permissible, the rule of lenity requires us to construe the statute strictly against the State in favor of the accused.” *State v. Gore*, 101 Wn.2d 481, 485-86, 681 P.2d 227 (1984). The State offers no authority for its contention that the rule does not apply here.

F. CONCLUSION

The Court of Appeals correctly resolved the issues in this case, and those issues do not satisfy any of the criteria for acceptance of review. This Court should deny the State's petition.¹⁰

DATED this 9th day of April, 2009.

Respectfully submitted,



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¹⁰ If the Court accepts review, Respondent asks for a determination as to whether bets made on Betcha.com's website constitute "bets" within the meaning of RCW 9.46.0213. Respondent raised this issue in its motion for summary judgment and briefed it to the Court of Appeals, but the issue was not addressed by the State or the courts. CP 29-31; Br. of Appellant 5, 35.

Appendix

Court of Appeals of Washington,
Division 2.
INTERNET COMMUNITY & ENTERTAIN-
MENT CORP., d/b/a Betcha.Com, Appellant,
v.
STATE of Washington, a government entity, and
the Washington State Gambling Commission, a
Commission of the State of Washington, Respond-
ents.
No. 37079-4-II.
Feb. 10, 2009.

Background: Internet betting service brought de-
claratory judgment action against Gambling Com-
mission, seeking declaration that it was not engaged
in gambling activities. The Superior Court, Thur-
ston County, Gary R. Tabor, J., entered summary
judgment in Commission's favor, and service ap-
pealed.

Holdings: The Court of Appeals, Bridgewater, J.,
held that:

(1) service was not engaged in "gambling," and
thus, was not engaged in professional gambling or
making or possessing any gambling record, and
(2) service was not engaged in "bookmaking" when
it accepted fees from registered bettors who placed
bet for other users to consider.

Reversed and remanded.

Houghton, J., filed dissenting opinion.

West Headnotes

[1] Statutes 361 ↪190

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k187 Meaning of Language
361k190 k. Existence of Ambiguity.

Most Cited Cases

Where statutory language is plain, free from ambi-
guity and devoid of uncertainty, there is no room
for construction because the legislative intention
derives solely from the language of the statute.

[2] Statutes 361 ↪181(2)

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k180 Intention of Legislature
361k181 In General
361k181(2) k. Effect and Con-
sequences. Most Cited Cases

But in undertaking a plain language analysis when
interpreting a statute, the court must remain careful
to avoid unlikely, absurd or strained results.

[3] Statutes 361 ↪205

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k204 Statute as a Whole, and Intrinsic
Aids to Construction
361k205 k. In General. Most Cited

Statutes 361 ↪223.2(.5)

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k223 Construction with Reference to
Other Statutes
361k223.2 Statutes Relating to the
Same Subject Matter in General
361k223.2(.5) k. In General. Most
Cited Cases

In discerning the plain meaning of a provision, the
court considers the entire statute in which the provi-
sion is found, as well as related statutes or other
provisions in the same act that disclose legislative
intent.

[4] Gaming 188 ↪62

188 Gaming

188III Criminal Responsibility

188III(A) Offenses

188k62 k. Nature of Offense of Gaming.

Most Cited Cases

Internet betting service was not engaged in "gambling," and thus, was not engaged in professional gambling or making or possessing or storing any gambling record, within meaning of Gambling Act, by providing users with person-to-person betting platform, where users understood and had to agree before participating that all bets were non-binding, and therefore, there was no guarantee that bettors would receive something of value if they won bet. West's RCWA 9.46.0237, 9.46.0269(1)(a, c), 9.46.240.

[5] Constitutional Law 92 ↪3905

92 Constitutional Law

92XXVII Due Process

92XXVII(B) Protections Provided and Deprivations Prohibited in General

92k3905 k. Certainty and Definiteness; Vagueness. Most Cited Cases

Statutes 361 ↪241(1)

361 Statutes

361VI Construction and Operation

361VI(B) Particular Classes of Statutes

361k241 Penal Statutes

361k241(1) k. In General. Most Cited

Cases

Statutes that define crimes must be strictly construed according to the plain meaning of their words to assure that citizens have adequate notice of the terms of the law, as required by due process. U.S.C.A. Const.Amend. 14.

[6] Statutes 361 ↪47

361 Statutes

361I Enactment, Requisites, and Validity in General

361k45 Validity and Sufficiency of Provisions

361k47 k. Certainty and Definiteness.

Most Cited Cases

Persons of common intelligence cannot be required to guess at the meaning of the enactment.

[7] Statutes 361 ↪241(1)

361 Statutes

361VI Construction and Operation

361VI(B) Particular Classes of Statutes

361k241 Penal Statutes

361k241(1) k. In General. Most Cited

Cases

The "rule of lenity" provides that where an ambiguous statute has two possible interpretations, the statute is to be strictly construed in favor of the defendant.

[8] Gaming 188 ↪73

188 Gaming

188III Criminal Responsibility

188III(A) Offenses

188k73 k. Bookmaking or Pool Selling.

Most Cited Cases

Internet betting service was not engaged in "bookmaking" when it accepted fees from registered bettors who placed bet for other users to consider, within meaning of Gambling Act, and thus, was not engaged in professional gambling, where service did not accept bets, in that service never took any position on any bet. West's RCWA 9.46.0213.

*1046 Lee Howard Rousso, Green & Rousso PLLC, Renton, WA, for Appellant.

Jerry Alan Ackerman, Assistant Atty. General, Olympia, WA, H. Bruce Marvin, WA State Attorney General's Office, Olympia, WA, for Respondents.

BRIDGEWATER, J.

¶ 1 Internet Community & Entertainment Corp., d/

b/a Betcha.com, an Internet betting exchange, appeals from a summary judgment in its declaratory judgment action, ruling that it violated the Washington State Gambling Act, chapter 9.46 RCW, by providing a forum for person-to-person social wagering. We hold that because Betcha.com customers agreed in advance that participants were not required to pay their losses, Betcha.com was not engaged in "gambling" as defined in the Gambling Act. Also, the listing of bets for a fee was not "bookmaking" because bookmaking rests upon Betcha.com engaging in "gambling." We reverse and remand for entry of summary judgment in favor of Betcha.com.

FACTS

¶ 2 From June 8, 2007, until on or about July 11, 2007, Betcha.com operated a website that provided a patent-pending, person-to-person betting platform.^{FN1} Internet users who registered and funded accounts on Betcha.com's website could offer betting propositions to other users and accept betting propositions from other users by paying nominal fees to Betcha.com for providing the forum services facilitating that activity.^{FN2} The unique aspect of Betcha.com's business model was that users conducted their activities with the understanding that bettors were not required to pay if they lost a wager. Notably, users had to first agree that bets were "non-binding" in order to use the website. CP at 86. The website's page setting forth "Terms of Service" provided in relevant part:

FN1. Betcha.com is the creation of its founder and CEO Nicholas Jenkins. Jenkins conceived the honor-based betting model in 2004, and launched the site three years later after he researched its feasibility under Washington law and consulted a gambling law expert.

FN2. The website was purportedly "modeled" on eBay with the goal of building a similar "social gathering spot," ex-

cept that instead of buying and selling items, Betcha.com users could offer and accept betting propositions. See CP at 15, 199.

1. ACCEPTANCE OF TERMS

Welcome to Betcha.com ("Betcha"), the world's first honor-based betting exchange. Betcha provides its service to you, subject *1047 to the following Terms of Service ("TOS")....

2. DESCRIPTION OF SERVICE

Betcha provides users with a global platform to list and accept bets (the "Service"). Bets made on Betcha are made on the honor system—that is, bettors are not obliged to pay when they lose. We hope they will, of course, not because they have to, but because they should. In any case, bets made on Betcha carry no term, express or implied, that winning bettors will be paid when they win.

You understand and agree....

The Service helps bring bettors together to make non-binding bets. You understand and agree that bets are made between you and fellow bettors, not Betcha. You are responsible for collecting on winning bets. You understand and agree that Betcha assumes no responsibility for bets that are unpaid or underpaid.

CP at 86. The website repeatedly made the point that bets were non-binding. On an informational page under the rubric "Why Betcha > Why Not," the webpage stated:

At Betcha we treat others as we'd have them treat us. That's the Golden Rule, and it's the basis of our unique honor-based betting platform. So we're duty-bound to be honest about why Betcha might *not* be for you:

Payments on wins are not guaranteed.

Betting on Betcha is between individual bettors and

groups of bettors. Not us. Bettors always retain the right not to pay their losses. Your protection against that possibility is the Honor Rating system-i.e., you leave negative feedback when/if you run into a welcher, and that feedback makes it that much less likely that other people will do business with your welcher in the future. Betcha does not take a side in bets, one way or the other. And just like when you bet with your pals in the real world, there is no guarantee that losing bettors will pay their losses.

CP at 88. On the "Overview" page the website stated: **Betcha.com is a person-to-person betting platform. We connect people who like to bet....** For legal reasons, betting on Betcha is done on the honor system-bettors who pay build their reputations (called "Honor Ratings"), bettors who don't may find it tough to get action in the future.

CP at 89. The FAQ page included the question: **"What if the person I'm betting against doesn't pay?"** CP at 87. The website answered: "you are basically out of luck," explaining that although the Betcha.com website would "hold the purse" during the pendency of an active bet by escrowing the bettors' possible losses, "[n]evertheless, a losing bettor can decide that, for whatever reason, he just doesn't want to pay." CP at 87. *See also* CP at 90 ("Our Mission" page stressing the website's "honor-based betting platform"); CP at 92 (website's answer to FAQ: "Is this legal?," explaining that because bettors can withdraw their bets and not pay their losses, they are not risking anything, thus they are betting without gambling).

¶ 3 To place a bet on Betcha.com's website, a user had to first register, create a username, provide a mailing address, and fund an account with a credit card payment over the Internet. Upon registration, he received an honor rating of 250, which could then go up or down based on his payment record and feedback from other bettors with whom he had bet. He could then bet with other users, individually

or in pools, by drafting a bet or using pull down menus provided on the website to assist in formulating the proposition, or he could select from lists of predrafted wagers on a variety of topics. He could also set parameters such as how long the bet was to remain open, and the minimum "Honor Rating[]" that the accepting bettor must possess. CP at 401.

¶ 4 When a bettor listed a bet, the website deducted a small fee from the bettor's account. When another bettor accepted the bet, the website deducted a matching fee from both bettors' accounts. When a user listed or accepted a bet, the funds being wagered were placed in escrow until the bet settled. After the event that was bet upon had occurred, the website sent an e-mail to the bettors telling them to return to the *1048 website to make their claim. Bettors then had 72 hours to make a claim. If a bettor did not respond, he agreed to be bound by his opponent's claim. On the claim page, bettors could choose and click on a button indicating: "I won", "I lost," "I can't decide," or "I'm gonna welch." CP at 47, 423. Once a bet had been resolved, each bettor could leave the other feedback, which affected their respective honor ratings.^{FN3}

FN3. Pool betting was similar, but accommodated more people. It also had a finite settlement period and allowed losers to welch by clicking on a button denoting "I refuse to pay." CP at 48.

¶ 5 On June 8, 2007, Betcha.com opened its website to the public and began engaging in the activity described above. On June 21, 2007, agents from the Washington State Gambling Commission visited Betcha.com's Seattle office. The agents met with Jenkins, told him that commission personnel had determined that Betcha.com was engaged in illegal professional gambling and instructed him to stop operations, return all fees that Betcha.com had collected from its customers, and get legal counsel.

¶ 6 On July 6, 2007, Jenkins and his attorney met with commission personnel in Lacey. The commis-

sion served Jenkins with a formal cease and desist letter, and Jenkins indicated that he would file a complaint seeking declaratory judgment and injunctive relief.

¶ 7 On July 7, 2007, the commission secured a search warrant for Betcha.com's headquarters based on an affidavit by commission agents establishing probable cause that Betcha.com's operations violated various provisions of the act, chapter 9.46 RCW. The commission executed the search warrant on July 9, 2007, and seized computer equipment and documents used in the online betting operation.^{FN4} Thereafter, Betcha.com notified the commission that it had shut down its website.

FN4. The commission also began forfeiture proceedings against the seized property under RCW 9.46.231.

¶ 8 On July, 10, 2007, Betcha.com served the commission with a complaint seeking declaratory judgment under chapter 7.24 RCW (Uniform Declaratory Judgments Act) that Betcha.com's website does not violate the act. Betcha.com in part sought a determination that under the act social wagering on its website was not "gambling," and that Betcha.com's facilitation of such wagering for a fee was not "professional gambling" or "bookmaking." CP at 558-60. The State filed a cross-motion for summary judgment.

¶ 9 The Thurston County Superior Court heard argument on the parties' respective pending summary judgment motions, and granted summary judgment to the State. The court ruled that as a matter of law, Betcha.com's Internet gambling operation violates chapter 9.46 RCW as follows: (1) persons placing bets on Betcha.com's website are engaged in "[g]ambling" as defined in RCW 9.46.0237; (2) Betcha.com's website promotes and facilitates gambling, and in doing so it transmits and receives gambling information by means of the Internet in violation of RCW 9.46.240; (3) Betcha.com engages in "[b]ookmaking" as that term is defined in RCW 9.46.0213 when it charges a fee to persons

placing bets on its website and when it charges a percentage commission on each matched wager on its website; (4) Betcha.com's activities amount to "professional gambling" as defined in RCW 9.46.0269(1)(a), (c), and (d); and (5) Betcha.com has created, possessed, and used gambling records in violation of RCW 9.46.217. CP at 540-41. Betcha.com filed a timely notice of appeal.

ANALYSIS

I. Standard of Review

[1][2][3] ¶ 10 We review a motion for summary judgment de novo, engaging in the same inquiry as the trial court and viewing the facts, as well as the reasonable inferences from those facts, in the light most favorable to the nonmoving parties. *Berrocal v. Fernandez*, 155 Wash.2d 585, 590, 121 P.3d 82 (2005). Summary dismissal is proper only if there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law. *Berrocal*, 155 Wash.2d at 590, 121 P.3d 82; CR 56(c). We review questions of statutory interpretation *1049 de novo. *Berrocal*, 155 Wash.2d at 590, 121 P.3d 82. Where statutory language is plain, free from ambiguity and devoid of uncertainty, there is no room for construction because the legislative intention derives solely from the language of the statute. *Berrocal*, 155 Wash.2d at 590, 121 P.3d 82. But in undertaking a plain language analysis, we must remain careful to avoid unlikely, absurd or strained results. *Berrocal*, 155 Wash.2d at 590, 121 P.3d 82. Moreover, in discerning the plain meaning of a provision, we consider the entire statute in which the provision is found, as well as related statutes or other provisions in the same act that disclose legislative intent. *City of Spokane v. County of Spokane*, 158 Wash.2d 661, 673, 146 P.3d 893 (2006).

II. Washington Gambling Act of 1973

¶ 11 The Washington Gambling Act of 1973, chapter 9.46 RCW, prohibits and criminalizes “professional gambling” as defined in the act. See RCW 9.46.0269 (defining professional gambling); RCW 9.46.220 (describing elements of first degree professional gambling and designating that crime as a class B felony); RCW 9.46.221 (describing elements of second degree professional gambling and designating that crime as a class C felony); RCW 9.46.222 (describing elements of third degree professional gambling and designating that crime as a gross misdemeanor). The legislature stated the act’s purpose as follows:

The public policy of the state of Washington on gambling is to keep the criminal element out of gambling and to promote the social welfare of the people by limiting the nature and scope of gambling activities and by strict regulation and control.

It is hereby declared to be the policy of the legislature, recognizing the close relationship between professional gambling and organized crime, to restrain all persons from seeking profit from professional gambling activities in this state; to restrain all persons from patronizing such professional gambling activities; to safeguard the public against the evils induced by common gamblers and common gambling houses engaged in professional gambling; and at the same time, both to preserve the freedom of the press and to avoid restricting participation by individuals in activities and social pastimes, which activities and social pastimes are more for amusement rather than for profit, do not maliciously affect the public, and do not breach the peace.

RCW 9.46.010. The act specifically “authorize[s]” fundraising by charitable and nonprofit organizations, as well as bingo, raffles, amusement games, and the operation of punch boards, pull-tabs, card games and other social pastimes when conducted pursuant to the rules of the act. RCW 9.46.010. The act also exempts fishing derbies, and certain fishing and hunting raffles. RCW 9.46.010. As to construc-

tion of the act’s provisions, the noted policy section provides that “[a]ll factors incident to the activities *authorized* in this chapter shall be closely controlled, and the provisions of this chapter shall be liberally construed to achieve such end.” RCW 9.46.010 (emphasis added).

III. Foundational Elements

¶ 12 As noted, Betcha.com sought a declaratory judgment that its website activities did not violate the act, but the trial court determined otherwise ruling that its patrons were gambling, as defined in RCW 9.46.0237; Betcha.com transmitted and received gambling information over the Internet in violation of RCW 9.46.240; engaged in bookmaking as defined in RCW 9.46.0213; engaged in professional gambling as defined in RCW 9.46.0269(1)(a), (c), and (d); and created, possessed, and used gambling records in violation of RCW 9.46.217. Betcha.com assigned error to each of these rulings, but did not discuss RCW 9.46.0269, RCW 9.46.217, and RCW 9.46.240 in its briefing. Instead, it argues generally that because social wagering on its website does not amount to gambling as defined in RCW 9.46.0237, and it did not engage in bookmaking as defined in RCW 9.46.0213, all other asserted statutory violations, which depend upon these definitions, fail. Betcha.com builds its entire case on these two arguments.

¶ 13 At oral argument, the State contended that some of the noted statutory violations *1050 relied on other definitions. While that is true, those other definitions, however, also rely on the foundational definitions of either “gambling” or “bookmaking.” For instance, the trial court found that Betcha.com had engaged in “professional gambling” in violation of RCW 9.46.0269(1)(a), (c), and (d). The statute provides in relevant part as follows:

(1) A person is engaged in “professional gambling” for the purposes of this chapter when:

(a) Acting other than as a player or in the manner authorized by this chapter, the person knowingly engages in conduct which materially aids any form of *gambling activity*; or

...

(c) Acting other than as a player or in the manner authorized by this chapter, the person knowingly accepts or receives money or other property pursuant to an agreement or understanding with any other person whereby he or she participates or is to participate in the proceeds of *gambling activity*; or

(d) The person engages in *bookmaking*;

RCW 9.46.0269 (emphasis added). As can be seen, “gambling activity” is an essential element of subsections (1)(a) and (1)(c). But “gambling activity” is not separately defined, thus, we must refer to the definition of “gambling” that appears in RCW 9.46.0237. As for subsection (1)(d), because “bookmaking” is an essential element, we must refer to RCW 9.46.0213 for the definition of that term.

¶ 14RCW 9.46.240 provides in relevant part that “[w]hoever knowingly transmits or receives *gambling information* by ... the [I]nternet, ... or knowingly installs or maintains equipment for the transmission or receipt of gambling information shall be guilty of a class C felony.” (Emphasis added.). “Gambling information” is separately defined in RCW 9.46.0245 as “any wager made in the course of and any information intended to be used for *professional gambling*.” (Emphasis added.). As explained above, “professional gambling” requires either gambling or bookmaking.

¶ 15RCW 9.46.217 provides in relevant part that “[w]hoever knowingly prints, makes, possesses, stores, or transports any *gambling record*, or buys, sells, offers, or solicits any interest therein, whether through an agent or employee or otherwise, is guilty of a gross misdemeanor.” (Emphasis added.).

“Gambling record” is defined in RCW 9.46.0253 to mean “any record, receipt, ticket, certificate, token, slip or notation given, made, used or intended to be used in connection with *professional gambling*.” (Emphasis added.). Again, the required element of “professional gambling” relies in turn on the definitions of either gambling or bookmaking.

¶ 16 As can be seen, all of the statutory violations found by the trial court depend upon the presence of one of the foundational elements of “gambling” or “bookmaking.”

IV. Gambling

[4] ¶ 17 In relevant part, the act defines “[g]ambling” as “staking or risking something of value upon the outcome of a contest of chance or a future contingent event not under the person’s control or influence, upon *an agreement or understanding that the person or someone else will receive something of value* in the event of a certain outcome.” RCW 9.46.0237 (emphasis added).^{FN5} Betcha.com argues that the italicized plain language is not met in this case because there can be no understanding that a bettor *will* receive something of value where the website stresses that all bets are non-binding. We agree. The salient point here is that as a prerequisite to registration and use of Betcha.com’s website, users must acknowledge and *agree* that all bets made on the website are non-binding. Accordingly, bettors cannot*1051 have an understanding that they *will* receive something of value if they win.

FN5. Betcha.com argued in part before the trial court that this definition codified the common law definition of gambling, which requires three elements: consideration, chance, and prize. A public information pamphlet produced by the commission regarding internet gambling demonstrates the commission’s agreement with the notion that these three elements are required. The pamphlet explains simply that “[i]f one of

these elements is removed, it is no longer a gambling activity” and such activity would be “okay to play on the Internet.” CP at 40.

[5][6] ¶ 18 Betcha.com also contends that the trial court erred when it did not apply the rule of strict construction when addressing RCW 9.46.0237.^{FN6} That statute in conjunction with the other provisions of the act define and prohibit criminal conduct. Statutes that define crimes must be strictly construed according to the plain meaning of their words to assure that citizens have adequate notice of the terms of the law, as required by due process. *State v. Enloe*, 47 Wash.App. 165, 170-71, 734 P.2d 520 (1987). Persons of common intelligence cannot be required to guess at the meaning of the enactment. *Enloe*, 47 Wash.App. at 170-71, 734 P.2d 520.

FN6. Betcha.com now distinguishes between the rule of strict construction and the rule of lenity. It notes that they are corollary rules, the former being designed to operate in the first instance to preclude a broad reading of the language of a criminal statute, and the latter being applied at the end of the inquiry serving as a tiebreaker in the event a court cannot determine the meaning of a criminal statute. *See* Br. of Appellant at 12 n. 4 (citing 3 Norman J. Singer, *Statutes and Statutory Construction* § 59.03 (Sands 4th ed.1986)). *See also* *State v. Gore*, 101 Wash.2d 481, 485-86, 681 P.2d 227 (1984) (stating where two possible constructions are permissible, the rule of lenity requires the court to construe the statute strictly against the State in favor of the accused). Before the trial court, however, Betcha.com used the terms interchangeably.

[7] ¶ 19 Here, Betcha.com correctly reads the undefined term “will,” giving it its common meaning of “shall,” and contends that the trial court erred by not doing so. *See State v. Postema*, 46 Wash.App. 512, 515, 731 P.2d 13, review denied, 108 Wash.2d

1014 (1987) (a term that is not defined in a statute will be given its ordinary meaning). Citing a dictionary definition, the State responds that “will” can also mean “‘simple futurity.’” *See* Br. of Resp’t at 20 n. 10 (quoting Webster’s Third New International Dictionary 2616-17 (2002)). The State’s contention demonstrates that the statute can be read to have two reasonable meanings. Our Supreme Court has articulated the applicable rule in this circumstance as follows: “Where two possible constructions are permissible, the rule of lenity requires us to construe the statute strictly against the State in favor of the accused.” *State v. Gore*, 101 Wash.2d 481, 485-86, 681 P.2d 227 (1984).^{FN7}

FN7. The appellate courts have repeatedly relied on this formulation of the rule. *See e.g. Staats v. Brown*, 139 Wash.2d 757, 769, 991 P.2d 615 (2000) (quoting *Gore*, 101 Wash.2d at 485-86, 681 P.2d 227). “The rule of lenity provides that where an ambiguous statute has two possible interpretations, the statute is to be strictly construed in favor of the defendant.” *State v. Lively*, 130 Wash.2d 1, 14, 921 P.2d 1035 (1996) (citing *Gore*, 101 Wash.2d at 486, 681 P.2d 227). “ ‘[U]nder the rule of lenity, where two possible statutory constructions are permissible, we construe the statute strictly against the State in favor of a criminal defendant.’ ” *State v. Bunker*, 144 Wash.App. 407, 420, 183 P.3d 1086 (2008) (quoting *State v. B.E.K.*, 141 Wash.App. 742, 745, 172 P.3d 365 (2007) (citing *Gore*, 101 Wash.2d at 485-86, 681 P.2d 227)). “If the language of a criminal rule is susceptible to more than one meaning, the rule of lenity requires that we strictly construe it against the State and in favor of the accused.” *State v. Quintero Morelos*, 133 Wash.App. 591, 596, 137 P.3d 114 (2006), review denied, 159 Wash.2d 1018, 157 P.3d 403 (2007) (citing *Gore*, 101 Wash.2d at 485-86, 681 P.2d 227). “Under the rule of lenity, we con-

strue a statute strictly against the State and in favor of the accused when two constructions are permissible.” *State v. Esquivel*, 132 Wash.App. 316, 324, 132 P.3d 751 (2006) (citing *Gore*, 101 Wash.2d at 485-86, 681 P.2d 227).

¶ 20 Here, the trial court declined to apply the rule of lenity because the present posture of the case was “civil.” RP (Nov. 9, 2007) at 54. But Betcha.com argues forcefully that the nature of the statute at issue determines whether the rule of lenity is to be applied, not the civil posture of the case in which the statute is being considered. *See Leocal v. Ashcroft*, 543 U.S. 1, 11 n. 8, 125 S.Ct. 377, 160 L.Ed.2d 271 (2004) (statute with both criminal and non-criminal applications must be interpreted consistently, thus the rule of lenity applies whether the court encounters the statute in a criminal or non-criminal context). *See also Bingham, Ltd. v. United States*, 724 F.2d 921, 924-25 (11th Cir.1984) (rule of lenity applies when construing criminal statute in a declaratory judgment action—a civil context).

¶ 21 The State responds that the appropriate rule of construction is found in the act itself, relying on the “liberally construed” *1052 language appearing in the last sentence of the legislature’s policy declaration found in RCW 9.46.010. But that statute states in relevant part: “[a]ll factors incident to the activities authorized in this chapter shall be closely controlled, and the provisions of this chapter shall be liberally construed to achieve such end.” RCW 9.46.010. The plain language of this provision clearly provides that liberal construction is to be applied to chapter provisions regarding the regulation of enumerated “activities authorized.” To read the “liberally construed” language as broadly as the State advocates would require us to add language to the statute, which we cannot do. *See Vita Food Prods., Inc. v. State*, 91 Wash.2d 132, 134, 587 P.2d 535 (1978) (a court will not add words to a statute even if it believes the legislature intended something else but failed to express it adequately).

¶ 22 Thus, the trial court should have applied strict

construction and the rule of lenity when interpreting RCW 9.46.0237. There is no logical basis for concluding that bettors have either an agreement or understanding that winners *will* be paid. Accordingly, there is nothing risked, which is the essence of both the common law and statutory definition of “gambling.” *See* RCW 9.46.0237. Thus, neither the users nor Betcha.com engaged in “gambling.”

V. Bookmaking

[8] ¶ 23 The act separately defines “[b]ookmaking” as “accepting bets, upon the outcome of future contingent events, as a business or in which the bettor is charged a fee or ‘vigorish’ for the opportunity to place a bet.” RCW 9.46.0213. This statute is also ambiguous. “Accepting bets” can be reasonably read to have two different meanings. One can accept a bet (vis a vis offer and acceptance) as a player or stakeholder who takes a position in the bet. Or, as in Betcha.com’s business model, one can accept (meaning “receive”) a bet from a bettor for purposes of posting it on the website for another bettor to accept, without having any interest (i.e. without taking a position) in the bet.

¶ 24 Here, Betcha.com listed (i.e. received and posted) bets from registered bettors on its website for other registered bettors to consider. It also charged bettors a fee for listing their bets. This conduct meets the second reasonable reading of the definition of bookmaking as above described, but not the first. Betcha.com contends that because it did not “accept bets” (as a player or stakeholder with an interest in the outcome), it was not “bookmaking” as statutorily defined. Br. of Appellant at 36. Because the statute can be read to have two reasonable meanings, it is ambiguous, and the rule of lenity applies. *See Gore*, 101 Wash.2d at 485-86, 681 P.2d 227 (where two possible constructions are permissible, the rule of lenity requires the court to construe the statute strictly against the State in favor of the accused). Applying that rule in Betcha.com’s favor, the definition of bookmaking requires one to “accept bets,” meaning to take a position in the bet.

As noted, Betcha.com did not do so. Accordingly, applying the rule of lenity, Betcha.com did not engage in bookmaking as defined in RCW 9.46.0213.

VI. Absence of Foundational Elements is Dispositive

¶ 25 Our determination that the statutory definitions of gambling and bookmaking are not met is dispositive of this case. Because these foundational elements are absent, the trial court erred in ruling that Betcha.com's activities amounted to "professional gambling" as defined in RCW 9.46.0269(1)(a), (c), and (d). The court also erred in ruling that Betcha.com violated RCW 9.46.240, which criminalizes the transmitting and receiving of "gambling information" over the Internet. The court likewise erred in ruling that Betcha.com violated RCW 9.46.217, which criminalizes the making, possessing, or storing of "gambling record[s]."

¶ 26 As discussed above, a required element of "professional gambling" as defined in RCW 9.46.0269(1)(a) and (c) is conduct aiding or facilitating "gambling activity." Because the act does not define "gambling activity," we must resort to the definition of "gambling" found in RCW 9.46.0237. Because the activities at issue here do not meet the statutory*1053 definition of gambling, there is in turn no "gambling activity" and thus no professional gambling as defined in RCW 9.46.0269(1)(a) and (c). Similarly, because there is no bookmaking, there is no professional gambling as defined in RCW 9.46.0269(1)(d).

¶ 27 Likewise, the absence of "professional gambling" is determinative of whether Betcha.com violated RCW 9.46.240 and RCW 9.46.217. The former statute in relevant part criminalizes the transmission or receipt of "gambling information" over the Internet. See RCW 9.46.240. As noted, "gambling information" is separately defined in RCW 9.46.0245 as "any wager made in the course of and any information intended to be used for *professional gambling*." (Emphasis added.). As ex-

plained, "professional gambling" requires either gambling or bookmaking. The absence of these foundational elements means that there is no professional gambling, thus there is no gambling information, and thus there is no violation of RCW 9.46.240.

¶ 28 Similarly, RCW 9.46.217 in relevant part criminalizes the making, possessing, or storing of "any gambling record." "Gambling record" is defined in RCW 9.46.0253 to mean "any record ... used or intended to be used in connection with *professional gambling*." (Emphasis added.). Again, because there is no gambling or bookmaking, there is in turn no professional gambling, no gambling record, and no violation of RCW 9.46.217.

¶ 29 For the reasons discussed, we reverse the trial court's grant of summary judgment to the State and remand for entry of summary judgment in favor of Betcha.com in compliance with this decision.

I concur: ARMSTRONG, J.
HOUGHTON, J. (dissenting).

¶ 30 I respectfully dissent from my colleagues' decision that allows Betcha.com to operate as it intends. I do so fully knowing and understanding that the rules of statutory construction could provide a basis for the majority's opinion. And although, in my usual judicial course, I follow the majority's cited statutory construction principles, I cannot do so here. Another principle requires us not to read a statute so literally that it would result in absurd consequences. *Tingey v. Haisch*, 159 Wash.2d 652, 663-64, 152 P.3d 1020 (2007). Unfortunately, absurd consequences will occur here.

¶ 31 In enacting the Washington State Gambling Act, chapter 9.46 RCW, the legislature declared that

[t]he public policy of the state of Washington on gambling is to keep the criminal element out of gambling and to promote the social welfare of the people by limiting the nature and scope of gambling activities and by strict regulation and

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control.

RCW 9.46.010.

¶ 32 Certainly the legislature did not intend that Betcha.com, while running its operation on foreign-based servers, could provide an unregulated platform for Internet wagering that undoubtedly will result in unpaid wagers being collected through unlawful means. Most certainly this is not the result the legislature intended when it set forth its strong declaration of public policy against unregulated gambling. Thus, I dissent.

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RCW 9.46.010

Legislative declaration.

The public policy of the state of Washington on gambling is to keep the criminal element out of gambling and to promote the social welfare of the people by limiting the nature and scope of gambling activities and by strict regulation and control.

It is hereby declared to be the policy of the legislature, recognizing the close relationship between professional gambling and organized crime, to restrain all persons from seeking profit from professional gambling activities in this state; to restrain all persons from patronizing such professional gambling activities; to safeguard the public against the evils induced by common gamblers and common gambling houses engaged in professional gambling; and at the same time, both to preserve the freedom of the press and to avoid restricting participation by individuals in activities and social pastimes, which activities and social pastimes are more for amusement rather than for profit, do not maliciously affect the public, and do not breach the peace.

The legislature further declares that the raising of funds for the promotion of bona fide charitable or nonprofit organizations is in the public interest as is participation in such activities and social pastimes as are hereinafter in this chapter authorized.

The legislature further declares that the conducting of bingo, raffles, and amusement games and the operation of punchboards, pull-tabs, card games and other social pastimes, when conducted pursuant to the provisions of this chapter and any rules and regulations adopted pursuant thereto, are hereby authorized, as are only such lotteries for which no valuable consideration has been paid or agreed to be paid as hereinafter in this chapter provided.

The legislature further declares that fishing derbies shall not constitute any form of gambling and shall not be considered as a lottery, a raffle, or an amusement game and shall not be subject to the provisions of this chapter or any rules and regulations adopted hereunder.

The legislature further declares that raffles authorized by the fish and wildlife commission involving hunting big game animals or wild turkeys shall not be subject to the provisions of this chapter or any rules and regulations adopted hereunder, with the exception of this section and RCW 9.46.400.

All factors incident to the activities authorized in this chapter shall be closely controlled, and the provisions of this chapter shall be liberally construed to achieve such end.

[1996 c 101 § 2; 1994 c 218 § 2; 1975 1st ex.s. c 259 § 1; 1974 ex.s. c 155 § 1; 1974 ex.s. c 135 § 1; 1973 1st ex.s. c 218 § 1.]

RCW 9.46.0213
"Bookmaking."

"Bookmaking," as used in this chapter, means accepting bets, upon the outcome of future contingent events, as a business or in which the bettor is charged a fee or "vigorish" for the opportunity to place a bet.

[1991 c 261 § 1; 1987 c 4 § 5. Formerly RCW 9.46.020(4).]

RCW 9.46.0237

"Gambling."

"Gambling," as used in this chapter, means staking or risking something of value upon the outcome of a contest of chance or a future contingent event not under the person's control or influence, upon an agreement or understanding that the person or someone else will receive something of value in the event of a certain outcome. Gambling does not include fishing derbies as defined by this chapter, parimutuel betting and handicapping contests as authorized by chapter 67.16 RCW, bona fide business transactions valid under the law of contracts, including, but not limited to, contracts for the purchase or sale at a future date of securities or commodities, and agreements to compensate for loss caused by the happening of chance, including, but not limited to, contracts of indemnity or guarantee and life, health, or accident insurance. In addition, a contest of chance which is specifically excluded from the definition of lottery under this chapter shall not constitute gambling.

[2005 c 351 § 1; 1987 c 4 § 10. Formerly RCW 9.46.020(9).]

RCW 9.46.0269

"Professional gambling."

(1) A person is engaged in "professional gambling" for the purposes of this chapter when:

(a) Acting other than as a player or in the manner authorized by this chapter, the person knowingly engages in conduct which materially aids any form of gambling activity; or

(b) Acting other than in a manner authorized by this chapter, the person pays a fee to participate in a card game, contest of chance, lottery, or other gambling activity; or

(c) Acting other than as a player or in the manner authorized by this chapter, the person knowingly accepts or receives money or other property pursuant to an agreement or understanding with any other person whereby he or she participates or is to participate in the proceeds of gambling activity; or

(d) The person engages in bookmaking; or

(e) The person conducts a lottery; or

(f) The person violates RCW 9.46.039.

(2) Conduct under subsection (1)(a) of this section, except as exempted under this chapter, includes but is not limited to conduct directed toward the creation or establishment of the particular game, contest, scheme, device or activity involved, toward the acquisition or maintenance of premises, paraphernalia, equipment or apparatus therefor, toward the solicitation or inducement of persons to participate therein, toward the actual conduct of the playing phases thereof, toward the arrangement of any of its financial or recording phases, or toward any other phase of its operation. If a person having substantial proprietary or other authoritative control over any premises shall permit the premises to be used with the person's knowledge for the purpose of conducting gambling activity other than gambling activities authorized by this chapter, and acting other than as a player, and the person permits such to occur or continue or makes no effort to prevent its occurrence or continuation, the person shall be considered as being engaged in professional gambling: PROVIDED, That the proprietor of a bowling establishment who awards prizes obtained from player contributions, to players successfully knocking down pins upon the contingency of identifiable pins being placed in a specified position or combination of positions, as designated by the posted rules of the bowling establishment, where the proprietor does not participate in the proceeds of the "prize fund" shall not be construed to be engaging in "professional gambling" within the meaning of this chapter: PROVIDED FURTHER, That the books and records of the games shall be open to public inspection.

[1997 c 78 § 1; 1996 c 252 § 2; 1987 c 4 § 18. Formerly RCW 9.46.020(17).]

RCW 9.46.217

Gambling records — Penalty — Exceptions.

Whoever knowingly prints, makes, possesses, stores, or transports any gambling record, or buys, sells, offers, or solicits any interest therein, whether through an agent or employee or otherwise, is guilty of a gross misdemeanor. However, this section does not apply to records relating to and kept for activities authorized by this chapter when the records are of the type and kind traditionally and usually employed in connection with the particular activity. This section also does not apply to any act or acts in furtherance of the activities when conducted in compliance with this chapter and in accordance with the rules adopted under this chapter. In the enforcement of this section direct possession of any such a gambling record is presumed to be knowing possession thereof.

[1994 c 218 § 10.]

RCW 9.46.240

Gambling information, transmitting or receiving.

Whoever knowingly transmits or receives gambling information by telephone, telegraph, radio, semaphore, the internet, a telecommunications transmission system, or similar means, or knowingly installs or maintains equipment for the transmission or receipt of gambling information shall be guilty of a class C felony subject to the penalty set forth in RCW 9A.20.021. However, this section shall not apply to such information transmitted or received or equipment installed or maintained relating to activities authorized by this chapter or to any act or acts in furtherance thereof when conducted in compliance with the provisions of this chapter and in accordance with the rules adopted under this chapter.

[2006 c 290 § 2; 1991 c 261 § 9; 1987 c 4 § 44; 1973 1st ex.s. c 218 § 24.]

Notes:

State policy -- 2006 c 290: "It is the policy of this state to prohibit all forms and means of gambling, except where carefully and specifically authorized and regulated. With the advent of the internet and other technologies and means of communication that were not contemplated when either the gambling act was enacted in 1973, or the lottery commission was created in 1982, it is appropriate for this legislature to reaffirm the policy prohibiting gambling that exploits such new technologies." [2006 c 290 § 1.]

CERTIFICATE OF SERVICE

I certify that on April 9, 2009, I sent a true and correct copy of the Respondent's Answer to Petition for Review by first class mail, postage prepaid, to:

Jerry A. Ackerman, Senior Counsel
Office of the Attorney General
P.O. Box 40100
Olympia, Washington 98504-0100

Dated: April 9, 2009

Anne Watson
Anne Watson, WSBA #30541