April 30, 2017

Aaron Baer
Citizens for Community Values
11177 Reading Road, 1st Floor
Cincinnati, Ohio 45241

Re: The Ohio General Assembly's proposed expansion of casino gaming through video poker at Ohio racetracks – Senate Bill 49

Aaron,

You have asked whether proposed legislation authorizing "video poker games on all video lottery terminals capable of operating the game" is inconsistent with Section 6, Article XV of the Ohio Constitution.

As an initial observation, we note that the 1851 Center for Constitutional Law maintains no formal *policy* position on video poker or gambling more generally. Were we to adopt a position, we would likely favor the legalization of all gambling by Ohio adults, whether through financial investment, insurance procurement, or casino gaming.

Nevertheless, our conclusion is that that Ohio Constitution currently prohibits casino gaming beyond the four casinos it designates in Section 6, Article XV.

Section 6, Article XV purports to broadly authorize "casino gaming" at four specific locations, Casinos in Cleveland, Columbus, Cincinnati, and Toledo, and prohibit it everywhere else in Ohio. Specifically, Division (C)(1) of Section 6 authorizes "casino gaming" at "four casino facilities." At first glance, this could be construed to be an *authorization* of gambling rather than a *limitation*. However, Division (C)(6) specifies that "Casino gaming authorized in section 6(C) shall be conducted <u>only by licensed casino operators of the four casino facilities</u> or by licensed management companies retained by such casino operators."

As such, the only operative question is whether "video poker games" are "casino gaming." The term is not defined by the Ohio Constitution. However, it is defined in R.C. 3772.01(E) as follows:

"Casino gaming" means any type of slot machine or table game wagering, using money, casino credit, or any representative of value, authorized in any of the states of Indiana, Michigan, Pennsylvania, and West Virginia as of January 1, 2009, and includes slot machine and table game wagering subsequently authorized by, but shall not be limited by, subsequent restrictions placed on such wagering in such states. "Casino gaming" does not include bingo, as authorized in Section 6 of Article XV, Ohio Constitution and conducted as of January 1, 2009, or horse racing where the pari-mutuel system of wagering is conducted, as authorized under the laws of this state as of January 1, 2009.

Thus, casino gaming includes "any type of slot machine or table game" involving wagering, so long as the slot machine or table game was or is now authorized in any of the four states bordering Ohio.

Pursuant to R.C. 3772.01(Y), a "table game" is "any game played with cards, dice, or any mechanical, electromechanical, or electronic device or machine for money, casino credit, or any representative of value." Poker is "played with cards." Even if *video* poker were viewed otherwise because it is played with video representations of cards rather than actual cards, video poker is almost certainly a game "played with . . . any mechanical, electromechanical, or electronic device or machine for money…."

Likewise, "video poker" may alternatively be defined as a "slot machine," depending on the rewards system. See R.C. 3772.01(X); R.C. 2915.01(UU)(1).

Presuming that video poker is or has been authorized by a state bordering Ohio in the past, it is indeed "casino gaming" limited to the four casino locations specified in the Ohio Constitution.

And if "video poker" is "casino gaming," then the Ohio Constitution currently prohibits it except at the four casino locations specified in the Ohio Constitution.

Should you have any questions, please feel free to contact me by email at MThompson@OhioConstitution.org or by phone at (614) 340-9817.

Best Regards,

Maurice A. Thompson
Executive Director