Shumaker

DECEMBER 18, 2018 | PUBLICATION

Client Alert: FAQs About Sports Betting Under Ohio Law

SERVICE LINE

Corporate, Tax & Transactions

MEDIA CONTACT

Wendy M. Byrne
wbyrne@shumaker.com

In May of 2018, the United States Supreme Court struck down the Professional and Amateur Sports Protection Act (PASPA) on 10th Amendment grounds. The Court's decision stripped sports leagues of their statutory right to exclude licensed and regulated sports betting in states such as Ohio. Since the Court rendered its decision, many questions have been raised regarding sports betting under Ohio law. This legal alert provides answers to some of these questions.

1. Must the Ohio General Assembly amend the Ohio Revised Code in order to authorize licensed and regulated sports betting in Ohio? **ANSWER: YES. Bets on sports are most frequently taken pursuant to a model of betting known as "fixed odds" betting, a/k/a "bookmaking."[1] Section 2915.02(A)(1) of the Ohio Revised Code prohibits "bookmaking." Thus, before any legal bets on sporting events can be taken in Ohio, the General Assembly must amend section 2915.02(A)(1) to permit licensees of the state and/or the Ohio Lottery to use the fixed odds model.**

2. Can the Ohio Casino Control Commission, Ohio Racing Commission, or Ohio Lottery authorize licensed and regulated sports betting in Ohio without authorizing legislation from the Ohio General Assembly? **ANSWER: NO. As stated in the answer to Question No. 1, the Ohio Revised Code prohibits fixed odds betting. The Code authorizes the Racing Commission to license and regulate pari-mutuel betting on horse racing, but the Code does not contain any reference to pari-mutuel betting on any other sporting events except horse racing. The limitations on fixed odds betting and pari-mutuel betting contained in the Ohio Revised Code make it virtually impossible for any agency of the state to roll out sports betting without the General Assembly first amending the Ohio Revised Code.**

3. Must voters amend Ohio's Constitution in order for the General Assembly to authorize licensed and regulated sports betting in Ohio? **ANSWER: PROBABLY NOT. The Ohio Constitution prohibits "lotteries and the sale of lottery tickets" except as provided in Section 6 of Article 15 of the Constitution.**

However, the Ohio Constitution does not prohibit the fixed odds model, betting on sports, or the pari-mutuel model. Some state lotteries, e.g., Delaware and Rhode Island, offer betting on sports. Neither the Ohio Constitution, nor the Ohio Revised Code prohibits the General Assembly from authorizing the Ohio Lottery to offer betting on sports. But the fixed odds model and the pari-mutuel model are not traditional lottery models. Thus, voters probably do not have to amend the Ohio Constitution in order for the General Assembly to authorize fixed odds, pari-mutuel, and/or peer-to-peer models of betting on sports just as the voters did not amend the Ohio Constitution before the General Assembly enacted legislation authorizing peer-to-peer daily fantasy contests that are regulated by the Ohio Casino Control Commission.

4. Do bets on sports constitute a "table game" and "casino gaming" as those terms are defined in the Ohio Constitution? **ANSWER: NO. Section 6 of Article 15 of the Ohio Constitution defines "casino gaming" to include any "table game" authorized in Indiana, Michigan, Pennsylvania, or West Virginia and defines a "table game" as "any game played with cards, dice, or any mechanical, electromechanical, or electronic device or machine for money, casino credit, or any representative of value." Bets on sports are played with odds and point spreads, not any of the items listed in the definition of "table game." Historically, betting on sports does not have its roots in "casino gaming." Nevada legalized betting on sports in 1951. However, from 1951 until 1974, betting on sports was offered only in "turf clubs," not casinos. In 1974, Congress reduced the federal excise tax on bets on sports from 10% to 2% and the first casino sports book opened at the Union Plaza Hotel and Casino in Las Vegas. In 1983, Congress again reduced the excise tax to 0.25%. In 1986, the Las Vegas Hilton opened its "Superbook," the world's largest sports book. Only since the mid-1980s has a sports book been a standard amenity at most, although not all, Nevada hotel casinos.**

5. Does the Ohio Constitution prohibit Ohio's casinos from offering betting on sports because such betting is not a table game? **ANSWER: NO. Section 6 of Article 15 of the Ohio Constitution states "[c]asino gaming shall be authorized" at the four casinos, but the Constitution does not limit the types of games the casinos may offer to "casino gaming." In other words, a licensed casino must offer "casino gaming" (i.e., slot machines and table games). But the Constitution does not prohibit an Ohio casino from offering additional gaming options in addition to slot machines and table games, such as sports betting, if the General Assembly authorizes such gaming options.**

6. Would the thirty-three percent (33%) tax on "gross casino revenue" set forth in the Ohio Constitution attach to all bets on sports in Ohio? **ANSWER: IT DEPENDS ON THE GENERAL ASSEMBLY'S AUTHORIZING LEGISLATION. Section 6 of Article 15 of the Ohio Constitution defines "gross casino revenue" as "the total amount of money exchanged for the purchase of chips, tokens, tickets, electronic cards, or similar objects by casino patrons, less winnings paid to wagerers." Because the constitutional tax rate only applies to bets placed by casino patrons, the tax does not automatically attach to bets placed by patrons of race tracks, off-track betting facilities, retail gaming locations (such as locations that are agents of the Ohio Lottery), and the internet. The General Assembly retains discretion to establish the appropriate tax rate on bets on sports that are not made by patrons physically present at an Ohio casino.**

[1] Fixed odds betting is a model of betting where the bettor knows the exact odds or point spread that will apply to the bet at the time the bet is made. Although the odds and spread can change over time, the changes will not apply to the bettor's wager, which is locked at the time it is made. In contrast,

pari-mutuel betting, which is the betting model for horse racing in Ohio, is a model in which all bets of a particular type are placed together in a pool. Under the pari-mutuel model, the odds also change over time and, unlike under the fixed odds model, the changes apply to the bettor's wager. Thus, the payoff to a winning fixed odds bettor is guaranteed to be based on the odds or spread that the bettor received at the time the bet is placed, but the payoff to a winning pari-mutuel bettor is not subject to such a guarantee. Rather, a payoff to a winning pari-mutuel better may be based on shorter (worse) odds or longer (better) odds than the odds that existed at the time the bettor made the bet. As a result, if the betting public follows a bettor's lead on a pari-mutuel bet and "bets the odds down," the value of the bettor's wager can be diluted. Such dilution is not possible under the fixed odds model. See Australia Sports Betting, Tote (Parimutuel) v. Fixed Odds Betting, http://www.aussportsbetting.com/guide/basics/tote-vs-fixed-odds/.

© 2026 Shumaker, Loop & Kendrick, LLP. All Rights Reserved. Privacy Policy/Disclaimer