

BEFORE THE LIMITED GAMING CONTROL COMMISSION

STATE OF COLORADO

Case No. DC 95 002

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

IN THE MATTER OF: 21 SUPERBUCKS JACKPOT FEATURE.

THIS MATTER has come before the Commission on the petition filed by Robert E. Purcell (hereafter, Petitioner) for declaratory order concerning the proposed use of the 21 SuperBucks Jackpot Feature in conjunction with limited gaming in Colorado. The Colorado Division of Gaming (hereafter, Division) denied Petitioner's request for approval of the 21 Superbucks Jackpot Feature, which prompted the filing of the present action. In response to Petitioner's petition, the Division filed its brief in opposition; both documents referred to facts and law. Petitioner and the Division also appeared before the Commission on March 15, 1995, and presented further evidence and argument in support of their respective positions. The Commission has reviewed the facts presented, and considered the arguments presented by both parties, both orally and in writing. Being sufficiently advised in the matter, the Commission makes the following findings and conclusions.

STANDARD OF REVIEW

The Commission must assess whether the 21 Superbucks Jackpot Feature proposed for play in the state of Colorado is a constitutionally permissible feature of a blackjack game.

In order to do this, the Commission must discern the intent of the voters of the State of Colorado when they enacted Article XVIII section 9 of the Colorado Constitution in November, 1990. To do this, the Commission would also look to any legislative guidance on the issue, as set forth in the provisions of the Limited Gaming Act of 1991, article 47.1 of title 12, C.R.S. See Submission of Interrogatories on Senate Bill 93-74, 852 P.2d 1, 8, n.7 (Colo. 1993).

It is important that the limited gaming provisions constitute an exception to the general prohibition against gambling in the state of Colorado. As such, the Commission must afford any provisions a strict and narrow interpretation in order to effectuate the general prohibition against gambling, while at the same

time effectuating the voters' intent that gaming be allowed in a limited capacity. See Lathe v. State of Colorado, 691 P.2d 356, 357 (Colo. 1984).

Petitioner thus bears the burden of proving, by a preponderance of the evidence, that its proposal to offer the 21 Superbucks Jackpot Feature comports both with constitutional, statutory, and regulatory provisions. The Commission is charged in the first instance with both interpreting and enforcing these provisions.

FINDINGS OF FACT

1. The 21 SuperBucks Jackpot Feature involves a progressive jackpot coin acceptance and metering device. Based upon the deposit of a single coin wager, typically a \$1 token, into the device before the deal of a traditional blackjack hand, a blackjack player may receive a payment based upon whether the combination of cards dealt the player in that hand matches one of seven qualifying 21 Superbucks card combinations.
2. The 21 Superbucks wager is optional. The 21 Superbucks wager is made independent of, and is in no way related to the wagering activity of blackjack, but instead focuses on the chance outcome of the deal, unrelated to the player's success in the game of blackjack.
3. The 21 Superbucks Jackpot wager requires a wager amount in addition to any limited gaming wager. As both wagers are made before the deal of cards in the blackjack hand, the possibility exists for an initial wager to exceed the constitutional \$5 limit.
4. The strategy for winning a 21 Superbucks jackpot is based upon entirely different strategy than that for attempting to best the dealer's hand in the play of blackjack. A player may win a 21 Superbucks Jackpot even though the player ultimately loses the blackjack game (e.g. in the 21 Superbucks jackpot prize Ace-2-3-4-5 combination, the total of the cards is 15, which the dealer could best by a hand of 17 or better). Thus, it is clear the 21 Superbucks wager is not a wager on the outcome of the blackjack game, but rather on the probability of acquiring the predetermined sequence of cards. Accordingly, as discussed infra, 21 Superbucks is more accurately classified as a card game, other than either blackjack or poker, which is played concurrent to the play of blackjack. Indeed, as mentioned supra, a player may modify playing strategy in hopes of qualifying for a 21 Superbucks payout instead of attempting to best the dealer's blackjack hand.

CONCLUSIONS OF LAW

1. The Colorado Constitution, Article XVIII, section 9, limits the authorized games eligible for play in Colorado to blackjack and Poker. Colo. Const. Art. XVIII, sec. 9(4)(b):

"Limited gaming" means the use of slot machines and the card games of blackjack and poker, each game having a maximum single bet of five dollars.

2. The Colorado General Assembly, in implementing the constitutional provisions, supra, defined the blackjack game:

"Blackjack" means a banking card game commonly known as "21" or "blackjack" played by a maximum of seven players in which each player bets against the dealer. The object is to draw cards whose value will equal or approach twenty-one without exceeding that amount and win amounts bet, payable by the dealer, if the player holds cards more valuable than the dealer's cards.

Section 12-47.1-103(4) C.R.S. (1991).

3. Both parties rely upon John Scarne as authority in the area of card games, and the Commission agrees with the traditional manner of play of blackjack as set forth by him. See Scarne, Scarne's Encyclopedia of Card Games, 278-292 (John Scarne Games, Inc. 1973).

4. The Commission's rules of blackjack provide, in pertinent part, as follows:

(1) Blackjack scoring is by summing the face value of the cards. Rule 47.1-803, 1 C.C.R. 207-1 (1995).

(2) Players wager only once, before any card is dealt, in blackjack. Rule 47.1-804. Blackjack wagers may be any amount up to five dollars. Rule 47.1-804.

(3) For blackjack, each player's strategy is to best the dealer's score. Rule 47.1-804.

(4) For blackjack, winning wagers other than blackjack are paid at odds of at least one to one; a blackjack score is paid at odds of at least three to two. Rule 47.1-807.

(5) Blackjack allows "optional wagers," which are specifically identified as insurance wagers, rule 47.1-809, doubling down, rule 47.1-810, and splitting of

pairs. Rule 47.1-811. These wagers directly affect the course of play of the game of blackjack.

DISCUSSION

A. Wagering activity could result in wagering in excess of \$5 limits.

Petitioner maintains the wager on the 21 Superbucks combinations constitutes an "optional" wager on one game, similar to other authorized optional wagers such as insurance, splitting of pairs, and doubling down. The Commission does not agree.

If one were to assume the wager is truly an optional wager, as a component of only the blackjack game, then initial wagering on the first round of card activity could exceed the \$5 maximum wager, i.e. a five dollar bet on the blackjack game, plus the extra wager on the 21 Superbucks Jackpot Feature.

In blackjack, all existing "optional" wagers are made after the initial hand is dealt a player, and are based upon successive dealing activities, with each wager (insurance, splitting, doubling down) requiring action independent of the status quo. A 21 Superbucks wager operates only before the hand is dealt, and does not operate to change the course of the game, as would an "optional" wager.

Rather, the 21 Superbucks wager constitutes a wager on a game independent of the blackjack game. Indeed, one qualifying 21 Superbucks combination is a mere natural, paying at odds of two to one. That payout is in addition to the possible payout of three to two for a blackjack game natural. It is thus clear Petitioner proposes the play of another game, not merely the addition of a new feature to an existing game.

The 21 Superbucks wager is not an "optional" wager, it is an "additional" wager. If the 21 Superbucks wager is part of the game of blackjack, it could result in a player's wagering in an amount which exceeds the \$5 limitations on stakes. However, the Commission is of the opinion the 21 Superbucks Jackpot Feature involves the play of an entirely new and separate game from blackjack, one which is not contemplated in either the statute or constitution.

B. The 21 Superbucks Jackpot Feature impermissibly combines mechanical devices with card games.

There is no question that blackjack is a card game which traditionally has operated without the assistance of machines or other mechanical devices. Petitioner has presented insufficient

understood to have been accommodated within the intent of the voters in 1990.

CONCLUSION

The 21 Superbucks Jackpot Feature is antithetical to the intent of the voters in authorizing limited stakes gaming in Colorado. The limitations set forth in the Colorado Constitution speak quite clearly, in that they authorize only blackjack and poker, as intended by the voters in 1990.

For any of the above reasons alone, the Commission, by unanimous vote¹, DENIES the Petition, and declines to authorize the 21 Superbucks Jackpot Feature for play in Colorado.

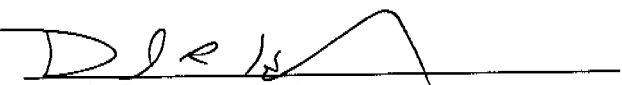
The Chair is authorized to sign this order on behalf of the Commission.

Appeal from this determination is governed by the Administrative Procedures Act, sections 24-4-105, 106 C.R.S. (1988 & 1994 Supp.), and by section 12-47.1-521 C.R.S. (1991).

Ordered and entered nunc pro tunc March 19, 1995, this 4th day of ~~March~~ 1995.

April

FOR THE COLORADO LIMITED GAMING
CONTROL COMMISSION


Daniel R. Hyatt
Chairman

Approved as to form:


Robert E. Purcell
Petitioner

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¹ Commissioners voting were Chairman Hyatt, Commissioner Rubottom, and Commissioner Brower. Commissioner Harvey, while present during argument by the parties earlier in the day, was absent and excused from deliberations and the vote in this matter.