



STATE OF ARKANSAS
ATTORNEY GENERAL
LESLIE RUTLEDGE

Opinion No. 2016-052

May 12, 2016

Cal McCastlain, Esq.
Dover Dixon Horne PLLC
425 W. Capitol Avenue, Suite 3700
Little Rock, AR 72201-9151

Dear Mr. McCastlain:

I am writing in response to your request for certification, pursuant to Ark. Code Ann. § 7-9-107 (Supp. 2015), of the popular name and ballot title for a proposed initiated measure.

At the outset, I wish to make clear to you that the decision to certify or reject a popular name and ballot title is in no way a reflection of my view of the merits of a particular proposal. I am not authorized to, and do not consider the merits of the measure when making my determination to certify or reject a popular name and ballot title.

The Attorney General is required, pursuant to Ark. Code Ann. § 7-9-107, to certify the popular name and ballot title of all proposed initiative and referendum acts or amendments before the petitions are circulated for signature. The law provides that the Attorney General *may, if practicable*, substitute and certify a more suitable and correct popular name and ballot title. Or, if the proposed popular name and ballot title are sufficiently misleading, the Attorney General may reject the entire petition.

Section 7-9-107 neither requires nor authorizes this office to make legal determinations concerning the merits of the act or amendment, or concerning the likelihood that it will accomplish its stated objective. In addition, consistent with Arkansas Supreme Court precedent, unless the measure is “clearly contrary to

law,”¹ this office will not require that a measure’s proponents acknowledge in the ballot title any possible constitutional infirmities.² Consequently, this review has been limited primarily to a determination, pursuant to the guidelines that have been set forth by the Arkansas Supreme Court, discussed below, of whether the popular name and ballot title you have submitted accurately and impartially summarize the provisions of your proposal.

The purpose of my review and certification is to ensure that the popular name and ballot title honestly, intelligibly, and fairly set forth the purpose of the proposed amendment or act.³

REQUEST

You have requested certification, pursuant to Ark. Code Ann. § 7-9-107, of the following popular name and ballot title for a proposed constitutional amendment:

Popular Name

AN AMENDMENT TO ALLOW THREE CASINOS TO OPERATE IN ARKANSAS, ONE EACH IN THE FOLLOWING COUNTIES: BOONE COUNTY, OPERATED BY ARKANSAS GAMING AND RESORTS, LLC; MILLER COUNTY, OPERATED BY MILLER COUNTY GAMING, LLC; AND WASHINGTON COUNTY, OPERATED BY WASHINGTON COUNTY GAMING, LLC

Ballot Title

An amendment to the Arkansas Constitution authorizing three casinos to operate in Arkansas, one in Boone County, Arkansas, operated by Arkansas Gaming and Resorts, LLC, an Arkansas limited liability company, one in Miller County, Arkansas, operated

¹ See *Kurrus v. Priest*, 342 Ark. 434, 445, 29 S.W.3d 669, 675 (2000); *Donovan v. Priest*, 326 Ark. 353, 359, 931 S.W.2d 119, 121 (1996); *Plugge v. McCuen*, 310 Ark. 654, 841 S.W.2d 139 (1992).

² As part of my review, however, I may address constitutional concerns for consideration by the measure’s proponents.

³ See *Arkansas Women’s Political Caucus v. Riviere*, 283 Ark. 463, 466, 677 S.W.2d 846 (1984).

by Miller County Gaming, LLC, an Arkansas limited liability company, and one in Washington County, Arkansas, operated by Washington County Gaming, LLC, an Arkansas limited liability company; creating the Arkansas Gaming Commission to regulate the casinos, with the commission comprised of 5 commissioners, each appointed by the Governor for staggered 5-year terms; requiring each casino to pay to the Arkansas State Treasury as general revenues a net casino gaming receipts tax equal to 18% of its annual net casino gaming receipts, defining annual net casino gaming receipts as gross receipts for a 12 month period from casino gaming less amounts paid out or reserved as winnings to casino patrons for that 12 month period; subjecting each casino to the same income, property, sales, use, employment and other taxation as any for-profit business located in the county and city in which the casino is located, except that the Arkansas Gross Receipts Act of 1941 and local gross receipts taxes shall not apply to casino gaming receipts; allowing a casino to operate any day for any portion or all of any day; allowing the selling or complimentary serving of alcoholic beverages in casinos during all hours the casino operates but otherwise subject to all applicable Arkansas laws involving the distribution and sale of alcohol; permitting the shipment into Boone, Miller and Washington Counties, Arkansas, of gambling devices shipped and delivered in accordance with applicable federal law (15 USC Sections 1171-1178 and amendments and replacements thereto); rendering the provisions of this amendment severable; declaring inapplicable all constitutional provisions and laws to the extent they conflict with this amendment, but not otherwise repealing, superseding, amending or otherwise affecting Amendment 84 (bingo or raffles), Amendment 87 (state lottery) to the Arkansas Constitution or Arkansas Act 1151 of 2005 (electronic games of skill).

RESPONSE

The popular name is primarily a useful legislative device.⁴ It need not contain detailed information or include exceptions that might be required of a ballot title, but it must not be misleading or give partisan coloring to the merit of the

⁴ *Pafford v. Hall*, 217 Ark. 734, 739, 233 S.W.2d 72, 75 (1950).

proposal.⁵ The popular name is to be considered together with the ballot title in determining the ballot title's sufficiency.⁶

The ballot title must include an impartial summary of the proposed amendment or act that will give the voter a fair understanding of the issues presented.⁷ According to the Court, if information omitted from the ballot title is an "essential fact which would give the voter serious ground for reflection, it must be disclosed."⁸ At the same time, however, a ballot title must be brief and concise;⁹ otherwise voters could run afoul of Ark. Code Ann. § 7-5-309's five-minute limit in voting booths when other voters are waiting in line.¹⁰ The ballot title is not required to be perfect, nor is it reasonable to expect the title to cover or anticipate every possible legal argument the proposed measure might evoke.¹¹ The title, however, must be "free of any misleading tendency whether by amplification, omission, or fallacy, and it must not be tinged with partisan coloring."¹² The ballot title must be honest and impartial,¹³ and it must convey an intelligible idea of the scope and significance of a proposed change in the law.¹⁴

⁵ E.g., *Chaney v. Bryant*, 259 Ark. 294, 297, 532 S.W.2d 741, 743 (1976); *Moore v. Hall*, 229 Ark. 411, 316 S.W.2d 207 (1958). For a better understanding of the term "partisan coloring," see *infra* at note 12.

⁶ *May v. Daniels*, 359 Ark. 100, 105, 194 S.W.3d 771, 776 (2004).

⁷ *Becker v. Riviere*, 270 Ark. 219, 226, 604 S.W.2d 555, 558 (1980) (internal citations omitted).

⁸ *Bailey v. McCuen*, 318 Ark. 277, 285, 884 S.W.2d 938, 942 (1994).

⁹ See Ark. Code Ann. § 7-9-107(b).

¹⁰ *Bailey* at 284, 884 S.W.2d at 944.

¹¹ *Id.* at 293, 844 S.W.2d at 946-47.

¹² *Id.* at 284, 884 S.W.2d at 942. Language "tinged with partisan coloring" has been identified by the Arkansas Supreme Court as language that "creates a fatally misleading tendency" (*Crochet v. Priest*, 326 Ark. 338, 347, 931 S.W.2d 128, 133 (1996)) or that "gives the voter only the impression that the proponents of the proposed amendment wish to convey of the activity represented by the words." (*Christian Civic Action Committee v. McCuen*, 318 Ark. 241, 249, 884 S.W.2d 605, 610 (1994)).

¹³ *Becker v. McCuen*, 303 Ark. 482, 489, 798 S.W.2d 71, 74 (1990).

¹⁴ *Christian Civic Action Committee*, 318 Ark. at 245, 884 S.W.2d at 607 (internal quotations omitted).

Furthermore, the Court has confirmed that a proposed measure cannot be approved if the text of the proposal itself contributes to confusion and disconnect between the language in the popular name and the ballot title and the language in the proposed measure.¹⁵ The Court concluded that “internal inconsistencies would inevitably lead to confusion in drafting a popular name and ballot title and to confusion in the ballot title itself.”¹⁶ Where the effects of a proposed measure on current law are unclear or ambiguous, it is impossible for me to perform my statutory duty to the satisfaction of the Arkansas Supreme Court without (1) clarification or removal of the ambiguities in the proposal itself, and (2) conformance of the popular name and ballot title to the newly worded proposal.

It is my opinion, based on the above precepts, that a number of additions or changes to your ballot title are necessary in order to more fully and correctly summarize your proposal. I cannot, however, at this time, fairly or completely summarize the effect of your proposed measure to the electorate in a popular name or ballot title without the resolution of the ambiguities in the text of the measure itself. Accordingly, I cannot determine precisely what changes to the ballot title are necessary to fully and correctly summarize your proposal. It is therefore not appropriate, in my opinion, for me to try to substitute and certify a more suitable and correct popular name and ballot title pursuant to Ark. Code Ann. § 7-9-107(b). Instead, you may, if you wish, redesign the proposed measure and ballot title, and then resubmit for certification. In order to aid your redesign, I highlight below the more concerning ambiguities in the *text* of your proposal.

1. Section 1, in defining “casino gaming,” states that the term includes “any game, device, or type of wagering permitted at a casino operated within Louisiana, Mississippi, Missouri, Nevada, Oklahoma, Texas, or any jurisdiction within said states, as of November 8, 2016, or as subsequently permitted thereafter.” This phrase is ambiguous with respect to its effect on Arkansas law for two reasons.

- a. It is unclear whether this means that so long as only one of those jurisdictions permits a game, device, or type of wagering, Arkansas would have to permit such as well.

¹⁵ *Cf. Roberts v. Priest*, 341 Ark. 813, 825, 20 S.W.3d 376, 382 (2000).

¹⁶ *Id.*

- b. It is also unclear whether the phrase “any jurisdiction within said states” means and/or includes sovereign Indian tribes operating casinos within any of those states pursuant to the Indian Gaming Regulation Act.¹⁷ (What other jurisdiction(s) might that phrase be intended to include?) Without a definition of “jurisdiction” for purposes of this section, the word creates a significant ambiguity.

These matters must be clarified and then be included in the ballot title (along with the more general definition of “casino gaming” in your proposed amendment). Under my analysis of the relevant case law and the significance of the issue to how voters may view this proposed amendment, the ballot title must put voters on notice of the breadth of the general definition of “casino gaming” as well as the manner in which that definition is affected by other states’ laws (both present and future laws).¹⁸

2. Section 1 also states that the General Assembly “shall from time to time enact laws to fulfill the purposes of this Amendment.” Section 2 would create an Arkansas Gaming Commission with authority over the administration of the laws pertaining to casinos and casino gaming, and the power to promulgate regulations over casinos and casino gaming in Arkansas “in accord with this Amendment.” Your proposal is silent, and thus unclear, on what authority, if any, your proposal invests or denies the legislature to define the scope of the commission’s duties or to otherwise regulate casino gaming.¹⁹

¹⁷ 25 U.S.C. 2701 *et seq.*

¹⁸ The more general definition of gaming should also be included in the ballot title.

¹⁹ I will note that the General Assembly does not need any express conferral of power in order to retain its law-making power over a subject matter. It is generally held as a canon of state constitutional construction that a state constitution, unlike the federal constitution, is not a *grant* of enumerated powers to a state legislature, but is rather a *limitation* on the power of the legislature to act. That is, the legislature has the power to legislate in all fields unless it is expressly or by necessary implication denied that power by the state (or federal) constitution. *See, e.g., Wells v. Purcell*, 267 Ark. 456, 592 S.W.2d 100 (1979); *Jones v. Mears*, 256 Ark. 825, 510 S.W.2d 857 (1974); *Berry v. Gordon*, 237 Ark. 547, 376 S.W.2d 279 (1964). If it is your intention by constitutional amendment to deny the General Assembly power to regulate in whole or part the gaming commission, this fact must be expressly stated or necessarily implied; otherwise, the General Assembly will retain that power. I cannot determine from the text of your proposed amendment whether such a “necessary implication” exists.

Knowing what entity—the legislature or the commission—will have the power of last resort to set policy regarding the conduct of casinos and casino gaming may give voters serious ground for reflection. Accordingly, this information must be clear in your measure and in a ballot title summarizing it.

3. There is an ambiguity arising from Sections 2 and 3 of your measure. As noted above, Section 2 would create an Arkansas Gaming Commission with authority over the administration of the laws pertaining to casinos and casino gaming, and the power to promulgate regulations over casinos and casino gaming. This wording suggests that this commission, like many other state regulatory boards or commissions, would have the authority to license and, if need be, to punish a casino, up to and including suspending or revoking a license. Yet, Section 3 states that the three casinos authorized by the amendment shall be operated by three specifically-named limited liability companies, which are referred to as “designated licensees.” The significance of identifying these “designated licensees” in the constitution is unclear. Specifically, it is unclear whether this means the three enumerated companies would be constitutionally guaranteed a license to operate casinos in the three named counties, or whether a license must still issue from the Arkansas Gaming Commission as the regulatory entity (after a certain statutory and regulatory framework is established and met by the designated casinos). An additional ambiguity concerns the extent of the commission’s authority over these “designated licensees,” given their potential constitutional status. Would the Arkansas Gaming Commission be prohibited from suspending or revoking one or more of those three licenses as punishment for violations of statutory or regulatory requirements? These important aspects of the measure must be clarified and then summarized in the ballot title.
4. In Section 4 concerning taxation, your proposal states: “All net casino gaming receipts taxes shall be paid to the Arkansas State Treasury as general revenues, less *said amounts* the General Assembly determines to be reasonably necessary for the operation of the Arkansas Gaming Commission.” (Emphasis added.) This sentence is unclear for two reasons.
 - a. The phrase “said amounts...” has no antecedent, so it is unclear what amounts in your proposal this language points to.

- b. Moreover, if all net casino gaming tax receipts are to be paid to the state treasury as general revenues less the amounts the legislature deems reasonably necessary for the operation of the gaming commission, to what fund is that second amount to be paid?

CONCLUSION

The ambiguities noted above are not necessarily all the ambiguities contained in your proposal, but they are sufficiently serious to require me to reject your popular name and ballot title. I am unable to substitute language in a ballot title for your measure due to these ambiguities. Further, additional ambiguities may come to light on review of any revisions of your proposal.

My office, in the certification of ballot titles and popular names, does not address the merits, philosophy, or ideology of proposed measures. I have no constitutional role in the shaping or drafting of such measures. My statutory mandate is embodied only in Ark. Code Ann. § 7-9-107, and my duty is to the electorate.

Based on what has been submitted, my statutory duty is to reject your proposed ballot title for the foregoing reasons and instruct you to redesign the proposed measure and ballot title.²⁰ You may resubmit your proposed amendment along with a proposed popular name and ballot title at your convenience.

Sincerely,



LESLIE RUTLEDGE
Attorney General

²⁰ Ark. Code Ann. § 7-9-107(c).

Popular Name

AN AMENDMENT TO ALLOW THREE CASINOS TO OPERATE IN ARKANSAS, ONE EACH IN THE FOLLOWING COUNTIES: BOONE COUNTY, OPERATED BY ARKANSAS GAMING AND RESORTS, LLC; MILLER COUNTY, OPERATED BY MILLER COUNTY GAMING, LLC; AND WASHINGTON COUNTY, OPERATED BY WASHINGTON COUNTY GAMING, LLC.

Ballot Title

AN AMENDMENT TO THE ARKANSAS CONSTITUTION AUTHORIZING THREE CASINOS TO OPERATE IN ARKANSAS, ONE IN BOONE COUNTY, ARKANSAS, OPERATED BY ARKANSAS GAMING AND RESORTS, LLC, AN ARKANSAS LIMITED LIABILITY COMPANY, ONE IN MILLER COUNTY, ARKANSAS, OPERATED BY MILLER COUNTY GAMING, LLC, AN ARKANSAS LIMITED LIABILITY COMPANY, AND ONE IN WASHINGTON COUNTY, ARKANSAS, OPERATED BY WASHINGTON COUNTY GAMING, LLC, AN ARKANSAS LIMITED LIABILITY COMPANY; CREATING THE ARKANSAS GAMING COMMISSION TO REGULATE THE CASINOS, WITH THE COMMISSION COMPRISED OF 5 COMMISSIONERS, EACH APPOINTED BY THE GOVERNOR FOR STAGGERED 5-YEAR TERMS; REQUIRING EACH CASINO TO PAY TO THE ARKANSAS STATE TREASURY AS GENERAL REVENUES A NET CASINO GAMING RECEIPTS TAX EQUAL TO 18% OF ITS ANNUAL NET CASINO GAMING RECEIPTS, DEFINING ANNUAL NET CASINO GAMING RECEIPTS AS GROSS RECEIPTS FOR A 12 MONTH PERIOD FROM CASINO GAMING LESS AMOUNTS PAID OUT OR RESERVED AS WINNINGS TO CASINO PATRONS FOR THAT 12 MONTH PERIOD; SUBJECTING EACH CASINO TO THE SAME INCOME, PROPERTY, SALES, USE, EMPLOYMENT AND OTHER TAXATION AS ANY FOR-PROFIT BUSINESS LOCATED IN THE COUNTY AND CITY IN WHICH THE CASINO IS LOCATED, EXCEPT THAT THE ARKANSAS GROSS RECEIPTS ACT OF 1941 AND LOCAL GROSS RECEIPTS TAXES SHALL NOT APPLY TO CASINO GAMING RECEIPTS; ALLOWING A CASINO TO OPERATE ANY DAY FOR ANY PORTION OR ALL OF ANY DAY; ALLOWING THE SELLING OR COMPLIMENTARY SERVING OF ALCOHOLIC BEVERAGES IN CASINOS DURING ALL HOURS THE CASINO OPERATES BUT OTHERWISE SUBJECT TO ALL APPLICABLE ARKANSAS LAWS INVOLVING THE DISTRIBUTION AND SALE OF ALCOHOL; PERMITTING THE SHIPMENT INTO BOONE, MILLER AND WASHINGTON COUNTIES, ARKANSAS, OF GAMBLING DEVICES SHIPPED AND DELIVERED IN ACCORDANCE WITH APPLICABLE FEDERAL LAW (15 USC SECTIONS 1171-1178 AND AMENDMENTS AND REPLACEMENTS THERETO); RENDERING THE PROVISIONS OF THIS AMENDMENT SEVERABLE; DECLARING INAPPLICABLE ALL CONSTITUTIONAL PROVISIONS AND LAWS TO THE EXTENT THEY CONFLICT WITH THIS AMENDMENT, BUT NOT OTHERWISE REPEALING, SUPERSEDING, AMENDING OR OTHERWISE AFFECTING AMENDMENT 84 (BINGO OR RAFFLES), AMENDMENT 87 (STATE LOTTERY) TO THE ARKANSAS CONSTITUTION OR ARKANSAS ACT 1151 OF 2005 (ELECTRONIC GAMES OF SKILL).

FULL TEXT

An Amendment to the Constitution of the State of Arkansas enacted by the people of the State of Arkansas:

Section 1. Authorizing Casinos and Casino Gaming.

Casinos and casino gaming are hereby authorized in the State of Arkansas as provided in this Amendment.

The Arkansas General Assembly shall from time to time enact laws to fulfill the purposes of this Amendment. Initial laws adopted by the General Assembly pursuant hereto shall be in full force and effect no later than June 30, 2017.

A casino means a facility where casino gaming is conducted as authorized by this Amendment.

Casino gaming means to deal, operate, carry on, conduct, maintain, or expose for play any game played with cards, dice, equipment, or any mechanical, electromechanical, or electronic device or machine for money, property, checks, credit, or any representative value, as well as to accept wagers on sporting events or other events. The term casino gaming includes, without limiting the generality of the foregoing, any game, device, or type of wagering permitted at a casino operated within Louisiana, Mississippi, Missouri, Nevada, Oklahoma, Tennessee, Texas, or any jurisdiction within said states, as of November 8, 2016, or as subsequently permitted thereafter.

Section 2. Commission Created — Members — Powers.

There is hereby created the Arkansas Gaming Commission. The regulation of the casinos authorized by this Amendment, and the administration of the laws pertaining thereto, are hereby vested in the Arkansas Gaming Commission. The Commission shall from time to time adopt regulations to regulate casinos and casino gaming in Arkansas in accord with this Amendment. Initial regulations adopted by the Commission shall be in full force and effect no later than March 31, 2018. The Commission shall be comprised of five Commissioners, all of whom shall be appointed by the Governor. The first Commissioners of the Commission shall be appointed no later than July 31, 2017, by the Governor for terms of one, two, three, four, and five years, respectively. The terms of the persons so appointed shall be determined by lot.

Upon the expiration of the foregoing terms of said Commissioners, successors shall be appointed by the Governor for terms of five years. Any vacancy arising in the membership on the Commission for any reason other than the expiration of the regular term for which the Commissioner was appointed shall be filled by appointment by the Governor, to be thereafter effective until the expiration of such regular term.

The Governor shall have the power to remove any Commissioner for cause only, after notice and hearing before the Commission. Such removal shall become effective only when approved in writing by a majority of the total number of the Commission, but without the right to vote by the Commissioner removed or by the successor Commissioner, which action shall be filed with the Secretary of State together with a complete record of the proceedings at the hearing. An appeal

may be taken to the Pulaski County Circuit Court by the Governor or the Commissioner ordered removed, and the same shall be tried de novo on the record. An appeal may be taken from the circuit court to the Arkansas Supreme Court, which shall likewise be tried de novo.

Section 3. Authorized Locations and Licensees.

Casinos allowed under this Amendment shall be limited to no more than one casino in each of the following Arkansas counties and shall be operated by designated licensees as follows:

- a. Boone County, operated by Arkansas Gaming And Resorts, LLC, an Arkansas limited liability company, its successors or assigns;
- b. Miller County, operated by Miller County Gaming, LLC, an Arkansas limited liability company, its successors or assigns,
- c. Washington County, operated by Washington County Gaming, LLC, an Arkansas limited liability company, its successors or assigns.

Section 4. Taxation.

Each casino shall pay an annual net casino gaming receipts tax equal to 18% of its annual net casino gaming receipts. Annual net casino gaming receipts are defined as gross receipts for a 12-month period from casino gaming, less amounts paid out or reserved as winnings to casino gaming patrons for that 12-month period. All net casino gaming receipts taxes shall be paid to the Arkansas State Treasury as general revenues, less said amounts the General Assembly determines to be reasonably necessary for the operation of the Arkansas Gaming Commission. Amounts paid out or reserved as winnings to casino gaming patrons and the annual net casino gaming receipts tax paid or reserved are deductible for purposes of calculating the casino's net income under the Income Tax Act of 1929 (Ark. Code Ann. Sections 26-51-101 et seq.) and any amendments or replacements thereto.

The tax imposed by Arkansas Gross Receipts Act of 1941 (Ark. Code Ann. Sections 26-52-101 et seq.), any amendments or replacements thereto, and any related local gross receipts taxes, shall not apply to casino gaming receipts, and no additional tax on casino gross receipts shall be imposed by the State or by counties, municipalities or other units of local government. Except for the exclusion in the previous sentence, each casino shall be subject to the same income, property, sales, use, employment or other taxation or assessments as any for-profit business located in the county and city in which the casino is located. No additional State or local taxes, fees, or assessments shall be imposed on the casinos except as authorized in this Amendment.

Section 5. Other Operational Provisions.

Casinos may operate any or all days of the year and for any or all portions of a 24-hour day.

Casinos shall be permitted to sell alcoholic beverages or provide complimentary servings of alcoholic beverages during all hours in which the casino is operating. Casinos shall be subject to all applicable Arkansas laws involving the distribution and sale of alcohol that do not conflict with the previous sentence.

Section 6. Legal Shipment of Gambling Devices into State.

All shipments of gambling devices, including slot machines, into any county of this State within which casino gaming is authorized, the registering, recording, and labeling of which has been duly performed by the manufacturer and/or dealer thereof in accordance with 15 U.S.C. Sections 1171-1178 and amendments and replacements thereto, shall be deemed legal shipments thereof into any such county of this State within which casino gaming is authorized.

Section 7. Severability.

If any provision of this Amendment, or the application of any such provision to any person or circumstance is held invalid, the validity of any other provision of this Amendment, or the application of such provision to other persons and circumstances, shall not be affected thereby, and to this end the provisions of this Amendment are declared to be severable.

Section 8. Inconsistent Provisions Inapplicable.

All provisions of the Constitution of this State and statutes of this State, including, but not limited to, laws forbidding the judicial enforcement of gambling debts and statutes declaring gambling to be crimes, to the extent inconsistent or in conflict with any provision of this Amendment are expressly declared null and void as to, and do not apply to, any activities allowed under this Amendment. However, this Amendment does not repeal, supersede, amend, or otherwise affect Amendment 84 (bingo or raffles) or Amendment 87 (state lottery) to the Arkansas Constitution, or Act 1151 of 2005 (electronic games of skill) (Ark. Code Ann. Sections 23-113-101 et seq.).