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FORMAL)	
OPINION)	
)	No. 18-02
of)	
)	August 2, 2018
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Michael Hartman, Executive Director of the Colorado Department of Revenue, requested this Formal Opinion under § 24-31-101(1)(b), C.R.S.

This Formal Opinion analyzes state constitutional and statutory provisions to determine whether current law authorizes commercial sports betting in the State of Colorado. The Opinion concludes that although commercial sports betting is not subject to state constitutional restrictions, it falls within the definition of prohibited gambling under Colorado’s criminal code, making it unlawful. Consequently, to legalize commercial sports betting in the State, a statutory change—but not a constitutional amendment—would be required.

QUESTIONS PRESENTED AND SHORT ANSWERS

Question 1: Is commercial sports betting subject to the prohibition on “lotteries” in Article XVIII, Section 2 of the Colorado Constitution, such that a state constitutional amendment would be required to authorize commercial sports betting in the State?

Answer 1: No, a state constitutional amendment would not be required. While Article XVIII, Section 2 imposes various restrictions on “lotteries,” commercial sports betting does not qualify as a lottery. The Colorado Supreme Court has ruled that betting on horse and dog races is not a lottery, and there is no material difference between betting on horse and dog races and betting on other types of sporting events. Commercial sports betting therefore falls outside the restrictions in Article XVIII, Section 2.

Question 2: Is commercial sports betting “gambling” under Section 18-10-102(2), C.R.S., such that new legislation would be required to authorize it in the State of Colorado?

Answer 2: Yes, commercial sports betting is currently prohibited as illegal gambling under Colorado’s criminal code. New legislation would be required to authorize commercial sports betting in Colorado.

BACKGROUND

Beginning in 1992, a federal law known as the Professional and Amateur Sports Protection Act, or “PASPA,” prohibited most States from enacting laws to license or authorize commercial sports betting. Pub. L. No. 102-559, § 2, 106 Stat. 4227 (1992) (codified at 28 U.S.C. §§ 3701–3704).¹ While four States were exempt from the prohibition, the majority—including Colorado—were not. *See* 28 U.S.C. § 3704 (setting forth enumerated exemptions); *see also* Andrew Brandt, *Professional Sports Leagues’ Big Bet: “Evolving” Attitudes on Gambling*, 28 STAN. L. & POL’Y REV. 273, 277 (2017) (discussing States that authorized commercial sports betting before PASPA and were grandfathered under PASPA’s enumerated exemptions). Recently, however, PASPA’s prohibition against commercial sports betting came to an end. In May, the United States Supreme Court struck down PASPA in its entirety, ruling in favor of the State of New Jersey in its attempt to legalize commercial sports betting in selected locations within the State. *Murphy v. Nat’l Collegiate Athletic Ass’n*, 138 S. Ct. 1461, 1468, 1485 (2018).

When PASPA was first enacted, New Jersey was given the option of authorizing commercial sports betting in Atlantic City, a tourist destination that offers legalized casino gambling. *Murphy*, 138 S. Ct. at 1471 (discussing PASPA’s history). New Jersey chose not to take advantage of this feature of PASPA, however, and consequently became subject to the full extent of PASPA’s prohibition on commercial sports betting. *Id.* Decades later, in 2012, New Jersey policymakers had a change of heart, passing legislation to allow Atlantic City’s casinos to operate sports betting books. *Id.* In response, the National Collegiate Athletic Association and various professional sports leagues, including the National Basketball Association and the National Football League, filed a lawsuit under PASPA. *Id.*

¹ Specifically, PASPA prohibited States from enacting laws that licensed or authorized “a lottery, sweepstakes, or other betting, gambling or wagering scheme based directly or indirectly, ... on one or more competitive games in which amateur or professional athletes participate, or are intended to participate, or on one or more performances of such athletes in such games.” 28 U.S.C. § 3702(1).

A panel of the Third Circuit Court of Appeals ultimately invalidated New Jersey's 2012 law. But the court determined that PASPA included a loophole: while PASPA prohibited States from *enacting new laws* to authorize commercial sports betting, it did not prohibit States from *repealing old laws* that outlawed commercial sports betting. *Murphy*, 138 S. Ct. at 1471–72 (discussing *Nat'l Collegiate Athletic Ass'n v. Christie*, 730 F.3d 208 (3d Cir. 2013)). Relying on the panel's decision, New Jersey repealed its prohibition on commercial sports betting as applied to certain parts of the State, including Atlantic City. *Murphy*, 138 S. Ct. at 1472. This new “repealer” law was once again challenged. And once again the Third Circuit—despite the language in its earlier decision seeming to approve of “repealer” laws—ruled against New Jersey. *Id.* (discussing *Nat'l Collegiate Athletic Ass'n v. Gov. of N.J.*, 832 F.3d 389 (3d Cir. 2016) (*en banc*)).

The Supreme Court of the United States heard New Jersey's appeal from the Third Circuit's 2016 decision and, in an opinion issued on May 14, 2018, concluded that PASPA is unconstitutional. *Murphy*, 138 S. Ct. at 1485. The Court based its decision on the anti-commandeering doctrine, a constitutional principle that preserves the balance between state and federal power by, among other things, prohibiting Congress from regulating what laws States must or must not enact. *Id.* at 1475–78. Under this doctrine, although Congress may directly regulate an activity such as commercial sports betting and preempt state laws that contradict federal regulation, it may not “command state legislatures to legislate.” *New York v. United States*, 505 U.S. 144, 178–79 (1992).

The Court concluded that PASPA violated this anti-commandeering principle. PASPA directly controlled the policy decisions of state legislators, “as if federal officers were installed in state legislative chambers and were armed with the authority to stop legislators from voting on any offending proposals.” *Murphy*, 138 S. Ct. at 1478. The Court therefore struck down PASPA's prohibition against state legislation authorizing commercial sports betting, regardless of whether the legislation comes in the form of a new authorizing statute or a so-called “repealer.” *See id.* The Court then determined that PASPA's remaining provisions could not stand on their own, and it therefore declared PASPA unconstitutional in its entirety. *Id.* at 1478, 1482–85.

Following the *Murphy* decision, there has been heightened interest in commercial sports betting among the States. Ben Nuckols, *A look at where legal sports betting is headed in the U.S.*, DENVER POST, May 15, 2018, at 6b.² The Department of Revenue, which houses the Division of Racing Events, the State Lottery Division, and the Division of Gaming, has received inquiries regarding the legality of commercial sports betting in

² An updated version of this article is available at <https://www.denverpost.com/2018/05/14/where-legal-sports-betting-is-headed/> (last visited July 30, 2018).

Colorado and possible prospective legislative changes authorizing commercial sports betting in Colorado. Those inquiries led the Department to request this Formal Opinion.

ANALYSIS

PASPA has not been the only potential impediment to legalized commercial sports betting in the State of Colorado. Colorado's constitution has always included a prohibition on lotteries. Colo. Const. art. XVIII, § 2. Colorado's criminal code, meanwhile, prohibits various forms of "gambling." §§ 18-10-101 through 108, C.R.S.³

This Formal Opinion focuses on whether commercial sports betting would fall within either the constitutional restrictions in Article XVIII, Section 2, or the statutory restrictions in Sections 18-10-101 through 108.⁴ For purposes of this Formal Opinion, commercial sports betting means wagering money or anything of value on the outcome of a sporting event, or a portion of a sporting event, for the chance of a monetary gain or an item of value, where the bettor has the opportunity to exercise skill in selecting the wager. This includes, among other activities:

- betting on the winner of a sporting event, such as a college basketball game, or a series of sporting events, such as a college basketball tournament;
- betting on the difference in points participating teams will earn in an event, such as the "point spread" in a professional football game; and
- betting on the outcome of a portion of a sporting event, such as a quarter of a basketball game or a down of a football game.

³ Other federal laws also criminalize certain sports betting activities that cross state lines, including, under specific circumstances, Internet gambling. *See* 18 U.S.C. § 1084(a) (prohibiting the use of a "wire communication facility" for the interstate transmission of wagers or information about wagers on any sporting event, among other things); 31 U.S.C. § 5363 (prohibiting a wagering business from accepting certain types of funds in furtherance of "unlawful Internet gambling"); *see also* Mem. for the Asst. Att'y Gen., Criminal Div., from Virginia A. Seitz, Asst. Att'y Gen., Off. of Legal Counsel (Sept. 20, 2011), at 5, 7, *available at* <https://www.justice.gov/file/18341/download> (regarding application of 18 U.S.C. § 1084 to gambling on sporting events). This Formal Opinion does not analyze those laws or the extent to which they would restrict the State of Colorado from authorizing affected commercial sports betting.

⁴ These provisions, in conjunction with other statutes that rely on the definition of gambling, are the main potential prohibitions on commercial sports betting under state law. A number of other state-law restrictions are specific to pari-mutuel wagering on horse and dog racing but do not apply more broadly to other types of sporting events. *See* §§ 12-60-101 to -803, C.R.S. Additionally, Colorado voters have approved "limited gaming" in the cities of Central, Black Hawk, and Cripple Creek. Colo. Const. art. XVIII, § 9. "Limited gaming" is a narrow, defined term that includes only blackjack, poker, and slot machines. *Id.* § 9(4)(b). Because commercial sports betting, as contemplated in this Formal Opinion, is not "limited gaming," this constitutional provision is not relevant.

This Formal Opinion assumes that informational materials would be available to a bettor that would be relevant to the outcome of the sporting event, allowing the bettor to exercise an element of skill in placing a bet. This Formal Opinion does not apply to games where the bettor exercises no independent control over the selection of the wager—for example, when selections are made or bets are placed at random. This Formal Opinion also does not apply to fantasy sports.⁵ Additionally, this Formal Opinion assumes that commercial sports betting is conducted as part of a commercial enterprise; other forms of sports betting, such as social wagers among friends, are beyond the scope of this Formal Opinion.

This Formal Opinion concludes that while Article XVIII, Section 2 of the Colorado Constitution does not restrict commercial sports betting in Colorado, commercial sports betting is “gambling” as defined in Colorado’s criminal code and is currently prohibited by Colorado law. Therefore, new legislation would be required to authorize commercial sports betting before it could lawfully occur in the State.

I. A state constitutional amendment would not be required to authorize commercial sports betting in Colorado, because commercial sports betting is not a “lottery” that is subject to the restrictions in Article XVIII, Section 2 of the Colorado Constitution.

Article XVIII, Section 2 has always been part of the Colorado Constitution, since its adoption in 1876. Initially, Article XVIII, Section 2 broadly prohibited the General Assembly from authorizing lotteries for any purpose. It also required the enactment of laws prohibiting lotteries. *See Bills v. People*, 157 P.2d 139, 141 (Colo. 1945) (quoting Colo. Const. art. XVIII, § 2 (1876)).

Today, Article XVIII, Section 2 continues to prohibit most lotteries, but it now authorizes specific types of lotteries, which are described in subsections (2) through (4) and (7). Subsections (2) through (4), added in 1958, permit certain non-profit organizations to operate “bingo,” “lotto,” and “raffles.” *See LEG. COUNCIL OF THE COLO. GEN. ASSEMBLY, AN ANALYSIS OF BALLOT PROPOSALS 11–13 (1958)*. Subsection (7), added in 1980, authorizes a state-supervised lottery. *See LEG. COUNCIL OF THE COLO. GEN. ASSEMBLY, AN ANALYSIS OF BALLOT PROPOSALS 5–8 (1980)*. The relevant question here is whether commercial sports betting is a “lottery,” “bingo,” “lotto,” or “raffle” subject to Article XVIII, Section 2’s various restrictions.

⁵ Fantasy sports are separately regulated under the Fantasy Contests Act. §§ 12-15.5-101 through 112, C.R.S.

A. Commercial sports betting is not a “lottery” under Article XVIII, Section 2 because participants are able to exercise sufficient skill in selecting their wagers such that chance is not the “controlling factor” in an award.

A “lottery,” according to the Colorado Supreme Court, is an activity in which “consideration is paid for the opportunity to win a prize awarded by chance.” *In re Interrogatories of Gov. Regarding Sweepstakes Races Act*, 585 P.2d 595, 598 (Colo. 1978); *see also Ginsberg v. Centennial Turf Club*, 251 P.2d 926, 929 (Colo. 1952) (holding that a lottery requires valuable consideration “paid, directly or indirectly, for a chance to draw a prize by lot” (quoting *Cross v. People*, 32 P. 821, 822 (Colo. 1893)) (emphasis in *Ginsberg*)). Whether a game is a lottery turns on the role that chance plays in the outcome. *See, e.g., Morrow v. State*, 511 P.2d 127, 128–30 (Alaska 1973); *Braddock v. Family Fin. Corp.*, 506 P.2d 824, 826 (Idaho 1973); *Sherwood & Roberts-Yakima, Inc. v. Leach*, 409 P.2d 160, 163 (Wash. 1966). “[I]f chance is the controlling factor in the award,” the game is a lottery. *Sweepstakes Races*, 585 P.2d at 598.

Wagering on a sporting event falls outside this definition. *Ginsberg*, 251 P.2d at 929. In *Ginsberg*, the Colorado Supreme Court concluded that chance does not control wagering on horse and dog races because the bettor can select a bet based on a review of information about a race and the prior records of its participants.⁶ *Id.* “While an element of chance no doubt enters into horse and dog races, it does not control them.” *Id.* The Court emphasized the availability of relevant information for a bettor’s review, including race programs that provide post position, approximate odds, jockey’s name, and class of race. *Id.* at 928–29. Past performance and physical statistics for both animals and jockeys are also typically available to bettors before they place their wagers. *Id.*; *see also Sweepstakes Races*, 585 P.2d at 597–98 (holding that Article XVIII, Section 2 is not implicated where “winning players are determined by the outcome of the race and the accuracy of each player’s selection,” whereas a random drawing for a money prize among winning players violates Article XVIII, Section 2 because “no skill is exercised by players who participate in the drawing”).

While *Ginsberg* focused on racing events, the Court’s analysis and holding apply equally to commercial sports betting. Sports bettors can use skill to choose who they believe will win a sporting event or whether some sub-event will occur (such as a point spread or the outcome of a particular portion of an event). In selecting their

⁶ In *Ginsberg*, the Court focused on bettors’ opportunity to exercise skill, not whether they actually did so in placing bets. 251 P.2d at 929 (noting that in choosing a bet a bettor “has available the previous records of the animal and the jockey, and various other facts which he may take into consideration in choosing the animal upon which he places a wager” (emphasis added)).

bets, today's sports bettors have far more information available than the bettors in *Ginsberg* did. This information includes schedules; team records; players' past performance data (amateur and professional); past head-to-head data; injury reports; facility conditions; weather conditions; and more. See Christian Frodl, *Commercialisation of Sports Data: Rights of Event Owners Over Information and Statistics Generated About Their Sports Events*, 26 MARQ. SPORTS L. REV. 55, 57–59 (2015) (discussing types of data available). Under *Ginsberg*, because a bettor can exercise skill in reviewing this information and selecting a wager, the element of chance is not the controlling factor in commercial sports betting. 251 P.2d at 929. Thus, there is no material difference between betting on the horse racing events at issue in *Ginsberg* and betting on other sporting events, and certainly none that would render the Court's conclusion regarding the definition of a lottery distinguishable.⁷

Other States have similarly concluded that commercial sports betting is not a lottery because chance is not the controlling factor in the outcome of a bet. See *Bureau of State Lottery—Authority to Institute Sports Wagering Game*, 1989–1990 Mich. A.G. 367, 1990 WL 525920 (Aug. 17, 1990) (concluding that sports betting is not a lottery and relying on cases with similar holdings regarding horse racing); 64 W. Va. A.G. No. 8, 1991 WL 628003 (Jan. 8, 1991) (concluding that sports betting is not a lottery and relying on cases with similar holdings regarding horse racing, including *Ginsberg*). Contrary authority exists in other jurisdictions, see *In re Request of Governor for Advisory Opinion*, 12 A.3d 1104 (Del. 2009), but Colorado law controls this analysis. *Ginsberg* holds that betting on horse and dog races is not a “lottery,” and betting on other sporting is not materially different. Therefore, commercial sports betting is not subject to the restrictions in Article XVIII, Section 2.

B. Commercial sports betting does not fall within the definition of “bingo,” “lotto,” or “raffles,” which are types of “lotteries” subject to special restrictions under Article XVIII, Section 2.

Article XVIII, Section 2 includes an exception for “the conducting of such games of chance as provided in subsections (2) to (4).” The games of chance addressed in those subsections are “bingo,” “lotto,” and “raffles.” If commercial sports betting qualified as one of these games, it would be subject to certain restrictions. See Colo. Const. art. XVIII, § 2(4).

Article XVIII, Section 2 specifically defines these games. “Bingo” and “lotto” are games where “prizes are awarded on the basis of designated numbers or symbols on

⁷ *Ginsberg*'s holding also applies to different types of bets, including bets on multiple events. The Court specifically approved of bets to win, place, or show, as well as games like “Quinella” and “Daily Double,” which involved the selection of successful animals in more than a single race. *Ginsberg*, 251 P.2d at 927–29.

a card conforming to numbers or symbols selected at random.” Colo. Const. art. XVIII, § 2(3). “Raffles” are games “conducted by the drawing of prizes or by the allotment of prizes by chance.” *Id.*

Commercial sports betting does not satisfy either of these definitions. Sports bettors are not given a card or a ticket at random and then awarded a prize based on a later, random drawing. Additionally, the exception for these particular “games of chance” operates as a carve-out from the general prohibition on lotteries. Thus, “bingo,” “lotto,” and “raffles” are types of “lotteries” and, logically, fall within the definition of lottery set out in *Ginsberg*. See 251 P.2d at 929. It would be illogical to conclude that commercial sports betting is not a lottery under the *Ginsberg* analysis but that it nevertheless falls within one of these subcategories.

For the reasons set out in this Section I, commercial sports betting is not a “lottery” subject to the restrictions of Article XVIII, Section 2. Therefore, a state constitutional amendment would not be required to authorize commercial sports betting in Colorado.

II. Because commercial sports betting is prohibited “gambling” under Colorado’s criminal code and does not fall within any of the code’s exceptions, new legislation would be required to authorize commercial sports betting in the State.

Colorado’s criminal code prohibits “gambling.” §§ 18-10-102(2) & -103(1), C.R.S. Generally, “gambling” includes “risking any money, credit, deposit, or other thing of value for gain contingent in whole or in part upon lot, chance, the operation of a gambling device, or the happening or outcome of an event, *including a sporting event*, over which the person taking a risk has no control.” § 18-10-102(2), C.R.S. (emphasis added). Under this definition, commercial sports betting clearly qualifies as gambling. In commercial sports betting, (1) a participant risks money for gain; (2) the gain is contingent on the outcome of a sporting event, as the statute specifically contemplates; and (3) the bettor has no control over the outcome of the event.

This conclusion is consistent with Colorado case law. For example, in *Wilson v. People*, 84 P.2d 463 (Colo. 1938), the Colorado Supreme Court held that two defendants could be convicted of engaging in gambling as a livelihood when the evidence demonstrated that they were taking bets on the outcome of horse races. 84 P.2d at 465–66.⁸ Similarly, in *Leichliter v. State Liquor Licensing Authority*, 9 P.3d

⁸ *Wilson* predates Colorado’s legalization of pari-mutuel betting on horse racing, which occurred in 1949. See *Centennial Turf Club v. Colo. Racing Comm’n*, 271 P.2d 1046, 1046 (Colo. 1954). It therefore illustrates how specific forms of prohibited “gambling”—and, in particular, betting on sporting events—may be authorized by legislation in Colorado.

1153 (Colo. App. 2000), a state agency suspended a bar’s liquor license, claiming that it was permitting gambling on the premises in the form of a basketball pool. 9 P.3d at 1154. The bar argued that the basketball pool was incidental to a bona fide social relationship—a recognized exception to the gambling definition. *See id.* The Court of Appeals, in analyzing this argument, noted that “the critical inquiry is whether the participants here came together for any shared purpose *other than gambling.*” *Id.* at 1155 (emphasis added). Implicit in this phrasing is the conclusion that participating in a basketball pool is gambling; if that were not true, it would have been unnecessary to consider the “bona fide social relationship” argument.

Thus, in light of the clear language of the statute and consistent with *Wilson* and *Leichliter*, commercial sports betting is impermissible gambling unless it qualifies for one of the five exceptions to the statutory definition of gambling. Those exceptions are as follows:

- bona fide contests of skill, speed, strength, or endurance in which awards are made only to entrants or the owners of entries;
- bona fide business transactions which are “valid under the law of contracts”;
- other acts or transactions “expressly authorized by law”;
- any game, wager, or transaction which is “incidental to a bona fide social relationship”; or
- any use of or transaction involving a “crane game.”

§ 18-10-102(2)(a)–(f), C.R.S.⁹

Three of these exceptions may be quickly removed from consideration. Commercial sports betting is not a “crane game,”¹⁰ and it therefore does not qualify for the crane-game exception. *See* § 18-10-102(2)(f), C.R.S. Similarly, commercial sports betting is not authorized elsewhere in statute with the exception of pari-mutuel betting on horse and dog races. *See* § 18-10-102(2)(c), C.R.S. (stating the exception); *see also* § 12-60-501, C.R.S. (authorizing the licensing and regulation of race meets with pari-mutuel wagering). Finally, because this Formal Opinion

⁹ Section 18-10-102(2)(e), C.R.S., no longer contains an exception to the definition of gambling; this subsection was repealed in 1984. 1984 Colo. Sess. Laws, ch. 95, § 2 at 437.

¹⁰ A “crane game” is defined as “an amusement machine that, upon insertion of a coin, bill, token, or similar object, allows the player to use one or more buttons, joysticks, or other controls to maneuver a crane or claw over a nonmonetary prize, toy, or novelty, none of which shall have a cost of more than twenty-five dollars, and then, using the crane or claw, to attempt to retrieve the prize, toy, or novelty for the player.” § 12-47.1-103(5.5), C.R.S.

considers only commercial sports betting, the social-gaming exception is not relevant. See § 18-10-102(2)(d), C.R.S. (exempting wagers that are “incidental to a bona fide social relationship” under certain circumstances); see also *Houston v. Younghans*, 580 P.2d 801 (Colo. 1978) (holding that a poker game among friends was permissible social gambling). As a commercial enterprise, commercial sports betting would not be part of a bona-fide social relationship, would likely be participated in by corporate entities, and would likely involve entities engaged in “professional gambling,” as defined in Section 18-10-102(8), C.R.S. Any one of those conditions is sufficient to take commercial sports betting outside of the social-gaming exception.

The two remaining exceptions also do not apply. Section 18-10-102(2)(a), C.R.S., contains an exception for “[b]ona fide contests of skill, speed, strength, or endurance in which awards are made only to entrants or the owners of entries.” As contemplated by this Formal Opinion, commercial sports bettors do not themselves participate in a bona fide contest of speed, strength, or endurance. And, although skill is involved in selecting a wager, the ultimate outcome is “contingent ‘in part’ upon chance,” taking it outside the exception. *Charnes v. Cent. City Opera House Ass’n*, 773 P.2d 546, 551 (Colo. 1989) (citing *Ginsberg*, 251 P.2d at 929) (holding that even though poker and “other wagering games” might involve skill, they still constitute “gambling”).¹¹ This exception is inapplicable to commercial sports betting.

Finally, Section 18-10-102(2)(b), C.R.S., contains a separate exception for “[b]ona fide business transactions which are valid under the law of contracts.” While Colorado law does not specifically define “bona fide business transactions,” other States with similar exceptions apply them to securities contracts, insurance contracts, and indemnity contracts. See ARIZ. REV. STAT. ANN. § 13-3301(4); KAN. STAT. ANN. § 21-6403(a)(1); OKLA. STAT. ANN. tit. 21, § 981(1)(a); WIS. STAT. § 945.01(1)(a). Federal law includes the same concepts. 31 U.S.C. § 5362(1)(E) (excluding from the term “bet or wager” insurance contracts, indemnity contracts, and activities governed by the Securities Exchange Act of 1934). The Colorado statute’s reference to validity “under the law of contracts” suggests a similar focus. Additionally, to conclude that commercial sports betting qualifies for the “bona fide business transaction” exception would render the reference to wagering on the outcome of a sporting event in the general gambling definition superfluous. Colorado law requires courts avoid such an outcome. *Lombard v. Colo. Outdoor Educ. Ctr.*, 187 P.3d 565, 569 (Colo. 2008) (noting statutes should be given effect in their entirety). Commercial sports betting thus does not qualify for the bona fide business transaction exception.

¹¹ Taken together, *Charnes* and *Ginsberg* establish that a lottery exists where the outcome is *wholly* controlled by chance, while gambling exists even when the outcome is only *partially* contingent on chance. *Charnes*, 773 P.2d at 551; *Ginsberg*, 251 P.2d at 929. Thus, all lotteries are gambling, but not all gambling involves a lottery.

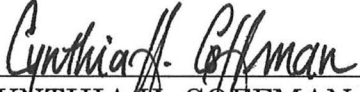
For the reasons set out in this Section II, commercial sports betting is prohibited “gambling” within the meaning of Colorado’s criminal code, and none of the exceptions to the gambling definition apply. New legislation would be required to authorize commercial sports betting in Colorado.

CONCLUSION

The Colorado Constitution does not prohibit or otherwise restrict commercial sports betting, but commercial sports betting is impermissible gambling under Colorado’s criminal code. New legislation, but not a state constitutional amendment, would be required to authorize commercial sports betting in Colorado.

Whether or not to amend state statutes to authorize commercial sports betting is a policy question for the General Assembly and the voters of this State. If policymakers wish to legalize commercial sports betting operations, they should take into account all relevant legal considerations, including federal laws that impose restrictions on interstate sports betting, *see, e.g.*, 18 U.S.C. § 1084(a); 31 U.S.C. § 5363, and other state laws that currently implicate or restrict gambling activities, *see, e.g.*, § 16-13-303, C.R.S. (defining as a “public nuisance” property “used ... as gambling premises”).

Issued this 2nd day of August, 2018.



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