

Court Says Competing for A Prize Isn't Gambling

BY WILLIAM JABINE

Taking a leaf out of the book of the television golf shows, the proprietors of a golf course in a Western state offered a prize of \$5,000 to any golfer making a hole-in-one on their course under certain conditions. A golfer named Gibson came along, complied with the conditions, which included payment of a 50 cent fee, and made a hole-in-one. When he asked for the \$5,000, payment was refused. He finally went to court to get his money. The principal defense to the suit was that a gambling debt was unenforceable in the courts. This doctrine, which prevails in most jurisdictions, is based on the premise that gambling is against public policy.

But where did this stout reliance upon the deleterious effects of gambling on the public welfare take place? In Las Vegas, Nev., which in the public mind is usually accounted the gambling capital of the United States.

Not A Matter of Skill

The men who had offered the handsome prize and then were reluctant to make their offer good, contended that making a hole-in-one is a mere matter of chance and not a matter of skill, and so should be classified as gambling. The trial court did not go along with this theory and ruled that the golfer should be paid. The golf course owners appealed to the Nevada supreme court and before that bench reasserted their argument that making a hole-in-one is so dependent on pure luck that it comes under the definition of gambling.

Beginning with a brief comment on the seemingly extraordinary fact that although gambling is legal in Nevada, collecting a gambling debt in the courts is still barred, the supreme court affirmed the ruling of the trial court which directed payment of the \$5,000 to Gibson. In support of this ruling the court said: "Inasmuch as the contention for a prize offered by another, which the one offering must lose in the event of compliance with the terms and conditions of his offer, is not gambling, it was not error to hold that the contract was valid and enforceable."

Although the court said it was not necessary to decide whether or not making a hole-in-one can be defined as a "feat

of skill", it included a brief quotation from the testimony of a golf professional who said "a skilled player will get it (the ball) in the area where luck will take over more often than an unskilled player." After quoting this sage remark the court concluded its discussion of this point by saying: "The test of the character of a game is not whether it contains an element of chance or an element of skill, but which of these is the dominating element." (Las Vegas Hacienda V. Gibson, 359 P

Rules Golfers Exempt from Signing Liability Waiver

The Passaic County park commission has no right to demand that golfers sign a waiver of liability claims before playing the course in Preakness Valley park in Wayne, N.J., according to a recent ruling made by Harold Kolovsky, a superior court judge.

The court overruled the waiver, which the commission circulated earlier this year, on motions for summary judgment by Louis Schwartz, a Paterson lawyer and golfer, and Herman C. Klein, park commission counsel.

The waiver would have released the park commission from liability for any injury suffered by a player on the course or its ancillary facilities.

Judge Kolovsky said a waiver of this kind is against public policy and an attempt to impose it on the public is arbitrary and beyond the power of a park commission.

A good deal of the argument over the waiver had to do with the distinction between "proprietary" and "governmental" functions and operations of public agencies. Judge Kolovsky said the distinction is hazy and that its elements go back to the Roman laws as they applied to the public baths.

The commission justified its attempt to require the waiver by pointing out its adoption would result in lower insurance rates and hence a saving for the taxpayer.

New Jersey Scholarships

Six winners of New Jersey State GA caddie scholarships were announced in May by Rutgers University. The awards, made for the 17th consecutive year, go to caddies at member clubs of the association. The four-year scholarships are worth \$2,000.