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LEGAL ISSUES ASSOCIATED WITH TICKET SCALPING

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INTRODUCTION

The popularity of live sport events combined with a limited number of tickets led to the scalping of tickets. Although often restricted by state or local legislation, ticket scalping is a common practice that occurs before many sport and entertainment events. Scalping is defined as, “the practice of selling something (especially a ticket) at a price above face value once it becomes scarce (usually just before a high-demand event begins)” (*Black’s Law Dictionary*, 2000, p. 1080). Ticket scalping can result in a criminal or civil violation in jurisdictions that have laws regulating the practice. These laws can range from limiting resale ticket prices to completely prohibiting the scalping of tickets. Some states require that a ticket scalper be licensed by the state to resell tickets. Other states only allow ticket brokers to resell tickets. Currently, there is no federal law that regulates ticket scalping. The purpose of this article is to provide a brief historical perspective of ticket scalping, examine various anti-scalping legislation and analyze related case law.

Ticket scalping has become a huge business; however, it is nearly impossible to account for the broad effect and extent it has on sport and entertainment events. One study estimated that ticket brokers/scalpers made a profit of over \$87 million from live sport and entertainment events in 2000 (“Ticket Scalping History,” 2002). Ticket scalping can obviously be very profitable and there are several methods typically employed in an effort to obtain such financial rewards.

TICKET SCALPING METHODS

The legality of ticket scalping depends upon the state or municipality in which the act occurs. Certain scalping methods are protected by law and do not violate anti-scalping legislation, even though tickets are often sold for a price higher than the original face value. The simplest and most traditional form of ticket scalping is when one person purchases a ticket via the box office or an authorized ticket agent (i.e., Ticketmaster) and then resells it at a higher price to a consumer on the street or through a brokerage (Gibbs, 2000). The initial owner of a ticket may sell the ticket to make a profit or simply to get rid of it if he or she cannot attend the event. Selling a ticket on the street around an event venue is the most common method of scalping tickets. This practice can be disruptive as it often creates commotion and possible safety concerns around the venue, which is a major reason for anti-scalping legislation (Gibbs, 2000).

Ticket brokers are another avenue for ticket scalping. Brokers are legal in some states and permitted to sell tickets for prices higher than face value. In an effort to regulate brokers for fair business practices and for tax collection purposes, they must be registered and licensed in such states. In these states, they are exempt from anti-scalping laws. Ticket brokers, however, can run into legal trouble when their means of acquiring tickets are illegal, such as bribing the person in control of the ticket at the original point of sale (Gibbs, 2000). Ticket brokers have received much criticism because they often control a large percentage of the tickets, thereby making it difficult for fans to obtain tickets through the box office.

Recently, a class action suit against the Chicago Cubs, who allow brokers to sell their tickets, was decided. The broker and defendant in the case, Wrigley Field Premium Ticket Services, is owned and oper-

ated by the Tribune Company, which also owns the Cubs franchise (Munson, 2003). The plaintiff's alleged that Wrigley Field Premium Ticket Services and the Cubs violated the Ticket Scalping Act by selling game tickets above face value through Premium. In ruling for the Cubs, the judge found that the Ticket Scalping Act did not prohibit a single entity such as the Tribune Company from owing a sports team and a ticket brokerage, or the team from selling its tickets to its sister company (Associated Press, 2003).

Although travel agents sell tickets for more than face value when sold in travel packages, they are also exempt from anti-scalping legislation. These state licensed agencies are allowed to increase the price of tickets only when they are included in a "package deal" that provides hotel accommodations and/or travel (Gibbs, 2000). When the agency sells the tickets alone for a higher price, it is considered scalping and the offender can face charges.

Authorized ticket agencies, such as Ticketmaster or Ticketron, are companies that are given permission and tickets by event managers/owners to sell tickets for an event (Gibbs, 2000). These agencies are permitted to add a surcharge above the original ticket price without violating the anti-scalping laws. However, authorized ticket agencies can violate the law if they set ticket prices higher than originally contracted.

The widespread use of the Internet has resulted in a new form of ticket scalping which has become very popular. With online auctions such as Ebay, chat rooms, and sales of tickets via the Internet, online scalping is a new issue facing sport managers/owners. However, ticket scalping legislation remains in effect if the person buying or selling the ticket is in a city or state where ticket scalping is regulated.

Anti-scalping legislation has become more defined over the years, but ticket scalping still remains a fundamental part of the sport industry. These laws differ among states and are often difficult to enforce. Anti-scalping legislation dates back to the early 1900's when the Sherman and Clayton Acts provided early regulations on price fixing and other unfair pricing practices. Due to the high demand for tickets and limited access to stage shows, the first anti-scalping laws in the United States were passed in 1918 (Happel & Jennings, 1995). As professional and college sports grew and became an integral part of American culture, ticket scalping became more and more prevalent. The increasing popularity of attending live events was evident as crowds began filling arenas and stadiums, subsequently creating a high demand for tickets, which ultimately led to ticket scalping.

Following World War II, the improving economy of the nation allowed many individuals an increase in leisure time and a more expendable income. With additional attention and money being spent on sports, there was an increase in season ticket sales, which resulted in fewer seats being available for single pre-game sales. This demand also contributed to ticket scalping, as well as fraudulent practices by many box office employees; some would buy tickets and then resell them on their own for a large personal profit. In an effort to curb such practices, cities and states began passing different types of anti-scalping legislation. This first strong wave of anti-scalping legislation included various levels of restrictions for reselling tickets, such as limiting resale price to \$1 above the printed ticket price, adding a maximum \$3 service charge to the original ticket price, or putting percentage limitations on the amount a ticket could be scalped for (Happel & Jennings, 1995). Several states utilize this type of anti-scalping law. For example, the 2004 Florida Statute on ticket scalping states:

§ 817.36 Resale of tickets of common carriers, places of amusement, etc.--

(2)(a) Whoever shall offer for sale or sell any ticket good for admission to any sporting exhibition, athletic

contest, theater, or any exhibition where an admission price is charged and request or receive a price in excess of \$1 above the retail admission price charged therefore by the original seller of said ticket shall be guilty of a misdemeanor of the second degree, punishable as provided in s. § 775.082 or s. § 775.083.

Other restrictions in the early wave of anti-scalping laws included requiring owner/promoter authorization for resale above the printed ticket price, restrictions on scalping locations (e.g., no sales at event, on-site property), ticket sales and resales limited to printed price, scalping deemed illegal for specific types of events (e.g., athletics), broker licensing, and charity/nonprofit exceptions for resale (Happel & Jennings, 1995). Many jurisdictions have laws that prohibit scalping within a certain distance from the sports venue. Attempting to curb scalping in this manner is often viewed as weak, since scalpers can simply, and legally, sell tickets, for example, at 200 feet from the premises rather than illegally at 199 feet.

These early laws made ticket scalping a misdemeanor offense and punishable by fines, possible jail sentences, and/or the confiscation of tickets. This legislation aimed to control the location, price, and nuisance effects. These laws held through the 1970's and 1980's, however, enforcement of them was typically infrequent (Happel & Jennings, 1995).

Within the past ten years, scalping laws have differentiated ticket scalpers on the street from ticket brokers or agents operating on the behalf of the event producer (Happel & Jennings, 1995)*. Throughout the country, many efforts are being undertaken to regulate and better define ticket scalping. Anti-scalping remains a debated topic whenever new legislation is proposed. Sport managers should stay abreast of the different and changing legislation in their jurisdiction(s).

**/[Editor's Note: For greater clarity, a sentence was removed from the original draft designated paragraph on 12-7-04]*

WHY HAVE ANTI-SCALPING LAWS?

In principle, ticket scalping is not necessarily negative. There are benefits to having ticket scalpers. Ticket scalpers provide goods (unobtainable tickets) to a portion of society that could not acquire tickets to the event by conventional methods or because they were sold out (Criscuolo, 1995). The service of selling tickets, although typically overpriced, is beneficial to those seeking them. Some fans benefit from ticket scalpers if they could not (or simply chose not to) wait in line, or on the phone, for tickets when they originally went on sale. For these fans, paying a higher price for the scalped ticket is justifiable because they did not have to wait in line. Many people think scalpers are simply taking advantage of America's free enterprise attitude (Diamond, 1982). Ticket scalpers argue that they own the ticket, and therefore, can resell the ticket for whatever price they want.

In the eyes of many, the profit that scalpers make is unfair. According to Phoenix Suns president, Jerry Colangelo, the scalpers, "made money off him without his permission and that was not right" (Happel & Jennings, 1995, p. 72). Owners often try to keep ticket prices somewhat low so fans can afford to come to the events. Additionally, by maintaining inexpensive prices, fans are more likely to increase their spending on concessions and souvenirs once inside the arena or stadium, thereby creating more revenue for the ownership entity of the team(s) (Criscuolo, 1995). Scalping can cut into the owner's profit, which is just one of the many problems scalping creates in the sport industry.

Additionally, ticket scalpers and brokers often obtain many of the tickets thereby causing regularly priced tickets to be unavailable for the fans. This leads to an unequal and unfair allocation of tickets to events (Criscuolo, 1995). Brokers also have an unfair advantage because they often utilize methods that the aver

age fan would not attempt in an effort to obtain tickets, like using high-speed dialing equipment or mailing in several order forms under many different names (“Why Can’t I Get Tickets?”, 1999).

The traditional act of scalping on the streets in areas surrounding venues has caused problems as well. Public disturbances, harassment/annoyance, and safety concerns are major issues. Just prior to the start of an event, there is often a high volume of people and scalpers can be a nuisance or seen as potentially dangerous because of the possible threat to public safety.

RELATED CASE LAW

The courts have responded to ticket scalping problems and have upheld much of the anti-scalping legislation. Four related legal issues that have been challenged in court are (1) the legitimate interest in protecting the welfare of the people, (2) the legitimate interest in ensuring public access to entertainment and sport events, (3) the legitimate exercise of a state’s police power, and (4) the ticket scalping statute must be rationally related to stated legislative goals (Pittman & Osborne, 2003). Other challenges against anti-scalping laws range from free market rights to constitutional grounds. These have included claims that anti-scalping statutes violate the Equal Protection Clause, Fourteenth Amendment (due process), and/or improperly delegate legislative power to the managers of sport or entertainment events (Crisuolo, 1995).

LEGITIMATE INTEREST IN PROTECTING THE WELFARE OF THE PUBLIC

Ticket scalping, on the basis that it goes against public welfare, is deemed illegal in many states (Gibbs, 2000). A case involving the state’s legitimate interest in protecting the welfare of the public is *The People of the State of New York v. Susan Johnson* (1967). In this case, the defendant, Susan Johnson, purchased two tickets to the opera in New York City for \$20 each. After purchasing the tickets, she realized she would not be able to attend the show, so she put an advertisement in the newspaper to sell the tickets. Three weeks before the opera, she received a call from someone wanting to buy the tickets. However, the buyers were two undercover police officers. They met at Johnson’s apartment and she sold them the tickets for \$40 each. The police officers then arrested Johnson for ticket scalping.

The court found that Johnson was not guilty of violating Section 168 of the General Business Law of New York. The court determined that anti-scalping legislation was established to preserve public welfare and for the advancement of the arts and theater (Pittman & Osborne, 2003). Since the defendant was not in the business of reselling tickets, she was not found guilty. The anti-scalping law made no reference to an isolated sales transaction by a person who is not in the business of reselling tickets.

LEGITIMATE INTEREST IN ENSURING PUBLIC ACCESS TO ENTERTAINMENT AND SPORT EVENTS

The courts have recognized that anti-scalping legislation was created, in part, so the public would have safe access to sport events. In *People v. Shepherd* (1978), the defendant was arrested for scalping Los Angeles Raiders tickets outside the Los Angeles Memorial Coliseum. Ticket scalping was illegal within the city limits and in areas used by the general public for recreation and amusement. The court ruled that the anti-scalping laws were created to, “eliminate the intrusion of the seller and his effect upon the safety, comfort and enjoyment of the crowds of people streaming into the Coliseum” (*People v. Shepherd*, p. 382). The court pointed out that the crowds of people outside the stadium need to move in a safe and quick manner, and unregulated use of this area by ticket scalpers would add annoyance, congestion, and inconvenience to the crowds. The anti-scalping law, in this case, was deemed reasonable based upon the significant governmental interest of protecting the well being of the people.

LEGITIMATE EXERCISE OF A STATE'S POLICE POWER

Courts have upheld anti-scalping laws when a state's police powers are legitimate and fair. The U.S. Supreme Court case of *Nebbia v. New York* (1934) was not directly related to ticket scalping, but it involved price controlling (of milk) and proved to be an important precedent. A New York statute mandated the minimum and maximum retail prices of milk and, in the case, the court upheld the statute. The court stated that, "price control like any other form of regulation is unconstitutional only if arbitrary, discriminatory, or demonstrably irrelevant to the policy the legislature is free to adopt, and hence an unnecessary and unwarranted interference with liberty" (*Nebbia v. New York*, p. 504). The state's regulation of the price for milk was not capricious, unreasonable, or without relation to the original purpose of the legislation and, therefore, the law did not violate the due process clause of the Fourteenth Amendment. A state may adopt any economic policy it considers necessary to promote public welfare and create legislation to enforce it (Pittman & Osborne, 2003). The *Nebbia* case became a foundation for anti-scalping legislation.

THE TICKET SCALPING STATUTE MUST BE RATIONALLY RELATED TO STATED LEGISLATIVE GOALS

Anti-scalping legislation is often upheld in court, especially if it is connected with reasonable goals of a state's constitution. This was evident in *State v. Major* (1979), which reversed the lower court's decision that anti-scalping laws were unconstitutional because they unduly interfered with, "the private property right of disposing of one's property at a non-exorbitant, non-fraudulent, non-extortionate price set by the scalper" (p. 725). The court ruled that the anti-scalping legislation in Georgia was constitutional and valid because the exchange made when scalping tickets is seen as an unlawful contract in the state. A ticket scalper can enter contracts only if the contract is legal and lawful (Pittman & Osborne, 2003). Furthermore, the Court stated, "the state has made the contracts covered [in ticket scalping] unlawful through a valid exercise of its police power" (p. 727).

CONCLUSION

Anti-scalping regulations have changed a lot since the early 1900's, but they will need further modification to address the new and ever changing methods of ticket scalping. Many of the current anti-scalping statutes are of merit and have been upheld in the courts; however, many law enforcement agencies do not have the manpower to effectively enforce these laws. Anti-scalping laws may also need to be revised to address Internet sales. Additionally, a federal anti-scalping statute may create more uniform enforcement and ease jurisdictional problems. Finally, sport fans and managers should stay abreast of the ticket scalping regulations in their jurisdiction to help avoid potential problems.

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