

November 19, 2013

Telephone: (717) 783-9454

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Don Sartor
Loyal Order of Moose Lodge 1276

Re: Daily Book Drawings

Dear Mr. Sartor:

ISSUE: This is in response to your e-mail sent October 1, 2013, wherein you seek advice regarding the legality of a proposed game for your members. The game is modeled after NYS Queen of Hearts. It is your understanding that the NYS game is not legal in Pennsylvania. You state that agents of the Liquor Control Board, during the course of inspections, have opined that that if the club makes no profit, the game is legal. You seek clarification of the subject of daily book drawings, with specific reference to the use of cards and bingo balls to run a game.

Records of the Pennsylvania Liquor Control Board (“Board”) indicate that the Loyal Order of Moose Lodge 1276 holds Catering Club Liquor License No. CC-6360 (LID 44532) for the premises located at Route 29 South, Tunkhannock, Pennsylvania. For the purpose of this response, the Queen of Hearts is identified as an approved raffle governed by the New York Games Of Chance Licensing Law and Sections 5620.22 and 5620.23 of the New York State Racing and Wagering Board’s Rules and Regulations.

OPINION: As you are aware, the rules of games of chance in New York are not applicable to Pennsylvania licensees. Section 5.32 of the Board’s Regulations [40 Pa. Code § 5.32] permits retail licensees, such as clubs, to hold self-sponsored events, tournaments, or contests on their licensed premises. Self-sponsored means paid for and carried out by the licensee.

Events, tournaments, and contests that are sponsored by the licensee are subject to the following rules, which provide, in pertinent part, that there may be no unlawful gambling directly or indirectly associated with the event, tournament, or contest. In addition, the value of all prizes awarded may not exceed one thousand

dollars (\$1,000.00). The maximum weekly prize limit in a seven (7)-day period is twenty-five thousand dollars (\$25,000.00). [40 Pa. Code § 5.32(f)(7)]. Please note that these limits are not only applicable to cash prizes, but include the fair market value of any non-cash prizes. There are exceptions to prize limitations for entities operating under the Small Games of Chance Act. [10 P.S. §§ 311-327].

In conducting self-sponsored events, licensees shall maintain on the licensed premises for two (2) years, from the date of the event, an itemized list of all prizes for each event, tournament, contest indicating each prize, its value and the name and address of the recipient. [40 Pa. Code § 5.32(e)(9)]. Furthermore, the Board's Regulations require a club licensee to adhere to the provisions of its constitution and/or bylaws. [40 Pa. Code § 5.81].

One of the conditions mentioned above is that no unlawful gambling may be directly or indirectly associated with any event, tournament, contest or activity on the licensed premises. If there is unlawful gambling, the licensee will be held strictly liable for such activity and could be cited for violation of the Liquor Code and the Board's Regulations. [40 Pa. Code § 5.32(e)(2)]. Because unlawful gambling is a violation of the Pennsylvania Crimes Code, this office cannot provide you with a legal opinion as to whether the daily drawings would constitute unlawful gambling. However, it should be noted that unlawful gambling consists of the following elements: (1) consideration or a fee or charge to play; (2) an element of chance; and (3) a prize or reward. Pennsylvania Liquor Control Bd. v. PPC Circus Bar, Inc., 96 Pa. Cmwlth. 115, 506 A.2d 521 (1986).

Some gambling activities, while unlawful generally, are considered to be lawful if conducted by an entity that holds a small games of chance permit. The Board does not regulate either the Local Option Small Games Of Chance Act [10 P.S. §§ 311-327] or the Bingo Law [10 P.S. §§ 301-308.1], and as such, the interpretation of those laws fall outside of the Board's authority. Accordingly, the Board is unable to address your question concerning daily draw books, the use of cards, the use of bingo balls, and any related games.

Therefore, it is recommended that you contact your County Treasurer's Office and/or the Department of Revenue, Miscellaneous Tax Division, at (717) 787-8275 with any questions about small games of chance. In addition, please note that the Pennsylvania Department of Revenue publishes a "Small Games of Chance Overview" that may be helpful to you. This overview can be obtained through the Department of Revenue's website, located at www.revenue.state.pa.us/SGOC.

You may also want to contact the local police, the Pennsylvania State Police, or the County District Attorney's Office for an official opinion regarding your proposed game.

THIS OPINION APPLIES ONLY TO THE FACTUAL SITUATION DESCRIBED HEREIN AND DOES NOT INSULATE THE LICENSEE OR OTHERS FROM CONSEQUENCES OF CONDUCT OCCURRING PRIOR TO ITS ISSUANCE. THE PROPRIETY OF THE PROPOSED CONDUCT HAS BEEN ADDRESSED ONLY UNDER THE LIQUOR CODE AND REGULATIONS. THE LAWS AND POLICIES ON WHICH THIS OPINION IS BASED ARE SUBJECT TO CHANGE BY THE LEGISLATURE OR THE PENNSYLVANIA LIQUOR CONTROL BOARD.

Very truly yours,

FAITH S. DIEHL
CHIEF COUNSEL

cc: Pennsylvania State Police, Bureau of Liquor Control Enforcement
Jerry W. Waters, Director of Office of Regulatory Affairs
Tisha Albert, Director, Bureau of Licensing
Jeffrey Lawrence, Assistant Director, Bureau of Licensing

LCB Advisory Opinion No. 13-489