

November 22, 2013

Telephone: (717) 783-9454

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Alesandria Hughes

Young Men's Democratic Club

Re: Question Regarding Touch Screen Games

Dear Ms. Hughes:

ISSUE: This is in response to your e-mail of October 5, 2013, in which you state that your club has two (2) Mega Touch Games. Twenty-five cents (\$0.25) is required to play various video games such as trivia, card games, etc. These video machines are not connected to the internet, and members of the club are not competing with people outside the club. You further state that, bi-weekly, an amusement company randomly picks five (5) games in each Mega Touch Game and posts them as a tournament, and uses names of the five (5) highest scorers to participate in a drawing with a prize of twenty-five dollars (\$25.00). You ask whether this is permissible because you were recently told by an officer from the Pennsylvania State Police, Bureau of Liquor Control Enforcement ("Bureau") that it is unlawful gambling.

Records of the Pennsylvania Liquor Control Board ("Board") indicate that the Young Men's Democratic Club of Lycoming County, Inc. holds Catering Club License No. CC-1058 (LID 39285) for the premises located at 230 East Street, Williamsport, Pennsylvania.

OPINION: Initially, to the extent your letter involves a pending citation, please be advised that the Board acts as an appellate court on citations adjudicated from an Administrative Law Judge. It would be therefore improper for this office to address the specific concerns. Thus, any opinion authored in this advisory notice is for prospective use only.

Section 5.32 of the Board's Regulations [40 Pa. Code § 5.32] allows retail licensees to hold self-sponsored events, tournaments or contests on their licensed premises. Events, tournaments and contests are defined as "a competitive endeavor involving skill, speed, strength or endurance," and may involve physical attributes of contestants. [40 Pa. Code § 5.30]. Events, tournaments, and contests sponsored by

the licensee are subject to the following rules: there may be no unlawful gambling directly or indirectly associated with the event, tournament, or contest; there may be no alcohol consumption as part of the event, tournament, or contest; the price of admission may not include a charge for or entitle the participant to receive an alcoholic beverage. [40 Pa. Code § 5.32(e)].

Self-sponsored means paid for and carried out by the licensee. It would not be permissible for a third party to conduct such events, tournaments or contests. However, retail licensees may permit events on the licensed premises sponsored by groups constituting a league, or events for the benefit of, and officially sponsored by, *bona fide* charitable organizations that are qualified, approved by and registered with the Department of State and operated under 49 Pa. Code Part I, Subpart B (relating to charitable organizations). [40 Pa. Code §§ 5.32(d)(3)-(4)(i)]. A charitable organization event must be operated in accordance with the Solicitation of Funds for Charitable Purposes Act [10 P.S. §§ 162.1-162.24] and, if applicable, the Local Option Small Games of Chance Act [10 P.S. §§ 311-327] and the Bingo Law [10 P.S. §§ 308-308.1]. [40 Pa. Code § 5.32(d)(4)(ii)].

Because unlawful gambling is a violation of the Pennsylvania Crimes Code, this office cannot provide you with a legal opinion as to whether poker tournaments constitute unlawful gambling. However, it should be noted that unlawful gambling consists of the following elements: (1) consideration or a fee to charge to play, (2) an element of chance, and (3) a prize or reward. You should contact the local police, the Pennsylvania State Police, or the District Attorney's Office of your county for an official opinion on whether your situation involves illegal gambling. Finally, you may also wish to contact your regional office of the Pennsylvania State Police, Bureau of Liquor Control Enforcement, 150 Choate Circle, Montoursville, PA 17754, at 570-433-3959, as that entity is charged with the responsibility of enforcing the Small Games of Chance Act at licensed establishments.

Finally, as you know, alcohol may not be awarded as a prize or part of a prize for any event, tournament, or contest on licensed premises. [40 Pa. Code § 5.32(h)].

If you have any additional questions regarding the Liquor Code or the Board's Regulations, please feel free to again contact this office.

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

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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. 13-501