

Bart Fenstermacher  
MDW Enterprises, LLC  
T/A Kutztown Tavern – Avalanche Brewing Co.  
270-278 West Main Street  
Kutztown, PA 19530-1604  
VIA E-MAIL: [efensty@gmail.com](mailto:efensty@gmail.com)

**Re: Beer Pong Tournament**

Dear Mr. Fenstermacher:

**ISSUE:** This is in response to your e-mail sent December 10, 2013, wherein you indicate that you manage Shorty's Bar, which is part of the Kutztown Tavern in Kutztown, Pennsylvania, and you ask whether it is permissible to conduct a beer pong tournament at the licensed premises for which you would charge participants an entry fee and would award cash prizes. You also appear to indicate that you would be using water, rather than beer, for purposes of conducting this tournament.

Records of the Pennsylvania Liquor Control Board ("Board") indicate that MDW Enterprises, LLC, t/a Kutztown Tavern – Avalanche Brewing Co., holds Brewery License No. G-00304 (LID 40340) and Restaurant Liquor License No. R-10458 (LID 40339) for use at the premises located at 270-278 West Main Street, Kutztown, Pennsylvania.

**OPINION:** Section 5.32 of the Board's Regulations generally prohibits retail licensees from holding or permitting to be held events, tournaments, or contests on their licensed premises. [40 Pa. Code Section 5.32(d)]. However, one (1) of several exceptions permits retail licenses to conduct self-sponsored (i.e., paid for and carried out by the licensee) events, tournaments, and contests on their licensed premises, provided they comply with certain conditions. [40 Pa. Code Section 5.32(d)(5)]. Most notably, the event, tournament, or contest may not involve the consumption of alcoholic beverages. [40 Pa. Code Section 5.32(e)(3)]. Based on this prohibition, it would not be permissible to conduct a beer pong tournament which involves the consumption of beer on retail licensed premises. If, however, the tournament is not played with beer or does not involve the consumption of beer or any other alcohol, such tournament would be permissible as long as your establishment adheres to the following other conditions.

There may be no unlawful gambling associated with the event, tournament, or contest. [40 Pa. Code Section 5.32(e)(2)]. The price of a ticket or admission to an event, tournament, or contest may not include a charge or assessment for alcoholic beverages or entitle the attendee to receive alcoholic beverages on the licensed premises. [40 Pa. Code Section 5.32(e)(4)]. In addition, the value of all prizes awarded may not exceed one thousand dollars (\$1,000.00), and the maximum weekly prize limit in a seven (7)-day period is twenty-five thousand dollars (\$25,000.00). [40 Pa. Code Section 5.32(e)(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. Sections 311-327]. Additionally, licensees are required to maintain on the licensed premises for two (2) years, from the date of the event, tournament, or contest, an itemized list of all prizes for every event, tournament, or contest indicating each prize, its value and the name and address of the recipient. [40 Pa. Code Section 5.32(e)(9)].

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 Section 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 tournament that you described 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). You should contact the local police, the Pennsylvania State Police, or the County District Attorney's Office for an official opinion regarding whether your proposed tournament would constitute unlawful gambling.

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