

April 22, 2014

Telephone: (717) 783-9454

FAX: (717) 787-8820

Myron I. Markovitz, Esquire
Gleason, Barbin & Markovitz, LLP
206 Main Street
Johnstown, PA 15901-1682

RE: Event for a Nonprofit Organization

Dear Attorney Markovitz:

ISSUE: This office is in receipt of your letter dated March 19, 2014, wherein you indicate that you represent a licensee that is proposing to house an event for a nonprofit organization which is characterized as a "Vegas Casino Night." You state that the nonprofit organization does not have a small games of chance license. The event involves giving guests fake money to gamble with and in exchange for the fake money, guests are given tickets to put in a Chinese Auction. All of the prizes for the Chinese Auction are donated. In addition, you state that there will be gift certificates from various businesses ranging from twenty-five dollars (\$25.00) to seventy-five dollars (\$75.00). You ask if holding an event as set forth would violate the Liquor Code.

You have not provided this office with information by which to identify the licensee that you represent. For the purpose of this response, it is assumed that you represent an entity that holds a retail liquor license.

OPINION: Sections 5.30 and 5.32 of the Board's Regulations [40 Pa. Code §§ 5.30 and 5.32], generally prohibit a third party from conducting an event, tournament or contest on retail licensed premises. However, an exception exists for *bona fide* charitable organizations qualified, approved by and registered with the Department of State. Such charitable institutions are permitted to conduct tournaments and contests on retail licensed premises in accordance with the Solicitation 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].

Next, section 471 of the Liquor Code [47 P.S. § 4-471], prohibits unlawful gambling on retail licensed premises. However, gambling activity conducted by a *bona fide*

Myron I. Markovitz, Esq.

April 22, 2014

Page 2

charitable institution, as discussed above, and permissible under a valid Local Option Small Games of Chance license, is permitted on retail licensed premises. [40 Pa. Code § 5.32(e)(4)(ii)]. It should be noted that unlawful gambling generally 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). To determine if the proposed activity constitutes gambling, you are advised to contact your local police department, the State Police, or your county District Attorney's office. Additionally, since you have not identified the nonprofit organization involved, it is unclear whether that organization is a *bona fide* charitable institution within the meaning of the Solicitation for Charitable Purposes Act.

If the proposed activity is determined by one of the aforementioned entities to constitute gambling activity, then the gambling must be authorized under the Local Option Small Games of Chance license in order to constitute lawful gambling activity. In the present case, you have indicated that the nonprofit organization does not have a small games of chance license. As such, if the activity constitutes gambling it could not be conducted on the licensed premises.

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. 14-164