

April 24, 2014

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Michelle Slaybaugh

**E: Casino Night Function at a Club**

Dear Ms. Slaybaugh:

ISSUE: This office is in receipt of your e-mail dated March 23, 2014, wherein you ask about the legality of your licensed catering club's proposed casino night function for entertainment purposes. Specifically, your club would like to hold a casino night where patrons play different table games such as blackjack, roulette, craps and poker utilizing "funny money." You state that no real money will be involved in the event. You further ask, if the event is legal, would the club be permitted to give out donated prizes such as beer vendor t-shirts.

Records maintained by the Pennsylvania Liquor Control Board ("Board") indicate that the Fraternal Order of Eagles Gettysburg Aerie No. 1562 holds Catering Club Liquor License No. CC-3710 (LID 1722) for use by it at premises located at 61 North 5<sup>th</sup> Street, Gettysburg, Pennsylvania.

OPINION: Section 5.32(e) of the Board's Regulations permits retail licensees, including clubs, to hold, or permit to be held, on their licensed premises an event, tournament or contest, but only under certain conditions. [40 Pa. Code § 5.32(e)]. One (1) of the conditions 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(f)(2)].

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). For example, the Pennsylvania Commonwealth Court has held that poker

playing for money, on licensed premises, is gambling, within the definition cited above. Pennsylvania Liquor Control Bd. v. Kehler, 114 Pa. Cmwlth. 310, 538 A.2d 979 (1988). You should contact your local police, the Pennsylvania State Police, or the county District Attorney for an official opinion concerning whether the proposed casino night constitutes unlawful gambling.

Even if the proposed casino night does not constitute unlawful gambling, please note that the event must be self-sponsored by the licensee. [40 Pa. Code § 5.32]. Self-sponsored means paid for and carried out by the licensee. Retail licensees may also permit events on the licensed premises which are 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 Options Small Games of Chance Act [10 P.S. §§ 311-327] and the Bingo Law [10 P.S. § 301-308.1]. [40 Pa. Code § 5.32(d)(4)(ii)].

Regarding prizes, those organizations that hold a bingo and/or small games of chance license/permit and are eligible to conduct events, tournaments and contests as set forth in this regulation are subject to the prize limitations of the Local Option Small Games of Chance (“SGOC”) Act [10 P.S. §§ 311-327] and/or the Bingo Law [10 P.S. §§ 301-308.1]. These limits were increased by the passage of Act 2 of 2012 such that a SGOC permit holder may award a single game of chance prize of up to one thousand dollars (\$1,000.00) and the maximum weekly prize limit in a seven (7) day period is now up to twenty-five thousand dollars (\$25,000.00) per week.

For purposes of the Liquor Code and Board Regulations, the total value of prizes for any given event, tournament or contest may not exceed one thousand dollars (\$1,000.00). The total value of all prizes awarded in any seven (7)-day period may not exceed 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, such as those you propose. 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)].

If the casino night project is otherwise lawful, the event could be conducted, if doing so conforms to the club's constitution and bylaws. Section 5.81 of the Board's Regulations requires that a licensed club adhere to the provisions of its constitution and bylaws. [40 Pa. Code § 5.81].

As noted above, an entity that holds a SGOC permit may conduct certain gambling activities on the premises. Please be advised that the Board does not regulate the SGOC Act [10 P.S. §§ 311-327] and as such, the interpretation of this law falls outside of the scope of the Board's authority. To determine exactly what activities are allowable pursuant to a small games of chance permit, you are advised to contact the Department of Revenue, Miscellaneous Tax Division at (717) 787-8275. 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 <http://www.revenue.state.pa.us/SGOC>.

Regarding beer vendor t-shirts, please be advised generally that section 13.51 of the Board's Regulations prohibits a licensee from contributing to or accepting, directly or indirectly, from another licensee of a different class, anything of value by means of advertisements, contributions, purchase, sale of tickets, donations or by any device, for any purpose. [40 Pa. Code § 13.51]. Section 493(24)(i) of the Liquor Code allows manufacturers and licensees to provide advertising novelties of nominal value, which bear advertising matter, to other licensees and consumers with or without a purchase. [47 P.S. § 4-493(24)]. "Nominal value" currently is interpreted as fifteen dollars (\$15.00) each, wholesale cost, or less. [Board Advisory Notice No. 10 (6<sup>th</sup> Revision)]. "Advertising novelties" has been defined in the Board's Regulations as matches, disposable lighters, bottle or can openers, caps, tee shirts, recipe pamphlets, pens, corkscrews and ashtrays, which bear advertising matter. [40 Pa. Code § 13.52(a)]. Therefore, assuming the above requirements regarding the event are met and the activity is otherwise lawful, your premises could give out donated prizes such as beer vendor shirts of a nominal value.

If further information would be helpful, please feel free to 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 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. 14-174