

May 7, 2014

Telephone: (717) 783-9454
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Stacey Krepps
Fraternal Order of Eagles Aerie No. 1859
E: Casino Night Function at a Club

Dear Ms. Krepps:

ISSUE: This office is in receipt of your e-mail dated April 25, 2014, wherein you state that your private club has a small games of chance license. You inquire if you are able to hold free poker tournaments for your members with the award of prizes to the winners. You further state that no money will be collected, that chips will be used, and that play will be open to all members.

Records maintained by the Pennsylvania Liquor Control Board ("Board") indicate that the Fraternal Order of Eagles Aerie No. 1859 holds Catering Club Liquor License No. CC-786 (LID 3028) for use at premises located at 432 South 1st Street, Bellwood, 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). However, your proposal deletes the element of consideration or fee to play and as such, may 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. With the small games of chance license, the licensee is eligible to conduct events, tournaments and contests as set forth in this regulation, subject to the prize limitations of the Local Option Small Games of Chance (“SGOC”) Act [10 P.S. §§ 311-327] and the increases set forth by the passage of Act 2 of 2012. A SGOC permit holder may award a single game of chance prize of up to one thousand dollars (\$1,000.00); 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)].

The poker tournaments can be conducted, if in compliance with state regulations, and if not in violation of any provisions of 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>.

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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. 14-196