

June 20, 2014

Telephone: (717) 783-9454

FAX: (717) 787-8820

Anthony Carbone

**RE: Banquet Room Rental and Bingo**

Dear Mr. Carbone:

ISSUE: This office is in receipt of your e-mail dated May 5, 2014, wherein you inquire if it is permissible for a restaurant liquor licensee to rent its banquet room to a charity that would hold bingo on Sundays. You also inquire if the restaurant would be able to sell food and alcohol.

Records maintained by the Pennsylvania Liquor Control Board (“Board”) indicate that 1 SANT, Inc, holds Restaurant Liquor License No. R-17945 (LID 56428) for premises located at 2552 Ben Franklin Highway, Edinburg, Pennsylvania.

OPINION: Section 5.32 of the Board's Regulations permits retail licensees to hold self-sponsored events, tournaments or contests on their licensed premises. [40 Pa. Code § 5.32] Events, tournaments and contests are defined as “a competitive endeavor involving skill, speed, strength or endurance. [40 Pa. Code § 5.30].

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)].

Fundraising events on a licensed premises are subject to the restrictions found in section 5.32(d)(4) - (f) of the Board’s Regulations:

(1) There may not be lewd, immoral or improper conduct by the licensee, its servants, agents, employees, patrons or event, contest or tournament participants. (While this restriction continues to appear within the Regulations, it was held to be unconstitutional by the U.S. Court of Appeals in the case of Conchatta Inc. v. Miller, 458 F.3d 258, 266 (3<sup>rd</sup> Cir. 2006)).

(2) There may not be unlawful gambling directly or indirectly associated with an activity on the licensed premises. A licensee will be held strictly liable for unlawful gambling on the licensed premises.

(3) There may not be an event, contest or tournament which involves the consumption of alcoholic beverages by an event, tournament or contest participant.

(4) The price of a ticket or evidence of admission to an event, tournament or contest may not include a charge or assessment for alcoholic beverages or entitle the holder thereof to receive an alcoholic beverage anywhere on the licensed premises except for alcoholic beverages included in a meal package offering as provided for in Chapter 13 (relating to promotion).

(5) A licensee or sponsoring charity may advertise an event, tournament or contest.

(6) Hotel, restaurant, club, privately-owned public golf course, privately-owned private golf course, municipal golf course, brew pub and malt beverage eating place licensees, as well as governing bodies of professional golf, skiing, tennis, bowling, pocket billiards and non-licensee sponsors as provided in subsection (e) may award prizes to contestants or participants of events, tournaments or contests.

(7) The total value of all prizes for any given event, tournament or contest may not exceed \$1,000. The total value of all prizes awarded in any 7-day period may not exceed \$25,000. An event, tournament or contest conducted under the authority of

the Local Option Small Games of Chance Act (10 P. S. §§ 328.101—328.707) or the Bingo Law (10 P. S. §§ 301—308.1) is subject to the prize limits in these acts.

(8) Golf, skiing, tennis, pocket billiards or bowling events, tournaments, contests and events sanctioned by the State Athletic Commission are exempted from the prize value restrictions in this section.

(9) Licensees shall maintain on the licensed premises for 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.

(f) The restrictions in this section apply not only to the licensee, but to partners, officers, directors, servants, agents and employees of a licensee.

[40 Pa. Code § 5.32(d)(4) - (f)].

If an entity is not a charitable organization, it may conduct a benefit as a catered event, sell tickets to the event, and thereafter donate its proceeds or a portion of its proceeds from ticket sales to another person or entity as it desires.

Please note that the Liquor Code prohibits anyone other than the named licensee from having a pecuniary interest in the licensed business. [47 P.S. § 4-404]. Section 1.1 of the Board's Regulations defines "pecuniary interest" as "an interest that sounds in the attributes of proprietorship." [40 Pa. Code § 1.1]. Further, section 1.1 provides that there is a rebuttable presumption of a pecuniary interest where a person receives ten (10%) percent or more of the proceeds of the licensed business or where control is exercised through matters of employment, the making of day-to-day decisions and the level of authority as related to the conduct of the licensed business. [40 Pa. § 1.1(a),(b),(c)]. If the person, or entity to whom a licensee wishes to donate a percentage of the proceeds has an "event" every week, for example, and regularly receives money from the events, this might be considered an unlawful pecuniary interest.

Anthony Carbone

June 20, 2014

Page 4

Accordingly, your proposal, as stated and as a weekly event, would not be permissible. Should the proposal be altered, there must be compliance with the aforementioned restrictions.

Please note that the Board does not regulate the Local Option Small Games of Chance Act [10 P.S. §§ 311-327] or the Bingo Law [10 P.S. §§ 301-308.1], and as such, the interpretation of these acts fall outside of the Board's authority. Therefore, it is recommended that you contact your County Treasurer's Office and/or the Pennsylvania Department of Revenue, Miscellaneous Tax Division, at (717) 787-8275 with any questions or concerns about conducting such games. You may also wish to contact the Pennsylvania State Police, Bureau of Liquor Control Enforcement, at 717-540-7428, as that entity is charged with the responsibility of enforcing the Small Games of Chance Act and the Bingo Law at licensed establishments.

Should you have any additional questions, do not hesitate 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. 14-372