

July 9, 2015

Gerard Dubois, Manager
District 9 President
LOOM Clearfield Lodge 97
2375 Wallaceton Morrisdale Road
Morrisdale, PA 16858
VIA E-MAIL: unbrick49@hotmail.com

RE: Skill-Based Machines

Dear Mr. Dubois:

ISSUE: This is in response to your e-mail of June 14, 2015, wherein you state that you are writing on behalf of the Loyal Order of Moose Clearfield Lodge 97 with inquiries related to the placement of skill-based machines on premises. The machines are similar to modified slot machines that do not have accounting. It is your understanding that some lower courts have found the machines to be legal. You inquire whether it would be permissible to make cash payouts for points accumulated on machines placed on the premises. You state that, from your reading of Advisory Notice No. 14, it would not be permitted. Additionally, you inquire whether machine-generated income would constitute a second business on licensed premises that would require permission from the Pennsylvania Liquor Control Board (“Board”).

Records of the Board indicate that Loyal Order of Moose Clearfield Lodge 97 holds Club Liquor License No. C-00548 (LID 621) for use by it at 2375 Wallaceton Morrisdale Road, Morrisdale, Pennsylvania.

OPINION: As a threshold matter, section 5.32(f) of the Board’s Regulations prohibits unlawful gambling directly or indirectly associated with an activity on licensed premises. [40 Pa. Code § 5.32(f)]. Advisory Notice No. 14 further enumerates the parameters of conducting events, tournaments, contents and the awarding of prizes on licensed premises.

Please be advised that 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)].

Because unlawful gambling is a violation of the Pennsylvania Crimes Code [18 Pa. C.S. §§ 5512-5513], this office cannot provide you with a legal opinion as to whether a particular gaming machine 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 Board v. Circus Bar, Inc., 96 Pa. Cmwlt. 115, 506 A.2d 521 (1986). Also, certain items are considered gambling devices *per se* and therefore their possession is illegal in and of itself. You may wish to contact your local police, the Pennsylvania State Police, or your county district attorney for an official opinion concerning whether the operation of these gaming machines constitutes unlawful gambling or whether the machines are gambling devices *per se*.

An entity that holds a small games of chance ("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>.

Finally, 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]. Therefore, if your club's bylaws or constitution prohibit use of such machines, you would be required to adhere to your constitution and bylaws.

Without first ascertaining if the machines are permitted on premises and if the use of the machines would be lawful, responses to your specific inquiries as to payoffs and income generation would be premature.

Should you have any other questions and/or issues related to the Liquor Code or the Board's Regulations, please feel free to once again 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. 15-281