

August 27, 2015

Thaddeus Willey

E: Fundraiser

Dear Mr. Willey:

ISSUE: Your e-mail of July 9, 2015 states that you are the commander of VFW Post 43 ("Post 43") in Martinsburg, Pennsylvania. Post 43 would like to host a series of tournaments to raise money for a children's Christmas charity. The events would include shuffleboard, pool, darts and cornhole. Post 43 would collect a ten dollar (\$10.00) entry fee to each tournament, with five dollars (\$5.00) going directly to charity and five dollars (\$5.00) going to a prize payout. Post 43 would retain none of the entry fee. The events would be open only to members and guests, per the club's bylaws. You inquire whether this proposed series of tournaments would be permissible.

Records of the Pennsylvania Liquor Control Board ("Board") indicate that D. Merl Tipton Post 43 Canteen / Home Association, Incorporated Veterans of Foreign Wars of the United States, Inc. holds Club Liquor License No. C-6324 (LID 52016) for use by it at the premises located at 115 South Nicodemus Street, Martinsburg, Pennsylvania.

OPINION: 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) Hotel, restaurant, club, privately-owned public golf course, privately-owned private golf course, municipal golf course, brew pub or malt beverage eating place licensees may permit the conduct of tournaments and contests on the licensed premises for the benefit of, and officially sponsored by, bona fide charitable organizations.
 - (i) A charitable organization for the purposes of this section is defined as one qualified, approved by and registered with the Department of State and operated under 49 Pa. Code Part I, Subpart B (relating to charitable organizations).

- (ii) Charitable organization functions shall 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. §§ 301—308.1).
- (5) Hotel, restaurant, club, privately-owned public golf course, privately-owned private golf course, municipal golf course, brew pub and malt beverage eating place licensees may conduct self-sponsored tournaments, events or contests on their own licensed premises so long as the activities are in conformance with the applicable provisions of this subchapter.
- (e) For an activity conducted under this subchapter, the following apply:
 - (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 (3rd 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 wishes to raise funds and the entity is not a bona fide charitable organization conducting an event, tournament or contest, in accordance with the Solicitation of Funds for Charitable Purposes Act, as described above, the entity 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.

Section 5.32 of the Board's Regulations [40 Pa. Code § 5.32] permits retail licensees to hold self-sponsored events, tournaments, or contests on their licensed premises. Self-sponsored means paid for and carried out by the licensee.

Events, tournaments and contests are defined as "a competitive endeavor involving skill, speed, strength or endurance. The term includes a competitive endeavor involving physical attributes of contestants." [40 Pa. Code § 5.30]. Events, tournaments, and contests that are sponsored by the licensee are subject to the following rules: there may be no unlawful gambling directly or indirectly associated with the event, tournament, or contest; there may be no consumption of alcohol by participants as part of the event, tournament, or contest; the price of admission may not include a charge for or entitle the participant to receive an alcoholic beverage. [40 Pa. Code § 5.32(e)].

The Local Option Small Games of Chance Act sets limits on the total value of all prizes awarded for any event, tournament or contest involving a valid small games of chance permit. [10 P.S. §§ 311-327]. This limitation on prize values applies even though the non-profit organization is the party conducting the tournament and handling all the funds. [Id.] Finally, licensees must maintain records of the prizes and winners on the licensed premises for at least six (6)-months, and must maintain the records on or off the licensed premises for two (2)-years following the event, tournament, or contest. [40 Pa. Code § 5.32(9); 47 P.S. § 4-493(12)].

One of the conditions mentioned above is that no unlawful gambling may be directly or indirectly associated with any event, tournament, contest or activity on the licensed premises. Because unlawful gambling is a violation of the Pennsylvania Crimes Code, this office cannot provide you with a legal opinion as to whether the raffles referred to would constitute unlawful gambling. However, please be advised 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 Bd. v. PPC Circus Bar, Inc., 96 Pa. Cmwlth. 115, 506 A.2d 521 (1986).

Some gambling activities, while unlawful generally, are considered to be lawful if conducted by an entity that holds a small games of chance permit. You should contact your County Treasurer or the Pennsylvania Department of Revenue, Miscellaneous Tax Division at (717) 787-8275 to determine what activities are permissible with such

a permit and what prize limits are permissible. You may also wish to contact the local police, the Pennsylvania State Police, or the County District Attorney's Office for an official opinion concerning whether the raffles would constitute unlawful gambling.

Section 5.81 of the Board's Regulations [40 Pa. Code § 5.81] requires a club licensee to adhere to the provisions of its constitution and/or bylaws. Failure to adhere to the constitution and/or bylaws may result in the issuance of a citation by the Pennsylvania State Police, Bureau of Liquor Control Enforcement, the entity that enforces the Liquor Code.

Provided that the proposed series of tournaments you intend to host would comply with the above, it would be permissible.

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
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