

February 12, 2016

Cathy Troxell  
VIA E-MAIL

**RE: Crickets, Inc. Inquiries Concerning Poker Night**

Dear Ms. Troxell:

ISSUE: This office is in receipt of your e-mail dated January 7, 2016, wherein you pose a series of questions concerning a proposed “poker night” at your establishment. You advise that you or your designee will be present to oversee the event, and want to be sure that it complies with the Liquor Code and regulations of the Pennsylvania Liquor Control Board (“Board”). Your questions will be answered below, in the order presented within your e-mail.

Board records indicate that Crickets, Inc., holds Restaurant Liquor License No. R-2856 (LID 50048) for the premises located at 144 West Front Street, Berwick, Pennsylvania. Board records further reflect that you are the Board-approved Vice President, Secretary, Treasurer, Director, Stockholder, and Manager.

OPINION:

**1. *Would our establishment be permitted to have a free poker night once a week?***

Section 5.32(e) of the Board’s Regulations permits retail licensees 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 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(e)(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). A poker night that deletes the element of consideration or fee to play may not constitute unlawful gambling; however, unlawful gambling is a Crimes Code violation and the Board does not interpret the Crimes Code. You are, therefore, advised to speak to your local District Attorney, local law enforcement officials, or the Pennsylvania State Police to get their opinions as to whether your proposed activities would 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.

Additional exemptions under section 5.32(d)(3) allow retail licensees to permit the conduct of events on the licensed premises by groups constituting a league. Section 5.32(e)(6) allows payment of tournament prizes by governing bodies of professional golf, skiing, tennis, bowling, pocket billiards, boxing, and wrestling. The other requirements set forth in section 5.32 and mentioned herein would still be applicable to a league event.

For purposes of the Liquor Code and Board Regulations, the total value of prizes for any given event, tournament, or contest may not exceed \$1,000.00. The total value of all prizes awarded in any seven-day period may not exceed \$25,000.00. [40 Pa. Code § 5.32(e)(7)]. Please note that these limits are not only applicable to cash prizes, but include the fair market value of any non-cash prizes. Licensees shall maintain on the licensed premises for two years, from the date of the event, an itemized list of all prizes for each event, tournament, or contest indicating each prize, its value, and the name and address of the recipient. [40 Pa. Code § 5.32(e)(9)].

Certain club liquor licensees and eligible organizations with a small games of chance permit are permitted to conduct events, tournaments, and contests, as set forth in the Board's Regulations, subject to the prize limitations of the Local

Option Small Games of Chance (“SGOC”) Act [10 P.S. §§ 311-327]. 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 SGOC permit, you are advised to contact the Pennsylvania Department of Revenue (“Revenue”), Miscellaneous Tax Division at (717) 787-8275. In addition, please note that 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>.

The remainder of the responses to your questions are predicated upon the event not being prohibited as unlawful gambling. Therefore, if the poker event is deemed to be unlawful gambling, as discussed above, the following questions and answers would be moot. Furthermore, if applicable for your events, the SGOC Act may contain provisions related to your questions, so it is, again, suggested that you contact Revenue for additional information, if needed.

**2. *Can we advertise the poker night event(s) with a sign outside advertising free poker with the date(s) and time(s)?***

The Board’s Regulations state that a licensee may advertise an event, tournament, or contest held pursuant to section 5.32. [40 Pa. Code § 5.32(e)(5)]. Any such advertisement that includes reference to alcoholic beverages must comply with the Liquor Code. [See e.g., Advisory Notice No. 10, Fourth Revision; 47 P.S. § 4-498].

**3. *Can we give a free beer shirt or hat to two winners every week?***

Section 493(24)(i) of the Liquor Code prohibits licensees from offering anything of value to induce directly the purchase of alcoholic beverages. [47 P.S. § 4-493(24)(i)]. An exception exists, however, for novelties which contain advertising material and which have a value of less than \$15.00. The definition of “advertising novelties of nominal value” is set forth in section 13.52 of the Board’s Regulations, and provides as follows:

**§ 13.52. Advertising novelties.**

(a) Under section 493(24) of the Liquor Code (47 P.S. § 4-493(24)), advertising novelties of nominal value may be distributed by manufacturers

of any class of licensee to trade or consumer buyers. Advertising novelties include 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)].

Please note that this limitation only applies if the receipt of the t-shirt or hat is contingent upon the purchase of an alcoholic beverage. If so, and the t-shirts and hats have a value of less than \$15.00, they would meet the definition of advertising novelty. If no purchase of alcohol is required to receive the t-shirt and/or hat, then only the daily \$1,000.00-value prize limitation discussed above would apply.

Please note that the prize value limitations and recordkeeping requirements of section 5.32 of the Board's Regulations [40 Pa. Code § 5.32(e)(9)], as set forth more fully above in response to question number one, would still apply.

**4. *After 8 weeks would we be permitted to buy a poker seat at a local casino?***

Although somewhat unclear, it appears that you are asking if you would be permitted to purchase a seat, or "buy-in" at a local casino's poker tournament or event, and give it away as a prize for your poker event(s). This depends upon the value of the seat, or cost of the "buy-in," and whether such a prize would be construed as unlawful gambling by the law enforcement officials mentioned above. Again, you are limited to the prize limitations set forth above, in response to question number one.

**5. *We would give free poker chips to everyone who came to play on poker night. Could we also give extra chips if the person came in a half hour before the game started? Or could we give extra chips if the person bought \$5.00 worth of food?***

This inquiry is best directed to your local District Attorney, local law enforcement officials, or the Pennsylvania State Police to get their opinion(s) as to whether the proposed structures for distribution of chips would constitute unlawful gambling, which, as explained above in response to question one, is prohibited by the Liquor Code and the Board's Regulations.

Please do not hesitate to contact this office should you have additional questions.

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,

RODRIGO J. DIAZ  
CHIEF COUNSEL

cc: Pennsylvania State Police, Bureau of Liquor Control Enforcement  
Jerry W. Waters, Director, Office of Regulatory Affairs  
Tisha Albert, Director, Bureau of Licensing  
Jeffrey Lawrence, Assistant Director, Bureau of Licensing

LCB Advisory Opinion No. 16-020