

February 26, 2016

Mike Naessens
VIA E-MAIL

RE: Hosting Poker League

Dear Mr. Naessens:

ISSUE: This office is in receipt of your e-mail dated February 11, 2016, wherein you ask about the legality of hosting a World Tavern Poker Tour poker league at your establishment.

Records of the Pennsylvania Liquor Control Board (“Board”) indicate that Historic Qingdao Inc. holds Restaurant Liquor License No. R-15690 (LID 65897) for the premises located at 206-208 Market Street, Philadelphia, Pennsylvania. Board records further reflect that you are the Board-approved President, Secretary, Treasurer, Director, and Stockholder.

OPINION: 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., 506 A.2d 521 (Pa. Cmwlth. 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, 538 A.2d 979 (Pa. Cmwlth. 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 the Board's 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)].

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. 16-055