

May 16, 2016

Philip Chow
Hitch'n Post Bar & Grille
VIA E-MAIL

RE: Pennsylvania Skill Game Machine

Dear Mr. Chow:

ISSUE: This is in response to your e-mail dated April 27, 2016 in which you ask whether the "Pennsylvania Skill Game Machine" is legal and may be placed by the machine manufacturer in licensed Pennsylvania establishments. You reference the manufacturer's website of www.mielemfg.com.

Records of the Pennsylvania Liquor Control Board ("PLCB") indicate that Narlee Entertainment LLC holds Restaurant Liquor License No. R-13424 (LID 67331) for use at the premises located at 438 Hadley Road, Greenville, Pennsylvania.

OPINION: Section 5.32 of the PLCB's Regulations generally prohibits retail licensees from holding or permitting to be held events, tournaments, or contests on their licensed premises. 40 Pa. Code § 5.32(d). However, one of several exceptions permits retail licenses to conduct self-sponsored (i.e., paid for and carried out by the licensee) events, tournaments, and contests on their licensed premises, provided they comply with certain conditions. 40 Pa. Code § 5.32(d)(5).

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 specific rules, including most relevantly that there may be no unlawful gambling associated with the event, tournament, or contest. 40 Pa. Code § 5.32(e)(2).

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 PLCB's Regulations. 40 Pa. Code § 5.32(e)(2). Because unlawful gambling is a violation

of the Pennsylvania Crimes Code, this office cannot provide you with a legal opinion as to whether the gaming machine that you describe 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 Bd. v. PPC Circus Bar, Inc., 96 Pa. Cmwlth. 115, 506 A.2d 521 (1986).

You should contact the local police, the Pennsylvania State Police, or the County District Attorney's Office for an official opinion regarding whether the gaming machine in question would constitute unlawful gambling. You may also wish to consult private counsel to advise you on the lawful operation of your licensed establishment.

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.

Sincerely,



RODRIGO J. DIAZ
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. 16-181