

February 2, 2017

Daniel M. Giamartino
Tully's Good Times, Coopertop Tavern & Good Buddy's Pub
One Technology Place
E. Syracuse, NY 13057
VIA E-MAIL

RE: Super Bowl Promotional Event

Dear Mr. Giamartino:

ISSUE: This correspondence is in response to your e-mail of January 17, 2017, wherein you request an advisory opinion regarding the legality of a promotional event that you would like to conduct at your licensed premises during the Super Bowl. During the event, you plan to offer every guest who walks into the restaurant a series of tickets (probably five tickets for each guest). Guests will not be required to make a purchase of any alcoholic beverage or nonalcoholic beverage items in order to receive the tickets being provided. At the end of each quarter during the Super Bowl, you will then select several winning numbers and give away prizes to the guests holding the winning tickets. The prizes will include food, hats, t-shirts, bottles of homemade honey mustard, and other nonalcoholic beverage items. Alcoholic beverages will not be offered as a prize. The total dollar amount of all prizes awarded during the event will not exceed \$1,000.00.

The Pennsylvania Liquor Control Board's ("PLCB") records indicate that Tully's Clarks Summit, Inc. holds Restaurant Liquor License No. R-6226 (LID 72892) for use at the premises located at 820 Northern Boulevard, Clarks Summit, Pennsylvania.

OPINION: Promotions involving alcoholic beverages are governed primarily by section 493(24)(i) of the Liquor Code, which prohibits the offering or giving of anything of value or any prize, premium, or gift to induce the purchase of alcoholic beverages, subject to a few limited exceptions. 47 P.S. § 4-493(24)(i). Because provision of the tickets for your proposed promotional event will not be made

contingent on the purchase of any alcoholic beverages, the promotional event would not violate section 493(24)(i).

However, promotional events conducted on retail licensed premises are also governed by section 5.32(e) of the PLCB's Regulations, 40 Pa. Code § 5.32(e). This section permits retail licensees to hold self-sponsored¹ events, tournaments or contests on their licensed premises and to award prizes or premiums (either separate or as a part of an event, tournament or contest), but only under certain conditions. 40 Pa. Code § 5.32(e). Those conditions are as follows: 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 contest²; the price of admission may not include a charge for or entitle the participant to receive an alcoholic beverage; the value of all prizes awarded (including both cash and non-cash prizes) may not exceed \$1,000.00; the total value of all prizes awarded (including both cash and non-cash prizes) in a seven-day period may not exceed \$25,000.00; and licensees must 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).

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. 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 specific activities 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). If you would like a legal opinion on whether certain activities, including any aspect of your proposed promotional event, would involve unlawful gambling, you should contact your local District Attorney, local law enforcement officials, and/or BLCE.

¹Self-sponsored means paid for and carried out by the licensee.

² This provision does not preclude persons who are present at a promotional event from consuming alcoholic beverages; it only prohibits making the consumption of alcoholic beverages part of a competitive endeavor comprising an event.

Note that 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 may wish to contact your county treasurer or the Pennsylvania Department of Revenue, Miscellaneous Tax Division, at (717) 783-9354, to determine what activities are permissible with such a permit.

Accordingly, as long as your proposed promotional event complies with all of the conditions set forth above, it would be permissible.

Thank you for your inquiry. If you have any further questions or concerns regarding this matter, the Liquor Code, or the PLCB's Regulations, please do not hesitate to 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.

Sincerely,



RODRIGO J. DIAZ
CHIEF COUNSEL

cc: Pennsylvania State Police, Bureau of Liquor Control Enforcement
Tisha Albert, Director of Regulatory Affairs
B.L. Peifer, Director, Bureau of Licensing
Jeffrey Lawrence, Assistant Director, Bureau of Licensing

LCB Advisory Opinion No. 17-015