

May 29, 1998

Andrew Kish, General Manager
Wilson-McGinley, Inc.
85 36th Street
Pittsburgh, PA 15201

Re: Charity Fundraiser

Dear Mr. Kish:

ISSUE: In your letter dated May 18, 1998, you inquired on behalf of Wilson-McGinley, Inc., holder of importing distributor license No. ID-765, as to whether a proposed promotion would be permissible. The promotion would be conducted collectively by Phantom Motorcycles, WRRK (radio), Rosebud, Whiskey Dick's, Miller Genuine Draft and Wilson-McGinley, Inc. to raise money for United Cerebral Palsy. Throughout the summer, a Harley-Davidson Sportster motorcycle, donated by Phantom Motorcycles, would be displayed to be raffled off by United Cerebral Palsy. Every Wednesday night during "Bike Night" promotions conducted at Rosebud and Whiskey Dick's, Wilson-McGinley, Inc. will collect \$1.00 donations for United Cerebral Palsy. Presumably, for each donation, the patron receives a chance to win the motorcycle. A drawing to select the winner of the motorcycle would be conducted by United Cerebral Palsy at the end of the summer.

OPINION: The promotion as proposed would not be permissible for several reasons. First, section 5.32 of the Board's regulations, a copy of which is enclosed, generally prohibits retail licensees such as Rosebud and Whiskey Dick's from holding or permitting to be held on the licensed premises an event, tournament or contest. Furthermore, retail licensees may not advertise, offer, award or permit the award on the licensed premises of trophies, prizes or premiums for any purpose. [40 Pa. Code §5.32(e)]. Therefore, it is not permissible for Phantom Motorcycles, WRRK or Wilson-McGinley, Inc. to conduct an event, tournament or contest such as you proposed on retail licensed premises.

There are several exceptions to the general prohibition regarding events, tournaments and contests found in section 5.32. For example, retail licensees may permit the conduct of tournaments and contests on the licensed premises if they are for the benefit of and officially sponsored by bona fide charitable organizations. A charitable organization is defined as one qualified, approved by and registered with the Department of State and operated under 49 Pa. Code, Part I, Subpart B. If United

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Cerebral Palsy qualifies as a bona fide charitable organization and officially sponsors the tournament or contest, the promotion could be permissible. A charitable organization function must also 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). Even if the promotion could be restructured as a charitable organization function, Wilson-McGinley, Inc. would still in all likelihood be prohibited from conducting the promotion since section 13.51(a) of the Board's regulations prohibits a licensee from directly or indirectly contributing to or accepting from another licensee of a different class anything of value by means of advertisements, contributions, purchases, sale of tickets, donations or by any device, for any purpose. [40 Pa. Code §13.51(a)]. Wilson-McGinley, Inc. may only be involved in the promotion provided it does not give anything of value to retail licensees who are also involved in the promotion.

Second, no unlawful gambling may be directly or indirectly associated with an activity on any licensed premises. Your promotion as proposed appears to constitute unlawful gambling since a patron must pay a dollar to enter the drawing, the winner of the drawing is determined by chance and there is a prize which is worth more than the amount charged to enter the drawing. However, gambling is a Crimes Code provision. As such, it is suggested that you contact the Pennsylvania State Police or your local police or district attorney for an interpretation as to whether your proposed promotion constitutes unlawful gambling. Please be advised that licensees are held strictly liable for unlawful gambling occurring on the licensed premises.

Third, the total value of all prizes for any given event, tournament or contests cannot exceed \$500.00. As the motorcycle is likely to exceed \$500.00 in value, it cannot be awarded in conjunction with a drawing held on retail licensed premises.

Please be advised that with respect to the motorcycle, it cannot be displayed on licensed premises if it bears any advertising matter for alcoholic beverages because the cost of the motorcycle would in all likelihood exceed the \$140 limit for point-of-sale advertising on licensed premises. However, if the motorcycle does bear advertising matter of alcoholic beverages, it could be displayed off the licensed premises so long as the motorcycle is not located within 300 feet of a church, school or public playground. [47 P.S. §4-498(e)(3)]. If the motorcycle bears no advertising matter of alcoholic beverages, there would be no prohibition to its display on or off the licensed premises.

THIS OPINION APPLIES ONLY TO THE FACTUAL SITUATION DESCRIBED HEREIN AND DOES NOT INSULATE THE LICENSEE OR OTHERS FROM CONSEQUENCES OF

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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: Bureau of Liquor Control Enforcement,
Pennsylvania State Police

Enclosure

Refer to: (717) 783-9454
FAX: (717) 787-8820

LCB Advisory Opinion No. 98-185