

March 2, 1999

Michael McDaniel  
Service Manager  
East Side Mario's  
180 E. Lincoln Highway  
Exton, PA 19008

**RE: NCAA Tournament Contest**

Dear Mr. McDaniel:

**ISSUE:** This office is in receipt of your facsimile of February 18, 1999 wherein you request an opinion concerning the legality of conducting a contest for patrons of your retail licensed establishment. The contest you propose would consist of your patrons utilizing the playoff brackets for the NCAA Basketball Tournament to predict winners. These entries are published in most general circulation newspapers and would be provided by your establishment as well. Predicting a winner of a round would entitle the patron to an advertising novelty. The overall winner would win a dinner at your establishment.

**OPINION:** Section 5.32 of the Pennsylvania Liquor Control Board Regulations [40 Pa. Code §5.32] permits retail licensees to conduct self-sponsored (paid for and carried out by the licensee) events, tournaments or contests provided the prize does not exceed \$500 per event, tournament or contest and the total value of all prizes awarded in any seven-day period does not exceed \$5,000. Because the contest you propose does not involve an entry fee, or consideration to play, it would not be considered illegal gambling. The three elements of illegal gambling are consideration, chance and reward.

Moreover, because advertising novelties provided to a retailer by a distributor or importing distributor may be disposed of by the retail licensee in any manner it wishes, you may provide these advertising novelties as prizes. However, the advertising novelties may not exceed \$15 in value. You are cautioned that it is not permissible to provide alcoholic beverages as a prize. [PLCB Advisory Notice No. 10 (4<sup>th</sup> Revision)]. As a result, the grand prize of a dinner cannot be accompanied by any alcoholic beverages.

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In addition, please be advised that licensees must maintain an itemized list of all prizes awarded, their value, and the name and address of the recipient on the licensed premises for a period of two years from the date of the contest. [40 Pa. Code §5.32(f)(9)]. Therefore, you may conduct the referenced contest within the aforementioned guidelines. The regulation dealing with events, tournaments and contests as well as copies of Advisory Notice No. 14 and 10 (4<sup>th</sup> Revision) are enclosed for your information.

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,

FAITH S. DIEHL  
CHIEF COUNSEL

Enclosures

cc: Bureau of Liquor Control Enforcement,  
Pennsylvania State Police  
Robert P. Kaskiel

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

LCB Advisory Opinion No. 99-065