

RAFFLE AND BAZAAR REGULATIONS

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QUESTIONS AND ANSWERS ON NONPROFIT GAMING EVENTS

Who can hold a raffle or other gaming event?

Only certain kinds of non-profit organizations. This is an exception to the general law prohibiting gambling in the Commonwealth.

An individual may not raffle private property for personal gain. A non-profit organization may purchase property from a third party and then conduct its own raffle using the property as a prize. In these circumstances the organization is responsible for ensuring that the raffle is a bona fide fundraising event.

What kind of activities are regulated?

A raffle, in which a chance to win is sold to participants, and the winner or winners are selected from the chances actually sold, is regulated by law. Whenever money is charged for the ticket or chance, the raffle can be legally operated only by a non-profit organization. The funds received must be used only for the purposes specified in the law. If no money is charged, anyone can legally operate a raffle, and businesses often do so for promotional purposes. Consumer protection laws apply to all raffles.

Casino and Las Vegas nights, offering the opportunity to play games of chance, also are regulated and can be legally operated only by a non-profit organization. The funds raised must be used for specified purposes.

Beano (bingo) games are regulated under the law by the Lottery Commission. For information call (781) 849-5555.

The operation of a *lottery* by anyone other than the State Lottery Commission is illegal. A lottery is a game in which chances to win are sold but it is possible that no one will win (because the number drawn is not one which was sold).

What kind of non-profit organization can hold raffles or sponsor Las Vegas nights?

A non-profit organization which has been in existence in Massachusetts for not less than two years and which is one of the following kinds:

- a) veterans' organizations;
- b) churches or religious organizations;
- c) fraternal or fraternal benefit societies, such as unions, Elks Clubs, etc.;
- d) educational or charitable organizations;

- e) civic or service clubs or organizations, such as the Jaycees; and
- f) clubs or organizations organized for pleasure, recreation, or other non-profit purposes, such as a garden club or a softball team.

The organization does not need to be incorporated.

Can a municipal or governmental organization, such as a public school or conservation commission, hold a raffle or sponsor a Las Vegas night?

No. These organizations do not fit within any of the authorized categories.

What is the law about the use of the funds raised?

The funds raised must be used for educational, charitable, religious, fraternal or civil purposes or for veterans' benefits.

Are there regulations about raffles?

Yes. All non-profit organizations must receive a permit from the town clerk and pay a tax of 5% of the gross proceeds derived from the raffle. This statute is in the Massachusetts General laws Chapter 271, Section 7A, "Conduct of Raffles and Bazaars." A copy of this section of the law is attached to this guide. In addition, there are Attorney General's Regulations Governing Raffles that apply if the value of the prize or prizes exceeds \$10,000 or the cost of a ticket is more than \$10. These regulations are also attached to this guide.

Are there regulations about how a Las Vegas night event should be operated?

Yes. They are set out in the Attorney General's Regulations Governing Bazaars ("bazaar" is the word used in the statute to describe Las Vegas or casino nights). These rules cover all events except those held at a facility which is licensed for beano; the rules for these events are issued by the Lottery Commission.

One of the most important rules for a Las Vegas night event is that all the operators of the games must be bona fide members of the sponsoring organization and the function must be supervised by a bona fide member. Attached to this guide you will find a copy of the Attorney General's Regulations Governing Bazaars and a copy of the applicable statute: Chapter 271, Section 7A, "Conduct of Raffles and Bazaars."

Is a permit needed? If so, how is it obtained?

A permit is necessary for both a raffle and a Las Vegas night event. Permits are issued by the clerk of the municipality in which the winning raffle number is going to be drawn or the event is going to be held.

The clerk will notify the Lottery Commission that a permit has been issued and the Commission will send you the necessary tax return forms. The clerk will provide you with the form needed to file a report with the clerk's office.

Who can sell raffle tickets?

Only the qualified members of the sponsoring organization. They cannot be paid for their time or effort.

Who can operate the games at a Las Vegas night?

Again, only the qualified members of the sponsoring organization. They cannot be paid for their time or efforts. Employees of the company furnishing the equipment or supplies for the event are prohibited from operating any of the games themselves.

How many raffles may be held during a year?

There is no limit. The permit from the municipality is good for one year from the date it is issued.

How many Las Vegas nights may be held during a year?

No more than three during any calendar year. The event can last no longer than five consecutive hours, and there cannot be more than one event during any single day.

THE GENERAL LAWS OF MASSACHUSETTS

PART IV. CRIMES, PUNISHMENTS AND PROCEEDINGS IN CRIMINAL CASES

TITLE I. CRIMES AND PUNISHMENTS

CHAPTER 271. CRIMES AGAINST PUBLIC POLICY

Chapter 271: Section 7A. Raffles and bazaars; conduct by certain organizations

Section 7A. In this section the following words shall have the following meanings:

“Raffle”, an arrangement for raising money by the sale of tickets, certain among which, as determined by chance after the sale, entitle the holders to prizes.

“Bazaar”, a place maintained by the sponsoring organization for disposal by means of chance of one or both of the following types of prizes: (1) merchandise, of any value, (2) cash awards, not to exceed twenty-five dollars each.

Notwithstanding any other provisions of law, raffles and bazaars may be promoted, operated and conducted under permits issued in accordance with the provisions of this section.

No organization, society, church or club which conducts a raffle or bazaar under the provisions of this section shall be deemed to have set up and promoted a lottery and nothing in this chapter shall authorize the prosecution, arrest or conviction of any person connected with the operation of any such raffle or bazaar; provided, however, that nothing contained in this section shall be construed as permitting the game commonly known as “beano” or any similar game regardless of name.

No raffle or bazaar shall be promoted, operated or conducted by any person or organization, unless the same is sponsored and conducted exclusively by (a) a veterans’ organization chartered by the Congress of the United States or included in clause (12) of section five of chapter forty of the General Laws; (b) a church or religious organization; (c) a fraternal or fraternal benefit society; (d) an educational or charitable organization; (e) a civic or service club or organization; and (f) clubs or organizations organized and operated exclusively for pleasure, recreation and other nonprofit purposes, no part of the net earnings of which inures to the benefit of any member or shareholder. Such organization shall have been organized and actively functioning as a nonprofit organization in the commonwealth for a period of not less than two years before it may apply for a permit. The promotion and operation of the raffle or bazaar shall be confined solely to the qualified members of the sponsoring organization and no such member shall receive remuneration in any form for time or effort devoted to the promotion or operation of such raffle or bazaar. All funds derived from any raffle or bazaar shall be used exclusively for the purposes stated in the application of the sponsoring organization which purposes shall be limited to educational, charitable, religious, fraternal or civic purposes or for veterans’ benefits. An

organization which meets the qualifications required by this section and which desires to conduct or operate a raffle or bazaar within the commonwealth shall apply for a permit to conduct raffles and bazaars from the clerk of the city or town in which the raffle will be drawn or the bazaar held. The application form shall be approved by the commissioner of public safety and shall include the name and address of the applicant, the evidence on which the applicant relies in order to qualify under this section, the names of three officers or members of the organization who shall be responsible for the operation of the raffle or bazaar, and the uses to which the net proceeds will be applied. Unless otherwise established in a town by town meeting action and in a city by city council action, and in a town with no town meeting by town council action, by adoption of appropriate by-laws and ordinances to set such fees, a fee of ten dollars shall accompany each such application and shall be retained by the city or town, but in no event shall any such fee be greater than fifty dollars. Upon receipt of such application, the clerk shall determine whether it is in conformity with this section. If the clerk so determines, he shall forward the application to the chief of police of the city or town, who shall determine whether the applicant is qualified to operate raffles and bazaars under this section. If the chief of police so determines, he shall endorse the application and return it to the clerk, who shall forthwith issue a permit, which shall be valid for one year from the date of its issuance. The clerk shall retain a copy of the application and shall send a copy to the commissioner of public safety. If there is any change in the facts set forth in the application for a permit subsequent to the making of such application, the applicant shall forthwith notify the authority granting such permit of such change, and such authority shall issue such permit if the applicant is qualified, or, if a permit has already been issued and the change in the facts set forth in the application disqualify the applicant revoke such permit.

If an application is not acted upon within thirty days after it is submitted, or if the organization is refused a permit, or if a permit is revoked, any person named on the application may obtain judicial review of such refusal or revocation by filing within ten days of such refusal or revocation or within ten days of the expiration of such thirty day period a petition for review in the district court having jurisdiction in the city or town in which such application was filed. A justice of said court, after a hearing, may direct that such permit be issued, if he is satisfied that there was no reasonable ground for refusing such permit, and that the applicant was not prohibited by law from holding raffles or bazaars.

An organization issued a permit under this section shall within thirty days of the expiration of its permit submit a report on a form to be approved by the commissioner of public safety. Such form shall require information concerning the number of raffles and bazaars held, the amount of money received, the expenses connected with the raffle or bazaar, the names of the winners of prizes exceeding twenty-five dollars in value, the net proceeds of the raffles and bazaars, and the uses to which the net proceeds were applied. The organization shall maintain and keep such books and records as may be necessary to substantiate the particulars of such report, which books and records shall be preserved for at least one year from the date of such report and shall be available for inspection. Such report shall be certified to by the three persons designated in the permit application as being responsible for such raffle or bazaar and by an accountant. Two copies of said report shall be filed with city or town clerk. The clerk shall send one copy to the commissioner of public safety. Failure to file said report shall constitute sufficient grounds for

refusal to renew a permit to conduct raffles or bazaars. The fee for renewal of such permit shall be ten dollars.

The authority granting any permit under this section shall immediately revoke the same for a violation of any provision of this section and shall not issue any permit to such permittee within three years from the date of such violation. Any person aggrieved by the action of such authority revoking such permit may appeal to the district court having jurisdiction in the city or town where the permit was issued; provided that such appeal shall be filed in such court within twenty days following receipt of notification by said authority. The court shall hear all pertinent evidence and determine the facts and upon the facts so determined annul such action or make such decision as equity may require. The foregoing remedy shall be exclusive.

Any organization conducting or operating a raffle or bazaar under this section shall file a return with the state lottery commission, on a form prepared by it, within ten days after the raffle or bazaar is held and shall pay therewith a tax of five per cent of the gross proceeds derived from such raffle or bazaar.

All sums received by said commission from the tax imposed by this section as taxes, interest thereon, fees, penalties, forfeitures, costs of suits or fines, less all amounts refunded thereon, together with any interest or costs paid on account of such refunds, shall be paid into the treasury of the commonwealth.

Whoever violates any provision of this section or submits false information on an application or report required under this section shall be punished by a fine of not more than one thousand dollars or by imprisonment in the house of correction for not more than one year, or both.

No person who prints or produces tickets, cards or any similar article used in the conduct of a bazaar or raffle pursuant to a permit issued under the provisions of this section shall be subject to any penalty therefor, provided that a certified copy of such permit was presented to him prior to his undertaking to print or produce such tickets or cards.

No organization issued a permit under this section shall conduct more than three bazaars in any single calendar year nor shall such organization conduct more than one bazaar in any single calendar day. The operation of a bazaar shall be limited to five consecutive hours.

940 CMR 12.00: REGULATIONS GOVERNING RAFFLES

Section

- 12.01: Definitions
- 12.02: Disclosure
- 12.03: Obligations of the Sponsoring Organization
- 12.04: Record Keeping, Financial Control
- 12.05: Violations of Regulations
- 12.06: Severability

940 CMR 12.00 shall apply to any raffle conducted under M.G.L. c. 271, § 7A in which the value of the prize or prizes to be awarded exceeds \$10,000 or in which the ticket price exceeds \$10.00.

12.01: Definitions

Prize. Any item or items chosen by a sponsoring organization as the subject of a raffle, which the organization announces it will award to a person selected by chance from among those purchasing tickets to the raffle.

Qualified Member. For the purposes of eligibility to participate in managing or otherwise assisting in the operation of a raffle, a person is a bona fide member of the licensed organization only when he or she:

- (a) Has become a member prior to the commencement of the function and such membership was not dependent upon, or in any way related to the payment of consideration to participate in, any gambling activity; and
- (b) Has held full and regular membership status in the licensed organization for a period of not less than three consecutive months prior to the subject function; and
- (c) Has paid any reasonable initiation or admission fees for membership, and/or any dues, consistent with the nature and purpose of the licensed organization and with the type of membership obtained and is not in arrears in payment of any such fees or dues; and
- (d) Has met all other conditions required by the licensed organization for membership and is in all respects a member in good standing at the time of the subject function.

A person may also be a bona fide member of a bona fide charitable or bona fide nonprofit organization affiliated with or auxiliary to his or her licensed organization, or to which his or her own licensed organization is auxiliary, when he or she meets all of the standards set out above respecting his or her own licensed organization.

Related Party. Includes:

- (a) An officer, director, or trustee (or an individual having powers or responsibilities similar to those of officers, directors, or trustees) of the organization.
- (b) A spouse other than a spouse who is legally separated from the individual under a decree of divorce or separate maintenance; a child including legally adopted children; grandchildren; parents; and grandparents of parties described in 940 CMR 12.01(1).
- (c) A corporation, trust, estate or partnership more than 35% of which is owned or held by any of the preceding.

Sponsoring Organization. Any organization conducting a raffle pursuant to a license under M.G.L. c. 271, § 7A to conduct raffles.

12.02: Disclosure

(1) In any raffle conducted pursuant to M.G.L. c. 271, § 7A, the sponsoring organization must disclose the following information either on the raffle ticket itself or in a written notice given to the purchaser prior to the sale:

- (a) a full and fair description of the prize;
- (b) the appraised value of the prize;
- (c) date or dates when the prize will be available for inspection;
- (d) if there is a minimum number of tickets to be sold; what the minimum is and the procedure to be employed to secure a refund in the event the minimum is not reached;
- (e) the maximum number of tickets to be sold if any;
- (f) the fact that the value of the prize will be treated as ordinary income to the winner for federal and state income tax purposes and that the winner may be required to pre pay a portion of the tax liability prior to receiving the prize;
- (g) the fact that the Internal Revenue Service takes the position that no portion of the ticket price will qualify as a charitable contribution for federal income tax purposes;
- (h) the drawing date for the raffle;
- (i) the estimated percentage of the ticket price which will be used for charitable purposes in the event that only the minimum number of tickets are sold;
- (j) the exact nature of the charitable purpose for which the proceeds will be used;
- (k) any other facts the disclosure of which may have influenced the purchaser or prospective purchaser not to enter into the transaction.

(2) Each ticket must bear a clear and conspicuous warning to the effect that depositing the ticket or any other material in connection with the raffle in the federal mails is a violation of federal law and may lead to criminal penalties.

12.03: Obligations of the Sponsoring Organization

(1) If there are any changes in the terms of the raffle such as a change in the nature or value of the prize, a postponement of the drawing date, the sale of greater than the maximum number of tickets, etc., the organization shall notify each of the ticket purchasers of the change and offer them an opportunity to rescind their purchase.

(2) If for any reason the raffle is not completed and a prize is not awarded on the scheduled drawing date, the sponsoring organization must take all steps necessary to notify ticket purchasers of that fact and return all money received from ticket purchasers within 30 days.

(3) No member or employee, or immediate family member of a member or employee, of a sponsoring organization who has been directly involved in the promotion or operation of a raffle shall be permitted to purchase tickets to the raffle or win the prize. The sale of tickets alone shall not constitute the promotion and sale of a raffle for purposes of 940 CMR 12.03.

(4) The sponsoring organization shall take such steps as are necessary under the circumstances to insure that each ticket purchased has a chance to be selected as the prize winner and that the prize winner is selected in an entirely random manner.

(5) In cases where the sponsoring organization purchases the prize from a third party, it must arrange for an independent appraisal of the value of the prize from a person licensed to render such appraisals, or if there is no applicable licensing requirement, from a person qualified to render such appraisals.

(6) If the sponsoring organization purchases a prize from a related party, the price to be paid must be at cost or substantially less than the appraised value of the prize.

(7) No sponsoring organization or its employees, members, agents or servants, shall give away tickets to a raffle without receiving the full established price for them.

(8) The sponsoring organization shall structure the raffle in such a way that it may reasonably be anticipated that the sponsoring organization will retain a percentage of the gross proceeds which is reasonable under the circumstances and shall retain all of the net proceeds (gross proceeds minus the direct expenses of the raffle) for the purposes specified in their application under M.G.L. c. 271, § 7A.

12.04: Record Keeping, Financial Control

(1) A record keeper shall be designated from among the members of the organization as defined at 940 CMR 12.01 and shall have been a member for a minimum of two years prior to the commencement of the raffle. The record keeper or his designee shall be responsible for the keeping and distribution of raffle tickets to be sold, the safekeeping of paid for and completed ticket stubs, and the maintenance of the records prescribed by 940 CMR 12.04 during and after the completion or suspension of the raffle for a period of at least two years.

(2) The raffle ticket shall have at least two parts, one of which is to be retained by the purchaser, and the other to be retained by the record keeper. The record keeper's part must at a minimum contain the purchaser's name, address, and the telephone number. All such parts shall be imprinted with sequential serial numbers commencing with the numeral "1" through the maximum number of tickets to be sold. Both copies shall bear the signatures of both the seller and the purchaser of the ticket.

(3) The record keeper shall maintain and periodically update as the need arises, the following types of records:

- (a) a list of members of the sponsoring organization;
- (b) a list of members authorized to sell raffle tickets or participating in any way in the promotion or operation of the raffle;
- (c) all documents, bills of sale, agreements, appraisals or other documents concerning the purchase of the article or articles to be raffled;
- (d) all permits, licenses, and any other documents prescribed or required by law as necessary for the lawful conduct of a raffle;
- (e) a ledger book or other suitable record keeping device listing the serial number of the ticket sold, the purchaser's name and address, and the date purchased. Such entries shall be made upon receipt of the ticket part from the selling member or members and will be maintained in such a way as to permit a calculation at any time, of the number of tickets sold to date;
- (f) the ticket stubs used to conduct the drawing for a period of not less than two years.

(4) Financial records shall be maintained by the record keeper sufficient to show:

- (a) the current amount of proceeds received on account of the raffle;
- (b) all expenses related to the conduct of the raffle including printing costs, advertising costs, lawyers fees, appraisal costs, insurance premiums, and any other costs reasonably attributable to the raffle.

12.05: Violations of 940 CMR 12.00

Failure to comply with any of 940 CMR 12.00 shall be deemed an unfair and deceptive act or practice, in violation of M.G.L. c. 93A, § 2 or a misapplication of funds given or appropriated to public charities.

12.06: Severability

If any provision of 940 CMR 12.00 or the application of such provision to any person or circumstances shall be held invalid, the validity of the remainder of 940 CMR 12.00 and the applicability of such provision to other persons or circumstances shall not be affected thereby.

REGULATORY AUTHORITY

940 CMR 12.00: M.G.L. c. 12, § 8J; c. 93A, § 2(c).

940 CMR 13.00: REGULATIONS GOVERNING BAZAARS

Section

- 13.01: Definitions
- 13.02: Licensing
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- 13.04: Limitation of Participation of Certain Persons
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13.01: Definitions

Bazaar means a place maintained by a Licensed Organization for disposal of merchandise or cash awards by means of chance; provided that the awarding of cash prizes in excess of the amount allowed by M.G.L. c. 271, § 7A or any successor thereto is expressly prohibited.

Function is a Bazaar maintained and conducted by a Licensed Organization for the disposal of awards of merchandise, cash or its equivalent by means of games. This includes without limitation thereto, so-called Las Vegas, Casino or Monte Carlo Nights.

Gross Receipts means the total amount of money received as admission fees and from the sale or transfer for money of chips, script or the like used to make wagers.

Lawful Purpose means educational, charitable, religious, civil or fraternal purposes or veterans benefits.

Licensed Organization means any Licensed Organization which holds a Bazaar permit issued pursuant to M.G.L. c. 271, § 7A.

Local Licensing Authority means the clerk of the city or town wherein a permit to conduct Bazaars is issued or to whom an application to conduct same is submitted.

Net Proceeds is Gross Receipts less taxes, prices and reasonable and necessary expenses ordinarily incidental to the conduct of said Bazaar.

Raffle/Bazaar Law means M.G.L. c. 271, § 7A.

13.02: Licensing

Lists Required To Be Kept: Membership List. Each Licensed Organization must maintain a list of its current membership by name, address, telephone number and a description of the type of membership in the organization which shall be kept available for inspection at all reasonable times.

13.03: Conduct of Games

(1) Workers.

(a) Member in Charge. Every Licensed Organization shall designate a bona fide, active member of the licensee to be in charge of and primarily responsible for each Function. The member-in-charge shall have been a member in good standing of the Licensed Organization for at least two years. The member in charge shall supervise all activities and be responsible for the conduct of all games during the Function of which he is in charge including the preparation of any financial reports required by law. The member-in-charge or his qualified designee shall be present on the premises continually during the Function and shall be familiar with the provisions of the Raffle/Bazaar Law, applicable ordinances and local laws, Regulations, and the terms of the permit.

(b) List of Workers. A Licensed Organization conducting a Function shall prepare and have available on the premises a list of all persons taking part in the management or operation of the Function. Such list shall be maintained as part of the permittees' records of the Function and shall be made available to any law enforcement officer.

(c) Participation of Worker Restricted. No person shall assist in the conduct of a Function except a bona fide member of the Licensed Organization whose name appears on the lists required by 940 CMR 13.03(1)(b).

(d) Bona Fide Member. For the purposes of eligibility to participate in managing or otherwise assisting in the operation of a Function, a person is a bona fide member of the Licensed Organization only when he or she:

1. Has become a member prior to the commencement of the Function and such membership was not dependent upon, or in any way related to the payment of consideration to participate in, any gambling activity; and
2. Has held full and regular membership status in the Licensed Organization for a period of not less than three consecutive months prior to the subject Function; and
3. Has paid any reasonable initiation or admission fees for membership, and/or any dues, consistent with the nature and purpose of the Licensed Organization and with the type of membership obtained and is not in arrears in payment of any such fees or dues; and
4. Has met all other conditions required by the Licensed Organization for membership and is in all respects a member in good standing at the time of the subject Function.

A person may also be a bona fide member of a bona fide charitable or bona fide nonprofit organization affiliated with or auxiliary to his or her Licensed Organization, or to which his or her own Licensed Organization is auxiliary, when he or she meets all of the standards set out above respecting his or her own Licensed Organization.

(e) Identification Required. The member-in-charge and those assisting him in any capacity shall possess and display identification.

(f) Officer Responsible for Gross Receipts. The Licensed Organization shall duly designate an officer of said organization to be in full charge and primarily responsible for the proper accounting, use and disposition of all Gross Receipts. Such officer's name shall appear on the list required under 940 CMR 13.03(1)(b) and such officer shall be a person other than the person designated member in charge pursuant to 940 CMR 13.03(1)(a).

(g) Payment of Workers Prohibited. No commission, salary, compensation, reward, recompense, reimbursement of expenses or gift or other consideration shall be paid directly or indirectly, to any person for conducting or assisting in the conduct of any Function except as hereinafter provided for bookkeepers or accountants who assist by rendering their professional services. No tip, gratuity or gift or other consideration shall be given or accepted by any person conducting or assisting in the conduct of a Function either directly or indirectly, and one or more signs prohibiting tipping shall be prominently displayed in each playing area. No person shall solicit or receive any gift or donation or other consideration directly or indirectly on the premises during the conduct of a Function.

(h) Compensation of Bookkeepers and Accountants. Bookkeepers and Accountants may receive reasonable compensation for necessary services ordinarily incidental to the operation of a Function. Any bookkeeper or accountant receiving any compensation under 940 CMR 13.03 shall not participate or assist in any other capacity under 940 CMR 13.03 or any other section of 940 CMR.

(i) Persons Performing Incidental Services. Persons who perform only the following incidental services in connection with a Function shall not be deemed to be participating in the "management or operation" of

such an event requiring that persons participating in the management or operation of the event be members of the Licensed Organization:

1. Serving food and/or drink to participants at the Function.
2. Acting as a police officer for the purposes of maintaining general crowd control and order at the Function, or to detect persons cheating the participants or the house, when that person is a commissioned law enforcement officer with the power to make arrests in the jurisdiction in which the Function is being held or is the employee of a commercial securities service firm licensed by the Department of Public Safety.
3. Providing janitorial functions.
4. Supervising personnel carrying out the functions enumerated in 940 CMR 13.03(1)(i)1., 2., and 3., without participating further in the Function.

Provided, that the payment of persons to perform these functions does not exceed the local prevailing level of payment for similar services.

(j) Regular Salary for Licensee's Employee Not "Compensation" For Work on Functions Under Certain Conditions. The salary of a regular and full time employee or a regular but part time employee if the Licensed Organization has employed that part time position for the past two consecutive years, of a Licensed Organization shall not be deemed "compensation" for work performed by the employee in connection with a Function conducted by that organization when all of the following conditions are met:

1. The position held by the employee has been created for purposes unrelated to the conduct of a Function and the required performance of duties is generally unrelated to Functions. The employee's contribution to a Function must be an incidental part of his or her total duties, consisting of less than 1% of the total time worked for the organization; and
2. The employee is paid on a recurring basis on a regular and established rate throughout the calendar year, unrelated to the income produced by any Function; and
3. The employee does not operate any game at any Function conducted by the organization but confines his or her services in connection with the event to assisting the organization's other members with the overall planning and organization of the event and with supervision of the supporting services for the event.

13.04: Limitation of Participation of Certain Persons

No person directly or indirectly connected with the manufacture, sale or distribution of gaming equipment or supplies, or the agents, servants or employees of such person, shall conduct, participate, advise or assist in the conduct of a Function or render any service to anyone conducting, participating or assisting in the conduct of a Function including the preparation of any form relating thereto.

13.05: Equipment

(1) Ownership of Equipment. The Licensed Organization shall conduct games only with equipment owned by it or which a lessor undertakes to provide by the terms of a written lease. The rental fee contained in such a lease shall be a sum certain and shall be commercially reasonable.

(2) Equipment. Equipment used in the conduct of a Bazaar must be maintained in good repair and sound working condition. Equipment shall be used, and play operated, so that each player is given an equal opportunity to win.

13.06: Operation of Games

(1) Wagering by Use of Chips, Script or the Like Required. A Licensed Organization may allow wagers to be placed only in the form of chips, script or the like and purchased for cash at the Function at which the wager is made. Wagering in the form of currency or representations of credit is expressly prohibited. Chips, script or the like may be redeemed at only the specific Function where they were acquired.

(2) House Rules. Prior to conducting a Function, each Licensed Organization shall develop a set of house rules which will govern the type, scope and manner of all games to be conducted. Among other information, these rules shall establish the maximum amount of wagers which may be placed by persons participating in games. In addition, the rules shall prohibit the giving of anything of value to any person involved in the management or operation of the Function and prohibit any involved in the management or operation of the Function from accepting anything of value. A copy of the rules shall be posted conspicuously on the premises where the Function is being conducted at all times during the occasion, and a copy thereof shall be made available upon request, to any law enforcement officer. The maximum wager and rules for individual games shall be displayed at the location of each said game so as to be conspicuous to those persons participating in said game.

13.07: Prohibited Acts

(1) Wagering Among Participants Not Permitted. No Licensed Organization shall permit, as a part of a Function, a gambling activity which involves a wagering of money or other items of value by one participant directly against another participant, if the activity does not provide for some portion of the proceeds to go to the Licensed Organization. This rule shall not be construed to prohibit games wholly administered by the Licensed Organization wherein the licensee collects wagers from among the participants and determines the winners and amount of prizes on a parimutuel basis.

(2) Credit and Checks. No Licensed Organization may extend credit to any patron at a Function. No checks may be cashed or received for the purchase of chips, script and the like.

(3) Persons Under Age 18. No person under 18 years of age shall be permitted on that portion of the premises used for a Function.

(4) Transaction of Certain Business Prohibited. No person who is directly or indirectly connected with the manufacture, sale or distribution of gaming equipment or supplies or his agents, servants or employees may be present during a Function for the transaction of business.

(5) Workers Prohibited From Participating. Workers are prohibited from participating in games at any Function during which they participate as workers.

13.08: Police Officer Required

Each Licensed Organization shall retain the services of a police officer of the city or town where the Function is conducted or shall take such other steps as are adequate to protect the proceeds and to insure the public safety. The police officer may be compensated under 940 CMR 13.03(1)(i)2. at a rate not to exceed the rate currently prevailing for such services in said city or town.

13.09: Limitation of Functions

No Licensed Organization shall conduct more than two Functions in any single calendar year. The operation of a Function shall be limited to five consecutive hours.

13.10: Record Keeping

(1) Records

(a) Record Keeping. Accurate records and books shall be kept by each Licensed Organization including but not limited to detailed financial reports of the amount and source of proceeds, the members participating in the promotion and/or operation of the Function, all expenses and disbursements.

(b) Access to Records. Law enforcement personnel shall at all times have access to all books and records

of any Licensed Organization.

(c) Period for Retention of Records. All records, books of account, bank statements and all other papers incidental to the operation of Bazaars by the Licensed Organization shall be retained and available for inspection by law enforcement personnel for a period of four years from the close of the calendar year to which the records apply.

(2) Central Accounting System. Each Licensed Organization shall establish and maintain a central accounting system for the operation of a Function for all activities conducted in conjunction with the Function. The central accounting system should include but not be limited to internal controls to secure and count all cash received in connection with the Function, methods of accounting for chip sale and reimbursement, and verification of all transfers of cash and chips between game station(s) and the central counting area.

(3) Expenses. Each Licensed Organization should incur only those expenses which are reasonable and necessary for the promotion and/or operation of a Function.

13.11: Violations of 940 CMR 13.00

Failure to comply with any of 940 CMR 13.00 shall be deemed an unfair and deceptive act or practice, in violation of M.G.L. c. 93A, § 2 or a misapplication of funds given or appropriated to public charities.

13.12: Severability

If any provision of 940 CMR 13.00 or the application of such provision to any person or circumstances shall be held invalid, the validity of the remainder of 940 CMR 13.00 and the applicability of such provisions to other persons or circumstances shall not be affected thereby.

REGULATORY AUTHORITY

940 CMR 13.00: M.G.L. c. 12, § 8J; c. 93A, § 2(c).

ATTORNEY GENERAL'S ADVISORY ON POKER TOURNAMENTS

June 30, 2005

The rising popularity of games such as Texas Hold'em and other forms of poker has led to an increase in poker tournaments, many of them organized by charities for fundraising purposes. For those who wish to hold such tournaments, this Advisory is intended as a guide to help distinguish between poker tournaments that are illegal and subject to prosecution in Massachusetts, and those that are legal.

Poker tournaments in Massachusetts are illegal if they violate either the lottery or betting prohibitions of the Massachusetts General Laws. This requires an analysis of two separate statutory provisions.

First, section 7 of Chapter 271 generally prohibits lotteries. Lotteries involve games of chance in which contestants pay money or something else of value for the opportunity to win prizes. Assuming that poker is a game of chance, section 7 prohibits all poker tournaments in which players pay an entry fee or something else of value to play a game which offers prizes to the winner(s). The legislature has carved out one important exception to this broad prohibition. Qualifying non-profit organizations are permitted to operate lotteries for fundraising purposes if they meet certain conditions and obtain a permit under section 7A of Chapter 271.

Second, section 17 of Chapter 271 prohibits anyone from registering bets, or buying or selling pools, on the result of poker hands, games or tournaments. Even a qualifying non-profit organization cannot operate a poker tournament in which players or spectators bet money or anything else of value on hands, or in which prizes come from a pool of money or something else of value based on the number of people who play, or the amount of proceeds collected.

I. A poker tournament is illegal if it is operated as a lottery.

Except for certain qualifying non-profit organizations that are issued a lottery permit under section 7A of Chapter 271 (discussed below in greater detail), it is illegal to set up or promote a lottery in which players pay to play a game where winning something of value is "dependent upon or connected with chance by lot, dice, numbers, game, hazard or other gambling device." G.L. c. 271, § 7. A game is an illegal lottery if:

- Players pay something of value to play the game. This includes players who are charged an entry fee, are required to make a charitable contribution, or bet money or anything else of value during the course of the game;
- The game is considered a game of chance; and
- Winning players receive something of value.

Even if the game involves some level of skill, it may still be a lottery. "The simplest form of lottery is, perhaps, a game depending wholly on chance in which the skill of the player is not a

factor The mere fact that skill as well as chance may enter into a game, however, does not prevent it from being a lottery With reference to cases where both elements are present, the rule generally stated is that if the element of chance rather than that of skill predominates, the game may be found to be a lottery.”¹ At least one court has ruled that under Massachusetts law, chance predominates over skill in video poker games and, as such, they are illegal lotteries.² Massachusetts appellate courts have not been called upon to determine whether traditional forms of poker are considered games of chance rather than skill.

Assuming that all forms of poker are games of chance, it is illegal to promote, operate or play in a poker tournament if a) players pay an entry fee, bet, or otherwise contribute something of value to play and b) prizes of cash or something else of value are awarded to winning players. The only exception to this prohibition involves fundraising activities by certain non-profit organizations issued lottery permits under section 7A of Chapter 271.

Of course, if players do not pay an entry fee, bet, or otherwise contribute something of value to play in a poker tournament, it does not constitute a lottery. A poker tournament in which participants pay nothing to play (meaning players neither pay an entry fee nor bet money during the game) may award prizes to winning players.

II. A poker tournament that would otherwise be an illegal lottery in Massachusetts is legal when operated by a properly licensed qualifying non-profit organization.

Section 7A of Chapter 271 allows certain qualifying organizations to hold special events, known as “bazaars,” for fundraising purposes. Bazaars (also referred to as Las Vegas or Casino nights) may include games of chance such as roulette, craps, blackjack, and poker, including Texas Hold’em. A qualifying organization which operates a bazaar pursuant to section 7A is not in violation of the section 7 lottery prohibitions so long as the organization and players comply with the requirements described in more detail below.

A. Qualifying Organizations

Poker tournaments held pursuant to section 7A may only be operated by:

- (1) a veterans’ organization chartered by the Congress of the United States;
- (2) a church or religious organization;
- (3) a fraternal or fraternal benefit society;
- (4) an educational or charitable organization;
- (5) a civic or service club; or
- (6) other clubs or organizations operated exclusively for non-profit purposes.

¹ *Commonwealth v. Plissner*, 295 Mass. 457, 463-64 (1936).

² See *United States v. Marder*, 48 F.3d 564 (1st Cir. 1995). In *Commonwealth v. Club Caravan*, 30 Mass. App. Ct. 561 (1991), the court held that video poker games contain an element of skill, but did not rule whether skill or chance is the predominate feature.

B. Summary of Important Limitations

Qualifying organizations wishing to run poker tournaments must:

- have been organized and operating in Massachusetts for at least two years;
-
- obtain a permit from the city or town where the event will be held;
-
- limit cash awards to \$25 (there is no similar limitation on non-cash awards); and
-
- hold no more than three bazaars per calendar year.
-

C. Local and State Permits

A qualifying organization must request and obtain the necessary permit from the city or town where the poker tournament will be held and must follow all of the legal requirements for holding such a tournament, including, among other things: being a non-profit functioning in Massachusetts for at least two years; identifying three qualified members who will be in charge of the event; and specifying how the net proceeds will be used for charitable purposes. A poker tournament cannot be held at the same time as a bingo or beano event. Attached is a checklist to assist municipalities in obtaining the information necessary for issuing a permit.

The Lottery Commission does not require that an organization obtain a permit from the Commission, but does require that the organization hosting a bazaar, including any poker tournament, file a report on the funds raised and pay to the Lottery Commission five percent of the gross proceeds.

D. Management and Operation

There are strict rules about how qualifying organizations must manage and operate poker tournaments. The organization must appoint a member in charge who is responsible for all of the activities at the tournament and the filing of all financial reports. The member in charge must be present during the tournament and be familiar with all laws and regulations pertaining to the event. The organization must also designate one of its officers (different from the member in charge) to be responsible for all of the proceeds.

Any person or company that rents equipment to the organization cannot also supply card dealers or game managers. In fact, the organization cannot allow anyone who is an employee or agent of an equipment rental company to be on the premises during the event. Only members of the organization can participate in the event's promotion and operation.

Other legal requirements for operating a tournament include: posting house rules; filing the necessary reports; and maintaining accurate records, including the amount and source of all proceeds, all expenses and disbursements, prize winners and prizes awarded.

E. Prizes

Tournaments organized under section 7A are limited to “one or both of the following types of prizes: (1) merchandise, of any value, (2) cash awards, not to exceed twenty-five dollars each.” Merchandise (including gift cards) and cash awards may be awarded to one or more winners at the end of the entire event, at the end of any game, or at such other times and in such other manner during the event as the organization chooses, so long as the prizes have been determined in advance and do not increase or decrease based on the number of people playing, the amount of proceeds collected, or the outcome of the games being played.

F. Penalties

Failure to comply with the promotion, operation, and reporting requirements governing bazaars can expose a non-profit organization and its event organizers to various penalties. Under section 7A of Chapter 271, bazaar permits may be immediately revoked, non-profits may be prohibited from holding a bazaar for up to three years, and civil and criminal penalties may be imposed on individuals, including a fine of up to \$1,000 and up to one year imprisonment. Moreover, anyone who is not covered by the protections of section 7A, but nonetheless sets up or promotes a poker tournament in violation of the section 7 lottery restrictions, may be guilty of a felony offense punishable by up to three years in state prison or a \$3,000 fine.

There are also other requirements for operating a bazaar. Attached to this Advisory are checklists to assist non-profits and municipalities in completing the required steps for holding a bazaar pursuant to the provisions of G.L. c. 271, § 7, and 940 CMR 13.00, which are, respectively, the statute and regulations that govern bazaars in the Commonwealth of Massachusetts.

III. Poker tournaments that do not violate Massachusetts lottery laws are still illegal if they allow players or spectators to register bets of money or anything else of value on the result of the game(s), or if they constitute the buying or selling of pools out of which prizes are awarded.

Even a qualifying non-profit organization that obtains a bazaar permit under section 7A of Chapter 271 cannot lawfully operate a poker tournament in which players or spectators register bets of money or anything else of value on the result of the game or receive prizes out of pools.

Section 17 of Chapter 271 makes it illegal to keep or be found in any place with “apparatus, books or any device, for registering bets, or buying or selling pools, upon the result of a . . . contest of skill . . . or upon the result of a game” The statute prohibits two different kinds of conduct.

First, it is illegal to hold or participate in a poker tournament if players or spectators bet money or anything else of value on hands or games. There is no exception to this prohibition. Under Massachusetts law, a player bets if he or she has a chance of winning and losing money or something of value, and whether he or she wins or loses is dependent on the outcome of a hand or game.³

³ See *Commonwealth v. Sousa*, 33 Mass.App.Ct. 433, 437 (1991) (citing *Commonwealth v. Sullivan*, 218 Mass. 281, 283 (1914)).

Second, it is illegal for tournaments to pool the proceeds collected from players and use those proceeds for the prizes awarded. Even if only a portion of the proceeds collected go to the winner(s), it may still represent an illegal pool under Massachusetts law.⁴

Poker tournaments must be structured to avoid the restrictions on bets and pools. For example, a tournament may be lawfully operated if:

- Players pay a pre-determined entry fee that entitles them to play in the tournament. So long as the entry fee is pre-determined, is the same for all players in the game, and is not tied to how the players fare during the game, it does not constitute betting. Of course, requiring players to pay an entry fee would turn the tournament into a lottery. The tournament would then have to be sponsored by a qualifying non-profit organization that has been issued a bazaar permit under section 7A of Chapter 271.
- At the start of the tournament, players are given an equal number of poker chips. Once the tournament begins, players cannot purchase any more chips. Re-buys are prohibited.
- During the course of the tournament, players receive prizes. The rules might provide that at the end of each game, or at the end of each hour of play, the player with the most number of points or chips receives a prize. Even though players have a chance of winning something of value, it is not betting because the players have no chance of losing anything of value.
- Prizes are determined by the event organizer in advance of the tournament, and do not increase or decrease based on the number of people who play, the amount of money collected, or the outcome of a particular hand or game. Courts in other states have found a meaningful distinction between games in which there is a pre-determined prize contributed by an event organizer, and games in which the participants alone contribute the funds which the winner(s) receive.

IV. Contacts

If you have questions concerning the operation of poker tournaments or other similar fundraising activities, please feel free to contact:

Office of the Attorney General
Division of Public Charities
(617) 727-2200, ext. 2101

Massachusetts State Lottery Commission
(781) 849-5555, ext. 527

Department of Public Safety
Office of the Commissioner of Public Safety
(617) 727-3200, ext. 25230

⁴ See *Commonwealth v. Sullivan*, 218 Mass. 281, 283 (1914).

Checklist for a Non-Profit Organization Holding a Poker Tournament

Step One - Qualifying Organizations

- A veterans' organization, church or religious organization, fraternal or fraternal benefit society, educational or charitable organization, civic or service club, or other organization operated exclusively for non-profit purposes.
- Actively functioning as a non-profit organization in the Commonwealth for at least the past two years.
- If required, have registered with the Attorney General's Division of Public Charities pursuant to G.L. c. 12, § 8E and c. 68, § 19, are up-to-date with annual filings, and are in possession of a valid Certificate for Solicitation.
- Haven't conducted more than three bazaars in a single calendar year.
- Haven't had a raffle/bazaar permit revoked for a G.L. c. 271, § 7A violation occurring within the past three years.

Step Two - Preparing for the Event

- Select three persons, two of whom have been officers or members in good standing for at least the past three months and one of whom has been a member in good standing for at least the past two years, to be responsible for the operation of the event and the uses to which the net proceeds will be applied.
- Of the three members selected, designate one person who has been a member in good standing for at least the past two years to be the "member in charge," with primary responsibility for the operation of the event.
- Designate a separate person who is an officer of the organization to be the "officer responsible for gross receipts," with primary responsibility for the accounting, use, and disposition of all funds received during the event.
- Establish a system of bookkeeping to keep complete financial records.
- Maintain a list of all members who assist in the event's promotion and operation.
- Establish and reduce to writing the house rules.
- Determine in advance the prizes to be awarded (prizes should not increase or decrease based on the number of people playing, the amount of proceeds collected, or the outcome of the games being played).

- Limit individual cash prizes to \$25. (Prizes for merchandise, including gift cards, may be any value.)
- Obtain a permit from the clerk of the city or town in which the event will be held.
- Arrange for a uniformed police officer to be present during the event.
- Do not hold a bingo or beano event at the same time as the poker tournament. (A raffle may be held simultaneously, so long as the organization complies with all applicable legal obligations.)

Step Three - During the Event

- Ensure that the member in charge and all assistants are present and display proper ID.
- Prohibit anyone under eighteen on that part of the premises where poker is played.
- Ensure non-members do not participate in any aspect of the tournament's promotion or operation.
- Conspicuously post house rules at each table, including no tipping of dealers.
- Ensure that participants and spectators are not registering bets of money or anything of value upon the result of any hand or game.
- Ensure that the event does not last longer than five hours.

Step Four - After the Event

- Within ten days after the Bazaar, file a return with the Lottery Commission.
- Within thirty days after the permit expires, file with the clerk two copies of the financial report certified by the three members responsible for the event and by an accountant.
- Store all records so that they will be accessible and available for at least one year from the issuance of the financial report or for at least three years if an organization is required to file an annual report with the Division of Charities.
- Use net proceeds exclusively for educational, charitable, religious, fraternal or civic purposes, or for veterans' benefits.

Checklist for a Municipality Issuing a Poker Tournament Permit

Step One - Application Information

- The application includes the name and address of the organization.
- The organization is a veterans' organization, church or religious organization, fraternal or fraternal benefit society, educational or charitable organization, civic or service club, or other organization operated exclusively for non-profit purposes. (You may ask the organization to provide evidence of its non-profit status.)
- The organization has been actively functioning in the Commonwealth for at least the past two years.
- The application includes the names of three officers or members of the organization responsible for the event, two of whom have been officers or members in good standing for at least the past three months and one of whom has been an officer or member in good standing for at least the past two years.
- The application states how the net proceeds from the event will be used (limited to educational, charitable, religious, fraternal or civic purposes, or for veterans' benefits).

Step Two - Additional Requirements

- The event is being held in the city or town that is issuing the permit.
- The organization has not held more than three bazaars in a single calendar year.
- The organization is not holding beano/bingo or any other event on the day of the bazaar (excluding a raffle, which may be held simultaneously with a bazaar).
- The event does not last more than five hours.
- The organization has not had a raffle/bazaar permit revoked for a G.L. c. 271, § 7A, violation occurring within the past three years.
- The organization will have a uniformed police officer from the city or town where the event is held present during the tournament.

Step Three - Approval Process

- Upon the filing of an application, the clerk of the city or town in which the tournament will be held must determine that the application is in conformity with section 7A of Chapter 271.

- The clerk may require the applicant to produce a current list of its membership by name, address, telephone number and a description of the type and length of membership of each person in the organization.
- If in conformity with section 7A, the clerk forwards the application to the municipality's police chief for determination that the applicant is qualified to operate such a tournament. (A police department may not run CORI checks in connection with the application process, without express authorization from the Criminal History Systems Board.)
- If the police chief determines that the applicant is qualified, the chief endorses the application and returns it to the clerk.
- The clerk issues a permit valid for one year from the date of issuance.
- The clerk retains one copy of the approved application, and forwards a second copy of the approved application to the Commissioner of Public Safety.
- The clerk forwards a notice of issuance to the Lottery Commission.

Step Four - Reporting Process

- Within thirty days after the expiration of the permit, the organization must file two copies of a financial report with the clerk.
- The financial report shall set forth the number of raffles and bazaars held, the amount of money received, the expenses incurred, the names of the winners of prizes exceeding \$25 in value, net proceeds, and the uses to which the net proceeds were applied.
- The financial report must be certified by the three members who are responsible for the event and an accountant.
- The clerk keeps one copy of the financial report and forwards the other copy to the Commissioner of Public Safety.

Step Five - Denial/Revocation Process

- If the clerk determines that the application is not in conformity with the requirements of section 7A of Chapter 271, the clerk shall deny the application.
- If the police chief determines that the applicant is not qualified to operate a poker tournament, the police chief shall report that determination to the clerk, and the clerk shall deny the application.
- An application to renew a permit may be denied if the organization fails to file the required financial report.

- If a permit was issued based on inaccurate information and a change in the facts of an event make it illegal, the clerk may revoke the permit.
- At any point after being issued, the permit may be revoked for any violation of section 7A of Chapter 271. A new permit cannot be issued for three years after the violation.

Step Six - Appeals Process

- If an application is not acted upon within thirty days, or is denied, or is revoked for any reason other than a violation of section 7A, any person named on the application has ten days to petition for review in the district court having jurisdiction over the city or town in which the application was filed.
- The judge may direct that the permit be issued if there were no reasonable grounds for refusing such permit.
- If a permit is revoked because of a violation of section 7A, any person aggrieved by the action may file an appeal in the relevant district court within twenty days following receipt of notification of the revocation.