

PENNSYLVANIA VICE

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GOVERNMENT

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Let the Games Begin?

Debate over the definition of 'unlawful gambling' in pubs continues

With the NCAA Basketball Tournament having just ended and fantasy baseball just beginning, many of us have fielded offers from family, friends and colleagues to fill out a bracket and join their pool or pick fantasy baseball leagues.

Many of these activities, and a great deal of more serious NFL action, occur at local pubs.

Most informal gambling gets a wink and a nod from law enforcement — when it is harmless, officials tend to look the other way. But the pool, fantasy league, or even sweepstakes at your local pub are entirely different stories.

As licensed establishments, pubs are subject to the Pennsylvania Liquor Control Board regulations regarding on-premises self-sponsored events and contests. In order to run a tournament pool, the pub needs to tailor the terms to fit within these regulations. And these regulations are enforced by state troopers.

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This February, participants in a Super Bowl "block" pool run out of a Folcroft, Pa., tavern learned the hard way how the PLCB regulations and the Crimes Code can intersect.

The bar was conducting a \$125 per block pool and had collected over \$10,000 when agents from the State Police Bureau of Liquor Control Enforcement raided the bar, found its records regarding the pool and confiscated the money that had been collected. It is our understanding that the matter remains open; the bar could face administrative penalties for violating the PLCB regulations, and the individual participants could face misdemeanor criminal charges for gambling.

With significant gambling enforcement funding made available under the Pennsylvania Horse Race Development and Gaming Act, we expect that enforcement of illegal gambling will continue to expand in areas already under State Police jurisdiction.

SMALL PRIZES ONLY

The spirit of gambling enforcement carries over even to those contests where the participants do not have to put up money.

For example, a Hooters franchisee with 13 restaurants in four states wanted to run a contest last month where patrons would try to guess the NCAA tournament field.

They envisioned approximately 25,000 customers selecting which teams would be invited to the tournament and, if a customer guessed the entire field correctly, he or she would win \$100,000.

Although it seems both innocent and innocuous, the PLCB issued an advisory opinion that prohibited the franchisee from holding the contest, at least in its Pennsylvania establishments, solely because the prize was too big.

State law places significant limits on contests that take place at bars, restaurants with liquor licenses and other premises licensed by the PLCB. PLCB regulations insist that these contests be small in scale, limiting the prize for any contest to \$500. There is also a limit in the regulations that cap the total value of all prizes at \$5,000 in any seven-day period.

The \$100,000 Hooters grand prize easily exceeded the \$500 limit.

DON'T DRINK THAT

Size is but one constraint for licensed establishments considering contests.

For example, contest entry charges, if any, cannot pay for liquor, and buying alcohol cannot be a condition of contest entry. Ironically, no bar contests are allowed to involve the consumption of alcohol.

Dashing the hearts of college seniors across Pennsylvania, the PLCB in February provided an opinion regarding a request to hold a "beer pong" tournament at an unidentified central Pennsylvania bar.

For those who are not familiar, the PLCB describes beer pong as "a game in which players throw a pingpong ball across a table with the intent of landing the ball in a cup of beer at the other end. If the ball lands in the cup, the opponent must drink that cup of beer."

The PLCB description is silent as to the fate of the pingpong ball.

The bar owner noted in his PLCB request that other pubs in the area had advertised beer pong tournaments on the radio. He wanted to get in on the action, but also wanted to comply with regulations. That did not work.

The PLCB opinion clearly stated that “beer pong,” as the board understood it, was prohibited by the plain language of the regulations. The opinion did concede that if a “beer pong” tournament is played without the beer (and otherwise complies with the regulations), it would be permitted.

The PLCB has enforced regulations that require that, with limited exceptions for other licensed entities, all contests be “self-sponsored;” even nominal contests cannot be sponsored by unlicensed third parties, but must be paid for entirely by the licensed establishment.

An exception exists for contests sponsored by manufacturers, but licensed establishments are only allowed to be drop-off and pick-up points for contest entries — neither the drawings themselves nor any activities are allowed at the bars or distributors. Again, ironically, alcohol cannot be part of the prize.

In a recent advisory opinion, a sweepstakes sponsored by a major Irish brewery that offered as a prize a tour of Irish pubs was classified as something that could have been allowed, provided that the winners were not served beer while in the Irish pubs. If they drank the sponsor’s beer in the Irish pubs, the sweepstakes would have been illegal under Pennsylvania law.

Charities have another small exception to the PLCB “self-sponsored” regulation, provided that they comply with other Pennsylvania laws.

Charitable organizations that are qualified, approved by and registered with the Pennsylvania Department of State could sponsor an event at a licensed establishment. The charitable event, however, must be operated in ac-

cordance with the Solicitation of Funds for Charitable Purposes Act and, if applicable, the Local Option Small Games of Chance Act. The SGCA only permits five types of games: punchboards, pull-tabs, raffles, daily drawings and weekly drawings.

While designed to help charities, these efforts tend not to help the bars and restaurants hold significant contests, as the limitations on the value of prizes under the SGCA is generally consistent with, or more restrictive than, the PLCB regulations for “self-sponsored” contests.

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SCOPE OF UNLAWFUL GAMBLING

Self-sponsored contests also cannot involve “unlawful gambling” under the PLCB regulations.

Those regulations, however, do not define what is considered “unlawful gambling.” The PLCB also generally declines to provide an opinion on what constitutes unlawful gambling. Instead, the PLCB notes that unlawful gambling is a violation of the Pennsylvania Crimes Code, which also fails to define the term “unlawful gambling.”

The Commonwealth Court in 1975 proclaimed that unlawful gambling meant “gambling not specifically authorized by the commonwealth” but did not expressly define what constituted gambling.

Since 1983, this interpretation has been guided by the decision in *Commonwealth v. Two Electronic Poker Game Machines*, which provides the three elements of gambling: consideration or a fee to play, an element of chance and a prize or reward.

Following on a national craze, Texas Hold’em tournaments became much more prevalent in Pennsylvania. Advocates, building off of long-standing California law that considers poker a game of skill and not chance, argued that Texas Hold’em was a contest and not illegal gambling.

Last year, however, in *Commonwealth v. Dent*, the Commonwealth Court held that it was primarily a game of chance and thus not a game of skill. On March 23, the Supreme Court denied a petition for allowance of appeal, so, for the time being, *Dent* remains good law.

A number of bars nevertheless continue to employ Hold’em tournaments as major draws. The use is so widespread that the PLCB website now has a dedicated page explaining the local enforcement concerns for bars that run Hold’em tournaments.

The juncture of gambling regulations and the liquor regulations is complicated and often counter intuitive. That said, the advisory opinion process is a very useful option in navigating these regulations for clients. And, having reviewed the recent opinions, we are very excited about the next Kool-Aid pong tournament at our local pub. •