

STATE OF NEW YORK: LIQUOR AUTHORITY

Ability of a non-for-profit organization to conduct
a lawful raffle on a licensed premises

DECLARATORY
RULING
2012-01729

Alcoholic Beverage Control Law §106(6) provides that no on-premises licensee “shall suffer or permit” any gambling on the licensed premises. Since the Alcoholic Beverage Control Law does not contain a definition of “gambling”, the State Liquor Authority has, as a matter of practice, relied on the definition of “gambling” that is in the Penal Law. In the case of *Plato's Cave Corporation v. State Liquor Authority*, 68 NY2d 791(1986), the Court of Appeals upheld the Authority’s reliance on the Penal Law definition contained in Section 225.00(2). The Penal Law defines “gambling” as a person risking “something of value upon the outcome of a contest of chance or influence, upon an agreement or understanding” that the person will receive “something of value in the event of a certain outcome.”

Under the Authority’s interpretation of gambling, there is no distinction between professional (or criminal) betting and social (or casual) wagering. The Court of Appeals, in *Katz's Delicatessen Inc. v. State Liquor Authority*, 302 NY 286 (1951) has held that the friendly poker game for nominal stakes is considered gambling under the Alcoholic Beverage Control Law. Applying the Penal Law standard, the Authority has found the following activities to be considered gambling: card games; pools (for example, football pools); dice games; raffles; and pull tabs.

The Authority is in receipt of a request from Anthony J. Casale (of Casale Public Affairs) on behalf of a not-for-profit organization (hereinafter referred to as “the non-profit”) with respect to whether an on-premises licensee may permit the non-profit to sell raffle tickets on the premises when the non-profit controls all aspects of the sales and receipt of funds. As represented by Mr. Casale, the non-profit holds the requisite approval needed under state law to conduct the raffle.

According to Mr. Casale, the licensee is a sponsor of the raffle. The non-profit intends to market the raffle tickets in several ways. One of proposed methods

is to sell the tickets at the licensed premises. All aspects of the sales of the tickets, including distribution of the tickets, collection of the money, etc., would be handled by representatives of the non-profit. The licensee and its employees would not be involved.

For the purpose of this request, Mr. Casale does not appear to be contending that the raffle tickets would not constitute gambling. However, §106(6) does allow for certain gambling activity to take place “when duly authorized and lawfully conducted.” Those activities are: the sale of lottery tickets; playing of bingo or games of chance; and the operation of a simulcast facility or simulcast theater pursuant to the racing, pari-mutual wagering and breeding law.

Mr. Casale notes in his request that the non-profit has a license to conduct the raffle by the local government. Article 9-A of the General Municipal Law gives local municipalities the right to regulate the conduct of games of chance within the municipality.¹ Only certain organizations, such as bona fide religious or charitable organizations, are eligible to obtain a license to conduct such games of chance.² Those eligible organizations are allowed to conduct certain raffles without having to obtain a license.³ For purposes of this request, the Members of the Authority assume that the non-profit has been (or will be) issued the necessary permit or that it may lawfully conduct the raffle without obtaining the permit.

Through the General Municipal Law, the state has imposed minimum restrictions on the operation of games of chance. The local municipalities may add further restrictions but cannot remove any of the state restrictions.⁴ One of those provisions prohibits any entity other than the licensee holder from conducting the game of chance.⁵ The General Municipal law also prohibits the sale of any alcoholic beverage, other than beer, on the premises where a game of chance is being conducted.⁶ However, that restriction does not apply when the game of chance is a raffle.

¹ See General Municipal Law §187.

² See General Municipal Law §186(4).

³ See General Municipal Law §190-a. An organization eligible to obtain a license to conduct a game of chance can conduct raffles without a license if that organization derives net proceeds of less than \$5,000 from each raffle and derives less than \$20,000 from all raffles conducted during the calendar year.

⁴ See General Municipal Law §189.

⁵ See General Municipal Law §189(1).

⁶ See General Municipal Law §194(3).

Since it appears, based on the facts presented, that the raffle conducted by the non-profit is otherwise legal, it is the ruling of the Members of the Authority that the non-profit may sell raffle tickets and advertise the raffle in a licensed premises. This ruling does not address the extent to which a licensee may be involved in the sales or promotion of such a raffle.

The foregoing Declaratory Ruling was formally approved by the Members of the Authority at a Full Board meeting held on July 10, 2012.



Jacqueline Held
Secretary to the Authority