

# Advisory on Poker Tournaments

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## Advisory

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.

1. 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 nonprofit organizations are permitted to operate lotteries for fundraising purposes if they meet certain conditions and obtain a permit under section 7A of Chapter 271.

2. 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 nonprofit 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.”<sup>1</sup> 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.<sup>2</sup> 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 nonprofit 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 nonprofit 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 nonprofit purposes.

### **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 nonprofit 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 nonprofit organization and its event organizers to various penalties. Under section 7A of Chapter 271, bazaar permits may be immediately revoked, nonprofits 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 nonprofit 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.<sup>3</sup>

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.<sup>4</sup>

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

**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  
Non-Profit Organizations/Public Charities Division  
(617) 727-2200, ext. 1701

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

**Checklists**

[Checklist for Nonprofit Organizations Holding Poker Tournaments](#)

[Checklist for Municipalities Regarding Poker Tournaments](#)

## Endnotes

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

<sup>2</sup> 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.

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

<sup>4</sup> See *Commonwealth v. Sullivan*, 218 Mass. 281, 283 (1914).

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 nonprofit 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.