

## Charitable Festivals in Ohio

On repeated occasions, I am requested to render an opinion on the applicability of the new gambling law on games of chance. Because of the multiple inquiries, I thought it would be best to site an article that gives an overview to all the Councils as to the current status of the law regarding games of chance including, but not limited to Texas hold-em poker tournaments. In the Summer 2006 Ohio Bar Publication *Ohio Lawyer* section called "Bar Briefs", Michael E. Zatezalo of Kegler, Brown Hill and Ritter published a timely piece entitled "Charitable Festivals In Ohio *and the games people play*". Since it highlights the nuts and bolts of the law on Charitable Festivals, I quote the pertinent parts verbatim.

"In 1976, voters passed a constitutional amendment permitting charitable gaming in Ohio (ORC Section 2915.01). While charitable organizations have been permitted to operate games of chance at festivals in Ohio since the '70s, the exploding popularity of poker tournaments (poker defined as a game of chance in Section 2915.01) has caused law enforcement officials to take a closer look at what constitutes a festival under Ohio law.

Although Chapter 2915 of the Code was completely revised by House Bill 512 in late December 2002 and further revised in HB 95 (effective July 1, 2003) and HB 325 and Senate Bill 146 (effective September 30, 2004), the language regarding games of chance has remained substantially the same as it was prior to December 2002.

Section 2915.02(D)(1) of the Code permits charitable organizations as defined to conduct games of chance providing they comply with the following requirements:

- The games of chance are not craps for money or roulette for money.
- The charitable organization meets the definition of a charitable organization contained in ORC Section 2915.01.
- The charitable organization is and has received from the Internal Revenue Service a determination letter currently in effect stating that the organization is tax exempt from federal taxation under subsection 501(c)(3) of the Internal Revenue Code.
- The games of chance are conducted at festivals of the charitable organization for a period of four days or less, and not more than twice a year or for a period of five days or more, not more than once per year.
- The festival must be held on premises owned by the charitable organization for a period of no less than one year preceding the conducting of the games of chance; on premises leased from a governmental unit; or on premises that are leased from a veteran's or

- fraternal organization and owned by the organization for one year immediately preceding the conducting of the games.
- A veteran's or fraternal organization cannot lease its premises to a charitable organization for a festival if it has already leased the premises four times during the preceding year to charitable organizations for that purpose.
  - All of the money or assets received from the games of chance after the deduction only of prizes paid out must be donated or transferred to an organization which is a govern-mental unit that is tax exempt under subsection 501(c)(3) of the Internal Revenue Code.
  - The games of chance cannot be conducted during or within ten hours of a bingo game conducted for amusement purposes only.
  - No person can receive commission, wage, salary, reward, tip, donation, gratuity, or other form of compensation, directly or indirectly, for operating or assisting in any games of chance.

Since a license is not required to operate games, as a practical matter the enforcement of Ohio's laws with respect to festivals lays primarily with local law enforcement authorities. However, due to the recent national popularity of poker, Texas Hold-Em poker tournaments are being advertised and conducted all around the State of Ohio, most under the guise of a charitable festival. As a result of the proliferation of these poker tournaments (many of which were in clear violation of the ORC), the Ohio Attorney General's Charitable Law Section promulgated Policy 201, setting forth guidelines for conducting games of chance at festivals. Policy 201 and the guidelines are on the attorney general's website. While not legally binding and not equivalent to an official attorney general's opinion, local law enforcement officials are using the guidelines as a basis for determining the legality of the festivals being conducted in their respective jurisdictions.

To be considered a charitable organization, an organization must be a religious, educational, veteran's, fraternal, sporting, service, non-profit medical, volunteer rescue service, volunteer firefighter, senior citizen's, historic railroad educational, youth athletic, amateur athletic or youth park athletic organization (see ORC Section 2915.01(H)).

With respect to the payment of a supervisor, no person can be compensated directly or indirectly for operating or assisting in any games of chance. Therefore, whoever supervises the tournament cannot be paid.

Finally, in Policy 201 the Ohio attorney general's office has taken the position that in order to be considered a festival, the charitable organization must offer two activities in addition to games of chance and serving refreshments. The policy is not the equivalent of an attorney general's opinion and does not have the force of law, but local law enforcement officials have been using the policy as

a guideline. It remains to be seen as to whether the guidelines in the policy will be challenged.”

When considering charitable gaming activities, a Council should carefully review their “qualification as a charitable organization, make sure there are no additional policies or procedures promulgated by the attorney general's office, and to be completely safe, give local law enforcement agencies a briefing on the proposed event.”

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Knights of Columbus

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