



Texas Hold'em
THE OFFICE OF MASSACHUSETTS ATTORNEY GENERAL *Tom Reil*

CONSUMER PROTECTION

[Home Page](#) > [Consumer Protection](#) > [Consumer Advisories](#) > June 30, 2005

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 "dependant 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.

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

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:

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

⁴ 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 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

**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.