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April 23, 1990

The Honorable Doug Todd
State Senator
Capitol Complex, Senate Wing
Phoenix, Arizona 85007

Re: I90- 035 (R90-037)

Dear Senator Todd:

You have asked four questions concerning application of Arizona gambling statutes to the conduct of "casino night" games by charitable organizations raising funds for charitable purposes. Your request refers to our 1987 opinion concerning methods for lawfully conducting such games. See Ariz. Att'y. Gen. Op. I87-101, which describes, in detail, the format used to conduct "casino night" games. We will respond to your questions in order, following a brief explanation of I87-101.

The 1987 statutory revisions to the state gambling laws essentially made all gambling unlawful unless it came within a specific statutory exclusion. See A.R.S. §§ 13-3303 (Promotion of gambling), 13-3304 (Benefitting from gambling) and 13-3302 (Exclusions). Consequently, the "casino nights" games which you refer to are unlawful unless they are conducted in some manner which either is not gambling or falls within a statutory exclusion. Ariz. Att'y Gen. Op. I87-101.

Our 1987 opinion addressed two separate and distinct methods in which "casino nights" could be lawfully conducted. The first method is the "no consideration" method and the second method is the "raffle method," which is only available to bona fide tax exempt organizations which meet all the requirements of

A.R.S. § 13-3302(B). A.R.S. § 13-3302(B) currently provides:

- B. An organization which has qualified for an exemption from taxation of income under section 43-1201, paragraph 1, 2, 4, 5, 6, 7, 10, 11 may conduct a raffle that is subject to the following restrictions:
1. The nonprofit organization shall maintain this status and no member, director, officer, employee or agent of the nonprofit organization may receive any direct or indirect pecuniary benefit other than being able to participate in the raffle on a basis equal to all other participants.
 2. The nonprofit organization has been in existence continuously in this state for a five year period immediately before conducting the raffle.
 3. No person except a bona fide local member of the sponsoring organization may participate directly or indirectly in the management, sales or operation of the raffle.

In the "no consideration" method the charity must "resolve to give away the chips or scrip to anyone who requests them without requiring a donation or other consideration." Ariz. Att'y Gen. Op. 187-101. In this manner the conduct of the games would not constitute "gambling," which is defined, in pertinent part, as "an act of risking or giving something of value for the opportunity to obtain a benefit from a game or contest of chance of skill or a future contingent event...." A.R.S. § 13-3301(3) (emphasis added).

In the "raffle method," a qualified tax exempt organization as part of a raffle and in a manner meeting the criteria set forth in A.R.S. § 13-3302(B) may lawfully sell raffle tickets to play the games because "[t]he games merely serve to distribute and redistribute the chances of winning the raffle among the players." Ariz. Att'y Gen. Op. 187-101.

You asked whether a charity may "request" a donation from participants or limit the amount of chips or scrip that may be given to the "casino night" participants. As we stated in 187-101, a charity receives consideration for the conduct of gambling if it requires payment in exchange for chips or scrip to play casino games. Therefore, our opinion is that a charity may lawfully "request" a donation only if the organization clearly indicates: that it is seeking a donation and not

payment for chips or script; that the donor will receive the same amount of chips or script despite the size of the donation; and even if a person made no donation he will receive chips or script. Likewise, the organization may limit the number of chips or the amount of scrip a person receives so long as that limit applies to all persons and is not contingent in any manner on the size of the donation. When the "no consideration" method is used we cannot envision a circumstance when a charity could refuse to give a person who did not donate chips or script and still operate a lawful "casino night."

You also asked whether chips or scrip used in the "raffle" method have value and, therefore, constitute consideration paid for the conduct of gambling. As we indicated in I87-101, the "raffle" method is the conduct of "gambling" because the chips or scrip are given in exchange for payment of consideration. However, if all the conditions of A.R.S. § 13-3302(B) were met the conduct would not constitute unlawful gambling.

In response to your question whether a charity may contract with a person or company to conduct a "casino night" by the "raffle" method, we conclude that only a qualified tax exempt organization may conduct the games. The law specifically precludes anyone other than "a bona fide local member of the sponsoring organization [to] participate directly or indirectly in the management, sales or operation of the raffle." A.R.S. § 13-3302(B)(3) (emphasis added). Furthermore, such a member may not receive any direct or indirect pecuniary benefit from the conduct of the raffle. A.R.S. 13-3302(B)(1).

Finally, in response to your question whether an organization may rent equipment to conduct the "casino night" games, we conclude that section 13-3302(B) does not prohibit a bona fide agreement to rent such equipment. However, such an agreement may not be used to circumvent the provisions of section 13-3302(B) by permitting non-members to participate directly or indirectly in the management, sales or operation of the raffle nor may it be used to provide any indirect or indirect pecuniary benefit to a member of the organization. Consequently, rental arrangements which call for exorbitant fees or fees based upon a percentage of sales or receipts from conduct of the games would be unlawful as direct or indirect participation in sales or operation of the raffle. See Charnes v. Central City Opera House Association, Colo., 773 P.2d 546, 554 (1989) (holding that an arrangement designed to derive a profit from increased sales of liquor and food at a business establishment due to conduct of gambling constituted "direct or indirect participation in professional gambling."); People v. Wheatridge Poker Club, Colo., 569 P.2d 324, 328 (1977) ("We find no significant distinction between 'taking a cut of the pot' and

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charging an hourly chair rental fee which permits a player to engage in gambling. In both instances, the individual receiving the money is deriving a 'profit' from the gambling activity.").

Sincerely,



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