

March 24, 2017

March Madness & Your Liquor License

March Madness is upon us, and inseparable from the NCAA Basketball Tournament itself are its “brackets.” All over the country, it has become customary for fans to fill out their own tournament bracket, attempting to identify the winners of each round of games, for all 68 teams, until a national champion is crowned. In fact, it has become so ubiquitous that more money is wagered on the NCAA Basketball Tournament each year than the Super Bowl.

One of the more popular places to watch the games (and follow your bracket) is a local bar or brewpub. The purpose of this Legal Briefing is to discuss the legality of hosting bracket tournaments, in general, and specifically, at an establishment with a liquor license.

In a previous Legal Briefing, the definition of gambling under New York Law (contained in Section 225 of the Penal Law) and the necessary corollary discussion of “games of skill” versus “games of chance” was also discussed. For a more thorough mention of these issues, please refer to the Legal Briefing entitled “Gambling and New York Law: Skill v. Chance.”

In Declaratory Ruling 2011-02844, the New York State Liquor Authority (“SLA”) reminded that it borrows the definition of “gambling” from the Penal Law, and that this use has been upheld by the Court of Appeals in *Plato’s Cave Corporation v. State Liquor Authority*, 68 NY2d 791 (1986). Further, in the Ruling the Authority listed activities it considers gambling, including betting on sports (whether professionally or in casual pools at the establishment), card games, dice games, raffles, and pull tabs.

Later in Declaratory Ruling 2011-02844, the State Liquor Authority detailed the three-part test it uses to decide whether an activity constitutes gambling:

1. Is it a contest of chance?
2. Is the person giving something of value to participate?
3. Is there something of value being offered as a prize?

If the answer to all three questions is “yes”, then the activity is considered gambling and is prohibited by Section 106(6) of the Alcoholic Beverage Control Law (“ABCL”) (unless it is one of the listed exceptions). As mentioned, for a discussion on contests of chance, please see the Legal Briefing entitled “Gambling and New York Law: Skill v. Chance.”

The party that submitted the request in Declaratory Ruling 2011-02844 was seeking a determination as to whether its poker tournaments constituted impermissible gambling at licensed premises. The SLA declared that even though it still considers poker a game of chance, the activity was not gambling. This is because the players did not give anything of value to participate. In other words, they were playing a game of chance for the opportunity to win a prize, but there was no “buy-in.” Chips were handed out for free, all players received the same amount of chips, and players could not buy back in once they lost all of their chips. Because it was not gambling, it was permitted at the licensed premises, provided certain conditions were met.

The Authority went on to list those conditions as a guide not only to the party that requested the Declaratory Ruling, but for the general public. The conditions, which are listed below, are illuminating

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and can be thought of as a general guide to other games of chance being considered at a licensed establishment.

1. No fee, of any kind, is required to be paid by, or on behalf of, a contestant to participate in the game or tournament;
2. A contestant shall not be required to purchase anything from the licensee, or any other party, in order to participate in the game or tournament;
3. A contestant shall not be required to pay a fee to enter the licensed premises in order to participate in the game or tournament;
4. The price of food and beverages at the licensed premises during any game or tournament shall not be higher than the prices regularly charged by the licensee;
5. The licensed premises shall remain open to the public during any game or tournament with food and beverages available for purchase by non-contestants;
6. Each contestant shall be provided with the same number of poker chips and no additional chips may be purchased for use at the game or tournament;
7. No contestant shall have the ability to pay money to the licensee or any other party gain benefits not provided to all contestants;
8. Any wagers or bets are to be made using chips or other tokens supplied free of charge to contestants;
9. Items #1 through #8 shall be prominently displayed on signs publicly posted at the licensed premises and in written materials distributed to the contestants.

Therefore, if a holder of a liquor license conducted a March Madness tournament bracket in accordance with the nine conditions listed above, it is fair to conclude the bracket would likely not be prohibited by Section 106(6) of the ABCL. If not, it is fair to conclude it would be considered gambling by the SLA and subject the licensee to monetary penalties and potential license revocation.

Further evidence for the latter can be found in the New York State Law Revision Commission 2008 Report on the ABCL:

“We will review whether there should be an exception for special events pools, such as NCAA March Madness, the Super Bowl, the World Series and the like, in which the house takes no cut, there is a modest entry fee, and all the money collected is distributed to the pool participants.”

The Law Revision Commission was created by statute in 1934 to “examine the common law and statutes of the State and current judicial decisions for the purpose of discovering defects and anachronisms in the law and recommending needed reforms.” No changes to the ABCL have yet been instituted based on its recommendation.

If you have any questions about this Legal Briefing, please contact any attorney of our Firm at 585-730-4773.

This Legal Briefing is intended for general informational and educational purposes only and should not be considered legal advice or counsel. The substance of this Legal Briefing is not intended to cover all legal issues or developments regarding the matter. Please consult with an attorney to ascertain how these new developments may relate to you or your business.

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