GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL

DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE
REGULATION ADMINISTRATION
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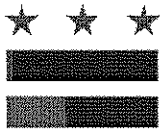

Legal Counsel Division

MEMORANDUM

TO: **Fred P. Moosally**
Director
Alcoholic Beverage Regulation Administration

FROM: **Wayne C. Witkowski**
Deputy Attorney General
Legal Counsel Division

DATE: **September 30, 2009**

SUBJECT: **Legal Opinion on Licensing Poker Operations in the District (ABC Establishments)**
(AL-09-591)

This memorandum responds to your request that this Division provide a legal opinion to the Alcoholic Beverage Regulation Administration (ABRA) in response to an inquiry dated August 12, 2009 from Jacob M. Leibowitz, Esq. on behalf of his client concerning the legality of a proposal to include poker in the proposed D.C. Social Poker Club (Poker Club).

Questions Presented

1) Whether the Poker Club proposal violates anti-gambling statutes of the District.

2) Whether there are any exceptions that would permit this type of operation to function in an ABC-licensed establishment under the law.

Conclusions

1) The Poker Club proposal to operate for-profit poker games in an ABC-licensed establishment is illegal under District law.

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2) There are no exceptions in District law that permit the ongoing operation of for-profit poker games in an ABC-licensed establishment.

Analysis

Poker is an illegal form of gambling in the District, and in most other jurisdictions in the United States. If the elements of prize, chance and consideration are present in any game, contest or promotion, the activity is considered an illegal lottery. *See Corporate Organization & Audit Co. v. Hodges*, 47 App. D.C. 460 (1918). No ABC-licensed establishment in the District may operate poker games for profit without a change to existing District law.

We consulted with Antar Johnson, Assistant General Counsel, Lottery & Charitable Games Control Board, about this issue. Mr. Johnson provided our Division with the following information[1] that he has previously provided in response to similar inquiries fielded by his office:

> D.C. Official Code §§ 22-1716 and 22-1717 provide that the only gambling allowed in the District of Columbia must be either *conducted* or *regulated* by the District of Columbia Lottery and Charitable Games Control Board [emphasis added]. Only licensed District charitable organizations are allowed to conduct games of chance, such as those traditionally found in casinos, by holding a Monte Carlo Night Party. (D.C. Official Code §3-1322.01.) However, even at a Monte Carlo Night Party, poker is not allowed (Title 30 DCMR §1602.2) [with the limited exception of licensed Texas Hold 'em tournaments], and it is illegal to operate, aid or abet an unlicensed Monte Carlo event in the District. *See* D.C. Official Code §§3-1323 and 3-1332.
>
> Pay-for-play poker tournaments are considered "gaming and/or setting up a gaming table" which is specifically prohibited by D.C. Official Code §§ 22-1704 and 22-1705, and is subject to imprisonment of up to 5 years. Additionally, pursuant to 18 USC §1302, the mere advertising of a gambling tournament in the newspaper is illegal.
>
> Poker tournaments in the District are illegal with the limited exception of a Texas Hold 'em tournament licensed by the DC Lottery to an eligible charitable organization and conducted pursuant District of Columbia Lottery and Charitable Games Control Board rules. *See* Title 30 DCMR §§ 1603.19 – 31.

If you have any questions about this memorandum, please do not hesitate to contact Anne R. Hollander, Assistant Attorney General, Legal Counsel Division, at 724-5533, or me at 724-5524.

WCW/arh

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[1] We have condensed the information provided by Mr. Johnson to address the specific questions posed by ABRA.