MEMORANDUM

State of Alaska
Department of Law

To: Neil Slotnick
Deputy Commissioner
Department of Revenue

Date: August 23, 2002

File No.: 663-03-0032

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From: Dan N. Branch
Assistant Attorney General

Subject: The legality of pull-tab sales by a charitable gaming operator in a liquor establishment.

You have asked whether a person who holds a charitable gaming operator's license and owns a bar or liquor store may use bar or liquor store employees and space to sell pull-tab games in that establishment without obtaining a vendor registration. We believe that the short answer is, no.

You also asked whether an operator might avoid the need for a vendor registration by renting pull-tab sales space in the liquor establishment and staffing the space with the operator's employees. We believe that the short answer to this question is, yes, provided that the cost of rent is the only expense connected with the liquor establishment passed on to the charitable gaming permittees by the operator.

Finally, you asked whether we see conceptual problems with the proposed regulation attached to your query that would authorize operators to conduct pull-tab sales in space rented from a liquor establishment. We do not.

Background

The Alaska Gaming Reform Act[1], enacted in 1988,[2] provides qualified charities and municipalities with limited opportunities to raise money for charitable purposes by selling pull-tab games.

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1 AS 05.15.

2 §36 ch 99 SLA 1988.

The law offers these entities four different ways to conduct the sales:

1) Municipalities or charities may obtain a permit to sell the games themselves.

2) The same entities may join together with others to sell pull-tabs under a multiple beneficiary permit.

3) Qualified organizations may contract with a professional gaming operator.

4) Qualified organizations may also contract with a bar or liquor store owner that holds a vendor registration to sell the organization's pull-tab games in the liquor establishment.

Alaska's legislature created the vendor option in 1993[3] to give charities a more lucrative alternative to placing their permit with operators.[4] Under the vendor option the charity permittee must receive an amount equal to 70 percent of the "ideal net"[5] of the pull-tab gains.[6] According to the information you provided, a charity can only expect to receive 30 percent of the adjusted gross income from the pull-tab sales through an operator.[7]

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[3] § 33 ch. 70 SLA 1993.

[4] *See* Sponsor Statement for CS HB 168 (FIN) at pp. 1-2 ("The bill….[p]rovides a reasonable licensing scheme that allows charitable organizations alternatives to placing their permits with for profit operators. Permittees who operate their own permits often double their net proceeds. The bill allows permittees to contract with vendors to sell pull-tabs. Under existing law, pull-tabs can be sold in bars and liquor stores, but current statute does not provide clear guidelines for direct third party relationships between permittees and these facilities."); *Alaska Housing Finance Corp. v. Salvucci*, 950 P.2d 1116, 1125, fn 10 (Alaska 1997)("[I]t is the sponsors we look to when the meaning of statutory words is in doubt.").

[5] "Ideal Net means an amount equal to the total amount of receipts that would be received if every individual pull-tab ticket in a series were sold at face value, less the prizes to be awarded for that series." AS 05.15.690(23).

[6] AS 05.15.188.

[7] "Adjusted gross income means gross income less prizes awarded and state, federal, and municipal taxes paid or owned on the income." AS 05.15.690(1).

Analysis of the Two Questions

The legislative ban on allowing licensed operators to use a vendor to sell pull-tabs is central to your questions. The ban is imposed with the following language, "An operator may not contract with or use a vendor to sell pull-tabs."[8] The plain meaning of the subsection places a ban on operators from ever transacting pull-tab business with a vendor, even when the establishment is owned by the operator. The words, "contract with" refer to the contract that a permittee must enter into with a registered vendor in order to have pull-tabs sold in the vendor's establishment.[9]

Placement of the words "or use" following "contract with" creates a ban preventing an operator from making any other use of a vendor to sell pull-tabs. The fact that an operator/liquor establishment owner is self-dealing does not matter. If the establishment meets the definition of "vendor" an operator may not use it to sell pull-tabs.

A "vendor" is a business establishment holding a beverage dispensary license or a package liquor store license (1) thats primary activity is not charitable gaming, (2) is engaged in the sale of pull-tabs on the part of a permittee, and (3) holds a business license.[10] An operator sells pull-tabs on behalf of permittees. When the operator uses a liquor establishment's employees and space to sell pull-tabs, the establishment qualifies as a vendor because the establishment is being used to sell pull-tabs.

These concepts provide the answer to your first question. An operator may not use a liquor establishment's employees and space to sell pull-tabs because that makes the establishment a vendor.

You also ask whether an operator may legally set up a pull-tab operation in rented space within a liquor establishment. This question turns on whether the liquor establishment becomes a "vendor" by merely being the operator's landlord.

Determination of whether the mere renting of sales space makes one engaged in the sale of pull-tabs requires further statutory interpretation. If the question were presented to a court for interpretation, the court's goal would be to give effect to the legislative intent with due regard for the meaning of the provision that the statutory

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8 AS 05.15.188(j).

9 AS 05.15.188(a).

10 AS 05.15.690(44).

language conveyed to others.[11] If the statute's meaning is clear and unambiguous, the party asserting a different meaning would have a heavy burden of demonstrating contrary legislative intent.[12]

The question, then, is whether the plain meaning of the phrase "engaged in the sale of pull-tabs for a permittee" clearly encompasses the mere renting of space to an operator who used it to sell pull-tabs. "Sale" means "the exchange of goods or services for an amount of money of its equivalent."[13] Space, not pull-tabs, is the commodity being sold in such a transaction. Renting space to one actually engaged in pull-tab sales does not qualify as a sale of pull-tabs. The plain meaning of "engaged in the sale of pull-tabs" does not encompass the mere renting of space to one who sells pull-tabs.

A liquor establishment that merely rents space to an operator for pull-tab sales is not engaged in the sale of pull-tabs and, thus, is not a vendor. The operator renting space from the liquor establishment may sell pull-tabs as an operator provided that the cost of renting the space is the only expense connected with the liquor establishment passed on to the permittees.

Analysis of Proposed Regulation

You also ask whether we see any problems with a proposed regulation (15 AAC 190.936) your agency drafted in order to allow operators to rent space in a liquor establishment to conduct pull-tab sales. Overall, the regulation is consistent with the gaming laws it is designed to implement. Your department has statutory authority to adopt it.

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11 *Gerber v. Juneau Bartlett Memorial Hospital*, 2 P.3d 74, 76 (Alaska 2000).

12 *Id.*

13 American Heritage Dictionary of the English Language, Third Edition. (1996).