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**ATTORNEY GENERAL'S ADVISORY ON POKER TOURNAMENTS**

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 "dependent 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.”<sup>1</sup> 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.<sup>2</sup> 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.

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<sup>1</sup> *Commonwealth v. Plissner*, 295 Mass. 457, 463-64 (1936).

<sup>2</sup> See *United States v. Marder*, 48 F.3d 564 (1<sup>st</sup> Cir. 1995). In *Commonwealth v. Club Caravan*, 30 Mass. App. Ct. 561 (1991), the court held that video poker games contain an element of skill, but did not rule whether skill or chance is the predominate feature.

**A. Qualifying Organizations**

Poker tournaments held pursuant to section 7A may only be operated by:

- (1) a veterans' organization chartered by the Congress of the United States;
- (2) a church or religious organization;
- (3) a fraternal or fraternal benefit society;
- (4) an educational or charitable organization;
- (5) a civic or service club; or
- (6) other clubs or organizations operated exclusively for non-profit purposes.

**B. Summary of Important Limitations**

Qualifying organizations wishing to run poker tournaments must:

- § have been organized and operating in Massachusetts for at least two years;
- § obtain a permit from the city or town where the event will be held;
- § limit cash awards to \$25 (there is no similar limitation on non-cash awards); and
- § hold no more than three bazaars per calendar year.

**C. Local and State Permits**

A qualifying organization must request and obtain the necessary permit from the city or town where the poker tournament will be held and must follow all of the legal requirements for holding such a tournament, including, among other things: being a non-profit functioning in Massachusetts for at least two years; identifying three qualified members who will be in charge of the event; and specifying how the net proceeds will be used for charitable purposes. A poker tournament cannot be held at the same time as a bingo or beano event. Attached is a checklist to assist 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.<sup>3</sup>

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.<sup>4</sup>

Poker tournaments must be structured to avoid the restrictions on bets and pools. For example, a tournament may be lawfully operated if:

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

<sup>4</sup> 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*

- G 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.
- G Actively functioning as a non-profit organization in the Commonwealth for at least the past two years.
- G 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.
- G Haven't conducted more than three bazaars in a single calendar year.
- G 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*

- G 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.
- G 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.
- G 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.
- G Establish a system of bookkeeping to keep complete financial records.
- G Maintain a list of all members who assist in the event's promotion and operation.
- G Establish and reduce to writing the house rules.

- G 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).
- G Limit individual cash prizes to \$25. (Prizes for merchandise, including gift cards, may be any value.)
- G Obtain a permit from the clerk of the city or town in which the event will be held.
- G Arrange for a uniformed police officer to be present during the event.
- G 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***

- G Ensure that the member in charge and all assistants are present and display proper ID.
- G Prohibit anyone under eighteen on that part of the premises where poker is played.
- G Ensure non-members do not participate in any aspect of the tournament's promotion or operation.
- G Conspicuously post house rules at each table, including no tipping of dealers.
- G Ensure that participants and spectators are not registering bets of money or anything of value upon the result of any hand or game.
- G Ensure that the event does not last longer than five hours.

***Step Four - After the Event***

- G Within ten days after the Bazaar, file a return with the Lottery Commission.
- G 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.
- G 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.
- G Use net proceeds exclusively for educational, charitable, religious, fraternal or civic purposes, or for veterans' benefits.

## QUESTIONS AND ANSWERS ON NONPROFIT GAMING EVENTS

### Who can hold a raffle or other gaming event?

Only certain kinds of non-profit organizations. This is an exception to the general law prohibiting gambling in the Commonwealth

An individual may not raffle private property for personal gain. A non-profit organization may purchase property from a third party and then conduct its own raffle using the property as a prize. In these circumstances the organization is responsible for ensuring that the raffle is a bona fide fundraising event.

### What kind of activities are regulated?

A raffle, in which a chance to win is sold to participants, and the winner or winners are selected from the chances actually sold, is regulated by law. Whenever money is charged for the ticket or chance, the raffle can be legally operated only by a non-profit organization. The funds received must be used only for the purposes specified in the law. If no money is charged, anyone can legally operate a raffle, and businesses often do so for promotional purposes. Consumer protection laws apply to all raffles.

*Casino and Las Vegas nights*, offering the opportunity to play games of chance, also are regulated and can be legally operated only by a non-profit organization. The funds raised must be used for specified purposes.

*Beano* (bingo) games are regulated under the law by the Lottery Commission. For information call (781) 849-5555.

The operation of a *lottery* by anyone other than the State Lottery Commission is illegal. A lottery is a game in which chances to win are sold but it is possible that no one will win (because the number drawn is not one which was sold).

### What kind of non-profit organization can hold raffles or sponsor Las Vegas nights?

A non-profit organization which has been in existence in Massachusetts for not less than two years and which is one of the following kinds:

- a) veterans' organizations;
- b) churches or religious organizations;
- c) fraternal or fraternal benefit societies, such as unions, Elks Clubs, etc.;
- d) educational or charitable organizations;

- e) civic or service clubs or organizations, such as the Jaycees; and
- f) clubs or organizations organized for pleasure, recreation, or other non-profit purposes, such as a garden club or a softball team.

The organization does not need to be incorporated.

Can a municipal or governmental organization, such as a public school or conservation commission, hold a raffle or sponsor a Las Vegas night?

No. These organizations do not fit within any of the authorized categories.

What is the law about the use of the funds raised?

The funds raised must be used for educational, charitable, religious, fraternal or civil purposes or for veterans' benefits.

Are there regulations about raffles?

Yes. All non-profit organizations must receive a permit from the town clerk and pay a tax of 5% of the gross proceeds derived from the raffle. This statute is in the Massachusetts General laws Chapter 271, Section 7A, "Conduct of Raffles and Bazaars." A copy of this section of the law is attached to this guide. In addition, there are Attorney General's Regulations Governing Raffles that apply if the value of the prize or prizes exceeds \$10,000 or the cost of a ticket is more than \$10. These regulations are also attached to this guide.

Are there regulations about how a Las Vegas night event should be operated?

Yes. They are set out in the Attorney General's Regulations Governing Bazaars ("bazaar" is the word used in the statute to describe Las Vegas or casino nights). These rules cover all events except those held at a facility which is licensed for beano; the rules for these events are issued by the Lottery Commission.

One of the most important rules for a Las Vegas night event is that all the operators of the games must be bona fide members of the sponsoring organization and the function must be supervised by a bona fide member. Attached to this guide you will find a copy of the Attorney General's Regulations Governing Bazaars and a copy of the applicable statute: Chapter 271, Section 7A, "Conduct of Raffles and Bazaars."

Is a permit needed? If so, how is it obtained?

A permit is necessary for both a raffle and a Las Vegas night event. Permits are issued by the clerk of the municipality in which the winning raffle number is going to be drawn or the event is going to be held.

The clerk will notify the Lottery Commission that a permit has been issued and the Commission will send you the necessary tax return forms. The clerk will provide you with the form needed to file a report with the clerk's office.

Who can sell raffle tickets?

Only the qualified members of the sponsoring organization. They cannot be paid for their time or effort.

Who can operate the games at a Las Vegas night?

Again, only the qualified members of the sponsoring organization. They cannot be paid for their time or efforts. Employees of the company furnishing the equipment or supplies for the event are prohibited from operating any of the games themselves.

How many raffles may be held during a year?

There is no limit. The permit from the municipality is good for one year from the date it is issued.

How many Las Vegas nights may be held during a year?

No more than three during any calendar year. The event can last no longer than five consecutive hours, and there cannot be more than one event during any single day.

# GENERAL LAWS OF MASSACHUSETTS

## PART IV. CRIMES, PUNISHMENTS AND PROCEEDINGS IN CRIMINAL CASES

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### TITLE I. CRIMES AND PUNISHMENTS

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#### CHAPTER 271. CRIMES AGAINST PUBLIC POLICY

##### Chapter 271: Section 7A Raffles and bazaars; conduct by certain organizations

Section 7A. In this section the following words shall have the following meanings:

""Raffle", an arrangement for raising money by the sale of tickets, certain among which, as determined by chance after the sale, entitle the holders to prizes.

""Bazaar", a place maintained by the sponsoring organization for disposal by means of chance of one or both of the following types of prizes: (1) merchandise, of any value, (2) cash awards, not to exceed twenty-five dollars each.

Notwithstanding any other provisions of law, raffles and bazaars may be promoted, operated and conducted under permits issued in accordance with the provisions of this section.

No organization, society, church or club which conducts a raffle or bazaar under the provisions of this section shall be deemed to have set up and promoted a lottery and nothing in this chapter shall authorize the prosecution, arrest or conviction of any person connected with the operation of any such raffle or bazaar; provided, however, that nothing contained in this section shall be construed as permitting the game commonly known as ""beano" or any similar game regardless of name.

No raffle or bazaar shall be promoted, operated or conducted by any person or organization, unless the same is sponsored and conducted exclusively by (a) a veterans' organization chartered by the Congress of the United States or included in clause (12) of section five of chapter forty of the General Laws; (b) a church or religious organization; (c) a fraternal or fraternal benefit society; (d) an educational or charitable organization; (e) a civic or service club or organization; and (f) clubs or organizations organized and operated exclusively for pleasure, recreation and other nonprofit purposes, no part of the net earnings of which inures to the benefit of any member or shareholder. Such organization shall have been organized and actively functioning as a nonprofit organization in the commonwealth for a period of not less than two years before it may apply for a permit. The promotion and operation of the raffle or bazaar shall be confined solely to the qualified members of the sponsoring organization and no such member shall receive remuneration in any form for time or effort devoted to the promotion or operation of such raffle or bazaar. All funds derived from any raffle or bazaar shall be used exclusively for the purposes stated in the application of the sponsoring organization which purposes shall be limited to educational, charitable, religious, fraternal or civic purposes or for veterans' benefits. An organization which meets the qualifications required by this section and which desires to conduct or operate a raffle or bazaar within the commonwealth shall apply for a permit to conduct raffles and bazaars from the clerk of the city or town in which the raffle will be drawn or the bazaar held. The application form shall be approved by the commissioner of public safety and shall include the name and address of the applicant, the evidence

on which the applicant relies in order to qualify under this section, the names of three officers or members of the organization who shall be responsible for the operation of the raffle or bazaar, and the uses to which the net proceeds will be applied. Unless otherwise established in a town by town meeting action and in a city by city council action, and in a town with no town meeting by town council action, by adoption of appropriate by-laws and ordinances to set such fees, a fee of ten dollars shall accompany each such application and shall be retained by the city or town, but in no event shall any such fee be greater than fifty dollars. Upon receipt of such application, the clerk shall determine whether it is in conformity with this section. If the clerk so determines, he shall forward the application to the chief of police of the city or town, who shall determine whether the applicant is qualified to operate raffles and bazaars under this section. If the chief of police so determines, he shall endorse the application and return it to the clerk, who shall forthwith issue a permit, which shall be valid for one year from the date of its issuance. The clerk shall retain a copy of the application and shall send a copy to the commissioner of public safety. If there is any change in the facts set forth in the application for a permit subsequent to the making of such application, the applicant shall forthwith notify the authority granting such permit of such change, and such authority shall issue such permit if the applicant is qualified, or, if a permit has already been issued and the change in the facts set forth in the application disqualify the applicant revoke such permit.

If an application is not acted upon within thirty days after it is submitted, or if the organization is refused a permit, or if a permit is revoked, any person named on the application may obtain judicial review of such refusal or revocation by filing within ten days of such refusal or revocation or within ten days of the expiration of such thirty day period a petition for review in the district court having jurisdiction in the city or town in which such application was filed. A justice of said court, after a hearing, may direct that such permit be issued, if he is satisfied that there was no reasonable ground for refusing such permit, and that the applicant was not prohibited by law from holding raffles or bazaars.

An organization issued a permit under this section shall within thirty days of the expiration of its permit submit a report on a form to be approved by the commissioner of public safety. Such form shall require information concerning the number of raffles and bazaars held, the amount of money received, the expenses connected with the raffle or bazaar, the names of the winners of prizes exceeding twenty-five dollars in value, the net proceeds of the raffles and bazaars, and the uses to which the net proceeds were applied. The organization shall maintain and keep such books and records as may be necessary to substantiate the particulars of such report, which books and records shall be preserved for at least one year from the date of such report and shall be available for inspection. Such report shall be certified to by the three persons designated in the permit application as being responsible for such raffle or bazaar and by an accountant. Two copies of said report shall be filed with city or town clerk. The clerk shall send one copy to the commissioner of public safety. Failure to file said report shall constitute sufficient grounds for refusal to renew a permit to conduct raffles or bazaars. The fee for renewal of such permit shall be ten dollars.

The authority granting any permit under this section shall immediately revoke the same for a violation of any provision of this section and shall not issue any permit to such permittee within three years from the date of such violation. Any person aggrieved by the action of such authority revoking such permit may appeal to the district court having jurisdiction in the city or town where the permit was issued; provided that such appeal shall be filed in such court within twenty days following receipt of notification by said authority. The court shall hear all pertinent evidence and determine the facts and upon the facts so determined annul such action or make such decision as equity may require. The foregoing remedy shall be exclusive.

Any organization conducting or operating a raffle or bazaar under this section shall file a return

with the state lottery commission, on a form prepared by it, within ten days after the raffle or bazaar is held and shall pay therewith a tax of five per cent of the gross proceeds derived from such raffle or bazaar.

All sums received by said commission from the tax imposed by this section as taxes, interest thereon, fees, penalties, forfeitures, costs of suits or fines, less all amounts refunded thereon, together with any interest or costs paid on account of such refunds, shall be paid into the treasury of the commonwealth.

Whoever violates any provision of this section or submits false information on an application or report required under this section shall be punished by a fine of not more than one thousand dollars or by imprisonment in the house of correction for not more than one year, or both.

No person who prints or produces tickets, cards or any similar article used in the conduct of a bazaar or raffle pursuant to a permit issued under the provisions of this section shall be subject to any penalty therefor, provided that a certified copy of such permit was presented to him prior to his undertaking to print or produce such tickets or cards.

No organization issued a permit under this section shall conduct more than three bazaars in any single calendar year nor shall such organization conduct more than one bazaar in any single calendar day. The operation of a bazaar shall be limited to five consecutive hours.

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