

State of California Department of Justice
Bureau of Gambling Control

FINAL STATEMENT OF REASONS
Article 8 Nonprofit Organization Fundraisers

HEARING DATE: January 7, 2008

SUBJECT MATTER OF PROPOSED REGULATIONS: Nonprofit Organization Fundraisers

SECTIONS AFFECTED: California Code of Regulations, Title 11,
Division 3, Article 8: Adding Sections 2080-
2116.

UPDATED INFORMATIVE DIGEST:

No changes to be made. The Informative Digest in the Notice of Proposed Rulemaking is incorporated as if fully set forth in this section.

Comments received and responses thereto: Comments were received at the public hearing, along with written comments during the 45-day comment period. A 15-day comment period was held on modified text from October 3, 2008 to October 20, 2008. The comments, oral and written, are summarized below in section order with Bureau responses. Where applicable, numbers correspond to issues and therefore not all comments begin with the number one.

COMMENT, Section 2082

Written Comment from David L. Fligor

"...Other methods of determining prizes are permissible."

RESPONSE TO COMMENT

The Bureau disagrees that Section 2082 is unclear or that the section creates a significant reduction in fundraising potential." The section follows guidelines set forth by statutory language including Penal Code section 337(e)(1), which defines controlled games. No change necessary.

COMMENT, Section 2082

Written Comment from Alan Titus on behalf of Artichoke Joe's

Definition is "inaccurate and incomplete." "All prizes must be donated" is ambiguous.

RESPONSE

By definition of nonprofit in the Business and Professions code 19986(h) eliminates the notion it could be a Gambling Establishment.

"All prizes donated" has been deleted from that section.

COMMENT, Section 2084(d)

Written Comment from Alan Titus on behalf of Artichoke Joe's

Additional criterion needed to prevent abuse from chapters conducting events

RESPONSE

The Bureau has added an additional criterion to this section: "the chapter must have a separate governing body **and budget**".

COMMENT, Section 2086(a)

Written Comment from Alan Titus on behalf of Artichoke Joe's

Lessee/Ownership question on form is insufficient.

RESPONSE

The Bureau disagrees with the comment. A Nonprofit Organization may own a facility and seek to rent or lease a facility to better accommodate the event. The ownership or lack of ownership by the Nonprofit Organization is moot. If a Nonprofit Organization finds it necessary to rent or lease a facility to conduct an event the exemption for rent paid as outlined in statutory language will prevail. No change necessary.

COMMENT, Section 2090(b)(1)

Written Comment from David L. Fligor

The Bureau should clarify that a fundraiser cannot be approved if the Nonprofit Organization previously held a fundraiser within the calendar year of the next proposed fundraiser event.

RESPONSE

The concern from Mr. Fligor is that if an Nonprofit Organization already completed an event and then applied for another event in the same calendar year it would be automatically denied. The Bureau recognizes that if an Nonprofit Organization submits an application in October 2008 for an event to be held in 2009 it would not be denied. The comment is overly technical. The Bureau conducts business in a rational manner therefore no change is necessary.

COMMENT, Sections 2102(c)

Written Comment from David L. Fligor

Any misconduct under the regulations or any other California gambling law will render an applicant ineligible for registration; this provision is vague.

RESPONSE

The Chief of the Bureau of Gambling Control reserves the right to deny or revoke an applicant from conducting a nonprofit fundraiser using controlled games at his or her discretion. The Bureau is charged statutorily with protecting the citizens of this State against unscrupulous and or criminal activity that results from the

conduct of gambling. Limiting the Bureau to the provisions of these regulations and the California Penal Code is unreasonable. No Change necessary.

COMMENT, Section 2110(c)

Written Comment from David L. Fligor

"...Single entry fee applies to each game or each type of controlled game."

RESPONSE TO COMMENT

The Bureau disagrees that Section 2110(c) is unclear. The section states "the nonprofit organization shall develop rules governing the type of controlled games to be conducted during the event." Re-buys are a typical component within poker tournaments and can be outlined in the rules developed by the Nonprofit Organization. No change necessary.

COMMENT, Section 2110(g)

Written Comment from David L. Fligor

"The Bureau should clarify the phrase 'Cash Prizes or Wagers.'"

RESPONSE TO COMMENT

Section 2110(g) is clear that cash prizes are prohibited. This supports the legislative intent to prohibit cash games from being conducted. The suggested comment would make the section more confusing and thus no change is necessary. Additionally, "All prizes must be donated..." was deleted in section 2082 in the 15-day change.

COMMENT, Sections 2114 and 2116

Written Comment from David L. Fligor

The Bureau should clarify that Nonprofit Organizations may delegate recordkeeping and reporting duties to gambling supply and/or service providers who are registered under section 2102.

RESPONSE

The Bureau believes that the responsibility to provide accurate recordkeeping falls on the Nonprofit Organization. Therefore the Bureau does not wish to clarify language that would allow a provider of gambling supplies and or services to complete, maintain or produce records from a nonprofit organization fundraiser where controlled games are used. This responsibility is borne on the Nonprofit Organization, not a provider of gambling supplies and or services and thus no change is necessary.

COMMENT, Section 2114

Written Comment from Alan Titus on behalf of Artichoke Joe's

Record reporting is not set forth clearly and is the regulation omits three categories of records to be kept in accordance with B&P Code section 19986(g).

RESPONSE

The Bureau has added (d) and (e) to section 2114 to keep in accordance with B&P Code section 19986(g). A Nonprofit Organization Fundraising Report Form has been created to gather the listed required information set forth in B&P Code section 19986(g).

COMMENT, **Sections 2082, 2084(d), 2086(a), and 2114**

Oral Comments from Alan Titus on behalf of Artichoke Joe's (See transcript from hearing).

RESPONSE

Regarding Mr. Titus' comment on omission of "consequence", Penal Code 330, illegal gambling misdemeanor gives the Bureau has the ability to deny registration to nonprofit organizations which do not follow the rules and regulations set forth. Additionally, section 2092 states cancellation of registration and ability to deny registration as consequences for nonprofits which do not abide by the law.

COMMENT, **Section 2114 (a)**

Written Comment from Alan Titus on behalf of Artichoke Joe's Subsection (a) requires records of the aggregate gross revenue from the operation, as opposed to the itemized list of gross receipts. This is completely inconsistent with the statute, which required an itemized, not an aggregate figure. An itemized figure is more complete, more detailed and for those reasons more reliable.

RESPONSE

The Bureau feels that it would be a burden on the Non-profit Organization to itemize the gross revenue. Events have one entrance fee and do accept cash at each game being played, so the organization would only be able to report the total revenue based on the entrance fee.

COMMENT, **Section 2114 (c)**

Written comment from Alan Titus on behalf of Artichoke Joe's Subsection (c) is revised to require record keeping of the "funds raised by the charitable organization accounting for 90% of the proceeds of the fundraiser. This language is not at all clear. All 100% of the revenue constitutes "funds raised by the charitable organization." This should be clarified. Even so, this subsection doesn't begin to satisfy item (2) in the statute, which requires that a list of recipients be kept.

RESPONSE

The Bureau has changed section 2114 (c) to read "The funds raised by the charitable organization accounting for the proceeds of the nonprofit organization in which controlled games were used."

The Bureau has added space to form BGC-SP 003 to provide a list of recipients of the net profit of the fundraiser and purpose of funds being used.

COMMENT, Section 2114 regarding prizes awarded

Written Comment from Alan Titus on behalf of Artichoke Joe's

Nowhere in the regulation is subsection (5) of the statute implemented at all. Nonprofits are not required to list the prizes awarded. The omission of this requirement from the regulation will result in lack of compliance with the statute.

RESPONSE

The Bureau has provided a TRUE/FALSE area on form BGC-SP 003 "Nonprofit Organization Fundraiser Report Form" under "Certification by Fiduciary on Behalf of Nonprofit Organization" for reporting individual prizes awarded exceeding a cash value of \$500. The Bureau feels that this meets the requirement made by the statute

COMMENT. Section 2114

Written comment from Alan Titus on behalf of Artichoke Joe's

Lastly, we note that the regulation, in its introduction states that it is adopted pursuant to section "19986 (e) and (g)." However, section 19986 (e) does not contain any record keeping or reporting requirements.

RESPONSE

The Bureau has added (d) and (e) to section 2114 to keep in accordance with "Pursuant to Business and Professions Code 19986 (g). A Nonprofit Organization Fundraising Report Form has been created to gather the listed required information set forth in B&P code section 19986 (g). 2116 reiterates the records retention and record keeping requirement under Business and Professions code 19986(g). 2114 requires reporting of items necessary for us to enforce the Act. The Bureau has the authority to visit nonprofit organizations and inspect items listed in 19986 (g). We find it unnecessary to have all items "reported", cumbersome and we can do our job without it. "e" does include nonprofit organization name, address, fiduciary, etc, which would identify information in (g), therefore pertinent.

COMMENT, Form BGC-SP-001

Written Comment from David L. Fligor

Attaching a signed lease agreement is problematic and impractical. 1) A lessee or lessor may be reluctant to sign a binding lease or rental agreement for a facility that will be used for a single fundraising event until the Nonprofit Organization has obtained approval from the Bureau for the fundraising event. 2) The lessor may refuse to lease a facility knowing that the lease agreement will be submitted with a form that may be releasable to the public. 3) ...The lease may contain a prohibition against disclosing the terms and conditions of the lease to the public. 4)

RESPONSE TO COMMENT

1) The Nonprofit Organization and the Bureau should work together to resolve issues as they arise. Signed lease agreements are necessary to determine the location of the event as well as ownership responsibility in the rented or leased property. The signed lease agreement is also necessary as Bureau staff must verify that 90% of the income from the event stays with the Nonprofit Organization and is not used to cover expenses such as rental or lease obligations. 2) All forms and attachments received by the Bureau are held in the strictest confidentiality. At the minimum, public dissemination of such documents would not commence without the guidelines of the Proposed Regulatory Action being followed. 3) The Bureau of Gambling Control should not be included in the definition of "public" The Bureau is a state agency within the Department of Justice and should be recognized as a law enforcement agency. 4). As stated previously, Bureau staff, in addition to verifying the location of an event need, must verify that 90% of the income from the event stays with the Nonprofit Organization and is not used to cover expenses such as rental or lease obligations. No Changes Necessary.

COMMENT, **Section 2114 (e)**

Written comment from Alan Titus on behalf of Artichoke Joe's Subsection (e) requires that a form be submitted to the Bureau for each fundraiser. This form would include date and location of the fundraiser, but does not include the hours of the fundraiser, despite that being required by the statute. This is an inconsistency.

RESPONSE

The Bureau preapproves each fundraiser and the hours of the fundraiser are captured on form BGC-SP 001, Application for Registration of Nonprofit Organization Fundraiser. This form is used to determine if the statute requirements are being met, prior to approval.

UPDATE OF INITIAL STATEMENT OF REASONS

The Initial Statement of Reasons is incorporated as if fully set forth in this section.

Required Determinations

TECHNICAL, THEORHETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS

The Bureau did not rely on any technical or empirical studies, reports or documents in proposing the adoption of this regulation.

LOCAL MANDATE

These regulations do not impose a mandate on local agencies or school districts.

REASONABLE ALTERNATIVES TO THE PROPOSED REGULATIONS AND REASONS FOR REJECTION THOSE ALTERNATIVES

The Bureau is not aware of any reasonable alternatives that would as effectively achieve the Bureau's regulatory purpose of registering nonprofit organizations and person or entities (defined by 19986(b) applications and achieving compliance in situations where nonprofit organization fundraising events have been requested.

REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESSES

The Bureau is not aware of any reasonable alternatives that would lessen any adverse impact on small businesses.

IMPACT ON PRIVATE PERSONS

The Bureau is not aware of any reasonable alternatives that would be more effective or as effective and less burdensome to private persons.

INCORPORATION BY REFERENCE:

BGC-SP. 001 (New 7/2007) Application for Registration of Nonprofit Organization Fundraiser

BGC-SP. 002 (New 6/2007) Application for Registration to Provide Gambling Equipment and/or Services at Nonprofit Organization Fundraiser

BGC-SP. 003 (New 09/08) Nonprofit Organization Fundraiser Report Form

IMPACT ON BUSINESS

The Bureau has made a determination that the proposed regulatory changes will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.