



# The Commonwealth of Massachusetts Massachusetts Gaming Commission

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## CHARITABLE GAMING

### MASSACHUSETTS GAMING COMMISSION REPORT PURSUANT TO St. 2011, c. 194, § 103 July 31, 2012

#### I. Background

The Expanded Gaming Statute, St. 2011, c. 194, devotes two sections to the subject of Charitable Gaming. The first is Section 16, an extensive section that creates G.L. c. 23K, the statute that creates the Gaming Commission and defines its duties and responsibilities. Chapter 23K, § 4(41) provides that

“The [gaming] commission shall have all powers necessary or convenient to carry out and effectuate its purposes including, but not limited to: . . . the power to regulate and enforce section 7A of chapter 271 relating to bazaars; provided, however, that nothing in this section shall limit the attorney general’s authority over public charities pursuant to the General Laws.”

Section 111 provides that G.L. c. 23K, § 4(41) becomes effective on July 31, 2012.

Section 103 is the second section of the new law that deals with charitable gaming. That section provides that

“Notwithstanding any general or special law to the contrary, the Massachusetts gaming commission shall analyze the laws relating to charitable gaming, raffles and bazaars in effect on the effective date of this act, including section 7A of chapter 271 of the General Laws. The analysis shall include a review of the efficacy of those laws and the need to update, redraft or repeal those laws. The commission shall report its findings and recommendations, together with drafts of legislation necessary to carry those recommendations into effect, by filing the same with the clerks of the senate and house of representatives and with the house and senate chairs of the joint committee on economic development and emerging technologies not later than April 1, 2012.”

Because the Commission was created on March 21, 2012, it did not have an opportunity to conduct the analysis or make the report by the April 1, 2012, deadline. Accordingly, by letter

dated April 19, 2012, the Commission's chair informed legislative leaders that the report would be filed on July 31, 2012. This is the promised report.

In preparing this report, the Commission has reviewed existing statutes and regulations governing charitable gaming, met on several occasions with representatives of the office of the Attorney General, the Massachusetts State Lottery, the Treasurer, and the Town Clerks' Association. The Commission also solicited comments on the operation of charitable gaming from members of the public, from members of the Town Clerk's Association and from representatives of charitable institutions throughout the Commonwealth. The Commission is very grateful for the assistance all of those groups provided.

## II. Facts

Charitable gambling in Massachusetts grosses approximately \$75 million annually, approximately \$18 million of which is retained by the sponsors of the gambling events. The gambling takes one of four forms. The first and by far the largest in terms of the amount wagered is beano, the local name for what elsewhere is known as bingo. In 2011, the latest year for which figures are available, \$38.8 million was wagered at beano games held throughout the Commonwealth. Of that sum, \$1.6 million was retained by the charitable sponsors, \$30.7 million was returned to players in the form of prizes and the balance was consumed by expenses and taxes. In 2011, 199 licensed beano games were conducted throughout the Commonwealth, typically on a weekly basis. Over the years, however, that number of beano games has been in steady decline.

Second, but closely allied, are charitable gaming tickets. These tickets are distributed by the Massachusetts Lottery (Lottery) and sold, almost exclusively, at beano games. The tickets, which typically sell for \$1, are called "pull tabs" because they have tabs on one side which, when opened, show whether or not the ticket-holder has won a cash prize. Like scratch tickets and other devices distributed by the Lottery, the cash prizes can be collected instantly from the ticket vendor at the beano game. In 2011, sale of charitable gaming tickets produced gross revenues of \$15.7 million, \$4.7 million of which was retained by the charities.

Raffles are the third form of charitable gaming and consist of a wide variety of events in which individuals purchase tickets for participation in a blind drawing to determine by chance which of the ticket holders will receive a prize. During 2011, raffles grossed \$19.6 million, \$11.3 million of which was retained by the charities.

Finally, bazaars, the statutory name for the "casino" or "Las Vegas" nights charitable organizations sometimes use as fundraisers, grossed \$1.4 million in 2011, \$578,000 of which was retained by the sponsoring charities. A chart showing the gross amounts wagered in all four forms of charitable gambling during 2011 is attached to this report as exhibit A.

The sponsors of the charitable gambling events are organizations that use the proceeds to support their charitable endeavors. They include churches, veterans groups, civic organizations, youth groups and many others. In many cases, the charitable gambling revenue generates the bulk of the funding available to the organization for carrying out their charitable works.

Somewhat different statutory criteria describe the charitable organizations that are eligible for a beano license and those that are eligible for raffle and bazaar licenses. "Any fraternal organization having chapters or branches in at least one other New England state, . . . any corporation organized under the provisions of chapter 180 [the statute governing charitable corporations], any religious organization under the control of or affiliated with an established church of the commonwealth and any veterans' organization incorporated or chartered by the Congress of the United States or listed in [G.L. 40, § 5 (12), an obsolete reference to] any volunteer, non-profit fire company or similar organization furnishing public fire protection, any voluntary association for promotion of the interests of retarded children, the Boston Firemen's Relief Fund, any volunteer, non-profit organization furnishing a public ambulance service, and non-profit athletic associations" are permitted by G.L. c. 10, §38, to have a beano license provided that they can demonstrate that they have been in existence for five years preceding their license application.

To obtain a lottery or bazaar license, applicants must show that they have been in existence for two years preceding their application and that they are "(a) a veterans' organization chartered by the Congress of the United States . . . ; (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; [or] (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."

All four forms of charitable gambling have their commercial counterparts. The Foxwoods casino, for example, advertises that it has "one of the largest bingo halls in the world," a 3,600 seat facility in Mashantucket, Connecticut. The charitable gambling tickets are comparable to scratch tickets sold by the Lottery and, except for extent of sales and size of the prizes, charitable lotteries are similar to the lotteries the Lottery itself conducts. And, as their names suggest, "casino" or "Las Vegas" nights host the kinds of games one finds in the typical casino.

### III. Regulatory framework

The current regulatory framework currently divides oversight of charitable gaming between the office of the Attorney General, the Lottery and local authorities. G.L. c. 10, §§ 37, 38 give the Lottery exclusive regulatory authority over beano games and charitable game tickets. Together, those forms of charitable gaming account for \$54.5 million, or 72%, of the total amount wagered on charitable gaming in 2011. Qualified organizations desiring to host a beano game must obtain a license from Lottery and the approval of the local mayor and city council or selectman or, in the case of Boston, the licensing board.

To carry out its regulatory responsibilities, the Lottery has a staff devoted to charitable gambling that includes auditors and inspectors who visit and audit beano games and the sale of charitable gaming tickets at least three times annually on an unannounced basis. In addition, the Lottery has a robust website (<http://www.masslottery.com/games/charitable-games/bingo.html>) containing helpful information about beano, charitable game tickets and other forms of charitable gaming.

By virtue of G.L. c. 10, § 39A, the Lottery also has regulatory authority over raffles and bazaars conducted by beano licensees. To carry out that authority, the Lottery has promulgated highly detailed regulations codified at 961 CMR 4.00 et seq. Those regulations cover all aspects of raffles and bazaars, including the mechanism for obtaining a raffle or bazaar license and the duties of each person who participates in the operation of a bazaar. Lottery officials estimate, however, that the bazaars conducted by beano licensees amount to only 3% of all bazaars conducted during the course of a given year.

The Attorney General's public charities division has general supervision over all public charities. See G.L. c. 12, § 8B et seq. See also G.L. c. 68, §19. Nested in that broad regulatory authority is the authority to regulate raffles and bazaars conducted by groups that do not hold a beano license. To carry out those responsibilities, the Attorney General has issued regulations dealing with raffles in which the value of the prizes exceeds \$10,000 or in which the cost of the tickets exceeds \$10. There are no Attorney General regulations governing other raffles. The Attorney General has also issued regulations governing the conduct of charitable bazaars. Those regulations differ from the bazaar regulations the Lottery has issued and, among other things, contain far less detail concerning the way in which those responsible for operation of a bazaar must carry out their duties. The Attorney General, like the Lottery, has a website devoted to charitable gaming issues. (<http://www.mass.gov/ago/doing-business-in-massachusetts/public-charities-or-not-for-profits/soliciting-funds/raffles-and-other-gaming-activity/>). No staff of the Attorney General routinely inspects or audits raffles or bazaars.

Day-to-day permitting and licensing of lotteries or bazaars is the responsibility of local authorities who operate in the following fashion. Under G.L. c. 271, §7A, any charitable organization desiring to conduct a raffle or a bazaar must submit an application to the clerk of the city or town where the event is to be conducted. The application must be on a form approved by the commissioner of public safety and, among other things, must show that the applicant is entitled to conduct the event. Upon receipt of the application, the clerk determines whether the application has been completed properly and whether it contains the information the statute requires, i.e., the name and address of the applicant, the evidence on which the applicant relies in order to show that it is qualified to obtain a raffle or bazaar license, the names of three officers or members of the organization who will be responsible for operation of the raffle or bazaar and the uses to which the net proceeds of the event will be applied.

If the application contains the requisite information, the clerk forwards it to the city or town's chief of police who is responsible for determining "whether the applicant is qualified to operate raffles and bazaars" under the statute. If the chief determines that the applicant is qualified, he or she returns the application to the clerk with an approving endorsement and the clerk issues the license. Licenses are valid for one year but may be renewed.

Within 30 days after the license expires, the license holder must prepare a report stating the number of raffles held during the licensed period, the net proceeds of the events and the uses to which the proceeds were put. Two copies of the report must be filed with the city or town clerk who sends one of them to the commissioner of public safety. License holders may conduct an unlimited number of raffles during the license period but are limited to three

bazaars during any one calendar year, none of which may operate for more than five consecutive hours.

In addition to the applications and reports just described, all organizations that conduct charitable gaming events must submit to the Lottery a written report regarding each event they conduct and, with the report, pay a tax. Beano, lotteries and bazaars are taxed at the rate of 5% of amounts wagered. Of that amount, 60% of the tax on beano goes to the General Fund and the balance goes to the Lottery to cover the expenses of regulating beano games. Sale of charitable game tickets is taxed at 10% of the gross proceeds. A maximum of 50% of that sum is payable to the Lottery for the expenses of purchasing and selling the tickets and the balance goes to the Local Aid Fund. The taxes on lotteries and bazaars go to the General Fund.

As noted earlier, beginning on July 31, 2012, the Gaming Commission will have regulatory authority over bazaars held under the authority of G.L. c. 271, §7A. At that point, three state entities will be responsible for some portion the oversight given to charitable gaming. Bingo and charitable game tickets will remain under the exclusive authority of the Lottery, which will also regulate raffles and bazaars conducted by beano licensees. Raffles conducted by charitable organizations that do not hold a beano license will be regulated by the Attorney General. Bazaars conducted by charitable organizations that do not hold a beano license will be regulated by the Gaming Commission, though its regulation will be subject to any regulatory authority the Attorney General exercises pursuant to her general supervisory powers over public charities. Regardless of who regulates the charitable events, those responsible for each event will continue to file tax returns with the Lottery.

#### IV. Substantive issues

During the course of its inquiry, the Commission received a number of comments dealing with substantive issues that affect charitable gambling. Among those was a suggestion that small lotteries, those run by PTAs, and local school athletic booster clubs, playground associations and other groups that may have no formal organization but provide assistance to establish community organizations, ought to be able to conduct a lottery even if they are not a charitable organization registered with the Attorney Generals Public Charities division and ought not to be required to comply with all of the registration and tax requirements applicable to other raffles if there gross wagering revenues are small.

Other suggestions were to the effect that so-called 50/50 raffles, highly popular raffles in which the winner takes 50% of the total amount wagered and the charitable organization retains the other 50%, ought to be specifically permitted by statute in order to remove any doubts about their legality. Reconciliation of inconsistent prize provisions among the different forms of charitable gambling was likewise recommended by several commentators.

Gaming equipment suppliers suggested that they should be authorized to conduct a casino or Las Vegas night for charitable organizations, in the process taking care of all record-keeping and regulatory filings, and not be limited, as they presently are, simply to supplying equipment for use at the event by the organization's members. Others opposed that suggestion. Indeed, some opponents went further, urging that a statutory provision be created that permitted any

local jurisdiction desiring to do so to prohibit all charitable gambling activities within its borders.

At present, the Commission takes no position on any of those recommendations. Its primary focus is on the regulatory structure for charitable gambling. As discussed in the next section, the Commission believes that that structure should be substantially streamlined and that the streamlining should be the first order of business insofar as charitable gambling is concerned. To be sure, substantive reforms should be considered but only in the context of a streamlined regulatory environment so that the impact of those reforms on the resources necessary for oversight can be carefully thought through in a concrete context.

## V. Recommendations

In the course of preparing this report, the Commission has conferred extensively with representatives of the Attorney General, Treasurer and the Lottery. As a result of those conversations and its own analysis, the Commission is convinced that regulation of charitable gaming ought to be streamlined and consolidated in a single authority. Moreover, for the following reasons, the commission recommends that the Lottery should be the single regulating authority.

Several considerations underlie that recommendation. First of all, the Lottery already regulates, exclusively, 73% of all charitable gambling that takes place in the Commonwealth. The regulation is effective and is conducted by knowledgeable state employees who have been engaged in the regulatory process for the last 40 years. It makes little sense to move that smoothly functioning regulatory regime to a new location.

Secondly, the taxation responsibilities cannot be moved out of an area under the Treasurer's general oversight. Even if other regulatory aspects of charitable gambling were moved to another location, therefore, the taxation function, with the associated reports, would have to stay approximately where it is now.

Thirdly, the staff of the Lottery, if appropriately augmented by some additional resources, possesses the experience to regulate and oversee the two forms of charitable gambling it does not now regulate. Indeed, the bazaars it does not now regulate are indistinguishable from the bazaars it does regulate. Raffles are similar to the kinds of events with which the Lottery is thoroughly familiar.

The recommended transfer of regulatory authority to the Lottery will require a number of steps. Obviously, the first is new legislation that will consolidate regulatory authority in the Lottery. In addition to transferring authority, that legislation should address the substantive issues discussed above that have been raised during the course of the Commission's examination of charitable gaming.

The second step will involve the drafting of new regulations to support the new legislation. The foundation for those regulations currently is in place in the form of regulations the Attorney General and the Lottery have independently issued. Those regulations, however,

require examination, consolidation and streamlining. Once the statute and regulations have been promulgated, a program and process must be undertaken to familiarize city and town clerks and police chiefs, whose advice should be solicited throughout the drafting process, with the new regulatory environment. Finally, a similar program and process should be undertaken to educate the public, and particularly the charitable gaming community, about the changes.

The Commission believes that the legislation and regulations necessary to effect the changes can be drafted and delivered to you by the end of calendar year 2012 and that, depending on your schedules and legislative calendars, the statutory changes you elect to make could become effective by July 1, 2013. In drafting the statutory recommendations and the regulations to support them, the Commission will again confer with representatives of the Attorney General, the Treasurer and the Lottery.

In the interim, to avoid unwarranted disruption of a regulatory process already familiar to city and town clerks, police chiefs and the charitable gaming community, the Commission intends to leave in place the existing Attorney General regulations regarding bazaars governed by G.L. c. 271, § 7A, and to issue a notice so stating.