

## **TEXAS HOLD 'EM EVENTS IN LICENSED ESTABLISHMENTS**

The popularity of televised Texas Hold 'Em events has prompted inquiries regarding the holding of Texas Hold 'Em events in licensed establishments.

The discussion which follows is intended to provide general guidance only. The following discussion is not, and is not intended to be, a complete legal analysis of the statutes and court decisions which pertain to gambling in New York State.

Generally speaking, gambling occurs where the player parts with something of value in connection with the player's participation in a game of chance for a prize. Three elements are required: the player's parting with consideration (something of value) in connection with the playing of a game of chance for a prize.

As it is normally played, "Texas Hold 'Em" (also known as "Hold 'Em") is a seven-card poker game where players wager money against each other on the strength of their hands by placing bets into a common pot, which is won by the player with the strongest hand at the conclusion of play. The course of play is as follows:

In Hold 'Em, players receive two downcards as their personal hand (holecards), after which there is a round of betting. Three boardcards are turned simultaneously (called the "flop") and another round of betting occurs. The next two boardcards are turned one at a time, with a round of betting after each card. The boardcards are community cards, and a player may use any five-card combination from among the board and personal cards. A player may even use all of the boardcards and no personal cards to form a hand (play the board).<sup>1</sup>

Normally, a person playing Texas Hold 'Em is gambling, since all three elements of gambling are present: consideration (the bets), chance (the random deal of the cards), and prize (the common pot).

The Alcoholic Beverage Control Law forbids an alcoholic beverage license holder to suffer or permit *any* gambling on the licensed premises [ABC Law §§ 105(22), 106(6)]. The Alcoholic Beverage Control Law's prohibition against gambling on the licensed premises is very broad.

Gambling in a licensed establishment is prohibited even where the license holder does not make a profit from permitting the game of chance to take place. To sustain a gambling charge against a license holder, it is not necessary to prove that the licensee took a "cut" from each pot or otherwise collected a fee from the players for providing the place where gambling was conducted.

A license holder who, on the licensed premises, plays as an equal participant in a purely social penny-ante game with friends also violates the Alcoholic Beverage Control Law's prohibition against suffering or permitting gambling. The gambling prohibition is violated whether such game occurs during or after business hours, or whether such game occurs in the public area or a private office of the licensed establishment.

### Specific Types of Texas Hold 'Em Event Promotions

#### LICENSEE'S PAYMENT TO A PROMOTER FOR THE EVENT

It has been asked:

1. In connection with the holding of a "Texas Hold 'Em" event at which one or more prizes will be awarded, is the prohibition against the permitting of gambling on the licensed premises violated where the licensee pays money to a promoter for services and/or products, but where the promoter does not accept any money directly from the patrons?

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<sup>1</sup> Robert Ciaffone, "Robert's Rules Of Poker" (<http://www.diamondcs.net/~thecoach/RobsPkrRules3.htm>). Robert Ciaffone is a regular columnist for Card Player Magazine ([www.cardplayer.com](http://www.cardplayer.com)).

The answer to this question is “YES”. A license holder’s payment of money to the promoter of a Texas Hold 'Em event constitutes, on behalf of the patrons, the payment of something of value in connection with the patrons’ participation in a game of chance for prizes.

The argument advanced in support of the supposed legality of the promotion described in Question No. 1 is that – because each patron has not *directly* paid the promoter for the right to play in the game of chance for a prize – each patron has not paid consideration, and therefore gambling has not been established.

The foregoing argument ignores the fact that payment for the patrons’ right to participate in the game of chance and to win a prize is being made by the licensee to the promoter on the patrons’ behalf. The game of chance and the award of prizes would not take place without the consideration paid by the licensee on behalf of the patrons, which payment secures the patrons’ right to participate in the game.

For example, a tavern licensee who permitted a promoter to run a Texas Hold 'Em event on the licensed premises – in connection with which event the promoter (1) directly accepted an entry fee from each playing patron, (2) operated the game of chance for all of the fee-paying players, and (3) awarded prizes to the winning players – would clearly be suffering or permitting gambling in violation of ABCL § 106(6).

A licensee may not affirmatively involve himself in gambling by paying what, in practical terms, is the entry fee for the participation of all players in a game of chance for prizes. The licensee’s payment of money to the promoter constitutes payment of the consideration required for the patrons’ participation in the game of chance for prizes, and violates the prohibition against the sufferance or permission of gambling on the licensed premises, in violation of ABCL §§ 105(22) or 106(6).

#### LICENSEE’S ACCEPTANCE OF MONEY FROM PATRONS IN CONNECTION WITH THE EVENT

It has been asked:

2. In connection with the holding of a “Texas Hold 'Em” event at which one or more prizes will be awarded, is the prohibition against the permitting of gambling on the licensed premises violated where the licensee accepts from or on behalf of a player payment for chips used in the playing of the game, an admission fee, an entry fee, a cover charge, a seat rental fee, food and drink, and/or any other product or service?

The answer to this question is “YES”. The Courts of New York State have consistently held that the payment of money in connection with a game of chance for a prize constitutes the conduct of an illegal lottery. In many such cases, the Courts have explicitly rejected the argument – advanced on behalf of the recipient of the payment – that the entirety of the money paid should be considered as payment for a non-gaming product or service, and that no part of the money paid should be regarded as consideration for participation in a game of chance for prizes.

Where a patron’s participation in a Texas Hold 'Em event is not formally and explicitly conditioned upon the patron’s payment of money for poker chips, a cover charge, an admission fee, a seat rental fee, or an entry fee, it will be argued on behalf of the supposed legality of such an event that the patron is playing at the game of chance “for free”. With respect to a patron’s food and drink orders, it will be contended that the entirety of any money accepted by the licensee from the patron should be considered as payment for the food and drink alone, and that no part of the money paid should be regarded as consideration for participation in the game of chance for prizes. This argument ignores the underlying purpose of the event and a number of judicial decisions which have held otherwise.

A licensee who features a Texas Hold 'Em event does so with the expectation of profit: that patrons will attend and spend money for food and drink (and any other available products and services) while playing at the game of chance for prizes. The fact that a Texas Hold 'Em event takes place over a number of hours provides assurance that players in the game will be parting with money for food and drink while taking part in the game of chance. Because the “free” game of chance for prizes is a vehicle by which the licensee will obtain money from patrons playing the game, all of the elements of the exchange between patron and licensee must be taken into account.

Patrons who visit the premises in order to take part in the “free-to-the-patron” Texas Hold 'Em event, to the extent they do purchase food and drink, are not merely purchasing food and drink. Such patrons are paying for food or drink *at a Texas Hold 'Em event*. If the Texas Hold 'Em event were not furnished, there would be no reason for the patron-player to attend and purchase the food and drink. The patron's participation in the game of chance for prizes together with the patron's receipt of food and drink are benefits the patron receives in consideration for the money surrendered by the patron to the licensee. The entire exchange must be taken into account.

Money for food and drink paid by a patron at a Texas Hold 'Em event is money for *both* the food-and-drink *and* the patron's participation in the Texas Hold 'Em event. Such payment of money constitutes consideration for the game of chance and the possibility of a prize, and violates the prohibition against the sufferance or permission of gambling on the licensed premises, in violation of ABCL §§ 105(22) or 106(6).

DIFFICULTY OF LEGALLY CONDUCTING OR PERMITTING THE CONDUCT OF A TEXAS HOLD 'EM EVENT  
IN A LICENSED ESTABLISHMENT

The answers to foregoing questions indicate that the conduct of a Texas Hold 'Em event in a licensed establishment is likely to constitute the sufferance or permission of gambling on the licensed premises, in violation of ABCL §§ 105(22) or 106(6).

It is strongly suggested that a licensee consult with an attorney before proceeding with the conduct of any Texas Hold 'Em event upon the licensed premises.