

01-076

**CRIMES AND OFFENSES GENERALLY: CRIMES INVOLVING
MORALS AND DECENCY – CHARITABLE GAMING.**

Qualified organization authorized to remove proceeds from pull tabs sales from its gross receipts is exempt from permit requirement, provided annual gross receipts resulting from charitable gaming do not exceed \$25,000. Charitable Gaming Commission must enforce audit, inspection and enforcement requirements of charitable gaming statutes that are not predicated on organization's gross receipts. Charitable gaming statutes do not restrict organization's use of proceeds from pull tabs games.

The Honorable Donald L. Moseley
Secretary of Administration
August 30, 2001

You inquire regarding the enactment of § 18.2-340.26:1 of the *Code of Virginia* by the 2001 Session of the General Assembly,¹ a portion of the statutes in Article 1.1:1, Chapter 8 of Title 18.2, relating to charitable gaming. You first ask whether qualified gaming organizations that sell pull tabs in private social quarters are required to maintain a valid permit issued by the Charitable Gaming Commission² as a prerequisite to selling pull tabs.

Section 18.2-340.26:1 provides:

A. Pull tabs ... used as part of a raffle as defined in § 18.2-340.16 may be sold only upon the premises owned or exclusively leased by the organization and at such times as the portion of the premises in which the pull tabs ... are sold is open only to members and their guests.

B. The proceeds from pull tabs ... used as a part of a raffle shall not be included in determining the gross receipts for a qualified organization provided the gaming (i) is limited exclusively to members of the organization and their guests, (ii) is not open to the general public, and (iii) there is no public solicitation or advertisement made regarding such gaming.

Except as provided in § 18.2-340.23, organizations are required to obtain a permit from the Charitable Gaming Commission before conducting any charitable game.³ "Charitable games" are "those *raffles* and games of chance explicitly authorized by [Article 1.1:1]."⁴ Pull tabs sold pursuant to § 18.2-340.26:1 are forms of "raffles." Consequently, unless exempted by § 18.2-340.23, organizations that conduct pull tab games pursuant to § 18.2-340.26:1 must obtain a permit from the Commission before conducting such games.

Section 18.2-340.23(A) provides that "[n]o organization that reasonably expects ... to realize gross receipts of \$25,000 or less in any twelve-month period shall ... notify the Commission of its intention to conduct charitable gaming ... or ... comply with Commission regulations." "Gross receipts," as used in Article 1.1:1, means "the total amount of money received by an organization from charitable gaming before the deduction of expenses, including prizes."⁵ I am advised that the majority, if not all, of the games offered by organizations that sell pull tabs gross more than \$25,000 per year.⁶

I can find no basis upon which to conclude that § 18.2-340.26:1 permits the proceeds of these games to be included in the organization's gross receipts for some purposes, but not for other purposes. Accordingly, I must conclude that, by removing the proceeds from pull tabs in determining the gross receipts from charitable gaming conducted under the conditions specified in § 18.2-340.26:1, an organization is exempt from the permit requirement of § 18.2-340.25, provided the gross receipts' annual results still do not exceed \$25,000.

You next ask whether qualified gaming organizations that sell pull tabs in private social quarters are required to meet the recordkeeping requirements of the Charitable Gaming Commission and are subject to audit, inspection and enforcement by the Commission.

An organization that conducts charitable games under the conditions specified in § 18.2-340.26:1(B) will not be exempt from all the charitable gaming statutes, even though the organization is exempt from the permit requirements of § 18.2-340.25. Section 18.2-340.23(A) provides that any organization that reasonably expects to realize gross receipts' annual results of \$25,000 or less is not required to "(i) notify the Commission of its intention to conduct charitable gaming, (ii) file a resolution of its board of directors as required by subsection B, or (iii) comply with Commission regulations." Section 18.2-340.23(C) provides that nothing in the statute prevents the Commission from conducting any investigation or audit it deems appropriate to ensure an organization's compliance with Article 1.1:1 and any applicable Commission regulations.

Although, in this instance, the Commission's regulations will not be applicable, those portions of Article 1.1:1 with which compliance is not predicated on the organization's gross receipts will apply, and the Commission is not divested of its authority to enforce those provisions. Section 18.2-340.30(A) requires each qualified organization to keep a record of its receipts from charitable gaming and its disbursements related to such operation. The organization must file annual reports with the Commission and may be required, by regulation of the Commission, to file more frequent reports.⁷ Section 18.2-340.23(B) exempts volunteer fire departments and rescue squads and their auxiliaries from the required financial reporting requirements and from the payment of audit fees; however, it requires them to obtain an "exempt status" certification from the Commission prior to conducting charitable gaming and to file a resolution of their board of directors, at such time as may be required by the Commission, stating that the organization has complied with Article 1.1:1. Organizations exempt under § 18.2-340.23(A) are not required to file the resolution and are exempt from the Commission's regulations. Should any such organization's actual gross receipts' annual results exceed \$25,000, however, the Commission may require it to file the report specified in § 18.2-340.30. As the Supreme Court of Virginia has noted, a basic rule of statutory construction is that, in considering the object and purpose of a statute, a reasonable construction should be given to promote the end for which it was enacted.⁸ That which is necessarily implied in a statute must be included to effect the purpose of that statute.⁹

Furthermore, except as provided in § 18.2-340.23, all reports filed pursuant to § 18.2-340.30 are subject to audit by the Commission, and the Commission may prescribe an annual audit fee based on a percentage of the organization's gross receipts from charitable gaming.¹⁰ Because the proceeds from pull tabs are not included in determining the organization's gross receipts from charitable gaming, they would not be included in calculating the audit fee due from those organizations. If the organizations conducted no other charitable games, no audit fee could be prescribed, though the Commission would retain the authority to conduct an audit. There is no corresponding exemption from the requirements regarding the records that must be kept.¹¹

Although the organizations conducting the gaming limited by § 18.2-340.26:1 would be exempt from Commission regulations, the powers and duties of the Commission specified in § 18.2-340.18 continue to apply to such organizations. "The Commission is vested with jurisdiction and supervision over all charitable gaming authorized under [Article 1.1:1]."¹² Its powers include "free access to the offices, facilities or any other place of business of any organization, including any premises devoted in whole or in part to the conduct of charitable gaming," and they "may enter such places or premises for the purpose of carrying out any duty imposed by

[Article 1.1:1], securing records required to be maintained by an organization, investigating complaints, or conducting audits."¹³ Furthermore, "[t]he Commission may compel the production of any books, documents, records, or memoranda of any organizations or supplier for the purpose of satisfying itself that [Article 1.1:1] and its regulations are strictly complied with."¹⁴ The Commission continues to possess the authority to "issue subpoenas for the attendance of witnesses before it, administer oaths, and compel production of records or other documents and testimony of such witnesses whenever, in the judgment of the Commission, it is necessary to do so for the effectual discharge of its duties,"¹⁵ although it may compel only a person "holding a permit to file with the Commission such documents, information or data as shall appear to the Commission to be necessary for the performance of its duties."¹⁶ In addition, "[t]he Commission may enter into arrangements with any governmental agency of this or any other state or any locality in the Commonwealth for the purposes of exchanging information or performing any other act to better ensure the proper conduct of charitable gaming."¹⁷ There appears to be no limitation on the power of the Commission to conduct such audits, in addition to those required by § 18.2-340.31, as it deems necessary and desirable, and the Commission may, of course, continue to report any alleged criminal violation of Article 1.1:1 for appropriate action by the local Commonwealth's attorney.

Your final inquiry is whether qualified gaming organizations are permitted to use the proceeds from the sale of pull tabs in private social quarters for purposes other than those permitted in Article 1.1:1.

Section 18.2-340.26:1(B) expressly provides that the proceeds from the games that satisfy its conditions "shall not be included in determining the gross receipts for a qualified organization." Gross receipts from charitable gaming may be used only as prescribed by statute.¹⁸ In addition, a portion of the organization's gross receipts must be used for certain purposes.¹⁹

Because the proceeds of the games described in § 18.2-340.26:1 are not used in determining the organization's charitable gaming gross receipts, such are not intended to be governed by § 18.2-340.19(1) or § 18.2-340.33(1) and (15).²⁰ Moreover, if the organization is exempt from the permit requirement pursuant to § 18.2-340.23(A), it need not comply with the Commission's regulations, including those prescribed pursuant to § 18.2-340.19(1).²¹ For all of these reasons, I am of the opinion that the charitable gaming statutes impose no restriction on the uses to which the proceeds of the games described in § 18.2-340.26:1 may be put, or any requirement that such proceeds be used for any particular purpose, including charitable purposes.

¹2001 Va. Acts ch. 833.

²Section 18.2-340.17 establishes the Charitable Gaming Commission. The Commission "is vested with control of all charitable gaming in the Commonwealth, with plenary power to prescribe regulations," and is authorized to issue, deny, suspend or revoke the permits of organizations that are not in compliance with the charitable gaming laws. Va. Code Ann. § 18.2-340.15 (Michie Repl. Vol. 1996); § 18.2-340.20 (Michie Supp. 2001); see also §§ 18.2-340.18, 18.2-340.19 (Michie Supp. 2001) (enumerating powers and duties of Commission and authorizing Commission to adopt regulations).

³See Va. Code Ann. § 18.2-340.25 (Michie Supp. 2001); see also Va. Code Ann. § 18.2-340.16 (Michie Supp. 2001) (defining "qualified organization").

⁴Section 18.2-340.16 (emphasis added).

⁵*Id.*

⁶Section 18.2-340.23(B) grants permit exemptions for any volunteer fire department or rescue squad or an auxiliary of such fire department or squad "if, prior to conducting charitable gaming, it notifies the Commission ... that it will conduct charitable gaming." I am not aware of any volunteer fire department or rescue squad that conducts any form of charitable gaming that (i) is limited exclusively to members of the organization and their guests, (ii) is not open to the general public, and (iii) has not publicly solicited or advertised such gaming. Accordingly, § 18.2-340.23(B) is probably not relevant to your inquiry.

⁷See Va. Code Ann. § 18.2-340.30(A) (Michie Supp. 2001).

⁸See *Ambrogi v. Koontz*, 224 Va. 381, 389, 297 S.E.2d 660, 664 (1982); *Rich v. Commonwealth*, 198 Va. 445, 449, 94 S.E.2d 549, 552 (1956); *Pirkey Bros. v. Commonwealth*, 134 Va. 713, 726, 114 S.E. 764, 768 (1922); 17 M.J. *Statutes* § 38 (1994 & Supp. 2000).

⁹See *Norfolk So. Ry. Co. v. Lassiter*, 193 Va. 360, 364, 68 S.E.2d 641, 643 (1952) ("policy [in statute] that is clearly implied is as effective as that which is expressed"); *Aetna Co. v. Earle-Lansdell Co.*, 142 Va. 435, 450, 129 S.E. 263, 267 (1925) (noting that authority to contract necessarily implies power to specify or negotiate terms and conditions of contract that will best promote speedy construction, otherwise there would be no measure of obligation).

¹⁰See Va. Code Ann. § 18.2-340.31(A)-(B) (Michie Supp. 2001).

¹¹See § 18.2-340.30.

¹²Va. Code Ann. § 18.2-340.18(1) (Michie Supp. 2001).

¹³Section 18.2-340.18(2).

¹⁴Section 18.2-340.18(3).

¹⁵Section 18.2-340.18(5).

¹⁶Section 18.2-340.18(6).

¹⁷Section 18.2-340.18(7).

¹⁸"No part of the gross receipts derived by a qualified organization may be used for any purpose other than (i) reasonable and proper gaming expenses, (ii) reasonable and proper business expenses, (iii) those lawful religious, charitable, community or educational purposes for which the organization is specifically chartered or organized, and (iv) expenses relating to the acquisition, construction, maintenance, or repair of any interest in the real property involved in the operation of the organization and used for lawful religious, charitable, community or educational purposes." Va. Code Ann. § 18.2-340.33(1) (Michie Supp. 2001). "Unless otherwise permitted in [Article 1.1:1], no part of an organization's charitable gaming gross receipts shall be used for an organization's social or recreational activities." Section 18.2-340.33(15).

¹⁹Section 18.2-340.19(1) requires the Commission to adopt regulations which "[r]equire, as a condition of receiving a permit, that the applicant use a predetermined percentage of its gross receipts for (i) those lawful religious, charitable, community or educational purposes for which the organization is specifically chartered or organized or (ii) those expenses relating to the acquisition, construction, maintenance or repair of any interest in real property involved in the operation of the organization and used for lawful religious, charitable, community or educational purposes. The regulation may provide for a graduated scale of percentages of gross receipts to be used in the foregoing manner based upon factors the Commission finds appropriate to and consistent with the purpose of charitable gaming."

²⁰See *supra* notes 18, 19.

²¹See *supra* note 19.

[Back to Opinions Main Page](#)