



ELKS LOVE RAFFLES! ARE YOU IN COMPLIANCE? CA. PENAL CODE 320.5 CHARITABLE RAFFLES

SEPTEMBER 17, 2016

DONALD SCHULTZ CHEA PSP

The Raffle Issue:

CA State Penal Code Section 320.5 states that a raffle is a scheme for the distribution by chance among persons who have paid money for paper tickets that provide the opportunity to win these prizes, where all of the following are true:

- 1 Each ticket is sold with a detachable stub and marked with a unique identifier (numbered).
- 2 Winners are determined by a draw.
- 3 The draw is conducted in California.

"An eligible organization may not conduct a raffle unless it registers annually with the Dept. of Justice." Once registered an eligible organization must file annually thereafter."

The Napa Valley Quilters™ Board has learned that a local Soroptomist Club has been fined by the State of California for conducting an illegal raffle. The penalty was a \$10,000.00 fine and one year of jail time for the person collecting the money. A passionate plea, along with the help of Senator Barbara Boxer, got the sentence reduced to \$5,000.00 and probation. We must avoid this.

There is a way to proceed with these fundraising activities in a legal manner. An application must be on file with the State and paperwork sent in every time there is to be a raffle. We will do this, but until we do the research and send in the proper documentation, please do not collect any money on behalf of the Napa Valley Quilters.

Thank you

Your Executive Board

263-6716 ATTN: MARK

463-2974 ATTN: RUSS CLARKE

422-9413 ATTN: JOHN

468-5722 ATTN: HAL

REGISTRATION WINDOW

9-1 GOOD UNTIL FOLLOWING

8-31

WE DO NOT HAVE INFO ON

... IN RIFALES

(WED) 9 10 2003 11:01:10 ST/NO. 55107563696

FROM

From: Edward C A Johnson <edwcjohnson@sbcglobal.net>
To: DONALD SCHULTZ <dondutzax1@verizon.net>
Subject: Queen of Hearts Raffles
Date: Tue, Mar 15, 2016 7:40 pm

Good Evening Don:

I have been giving a lot of thought to your question concerning the legality of the Queen of Hearts Raffle in California. The material you sent me from Arizona is interesting. Arizona Laws are different concerning raffles than those in California. An attorney in Arizona has figured out a way to make the raffle legal under Arizona Law.

The Committee on Judiciary only advises on Elk law and does not give opinions on State law. Grand Lodge Statute Section 9.150 provides: "Gambling in the Lodge or Club rooms or on other Lodge property is prohibited where not permitted by Local, State or Federal Law." I have not researched California law, but everyone I know who knows anything about the subject tells me that the Queen of Hearts raffle is not a legal raffle under California Law as it has been conducted in our lodges.

A friend of mine has given me the following information on Queen of Heart (QOH)s:

A raffle is a type of lottery in which prizes are awarded to people who pay for a chance to win. Each person enters the game of chance by submitting a detachable coupon or stub from the paper ticket purchased. Some states see QOH as a raffle, some consider it as "Charitable Gambling" like the once-a-year licensed Gambling Nights most of the Lodges do... California has not been specific yet.

Requirements for Queen of Hearts, currently a progressive raffle:

- * You must register with the Attorney General (AG) as a Charitable Trust*
- * You must register for Raffles with the AG, and make reports on the proceeds*
- * (big) 90% of proceeds must go to "Beneficial Charitable Purposes" (not all money to winner);*
- * 10% may be used for overhead. As noted, this must be reported to the State,*
- * no proceeds to officers...*

Just for fun, 50/50's are illegal (90-10% issue).

Penal Code Sec. 330.

Every person who deals, plays, or carries on, opens, or causes to be opened, or who conducts, either as owner or employee, whether for hire or not, any game of faro, monte, roulette, lansquenet, rouge et noire, rondo,

tan, fan-tan, seven-and-a-half, twenty-one, hokey-pokey, or any banking or percentage game played with cards, dice, or any device, for money, checks, credit, or other representative of value, and every person who plays or bets at or against any of those prohibited games, is guilty of a misdemeanor, and shall be punishable by a fine not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000), or by imprisonment in the county jail not exceeding six months, or by both the fine and imprisonment.

I hope this is helpful.

Ed Johnson

Area 7 Member

Grand Lodge Committee on Judiciary

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Penal Code Section 320.5. Charitable Raffles

(a) Nothing in this chapter applies to any raffle conducted by an eligible organization as defined in subdivision (c) for the purpose of directly supporting beneficial or charitable purposes or financially supporting another private, nonprofit, eligible organization that performs beneficial or charitable purposes if the raffle is conducted in accordance with this section.

(b) For purposes of this section, "raffle" means a scheme for the distribution of prizes by chance among persons who have paid money for paper tickets that provide the opportunity to win these prizes, where all of the following are true:

(1) Each ticket is sold with a detachable coupon or stub, and both the ticket and its associated coupon or stub are marked with a unique and matching identifier.

(2) Winners of the prizes are determined by draw from among the coupons or stubs described in paragraph (1) that have been detached from all tickets sold for entry in the draw.

(3) The draw is conducted in California under the supervision of a natural person who is 18 years of age or older.

(4) (A) At least 90 percent of the gross receipts generated from the sale of raffle tickets for any given draw are used by the eligible organization conducting the raffle to benefit or provide support for beneficial or charitable purposes, or it may use those revenues to benefit another private, nonprofit organization, provided that an organization receiving these funds is itself an eligible organization as defined in subdivision (c). As used in this section, "beneficial purposes" excludes purposes that are intended to benefit officers, directors, or members, as defined by Section 5056 of the Corporations Code, of the eligible organization. In no event shall funds raised by raffles conducted pursuant to this section be used to fund any beneficial, charitable, or other purpose outside of California. This section does not preclude an eligible organization from using funds from sources other than the sale of raffle tickets to pay for the administration or other costs of conducting a raffle.

(B) An employee of an eligible organization who is a direct seller of raffle tickets shall not be treated as an employee for purposes of workers' compensation under Section 3351 of the Labor Code if the following conditions are satisfied:

(i) Substantially all of the remuneration (whether or not paid in cash) for the performance of the service of selling raffle tickets is directly related to sales rather than to the number of hours worked.

(ii) The services performed by the person are performed pursuant to a written contract between the seller and the eligible organization and the contract provides that the person will not be treated as an employee with respect to the selling of raffle tickets for workers' compensation purposes.

(C) For purposes of this section, employees selling raffle tickets shall be deemed to be direct sellers as described in Section 650 of the Unemployment Insurance Code as long as they meet the requirements of that section.

(c) For purposes of this section, "eligible organization" means a private, nonprofit organization that has been qualified to conduct business in California for at least one year prior to conducting a raffle and is exempt from taxation pursuant to Sections 23701a, 23701b, 23701d, 23701e, 23701f, 23701g, 23701k, 23701l, 23701t, or 23701w of the Revenue and Taxation Code.

(d) Any person who receives compensation in connection with the operation of the raffle shall be an employee of the eligible organization that is conducting the raffle, and in no event may compensation be paid from revenues required to be dedicated to beneficial or charitable purposes.

(e) No raffle otherwise permitted under this section may be conducted by means of, or otherwise utilize, any gaming machine, apparatus, or device, whether or not that machine, apparatus, or device meets the definition of slot machine contained in Section 330a, 330b, or 330.1.

(f) No raffle otherwise permitted under this section may be conducted, nor may tickets for a raffle be sold, within an operating satellite wagering facility or racetrack inclosure licensed pursuant to the Horse Racing Law (Chapter 4 (commencing with Section 19400) of Division 8 of the Business and Professions Code) or within a gambling establishment licensed pursuant to the Gambling Control Act (Chapter 5 (commencing with Section 19800) of Division 8 of the Business and Professions Code). A raffle may not be advertised, operated, or conducted in any manner over the Internet, nor may raffle tickets be sold, traded, or redeemed over the Internet. For purposes of this section, advertisement shall not be defined to include the announcement of a raffle on the web site of the organization responsible for conducting the raffle.

(g) No individual, corporation, partnership, or other legal entity shall hold a financial interest in the conduct of a raffle, except the eligible organization that is itself authorized to conduct that raffle, and any private, nonprofit, eligible organizations receiving financial support from that charitable organization pursuant to subdivisions (a) and (b).

(h) (1) An eligible organization may not conduct a raffle authorized under this section, unless it registers annually with the department of Justice. The department shall furnish a registration form via the Internet or upon request to eligible nonprofit organizations. The department shall, by regulation, collect only the information necessary to carry out the provisions of this section on this form. This information shall include, but is not limited to, the following:

(A) The name and address of the eligible organization.

(B) The federal tax identification number, the corporate number issued by the Secretary of State, the organization number issued by the Franchise Tax Board, or the California charitable trust identification number of the eligible organization.

(C) The name and title of a responsible fiduciary of the organization.

(2) The department may require an eligible organization to pay an annual registration fee of ten dollars (\$10) to cover the actual costs of the department to administer and enforce this section. The department may, by regulation, adjust the annual registration fee as needed to ensure that revenues willfully offset, but do not exceed, the actual costs incurred by the department pursuant to this section. The fee shall be deposited by the department into the General Fund.

(3) The department shall receive General Fund moneys for the costs incurred pursuant to this section subject to an appropriation by the Legislature.

(4) The department shall adopt regulations necessary to effectuate this section, including emergency regulations, pursuant to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

(5) The department shall maintain an automated data base of all registrants. Each local law enforcement agency shall notify the department of any arrests or investigation that may result in an administrative or criminal action against a registrant. The department may audit the records and other documents of a registrant to ensure compliance with this section.

(6) Once registered, an eligible organization must file annually thereafter with the department a report that includes the following:

(A) The aggregate gross receipts from the operation of raffles.

(B) The aggregate direct costs incurred by the eligible organization from the operation of raffles.

(C) The charitable or beneficial purposes for which proceeds of the raffles were used, or identify the eligible recipient organization to which proceeds were directed, and the amount of those proceeds.

(7) The department shall annually furnish to registrants a form to collect this information.

(8) The registration and reporting provisions of this section do not apply to any religious corporation sole or other religious corporation or organization that holds property for religious purposes, to a cemetery corporation regulated under Chapter 19 of division 3 of the Business and Professions Code, or to any committee as defined in Section 82013 that is required to and does file any pursuant to the provisions of Article 2 (commencing with section 84200) of Chapter 4 of Title 9, or to a charitable corporation organized and operated primarily as a religious organization, educational institution, hospital, or a health care service plan licensed pursuant to Section 1349 of the Health and safety Code.

(i) The department may take legal action against a registrant if it determines that the registrant has violated this section or any regulation adopted pursuant to this section, or that the registrant has

engaged in any conduct that is not in the best interests of the public's health, safety, or general welfare. Any action taken pursuant to this subdivision does not prohibit the commencement of an administrative or criminal action by the Attorney General, a district attorney, city attorney, or county counsel.

(j) Each action and hearing conducted to deny, revoke, or suspend a registry, or other administrative action taken against a registrant shall be conducted pursuant to the Administrative Procedure Act (Chapters 4.5 and 5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). The department may seek recovery of the costs incurred in investigating or prosecuting an action against a registrant or applicant in accordance with those procedures specified in Section 125.3 of the Business and Professions Code. A proceeding conducted under this subdivision is subject to judicial review pursuant to Section 1094.5 of the Code of Civil Procedure.

(k) The Department of Justice shall conduct a study and report to the Legislature by December 31, 2003, on the impact of this section on raffle practices in California. Specifically, the study shall include, but not be limited to, information on whether the number of raffles has increased, the amount of money raised through raffles and whether this amount has increased, whether there are consumer complaints, and whether there is increased fraud in the operation of raffles.

(l) This section shall become operative on July 1, 2001.

(m) A raffle shall be exempt from this section if it satisfies all of the following requirements:

(1) It involves a general and indiscriminate distributing of the tickets.

(2) The tickets are offered on the same terms and conditions as the tickets for which a donation is given.

(3) The scheme does not require any of the participants to pay for a chance to win.

CHAPTER 4.6. NON-PROFIT RAFFLE PROGRAM REGULATIONS

Chapter 9 of Part 1, Title 9, Penal Code (Section 320.5, Penal Code)

ARTICLE 1: TITLE, SCOPE, AND DEFINITIONS

Section 410. Title and Scope.

This chapter shall be known as the Department of Justice Regulations for the Non-Profit Raffle Program. These regulations implement, interpret and make specific the establishment of a registration and reporting program for specified non-profit organizations, as required by Penal Code section 320.5, enacted by statute in 2000 and effective July 1, 2001. These regulations apply to any eligible organization, as defined in Penal Code section 320.5(c), which conducts a raffle as defined in Penal Code section 320.5(b) on or after July 1, 2001.

NOTE: Authority cited: Section 320.5(h), Penal Code. Reference: Section 320.5, Penal Code.

Section 411. Definitions.

The following definitions shall be applicable when used in these regulations:

(a) "Administrative information" means any information maintained by the DOJ that is reasonably necessary for the DOJ to perform the duties required by Penal Code section 320.5. Such information includes, but is not limited to, the date a registration application or report is received, the date the registration takes effect, and the expiration date of the registration.

(b) "Attorney General" means the California Attorney General or any employee of the Attorney General acting under the authority of the Attorney General.

(c) "Department of Justice" means the California Department of Justice ("DOJ") or any employee of the DOJ acting under the authority of the DOJ.

(d) "Eligible organization" means a private non-profit organization as defined in Penal Code section 320.5(c) and excludes those entities specified in Penal Code section 320.5(h).

(e) "Fee" means the fee established by the DOJ as authorized by Penal Code section 320.5(h).

(f) "Non-Profit Raffle Program" means all information, documents and other material filed with or maintained by the DOJ, including registration applications and electronic databases, reports and any processes, procedures or other means of effectuating the requirements of Penal Code section 320.5.

(g) "Raffle" is defined in Penal Code section 320.5(b).

(h) "Registrant" means an eligible organization which has filed an application to be registered in the Non-Profit Raffle Program.

(i) "Registration application" or "registration form" means Form ct-NRP-1 (5/2002) which is incorporated by reference.

(j) "Report" means the completed Form ct-NRP-2 (5/2002) (which is incorporated by reference) that has been signed by a responsible fiduciary of the registrant declaring that the information therein is true and complete.

NOTE: Authority cited: Section 320.5(h), Penal Code. Reference: Section 320.5, Penal Code.

ARTICLE 2. MANNER OF REGISTRATION, WHO MUST REGISTER, FEE FOR REGISTRATION

Section 415. Registration.

Every eligible organization shall, prior to conducting any raffle in California, be registered with the DOJ in the Non-Profit Raffle Program. The organization shall submit a registration application on Form ct-NRP-1 (5/2002), the form prescribed by the DOJ, which shall contain all of the information required, including a statement signed by a responsible fiduciary of the eligible organization (such as an officer or director of the organization), attesting that the information provided is true and correct. If the organization plans to conduct more than one raffle during the annual registration period (September 1 through August 31), it must indicate on the application form each date that it plans to conduct a raffle; however, if any date changes, the organization is not required to amend its application. Only one application is required during the annual registration period even if the organization conducts more than one raffle. The application shall be submitted in the manner required by these regulations. The registration application and the required fee shall be submitted to the address set forth in section 416.

The DOJ will establish an electronic form as a means of entering registration information via the Internet. An applicant who uses the Internet shall enter the required information electronically, print the form, sign it and submit it with the required fee to the address specified in section 416. The DOJ shall, after receipt of the registration application form, add to the registration application form any administrative information, as defined in section 411(a) of these regulations, which is reasonably necessary to administer or maintain the Program.

An eligible organization is not registered until it has received written confirmation from the DOJ as provided in section 422.

NOTE: Authority cited: Section 320.5(h), Penal Code. Reference: Section 320.5, Penal Code.

Section 416. Place of Filing.

The address to be used for delivery and receipt of mail, information, registration applications, amendments, fees, reports and other material required by Penal Code section 320.5 is:

DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL
ATTN.: NON-PROFIT RAFFLE PROGRAM
1300 I STREET
P.O. Box 903447
SACRAMENTO, CA 94203-4470

The telephone number to be used for inquiries relating to the Non-Profit Raffle Program is (916) 445-2021.

NOTE: Authority cited: Section 320.5(h), Penal Code. Reference: Section 320.5, Penal Code.

Section 417. Time of Registration.

If an eligible organization expects to conduct a raffle between July 1, 2001 and August 31, 2002, it shall submit a registration application which shall be postmarked or hand-delivered to the address specified in section 416 no later than September 1, 2001. Thereafter, a completed registration form and registration fee must be submitted by September 1 of each year (i.e., September 1 through August 31) during which a raffle is expected to be conducted. If an eligible organization which is not registered determines after September 1 of any year that it will conduct a raffle during the year (September 1 through August 31), the organization shall submit its registration application at least 60 days before the date the raffle is held.

NOTE: Authority cited: Section 320.5(h), Penal Code. Reference: Section 320.5, Penal Code.

Section 418. Fee for Registration.

The registration fee shall be determined by the DOJ. The fee is \$20 for the initial one-year registration period. As provided in section 320.5 of the Penal Code, the fee may be increased as necessary to cover the actual costs of the Department of Justice to administer and enforce Penal Code section 320.5.

NOTE: Authority cited: Section 320.5(h), Penal Code. Reference: Section 320.5, Penal Code.

Section 419. Registration Applications—Time for Processing.

(a) Within 30 calendar days after the date of receipt of a registration application, the DOJ shall either inform the applicant, in writing, that the application is complete and accepted for filing, or shall return the application as deficient and specify how the application is deficient and what information is required. If an application is returned because it is deficient, any fee submitted shall also be returned.

(b) Within 30 calendar days after the date of receipt of a completed application, including the required fee, the DOJ shall reach a decision whether to issue or deny the registration, unless the time is waived by the applicant, and shall inform the applicant in writing of the decision.

NOTE: Authority cited: Section 15376, Government Code; and Section 320.5, Penal Code.

Reference: Section 15376, Government Code; and Section 320.5, Penal Code.

Section 419.1 Appeal Process.

(a) If the DOJ fails to meet the time periods for concluding the processing of an application, the applicant may apply in writing for a full refund of the application fee. The request must be received by the DOJ within 20 calendar days from the date of mailing of the final decision granting or denying the application.

(b) The DOJ shall respond within 15 calendar days from the date of receipt of a request for a refund.

(c) If the refund is denied, the applicant may directly appeal the denial in writing to the Attorney General. The appeal must be filed within 25 calendar days from the date of mailing of the denial of the refund. The appeal shall set forth a short statement of facts and a chronology of

events regarding the application.

(d) The appeal in subsection (c) of this section will be promptly reviewed, and a decision will be issued within 30 calendar days from the completion of any investigation which the Attorney General deems appropriate. The appeal in subsection (c) of this section will be decided in the applicant's favor if the DOJ has exceeded its maximum time period for the issuance or denial of the registration application, and the DOJ has failed to establish good cause for exceeding this time period.

(e) The DOJ will provide information regarding this appeal process on the registration application Form ct-NRP-1 (5/2002).

NOTE: Authority cited: Section 15378, Government Code; and Section 320.5, Penal Code.

Reference: Section 15378, Government Code; and Section 320.5, Penal Code.

Section 419.2 Denial, Revocation or Suspension of Registration

(a) The DOJ may deny any registration application and may revoke or suspend any registration it has issued if the applicant:

(1) Submits false or misleading information in the application.

(2) Fails to meet or comply with any requirements set forth in Penal Code section 320.5 or these regulations.

(3) Engages in any conduct that is not in the best interests of the public's health, safety or general welfare.

(b) If the DOJ denies an application or revokes or suspends a registration it has issued, the DOJ shall inform the applicant in writing of the reasons for the denial, revocation or suspension.

(c) The eligible organization may reapply when it has remedied the matters which caused the denial, revocation or suspension.

NOTE: Authority cited: Section 320.5(h), Penal Code. Reference: Section 320.5, Penal Code.

Section 419.3 Appeal of Denial, Revocation or Suspension

Each denial, revocation, or suspension of a registration, or any other administrative action taken against an applicant or registrant, shall be subject to Penal Code section 320.5(j).

NOTE: Authority cited: Section 320.5(h), Penal Code. Reference: Section 320.5, Penal Code.

Section 420. Reporting Requirements.

Every eligible organization that is registered shall file, on or before September 1 of each year, a report for each raffle conducted which shall contain all of the required information, including a statement signed by a responsible fiduciary of the eligible organization attesting that the information provided is true and correct. The report shall be filed with the DOJ at the address set forth in section 416 on Form ct-NRP-2 (5/2002) in the manner required by these regulations. If an organization conducted more than one raffle during the reporting year, it must file a report on each raffle, but a report may be filed individually at anytime during the year or all the reports may be filed at the same time so long as they are filed on or before September 1.

The DOJ will establish an electronic means of providing the reporting information via the Internet. A registrant who uses the Internet shall enter the required information on the electronic

form, print the form, sign it and submit it to the address specified in section 416. The DOJ shall, after receipt of the report form, add to the report form any administrative information, as defined in section 411(a) of these regulations.

NOTE: Authority cited: Section 320.5(h), Penal Code. Reference: Section 320.5, Penal Code.

ARTICLE 3. CONTENTS OF AND ACCESS TO THE NON-PROFIT RAFFLE PROGRAM

Section 421. Non-Profit Raffle Program.

The DOJ shall maintain copies of all registration applications accepted for filing and copies of all reports provided pursuant to section 320.5 of the Penal Code, which together shall constitute the Non-Profit Raffle Program required by section 320.5 of the Penal Code. The DOJ may retain the foregoing information in electronic form so long as actual copies are archived and retrievable for the period prescribed by law.

NOTE: Authority cited: Section 320.5(h), Penal Code. Reference: Section 320.5, Penal Code.

Section 422. Proof of Registration.

After the DOJ has approved a registration application, the DOJ shall provide written confirmation to the eligible organization that it is registered.

NOTE: Authority cited: Section 320.5(h), Penal Code. Reference: Section 320.5, Penal Code.

Section 423. Conduct of Raffles.

After July 1, 2001, a raffle may be conducted by an eligible organization, provided the organization is registered with the DOJ as provided in section 320.5 of the Penal Code and these regulations.

NOTE: Authority cited: Section 320.5(h), Penal Code. Reference: Sections 320.5, Penal Code.

ARTICLE 4. PENALTIES FOR FALSE REGISTRATION OR MISREPRESENTATION

Section 424. Penalties for False Registration or Misrepresentation.

An eligible organization that submits false or misleading information in the registration application, or fails to provide required information in either the registration form or the raffle report form shall be subject to denial, revocation or suspension of its registration. Each instance of a misrepresentation, submission of false information, or failure to submit required information in the registration or reporting process shall constitute a separate violation.

NOTE: Authority cited: Section 320.5(h), Penal Code. Reference: Section 320.5, Penal Code.

ARTICLE 5. MISCELLANEOUS PROVISIONS

Section 425. Requests by Attorney General.

Eligible organizations shall furnish all information, documents and other records requested by the DOJ pursuant to Penal Code section 320.5(h) in order to establish and maintain the Non-Profit Raffle Program.

NOTE: Authority cited: Section 320.5(h), Penal Code. Reference: Section 320.5, Penal Code.

Section 426. Inquiries and Investigations.

Eligible organizations shall cooperate fully with any inquiry or investigation that may be undertaken by the Attorney General to enforce the provisions of Penal Code section 320.5.

NOTE: Authority cited: Section 320.5(h), Penal Code. Reference: Section 320.5, Penal Code.