

May 14, 2008

The Honorable Raymond C. Fischer
Wood County Prosecuting Attorney
One Courthouse Square
Bowling Green, Ohio 43402-2431

SYLLABUS:

2008-015

1. A charitable organization, as defined in R.C. 2915.01(H) and described in R.C. 2915.092(A)(1), that has been issued an F-2 permit to sell alcoholic beverages by the individual drink at an event may conduct games of chance in accordance with the requirements of R.C. 2915.02(D)(1) and a raffle pursuant to R.C. 2915.092 at the event when the charitable organization strictly complies with the provisions of R.C. Chapter 2915 regulating gambling and the playing of bingo.
2. A charitable organization, as defined in R.C. 2915.01(H) and described in R.C. 2915.092(A)(1), that has been issued an F-2 permit to sell alcoholic beverages by the individual drink at an event and that conducts games of chance in accordance with the requirements of R.C. 2915.02(D)(1) and a raffle pursuant to R.C. 2915.092 at the event may permit a person to exchange gaming chips used in the playing of the games of chance for tickets to the raffle conducted by the charitable organization.



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OPINION NO. 2008-015

The Honorable Raymond C. Fischer
Wood County Prosecuting Attorney
One Courthouse Square
Bowling Green, Ohio 43402-2431

Dear Prosecutor Fischer:

You have requested an opinion concerning the use of gaming chips to purchase tickets for a raffle conducted by a charitable organization that is a nonprofit corporation. By way of background, you explain that a charitable organization annually acquires an F-2 permit to sell alcoholic beverages by the individual drink at an event where the charitable organization conducts games of chance and a raffle.¹ A person may participate in the charitable

¹ R.C. 4303.202(A) authorizes charitable organizations to obtain an F-2 permit to sell alcoholic beverages by the individual drink at an event:

The division of liquor control may issue an F-2 permit to an association or corporation, or to a recognized subordinate lodge, chapter, or other local unit of an association or corporation, to sell beer or intoxicating liquor by the individual drink at an event to be held on premises located in a political subdivision or part thereof where the sale of beer or intoxicating liquor on that day is otherwise permitted by law.

The division of liquor control may issue an F-2 permit to an association or corporation, or to a recognized subordinate lodge, chapter, or other local unit of an association or corporation, to sell beer, wine, and spirituous liquor by the individual drink at an event to be held on premises located in a political subdivision or part thereof where the sale of beer and wine, but not spirituous liquor, is otherwise permitted by law on that day.

....

In order to receive an F-2 permit, the association, corporation, or local unit shall be organized not for profit, shall be operated for a charitable, cultural,

organization's raffle by purchasing a raffle ticket. A person who wishes to play the games of chance at the event is required to purchase gaming chips from the charitable organization. The gaming chips are used instead of money during the playing of the games of chance. When the person is finished playing the games of chance, the person may return any gaming chips in his possession to the charitable organization for money.

In order to boost the sale of raffle tickets at the event, the charitable organization would like to permit a person to exchange his gaming chips for raffle tickets instead of money. Accordingly, you ask whether a charitable organization that has been issued an F-2 permit to sell alcoholic beverages by the individual drink at an event and that conducts games of chance and a raffle at the event may permit a person to exchange gaming chips used in the playing of the games of chance for tickets to the raffle conducted by the charitable organization.

For the reasons discussed in this opinion, we conclude that a charitable organization, as defined in R.C. 2915.01(H) and described in R.C. 2915.092(A)(1), that has been issued an F-2 permit to sell alcoholic beverages by the individual drink at an event may conduct games of chance in accordance with the requirements of R.C. 2915.02(D)(1) and a raffle pursuant to R.C. 2915.092 at the event when the charitable organization strictly complies with the provisions of R.C. Chapter 2915 regulating gambling and the playing of bingo. We also conclude that a charitable organization, as defined in R.C. 2915.01(H) and described in R.C. 2915.092(A)(1), that has been issued an F-2 permit to sell alcoholic beverages by the individual drink at an event and that conducts games of chance in accordance with the requirements of R.C. 2915.02(D)(1) and a raffle pursuant to R.C. 2915.092 at the event may permit a person to exchange gaming chips used in the playing of the games of chance for tickets to the raffle conducted by the charitable organization.

Authority of Charitable Organizations to Conduct Games of Chance and Raffles

Before considering whether it is permissible for a person to exchange gaming chips used in the playing of games of chance for raffle tickets, we will begin with a brief overview of the authority of a charitable organization to conduct games of chance and raffles. We will then review the authority of a charitable organization to conduct games of chance and a raffle at an event when the charitable organization has obtained an F-2 permit to sell alcoholic beverages by the individual drink at the event.

Article XV, § 6 of the Ohio Constitution declares that “[e]xcept as otherwise provided in this section, lotteries, and the sale of lottery tickets, for any purpose whatever, shall forever be prohibited in this State.” This constitutional provision, however, expressly empowers the General Assembly to authorize the operation of a state run lottery and “bingo to be conducted by charitable organizations for charitable purposes.”

fraternal, or educational purpose, and shall not be affiliated with the holder of any class of liquor permit, other than a D-4 permit.

The General Assembly has exercised the power conferred upon it by Article XV, § 6 of the Ohio Constitution and enacted provisions in R.C. Chapter 2915 to authorize and regulate bingo operations conducted by charitable organizations.² One of these provisions, R.C. 2915.07(A), provides that “[n]o person,³ except a charitable organization that has obtained a

² For purposes of R.C. Chapter 2915, a “charitable organization” is defined as follows:

Except as otherwise provided in this chapter, “charitable organization” means any tax exempt religious, educational, veteran’s, fraternal, sporting, service, nonprofit medical, volunteer rescue service, volunteer firefighter’s, senior citizen’s, historic railroad educational, youth athletic, amateur athletic, or youth athletic park organization. An organization is tax exempt if the organization is, and has received from the internal revenue service a determination letter that currently is in effect stating that the organization is, exempt from federal income taxation under subsection 501(a) and described in subsection 501(c)(3), 501(c)(4), 501(c)(8), 501(c)(10), or 501(c)(19) of the Internal Revenue Code, or if the organization is a sporting organization that is exempt from federal income taxation under subsection 501(a) and is described in subsection 501(c)(7) of the Internal Revenue Code. To qualify as a charitable organization, an organization, except a volunteer rescue service or volunteer firefighter’s organization, shall have been in continuous existence as such in this state for a period of two years immediately preceding either the making of an application for a bingo license under [R.C. 2915.08] or the conducting of any game of chance as provided in [R.C. 2915.02(D)]. A charitable organization that is exempt from federal income taxation under subsection 501(a) and described in subsection 501(c)(3) of the Internal Revenue Code and that is created by a veteran’s organization, a fraternal organization, or a sporting organization does not have to have been in continuous existence as such in this state for a period of two years immediately preceding either the making of an application for a bingo license under [R.C. 2915.08] or the conducting of any game of chance as provided in [R.C. 2915.02(D)].

R.C. 2915.01(H).

Whether an entity is a “charitable organization,” as defined in R.C. 2915.01(H), is a question of fact that must be answered by law enforcement officials and prosecutors or, ultimately, by the judiciary. *See generally* 1993 Op. Att’y Gen. No. 93-033 (syllabus, paragraph one) (questions of fact “cannot be determined by means of an Attorney General opinion”); 1983 Op. Att’y Gen. No. 83-057 at 2-232 (the office of the Attorney General “is not equipped to serve as a fact-finding body; that function may be served by your office or, ultimately, by the judiciary”).

³ The term “person,” as used in R.C. Chapter 2915, includes an individual, corporation, business trust, estate, trust, partnership, association, firm, or other legal entity, however,

license pursuant to [R.C. 2915.08⁴], shall conduct or advertise bingo.”⁵ (Footnote added.) For purposes of R.C. 2915.07, the term bingo includes raffles.⁶ R.C. 2915.01(S)(2); *see* R.C. 2915.01(HH); *see also* R.C. 2915.01(U); R.C. 2915.01(EE).

R.C. 2915.07(A) states, however, that its prohibition “does not apply to a raffle that a charitable organization conducts or advertises.” Moreover, R.C. 2915.092(A)(1) provides:

Subject to division (A)(2) of this section,⁷ a *charitable organization*, a public school, a chartered nonpublic school, a community school, or a veteran’s organization, fraternal organization, or sporting organization that is exempt from federal income taxation under subsection 501(a) and is described in subsection 501(c)(3), 501(c)(4), 501(c)(7), 501(c)(8), 501(c)(10), or 501(c)(19) of the Internal Revenue Code *may conduct a raffle to raise money for the organization*

organized. *See* R.C. 1.59(C); R.C. 2915.01(MM). *See generally* R.C. 2915.07(A) (indicating that the term person as used therein includes a charitable organization).

⁴ R.C. 2915.08 authorizes the Attorney General to issue a license to a charitable organization to conduct bingo, instant bingo at a bingo session, or instant bingo other than at a bingo session.

⁵ A person who violates R.C. 2915.07 “is guilty of conducting illegal bingo, a felony of the fourth degree.” R.C. 2915.07(B).

⁶ As used in R.C. Chapter 2915, the term “raffle” means

a form of bingo in which the one or more prizes are won by one or more persons who have purchased a raffle ticket. The one or more winners of the raffle are determined by drawing a ticket stub or other detachable section from a receptacle containing ticket stubs or detachable sections corresponding to all tickets sold for the raffle.

R.C. 2915.01(HH).

⁷ R.C. 2915.092(A)(2) provides:

If a charitable organization that is described in division (A)(1) of this section, but that is not also described in subsection 501(c)(3) of the Internal Revenue Code, conducts a raffle, the charitable organization shall distribute at least fifty per cent of the net profit from the raffle to a charitable purpose described in [R.C. 2915.01(Z)] or to a department or agency of the federal government, the state, or any political subdivision.

or school *and does not need a license to conduct bingo in order to conduct a raffle drawing that is not for profit.* (Emphasis and footnote added.)

Thus, notwithstanding R.C. 2915.07(A), a charitable organization, as defined in R.C. 2915.01(H) and described in R.C. 2915.092(A)(1), is authorized by R.C. 2915.092(A) to conduct a raffle that is not for profit to raise money for the organization without a license to conduct bingo issued under R.C. 2915.08.

In addition to regulating bingo in Ohio, the General Assembly regulates other forms of gambling. R.C. 2915.02 reads, in part, as follows:

- (A) No person shall do any of the following:
 - ...;
 - (2) Establish, promote, or operate or knowingly engage in conduct that facilitates any game of chance conducted for profit or any scheme of chance;
 - (3) Knowingly procure, transmit, exchange, or engage in conduct that facilitates the procurement, transmission, or exchange of information for use in establishing odds or determining winners in connection with bookmaking or with any game of chance conducted for profit or any scheme of chance;
 - (4) Engage in betting or in playing any scheme or game of chance as a substantial source of income or livelihood;
 - (5) With purpose to violate division (A)(1), (2), (3), or (4) of this section, acquire, possess, control, or operate any gambling device.
 -
- (C) This section does not prohibit conduct in connection with gambling expressly permitted by law.⁸ (Footnote added.)

Because charitable organizations that are nonprofit corporations are persons for purposes of R.C. 2915.02, *see* note three, *supra*, such organizations are prohibited from conducting a game of chance⁹ or any other type of gambling when the game of chance or gambling is not explicitly

⁸ Pursuant to R.C. 2915.02(C), a charitable organization that conducts a raffle in accordance with R.C. 2915.092 does not violate the gambling prohibitions set forth in R.C. 2915.02.

⁹ As used in R.C. Chapter 2915, a “game of chance” means “poker, craps, roulette, or other game in which a player gives anything of value in the hope of gain, the outcome of which is determined largely by chance, but does not include bingo.” R.C. 2915.01(D).

permitted by law.¹⁰ Exceptions to R.C. 2915.02(A)'s prohibitions are listed in R.C. 2915.02(D), which provides, in pertinent part:

[R.C. 2915.02] does not apply to any of the following:

(1) Games of chance, if all of the following apply:

(a) The games of chance are not craps for money or roulette for money.

(b) The games of chance are conducted by a charitable organization that is, and has received from the internal revenue service a determination letter that is currently in effect, stating that the organization is, exempt from federal income taxation under subsection 501(a) and described in subsection 501(c)(3) of the Internal Revenue Code.

(c) The games of chance are conducted at festivals of the charitable organization that are conducted either for a period of four consecutive days or less and not more than twice a year or for a period of five consecutive days not more than once a year, and are conducted on premises owned by the charitable organization for a period of no less than one year immediately preceding the conducting of the games of chance, on premises leased from a governmental unit, or on premises that are leased from a veteran's or fraternal organization and that have been owned by the lessor veteran's or fraternal organization for a period of no less than one year immediately preceding the conducting of the games of chance.

....

(d) All of the money or assets received from the games of chance after deduction only of prizes paid out during the conduct of the games of chance are used by, or given, donated, or otherwise transferred to, any organization that is described in subsection 509(a)(1), 509(a)(2), or 509(a)(3) of the Internal Revenue Code and is either a governmental unit or an organization that is tax exempt under subsection 501(a) and described in subsection 501(c)(3) of the Internal Revenue Code;

(e) The games of chance are not conducted during, or within ten hours of, a bingo game conducted for amusement purposes only pursuant to [R.C. 2915.12].

No person shall receive any commission, wage, salary, reward, tip, donation, gratuity, or other form of compensation, directly or indirectly, for operating or assisting in the operation of any game of chance.

¹⁰ The penalty for violating R.C. 2915.02 is as follows: "Whoever violates [R.C. 2915.02] is guilty of gambling, a misdemeanor of the first degree. If the offender previously has been convicted of any gambling offense, gambling is a felony of the fifth degree." R.C. 2915.02(F).

A charitable organization, as defined in R.C. 2915.01(H), thus is authorized to conduct games of chance when the charitable organization strictly complies with the requirements of R.C. 2915.02(D)(1).

A further review of the provisions of R.C. Chapter 2915 discloses that nothing therein prohibits a charitable organization from conducting games of chance in accordance with R.C. 2915.02(D)(1) and a raffle pursuant to R.C. 2915.092 at the same event. Also, no other provision in the Revised Code or the administrative rules regulating the playing of bingo prohibits such action on the part of a charitable organization. Accordingly, a charitable organization, as defined in R.C. 2915.01(H) and described in R.C. 2915.092(A)(1), that strictly complies with the provisions of R.C. Chapter 2915 regulating gambling and the playing of bingo may conduct games of chance in accordance with the requirements of R.C. 2915.02(D)(1) and a raffle pursuant to R.C. 2915.092 at the same event.

Conducting Games of Chance and Raffles at a Liquor Permit Premises

Let us now consider the authority of a charitable organization to conduct games of chance in accordance with the requirements of R.C. 2915.02(D)(1) and a raffle pursuant to R.C. 2915.092 at an event when the organization has obtained an F-2 permit to sell alcoholic beverages by the individual drink at the event.¹¹ 10B Ohio Admin. Code 4301:1-1-53(B) imposes the following restriction with respect to the use of gambling devices on a liquor permit premises:¹²

¹¹ It is possible that the area of an F-2 permit premises may be smaller than the area on which the event is being held. *See generally* R.C. 4303.202(A) (“[t]he premises on which [an F-2] permit is to be used shall be clearly defined and sufficiently restricted to allow proper supervision of the permit use by state and local law enforcement personnel”). Therefore, for the purpose of this opinion, it is assumed that the area of the F-2 permit premises and the location of the event coincide.

¹² In addition to 10B Ohio Admin. Code 4301:1-1-53(B)’s prohibition, rule 4301:1-1-53(E) states, in part, that “[n]o person authorized to sell alcoholic beverages shall sell or serve beer or intoxicating liquor or permit beer or intoxicating liquor to be consumed or seen in the same location in its premises where a bingo game, as described in [R.C. 2915.01(S)(1)], is being conducted.” While a raffle conducted pursuant to R.C. 2915.092 is classified as a form of bingo for purposes of R.C. Chapter 2915, *see* R.C. 2915.01(S)(2); R.C. 2915.01(HH); *see also* R.C. 2915.01(U); R.C. 2915.01(EE), such a raffle does not constitute a bingo game as described in R.C. 2915.01(S)(1). Instead, a raffle conducted pursuant to R.C. 2915.092 is classified as bingo under R.C. 2915.01(S)(2). Accordingly, rule 4301:1-1-53(E)’s prohibition does not prohibit a charitable organization that has been issued an F-2 permit to sell alcoholic beverages by the individual drink at an event from selling or serving alcoholic beverages at the event or permitting

No person authorized to sell alcoholic beverages shall have, harbor, keep, exhibit, possess or employ, or allow to be kept, exhibited, or used in, upon or about the premises of the permit holder of any gambling device as defined in [R.C. 2915.01(F)] which is or has been used for any gambling in violation of [R.C. Chapter 2915].

See generally rule 4301:1-1-53(A) (“[c]onviction in any court of competent jurisdiction of any holder of any permit, or of any agent or employee of a permit holder, or of any person, for keeping, exhibiting for gain, or operating gambling devices ... shall be grounds for suspension or revocation of such permit”).

Because the term “person,” as used in rule 4301:1-1-53, encompasses charitable organizations that are nonprofit corporations, *see* R.C. 1.59(C); R.C. 4301.01(B)(7); 10B Ohio Admin. Code 4301:1-1-02(B), it follows that rule 4301:1-1-53(B) prohibits a charitable organization that has been issued an F-2 permit to sell alcoholic beverages by the individual drink at an event from keeping, exhibiting, and using gambling devices, as defined in R.C. 2915.01(F), at the event.

Exceptions to rule 4301:1-1-53(B)’s prohibition are set forth in divisions (C) through (F) of rule 4301:1-1-53. One of these exceptions provides as follows:

This rule shall not be construed to prohibit a game or contest sponsored and conducted in accordance with [R.C. 2915.02(D)], provided that such game or contest strictly complies with all of the provisions of [R.C. 2915.02(D)] and *shall not prohibit the conducting of games of chance by charitable organizations as defined in [R.C. 2915.01(H)] so long as there is strict compliance with [R.C. Chapter 2915].* (Emphasis added.)

the consumption of such beverages at the event when the organization conducts a raffle pursuant to R.C. 2915.092 at the event.

Rule 4301:1-1-53(A) also provides that “[c]onviction in any court of competent jurisdiction of any holder of any permit, or of any agent or employee of a permit holder, or of any person, for keeping, exhibiting for gain, or operating gambling devices, or conducting or permitting on the liquor permit premises any gambling in violation of [R.C. Chapter 2915], shall be grounds for suspension or revocation of such permit.” Because R.C. Chapter 2915 does not prohibit a charitable organization, as defined in R.C. 2915.01(H) and described in R.C. 2915.092(A)(1), from conducting games of chance in accordance with the requirements of R.C. 2915.02(D)(1) and a raffle pursuant to R.C. 2915.092, it follows that a charitable organization that has been issued an F-2 permit to sell alcoholic beverages by the individual drink at an event does not operate gambling devices or conduct on a liquor permit premises gambling in violation of R.C. Chapter 2915 when it conducts such games of chance and a raffle at the event.

Rule 4301:1-1-53(D).

As explained previously, R.C. 2915.02(D) authorizes a charitable organization, as defined in R.C. 2915.01(H), to conduct games of chance when the requirements set forth in R.C. 2915.02(D)(1) are satisfied. Thus, pursuant to rule 4301:1-1-53(D), a charitable organization, as defined in R.C. 2915.01(H), that has been issued an F-2 permit to sell alcoholic beverages by the individual drink at an event may conduct games of chance in accordance with the requirements of R.C. 2915.02(D)(1) at the event so long as there is strict compliance with the provisions of R.C. Chapter 2915. *See generally Freedom Rd. Found. v. Ohio Dept. of Liquor Control*, 80 Ohio St. 3d 202, 207, 685 N.E.2d 522 (1997) (“R.C. 2915.02(D) permits participation in the operation of a charitable organization’s scheme of chance¹³ on liquor-permit premises by premises owners and/or their employees, so long as neither owners nor employees are compensated for their participation” (footnote added)).

Unlike the exception for games of chance conducted by charitable organizations, no provision in rule 4301:1-1-53 or other administrative rule excepts raffles conducted by charitable organizations pursuant to R.C. 2915.092 from rule 4301:1-1-53(B)’s prohibition.¹⁴ Nevertheless,

¹³ Charitable organizations, as defined in R.C. 2915.01(H), are no longer permitted to conduct schemes of chance. *See* 2001-2002 Ohio Laws, Part V, 9852, 9872-73 (Am. Sub. H.B. 512, eff. April 3, 2003) (amending R.C. 2915.02 so as to prohibit charitable organizations from conducting schemes of chance); 2006 Op. Att’y Gen. No. 2006-045 at 2-433 (“[n]o statute permits a charitable organization or any other person to conduct a scheme of chance”).

¹⁴ We note that rule 4301:1-1-53(D) provides that rule 4301:1-1-53 “shall not be construed to prohibit a game or contest sponsored and conducted in accordance with [R.C. 2915.02(D)], provided that such game or contest strictly complies with all of the provisions of [R.C. 2915.02(D)].” R.C. 2915.02(D)(3), in turn, authorizes “[b]ingo conducted by a charitable organization that holds a license issued under [R.C. 2915.08].” *See generally* rule 4301:1-1-53(E) (rule 4301:1-1-53 “shall not be construed to prohibit instant bingo, other than at a bingo session, that is sponsored and conducted by charitable organizations as defined in [R.C. 2915.01(H)] and where a license pursuant to [R.C. 2915.08] has been obtained, provided that such instant bingo is conducted in strict compliance with [R.C. Chapter 2915]”).

Although a raffle conducted pursuant to R.C. 2915.092 is a form of bingo for purposes of R.C. 2915.02(D), *see* R.C. 2915.01(S)(2); R.C. 2915.01(HH); *see also* R.C. 2915.01(U); R.C. 2915.01(EE), such a raffle is not bingo conducted pursuant to a license issued under R.C. 2915.08, which authorizes the Attorney General to issue licenses to charitable organizations to conduct bingo, instant bingo at a bingo session, or instant bingo other than at a bingo session. *See generally* R.C. 2915.07(A) (“[n]o person, except a charitable organization that has obtained a license pursuant to [R.C. 2915.08], shall conduct or advertise bingo. This division does not apply to a raffle that a charitable organization conducts or advertises”); R.C. 2915.092(A)(1) (a charitable organization does not need a license issued under R.C. 2915.08 to conduct a raffle

rule 4301:1-1-53(B) does not prohibit such conduct by charitable organizations at a liquor permit premises since raffle tickets and other items or equipment used in conducting a raffle pursuant to R.C. 2915.092 are not gambling devices for purposes of rule 4301:1-1-53(B).

For purposes of rule 4301:1-1-53(B), the term “gambling device” is to be accorded the meaning set forth in R.C. 2915.01(F). Pursuant to R.C. 2915.01(F), a “gambling device” is any of the following:

- (1) A book, totalizer, or other equipment for recording bets;
- (2) A ticket, token, or other device representing a chance, share, or interest in a scheme of chance or evidencing a bet;
- (3) A deck of cards, dice, gaming table, roulette wheel, slot machine, or other apparatus designed for use in connection with a game of chance;
- (4) Any equipment, device, apparatus, or paraphernalia specially designed for gambling purposes;
- (5) *Bingo supplies sold or otherwise provided, or used, in violation of this chapter.* (Emphasis added.)

R.C. 2915.01(F)(5) includes “bingo supplies” used in violation of R.C. Chapter 2915 within the definition of gambling device.¹⁵ “Bingo supplies,” as used in R.C. 2915.01(F)(5), are

drawing conducted under R.C. 2915.092). Rule 4301:1-1-53(D) thus does not except a raffle conducted pursuant to R.C. 2915.092 from the prohibition set forth in rule 4301:1-1-53(B).

¹⁵ Raffle tickets and other items and equipment used in conducting a raffle or other forms of bingo are not used to conduct a game or scheme of chance for purposes of R.C. 2915.01(F). *See generally* R.C. 2915.01(C) (as used in R.C. Chapter 2915, “scheme of chance ... does not include bingo”); R.C. 2915.01(D) (as used in R.C. Chapter 2915, “game of chance ... does not include bingo”); R.C. 2915.01(S)(2) (for purposes of R.C. Chapter 2915 “bingo” includes raffles); R.C. 2915.01(HH) (for purposes of R.C. Chapter 2915, a “raffle” is “a form of bingo”). Raffle tickets and other items and equipment used to conduct a raffle thus are not “a ticket, token, or other device representing a chance, share, or interest in a scheme of chance,” R.C. 2915.01(F)(2) or “apparatus designed for use in connection with a game of chance,” R.C. 2915.01(F)(3).

We are aware, however, that the definition of “gambling device” set forth in R.C. 2915.01(F) does include “equipment for recording bets,” R.C. 2915.01(F)(1), a ticket “evidencing a bet,” R.C. 2915.01(F)(2), and “[a]ny equipment, device, apparatus, or paraphernalia specially designed for gambling purposes,” R.C. 2915.01(F)(4). A “bet,” for purposes of R.C. 2915.01(F), is “the hazarding of anything of value upon the result of an event, undertaking, or contingency.” R.C. 2915.01(B). In addition, raffles are a form of gambling. *See* R.C. 2915.01(G)(1) (as used in R.C. Chapter 2915, “gambling offense” includes conducting

bingo cards or sheets; instant bingo tickets or cards; electronic bingo aids; *raffle tickets*; punch boards; seal cards; instant bingo ticket dispensers; and *devices for selecting or displaying the combination of bingo letters and numbers or raffle tickets*. *Items that are “bingo supplies” are not gambling devices if sold or otherwise provided, and used, in accordance with this chapter.* (Emphasis added.)

R.C. 2915.01(EE).

While the definition of bingo supplies, as used in R.C. 2915.01(F)(5), includes raffle tickets and other items and equipment used in conducting a raffle, such items are not gambling devices for purposes of R.C. 2915.01(F) when the tickets, items, or equipment are used in accordance with R.C. Chapter 2915. R.C. 2915.01(F)(5); R.C. 2915.01(EE). R.C. 2915.092 explicitly authorizes a charitable organization, as defined in R.C. 2915.01(H) and described in R.C. 2915.092(A)(1), to conduct a raffle that is not for profit to raise money for the organization

bingo in violation of R.C. 2915.07, 2915.08, R.C. 2915.081, R.C. 2915.09, R.C. 2915.091, R.C. 2915.10, and R.C. 2915.11, and conducting raffles in violation of R.C. 2915.092). Because raffle tickets and other items and equipment used to conduct a raffle appear to be used to record or evidence a bet or are specially designed for gambling purposes, it could be argued that such tickets, items, and equipment are gambling devices, as defined in R.C. 2915.01(F).

This argument is not persuasive, however, insofar as the General Assembly has specifically included raffle tickets and devices for selecting raffle tickets in the definition of bingo supplies for purposes of R.C. 2915.01(F)(5). R.C. 2915.01(EE). Moreover, under R.C. 2915.01(F)(5) and R.C. 2915.01(EE), the General Assembly has indicated instances in which bingo supplies are not gambling devices, as defined in R.C. 2915.01(F).

In light of the language of R.C. 2915.01(F)(5) and R.C. 2915.01(EE), it is illogical to conclude that the General Assembly would *expressly* provide that raffle tickets and other items and equipment used in conducting a raffle are bingo supplies that are not gambling devices, as defined in R.C. 2915.01(F), when used in accordance with R.C. Chapter 2915, but then intend for such tickets, items, and equipment to be included within the definition of gambling device, as defined in R.C. 2915.01(F), because they are used to record or evidence a bet or are specially designed for gambling purposes. *See generally* R.C. 1.47 (in enacting a statute, it is presumed that “[t]he entire statute is intended to be effective”); *State ex rel. Cleveland Elec. Illum. Co. v. City of Euclid*, 169 Ohio St. 476, 479, 159 N.E.2d 756 (1959) (“the General Assembly is not presumed to do a vain or useless thing, and that when language is inserted in a statute it is inserted to accomplish some definite purpose”). Accordingly, raffle tickets and other items and equipment used to conduct a raffle in accordance with R.C. Chapter 2915 do not constitute “equipment for recording bets,” R.C. 2915.01(F)(1), a ticket “evidencing a bet,” R.C. 2915.01(F)(2), or “equipment, device, apparatus, or paraphernalia specially designed for gambling purposes,” R.C. 2915.01(F)(4).

without a license to conduct bingo issued under R.C. 2915.08. In light of the authority to conduct raffles conferred upon charitable organizations by R.C. 2915.092 and the definitions of “gambling device” and “bingo supplies” set forth in R.C. 2915.01(F)(5) and R.C. 2915.01(EE), respectively, it follows that the raffle tickets and other items and equipment used in conducting such a raffle are not gambling devices for purposes of R.C. 2915.01(F).

Because raffle tickets and other items and equipment used in conducting a raffle pursuant to R.C. 2915.092 are not gambling devices, as defined in R.C. 2915.01(F), a charitable organization, as defined in R.C. 2915.01(H) and described in R.C. 2915.092(A)(1), that has been issued an F-2 permit to sell alcoholic beverages by the individual drink at an event is not prohibited by rule 4301:1-1-53(B) from conducting a raffle pursuant to R.C. 2915.092 at the event.

In addition, no other provision of law prohibits a charitable organization that has been issued an F-2 permit to sell alcoholic beverages by the individual drink at an event from conducting games of chance in accordance with the requirements of R.C. 2915.02(D)(1) and a raffle pursuant to R.C. 2915.092 at the event. Accordingly, a charitable organization, as defined in R.C. 2915.01(H) and described in R.C. 2915.092(A)(1), that has been issued an F-2 permit to sell alcoholic beverages by the individual drink at an event may conduct games of chance in accordance with the requirements of R.C. 2915.02(D)(1) and a raffle pursuant to R.C. 2915.092 at the event when the charitable organization strictly complies with the provisions of R.C. Chapter 2915 regulating gambling and the playing of bingo.

Exchanging Gaming Chips for Raffle Tickets

Having determined that it is permissible for a charitable organization, as defined in R.C. 2915.01(H) and described in R.C. 2915.092(A)(1), that has been issued an F-2 permit to sell alcoholic beverages by the individual drink at an event to conduct games of chance in accordance with the requirements of R.C. 2915.02(D)(1) and a raffle pursuant to R.C. 2915.092 at the event when the charitable organization strictly complies with the provisions of R.C. Chapter 2915 regulating gambling and the playing of bingo, we must now examine whether it is permissible for a person to exchange gaming chips used in the playing of the games of chance for raffle tickets instead of money.

As explained earlier, R.C. 2915.02 and rule 4301:1-1-53 prohibit a charitable organization that has been issued an F-2 permit to sell alcoholic beverages by the individual drink at an event from conducting games of chance at the event unless all of the requirements of R.C. 2915.02(D)(1) are satisfied. *See* R.C. 2915.02(D)(1); rule 4301:1-53(D). One requirement imposed by R.C. 2915.02(D)(1) is that “[n]o person shall receive any commission, wage, salary, reward, tip, donation, gratuity, or other form of compensation, directly or indirectly, for operating or assisting in the operation of any game of chance.” R.C. 2915.02(D)(1)(e). Because a charitable organization that is a nonprofit corporation is a person for purposes of R.C. 2915.02, *see* note three, *supra*, R.C. 2915.01(D)(1)(e) prohibits a charitable organization that has been issued an F-2 permit to sell alcoholic beverages by the individual drink at an event from

receiving any commission, wage, salary, reward, tip, donation, gratuity, or other form of compensation, directly or indirectly, for operating or assisting in the operation of games of chance at the event.¹⁶

In *Freedom Rd. Found. v. Ohio Dept. of Liquor Control*, 80 Ohio St. 3d 202, 206, 685 N.E.2d 522 (1997) the Ohio Supreme Court examined the breadth of the foregoing language of R.C. 2915.02(D)(1)(e) and stated:

In interpreting [R.C. 2915.02(D)(1)(e)], we must begin by examining its express terms. The statute itself does not expressly prohibit one who operates or assists a scheme or game of chance from deriving any *benefit* from that activity. Instead, the statute carefully sets out a list of the types of *compensation* that such persons are forbidden from receiving. None of the listed forms of compensation may be received “for operating or assisting in the operation of a scheme or game of chance.” The statute thus contemplates a *quid pro quo*—the receipt of something of value for the giving of another.

The *Freedom Road* court thus concluded that R.C. 2915.02(D)(1)(e) is violated when a person receives any of the types of compensation listed therein for operating or assisting in the operation of a game of chance. *Id.* Moreover, the *Freedom Road* court declared that R.C. 2915.02(D)(1)(e) is not violated when a person derives a benefit from operating or assisting in the operation of a game of chance that does not constitute a type of compensation listed in R.C. 2915.02(D)(1)(e). *Id.*

When a charitable organization that operates games of chance permits a person to exchange gaming chips used in the playing of games of chance for tickets to a raffle conducted by the charitable organization, the organization does not thereby receive any commission, wage, salary, reward, tip, donation, gratuity, or other form of compensation, directly or indirectly, for operating the games of chance. In other words, such an exchange does not involve a “*quid pro*

¹⁶ R.C. 2915.02(D)(1)(e) does not prohibit a charitable organization that conducts games of chance in accordance with the requirements of R.C. 2915.01(D)(1) from receiving moneys and assets generated by the playing of the games of chance operated by the charitable organization. *See generally* R.C. 2915.01(D)(1)(d) (“[a]ll of the money or assets received from the games of chance after deduction only of prizes paid out during the conduct of the games of chance [must be] used by, or given, donated, or otherwise transferred to, any organization that is described in subsection 509(a)(1), 509(a)(2), or 509(a)(3) of the Internal Revenue Code and is either a governmental unit or an organization that is tax exempt under subsection 501(a) and described in subsection 501(c)(3) of the Internal Revenue Code”). Instead, R.C. 2915.02(D)(1)(e) seeks to prevent a charitable organization from charging persons a sum of money for the right to participate in the playing of the games of chance conducted by the organization and to keep a charitable organization from paying a person to operate or assist in the operation of a game of chance on behalf of the charitable organization.

quo—the receipt of something of value for the giving of another,” as contemplated by R.C. 2915.02(D)(1)(e). *Freedom Road*, at 206.

In order for a violation of R.C. 2915.02(D)(1)(e) to occur, a charitable organization must receive something of value for operating the games of chance. When a person exchanges his gaming chips for a raffle ticket, the charitable organization is not receiving something of value for operating the games of chance. The value placed on the gaming chips is instead given for a chance to win a prize in the raffle, not the opportunity to play the games of chance.

Further, the charitable organization is merely offering the person the opportunity to receive raffle tickets in lieu of a cash payout. By such exchange, the charitable organization derives the benefit of affording the person a convenient opportunity to participate in its raffle. This is no different than if the charitable organization handed the person a cash payout and then allowed the person to use the money to purchase raffle tickets. As stated in *Freedom Road* at 206, R.C. 2915.02(D)(1)(e) “does not expressly prohibit one who operates or assists a scheme or game of chance from deriving any *benefit* from that activity.”

Finally, the potential for an increase in the number of people participating in the raffle because they can exchange their gaming chips for raffle tickets instead of money, is not one of the forms of compensation listed in R.C. 2915.02(D)(1)(e) and thus a charitable organization is not prohibited by R.C. 2915.02(D)(1)(e) from receiving such a benefit. *See generally Freedom Road*, at 206 (“[t]he benefit of increased patronage ... does not come in the form of compensation and therefore is not within the prohibited class”). Accordingly, a charitable organization that permits a person to exchange gaming chips used in the playing of games of chance for tickets to a raffle conducted by the charitable organization does not violate R.C. 2915.02(D)(1)(e).

Neither R.C. 2915.02(D)(1)(e) nor any other provision of law regulating gambling or the playing of bingo in Ohio prohibits the exchange of gaming chips for raffle tickets in the manner you have described. Such a practice, therefore, is lawful. Hence, a charitable organization, as defined in R.C. 2915.01(H) and described in R.C. 2915.092(A)(1), that has been issued an F-2 permit to sell alcoholic beverages by the individual drink at an event and that conducts games of chance in accordance with the requirements of R.C. 2915.02(D)(1) and a raffle pursuant to R.C. 2915.092 at the event may permit a person to exchange gaming chips used in the playing of the games of chance for tickets to the raffle conducted by the charitable organization.

Conclusions

Based on the foregoing, it is my opinion, and you are hereby advised as follows:

1. A charitable organization, as defined in R.C. 2915.01(H) and described in R.C. 2915.092(A)(1), that has been issued an F-2 permit to sell alcoholic beverages by the individual drink at an event may conduct games of chance in accordance with the requirements of R.C. 2915.02(D)(1) and a raffle pursuant to R.C. 2915.092 at the event when the charitable

organization strictly complies with the provisions of R.C. Chapter 2915 regulating gambling and the playing of bingo.

2. A charitable organization, as defined in R.C. 2915.01(H) and described in R.C. 2915.092(A)(1), that has been issued an F-2 permit to sell alcoholic beverages by the individual drink at an event and that conducts games of chance in accordance with the requirements of R.C. 2915.02(D)(1) and a raffle pursuant to R.C. 2915.092 at the event may permit a person to exchange gaming chips used in the playing of the games of chance for tickets to the raffle conducted by the charitable organization.

Respectfully,

A handwritten signature in black ink, appearing to read "Marc Dann", with a stylized flourish at the end.

MARC DANN
Attorney General