

# MEMORANDUM

## State of Alaska Department of Law

**TO:** Larry Persily  
Deputy Commissioner  
Department of Revenue

**DATE:** March 8, 2000

**FILE NO:** 663-00-0125

**TEL. NO:** (907) 465-3600

**SUBJECT:** May a Charitable Gaming  
Multiple-beneficiary Permittee  
(MBP) Form a Partnership with  
Other MBPs To Jointly Conduct  
Charitable Gaming?

**FROM:** Dan Branch  
Assistant Attorney General  
Commercial Section

It is our understanding that a group of MBPs has expressed intent to form a partnership named “The Unified Multiple Permittees Company” or “UMPCO.” According to its organizers, UMPCO will act as a mutual personnel-holding entity for all the MBPs combined, providing retail sales personnel, accounting and payroll personnel, and management personnel for gaming at 16 different Alaska locations. It will also serve as the umbrella entity through which all participating MBPs share in the joint Workers' Compensation Insurance Policy and General Liability Policy. UPMCO has been assigned an employer identification number by the Internal Revenue Service and acts as the employer for the individuals who conduct gaming on behalf of the partnership.

UMPCO's agents describe it as a partnership designed to reduce the costs of charitable gaming for the MBP members. In order to qualify as a true partnership, UMPCO must have been formed to carry on as co-owners of a business for profit.<sup>1</sup> In this context, a business includes every trade, occupation, or profession.<sup>2</sup> UMPCO would pay profits or gain from charitable gaming activity to the member charities of the MBPs. Therefore, it appears to meet the definition of a partnership under Alaska law.

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<sup>1</sup> AS 32.05.010(a).

<sup>2</sup> AS 32.05.990(2).

You have requested us to determine whether the holder of a charitable gaming multiple-beneficiary permit (MBP) may form a partnership, such as UMPCO, with other MBPs to jointly conduct gaming in Alaska. In your request, you state a belief that such a MBP partnership would violate Alaska's gaming laws and regulations. We concur.

In general, gambling is illegal in Alaska. Municipalities and qualified organizations may engage in a variety of regulated gaming activities if the proceeds go to provide financial support for municipalities or qualified charitable organizations.<sup>3</sup> Qualified organizations must come within the definition set out in statute.<sup>4</sup> Your question concerns qualified organizations and not municipalities.

Qualified organizations individually may obtain permits to conduct their own bingo and pull-tab games.<sup>5</sup> They may also contract for the services of a licensed operator,<sup>6</sup> or form a partnership with other charities to conduct such games directly. Qualifying partnerships receive a multiple-beneficiary permit for gaming<sup>7</sup> and are referred to as "MBPs."

No person or organization may conduct a charitable gaming activity on behalf of a qualified organization without an operator's license.<sup>8</sup> The question, then, is whether for the purpose of the charitable gaming laws an organization like UPMCO is an entity separate from the MBPs who are its partners. At common law, partnerships are not deemed to be separate legal entities, but rather alter egos of the partners.<sup>9</sup> However, the

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<sup>3</sup> AS 11.66.280(2)(C) (gaming activities not criminal if authorized by Department of Revenue under AS 05.15).

<sup>4</sup> AS 05.15.690(36).

<sup>5</sup> AS 05.15.100(a).

<sup>6</sup> AS 05.15.115.

<sup>7</sup> AS 05.15.100(d).

<sup>8</sup> AS 05.15.122(a).

<sup>9</sup> *State v. ABC Towing*, 954 P.2d 575,577-78 (Alaska 1998).

legislature has authority to enlarge the definition of “legal entity” to include partnerships and has done so in the criminal context.<sup>10</sup>

It has done so, as well, in the charitable gaming statutes where partnerships are eligible to become qualified organizations, capable of holding a gaming permit<sup>11</sup> or acting as an operator on behalf of other permit holders.<sup>12</sup>

The legislature made further changes in the common law concerning partnerships. At common law, a partnership could not hold property.<sup>13</sup> Under Alaska statutes, partnerships are capable of holding property<sup>14</sup> and conducting business with third parties.<sup>15</sup> UPMCO plans to utilize this authority to carry out a large gaming operation. According to the information provided by its agents, UPMCO will employ the individuals who carry out gaming, contract for gaming supplies, manage the operation, and obtain insurance coverage. The MBP partners will not be involved in the conduct of the gaming business. UPMCO will be conducting gaming activities on behalf of the MBPs as a separate entity. Therefore, it would need an operator’s license to comply with Alaska’s charitable gaming laws.

UMPCO is not qualified to obtain an operator’s license. Only a natural person, municipality, or qualified organization may obtain an operator’s license.<sup>16</sup> A partnership may be a qualified organization but only if it is a bona fide organization of the type listed in AS 05.15.690(36)<sup>17</sup> that has been in existence for a period of three years prior to

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<sup>10</sup> *Id* at 578.

<sup>11</sup> AS 05.15.690(36); AS 05.15.100.

<sup>12</sup> AS 05.15.100(c).

<sup>13</sup> *Id.*

<sup>14</sup> AS 32.05.030.

<sup>15</sup> AS 32.05.040.

<sup>16</sup> AS 05.15.122(b).

<sup>17</sup> AS 05.15.690(36) defines “qualified organization” to mean “a bona fide civic or service organization or a bona fide religious, charitable, fraternal, veterans, labor, political, or educational organization, police or fire department and company, dog mushers' association, outboard motor association, or fishing derby or nonprofit trade association in the state . . . .”

application for a gaming permit or operator's license.<sup>18</sup> This requirement excludes UMPCO because it was formed by MBPs to conduct gaming on their behalf and not for one of the reasons approved by AS 05.15.690(36). Furthermore, it has not been in existence for at least three years. Therefore, the proposed MBP partnership would not be eligible for an operator's license and may not conduct gaming for the MBPs without violating Alaska's gaming statutes. The department gaming regulations reinforce the conclusion that UMPCO would be an unlicensed operator.

We have previously opined that the legislature gave the Department of Community and Economic Development, at the time the department was responsible for charitable gaming enforcement, broad regulatory authority over games of chance and skill in Alaska.<sup>19</sup> This authority was transferred to the Department of Revenue with the responsibility for policing charitable gaming, including the authority to supplement gaming law restrictions through regulation.<sup>20</sup> The department used this authority to adopt 15 AAC 160.190, which implements the operator license requirement of AS 05.15.122.

Under the guidelines set out in 15 AAC 160.190, a partnership made up of MBPs would be an unlicensed operator for purposes of AS 05.15.122. Subsection (a)(1)(A) of 15 AAC 160.190 provides that anyone who conducts a gaming activity, and who is not an employee of the permittee benefiting from the activity, is an operator.<sup>21</sup> Since the MBPs hold the permit that will be used for the gaming activity, and UMPCO will not be an employee of the MBPs, the proposed partnership will need an operator's license to conduct gaming.<sup>22</sup>

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<sup>18</sup> AS 05.15.690(36).

<sup>19</sup> 1990 Inf. Op. Att'y Gen. (May 4; 663-90-0386).

<sup>20</sup> AS 05.15.130.

<sup>21</sup> 15 AAC 160.190(a)(1)(A).

<sup>22</sup> For purposes of the regulation, a person is "an employee of the permittee" if the person's compensation is subject to income tax withholding by the permittee under federal law, the compensation has no direct relationship to the income from the gaming, and the person has no direct or indirect financial interest in any of the property sold, leased, or rented to the permittee for use in conducting the gaming activity. *See* 15 AAC 160.190(b).

The regulation also provides that anyone who directly supervises a person involved in conducting a gaming activity, or who is paid money not under the sole control of the permittee, is an operator.<sup>23</sup> It also states that anyone who makes an investment of any kind, including an investment in property or equipment used in the permittee's gaming activity, and conducts a gaming activity is an operator.<sup>24</sup> According to the information provided in the informal opinion request letter and by UMPCO agents, the MBP partnership would be required to obtain an operator license under these subsections of the regulation. UMPCO will be responsible for providing employees and arranging for gaming locations, pull-tabs supplies, bingo supplies, and insurance. The partnership will have to invest in inventory, gaming space, and insurance in order to meet this commitment. Therefore, in order to conduct a gaming activity legally, it must have an operator's license.

It is likely that the partnership will also be an operator under other subsections of 15 AAC 160.690. The regulation requires an operator's license if the entity is responsible for accounting for game-related expenses that are not under the control of the permittee<sup>25</sup> or if the entity authorizes or pays for game-related expenses that are not under the sole control of the permittee.<sup>26</sup> UMPCO would qualify as an operator under these subsections of 15 AAC 160.190.

Conclusion: Charitable gaming, carried out by a partnership formed by MBPs to conduct gaming in the MBPs' behalf such as UMPCO, will violate AS 05.15.122.

We hope this answers your questions. If we can be of further service, please let us know.

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<sup>23</sup> 15 AAC 160.190(a)(1)(B).

<sup>24</sup> 15 AAC 160.190(a)(1)(C).

<sup>25</sup> 15 AAC 160.190(a)(1)(E).

<sup>26</sup> 15 AAC 160.190(a)(1)(F).