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An exception to Florida gambling law is allowed for the Queen of Hearts random drawing by chance fund raisers conducted by 501-(C) (8) IRS approved lodges provided they totally comply with all provisions detailed in 849.0935 of Florida Statutes as communicated by ABT Prosecutor Robert L. Ehrhardt on February 14, 2014.

Following a recent unannounced visit to BPOE Tampa #708 by ABT Agents, members of the Tampa Elks Queen of Hearts committee rewrote their game rules, made a self-appraisal audit of each section of the rules to Florida Statutes 849.0935 and forwarded details to the local ABT Office (as attached) requesting review and approval from ABT attorneys in Tallahassee. As of March 2019, no reply has been received, but the local ABT Office is aware that the fundraiser continues in operation under the revised rules attached.

By law, the language in your rules is very important, i.e. lodges do **not sell, nor** do members **buy** entry tickets. Voluntary contributions **cannot** be required for entry; a member in good standing may request a free entry ticket, a minimum donation may be suggested, rules must be prominently displayed, specifies in the law must be followed in detail to qualify for the exception.

To satisfy ABT requirements and comply with IRS 501 – (C) (8) Rules, voluntary donations should be from **only** members in good standing, their spouses or widow(er) with Secretary issued cards. To treat all donors equally, for example, a \$2.00 suggested minimum entry would provide a \$10.00 contributor 5 entry tickets for the drawing.

Unrelated Business Income Tax may be involved. This gaming generates income; it is carried on weekly at the same location and same time; and gaming is generally not an IRS Exempt activity and obviously not a major purpose for the existence of the BPOE nationwide.

To avoid UBI Taxes each lodge must understand the 85% Volunteer Labor Rule Exception, insure that actual hours worked at each session meet the 85% Rule, and require accurate reports and records regarding hours worked for every function or event. IRS Form 990, Part III, Schedule G provides a good indication of

information required by the IRS that should be the basis for daily reports that accompany cash receipts to the Lodge Secretary.

IRS Form W-2G must be issued to winners over \$600 and for winners over \$5,000 Federal Income Tax of 24% must be withheld from each payment. Organizations in violation of this section of the law could be charged with a misdemeanor of the second degree.

EDITOR'S NOTE: Risk of losing our tax-exempt status or incurring taxes on UBI from gaming and other activities can be avoided if all Elk members uphold the obligation they assumed when accepted as a member. That is, to obey the statutes, rules, and regulations within the BPOE and the laws within the USA. This includes having lodges open **only** to bona fide members and their guests and allowing **only** members to pay for food, drinks, other goods and services, and gaming activities sponsored by the lodge as provided by IRS, ABT, and other national, state, and local laws, rules, and regulations.

Submitted by:

Frank Palladini, PSP
Advisor, FSEA Business Practices Committee
March 2019

TAMPA ELKS 708 QUEEN OF HEARTS—RULES OF THE GAME

The Starting Jackpot amount will be determined by the Queen of Hearts committee and will be announced prior to the first drawing on the game board. Starting Jackpot will be at least \$400.

1. To begin, a game board that has been purchased from a certified gaming vendor containing 54 cards will be displayed in the social quarters, with the **QUEEN OF HEARTS** as the “JACKPOT CARD”. Removing the seal will be done only by a member of the **QUEEN OF HEARTS** committee at the time and date of the drawing.
2. **QUEEN OF HEARTS is open ONLY to members in good standing and their spouses or widow(er). Must present a valid membership (spouse, widow(er)) card to collect winnings. If not valid, another name will be drawn.**
3. No donation or contribution is necessary to play (one per week); however, the committee has a suggested minimum donation in (#4) below.
4. The suggested minimum donation is \$2 per chance. Tickets can be acquired immediately after any drawing up to the time of the next drawing. There can be only one name per ticket. **Write your name LEGIBLY (avoid use of initials to avoid confusion) and Card Choice** on the ticket and place in the raffle drum. Exception: if a member chooses to donate their winnings, any reference to Elks Lodge #708 is acceptable. If you are not present and you do not write a valid choice card number on your ticket, **the ticket will be discarded as null and void and a new ticket will be drawn.**
5. The drawn ticket will be discarded as invalid if it does not contain all the required information in #4 above and a new ticket will be drawn.
6. Each Thursday (unless otherwise posted) the last ticket available will be at 6:45 PM. At 7:00 PM, a name will be drawn from the tickets distributed that week. If you show up after 7 PM, you will be considered not present. The clubroom clock is the official clock.
7. The total prize pool will continue to accumulate weekly until the **QUEEN OF HEARTS** is uncovered. The jackpot amount, based on contributions received, will be updated, and prominently displayed in the Social Quarters.
8. If your name is drawn, your card choice will be exposed. If the chosen card is the **QUEEN OF HEARTS**, and you are present, you will receive 60% of the Jackpot. If you are not present, you will receive half that amount (half of the 60%). * If the **QUEEN OF HEARTS** is not drawn, the attached stages will determine the winning payout.
9. Once a card is selected, it will be removed from play and shown face up on the board. Each week after the drawing, all tickets for that week’s drawing will be destroyed.
10. Tickets will be held in the locked raffle drum until the weekly drawing. **Tickets will only be dispersed when the Club is open.**

11. All winning players are responsible for all taxes. A W2-G will be issued for prizes over \$600. NO prize over \$600 will be paid until the W2-G information is properly filled out. If a player is unwilling or unable to provide W2-G information, the prize will revert to the club. Winnings up to \$600 will be paid in cash, at the time of the drawing. Winnings over \$600 will be paid by check within 48 hours after the drawing.

***Unless on “Official Elk Business” as validated by the Queen of Hearts Co**



QUEEN OF HEARTS RAFFLE STAGES

STAGE 1

POT AMOUNT \$ 0 TO \$5,000

Ticket Winner.....	\$25
Other Queens.....	\$30
Jokers.....	\$50
Any Ace.....	\$25
Any King.....	\$20
Any Jack.....	\$10

STAGE 3

POT AMOUNT \$10,001 TO \$15,000

Ticket Winner.....	\$75
Other Queens.....	\$100
Jokers.....	\$200
Any Ace.....	\$25
Any King.....	\$20
Any Jack.....	\$10

STAGE 5

POT AMOUNT \$20,001 TO \$40,000

Ticket Winner.....	\$200
Other Queens.....	\$250
Jokers.....	\$500
Any Ace.....	\$25
Any King.....	\$20
Any Jack.....	\$10

STAGE 2

POT AMOUNT \$ 5,001 TO \$10,000

Ticket Winner.....	\$50
Other Queens.....	\$50
Jokers.....	\$100
Any Ace.....	\$25
Any King.....	\$20
Any Jack.....	\$10

STAGE 4

POT AMOUNT \$15,001 TO \$20,000

Ticket Winner.....	\$100
Other Queens.....	\$200
Jokers.....	\$300
Any Ace.....	\$25
Any King.....	\$20
Any Jack.....	\$10

STAGE 6

POT AMOUNT \$ 40,001 AND UP

Ticket Winner.....	\$500
Other Queens.....	\$500
Jokers.....	\$1,000
Any Ace.....	\$25
Any King.....	\$20
Any Jack.....	\$10

Florida Statutes (and relevance to Queen of Hearts)

849.0935 Charitable, nonprofit organizations; drawings by chance; required disclosures; unlawful acts and practices; penalties.—

(1) As used in this section, the term:

(a) “Drawing by chance” or “drawing” means an enterprise in which, from the entries submitted by the public to the organization conducting the drawing, one or more entries are selected by chance to win a prize. The term “drawing” does not include those enterprises, commonly known as “matching,” “instant winner,” or “preselected sweepstakes,” which involve the distribution of winning numbers, previously designated as such, to the public.

Not public; available to bona fide members only. Once a week random drawing. If the drawn entry includes the card number covering the Queen of Hearts, the amount of the prize announced before the drawing is awarded the entrant.

(b) “Organization” means an organization which is exempt from federal income taxation pursuant to 26 U.S.C. s. 501(c)(3), (4), (7), (8), (10), or (19), and which has a current determination letter from the Internal Revenue Service, and its bona fide members or officers.

BPOE Tampa Elks Lodge #708 is a subordinate Lodge of the BPO Elks of America and is incorporated under the State of Florida (Corporation # 702354). The lodge files annual Federal Income Tax returns under ID 59-023-3020; group exemption 1156 as an IRS-approved 501(c)8 organization. All records pertaining to the Department of the Treasury approval, IRS matters, Florida Articles of Incorporation, Lodge bylaws, etc. are maintained in the office of the elected Secretary of BPOE Tampa #708, located at 3616 W Gandy Blvd., Tampa, FL 33611.

(2) The provisions of s. 849.09 shall not be construed to prohibit an organization qualified under 26 U.S.C. s. 501(c)(3), (4), (7), (8), (10), or (19) from conducting drawings by chance pursuant to the authority granted by this section, provided the organization has complied with all applicable provisions of chapter 496.

Solicitation of contributions is limited to members per exemption found in Chapter 496.406(b).

(3) All brochures, advertisements, notices, tickets, or entry blanks used in connection with a drawing by chance shall conspicuously disclose:

(a) The rules governing the conduct and operation of the drawing.

Rules are prominently displayed in social quarters

(b) The full name of the organization and its principal place of business.

Part of the posted Rules document

(c) The source of the funds used to award cash prizes or to purchase prizes.

Prize pool is comprised of members contributions accumulated throughout the life of each Queen of Hearts board. Documented in the prominently displayed Rules.

Florida Statutes (and relevance to Queen of Hearts)

(d) The date, hour, and place where the winner will be chosen and the prizes will be awarded, unless the brochures, advertisements, notices, tickets, or entry blanks are not offered to the public more than 3 days prior to the drawing.

Rules document contains date & hour. Tickets are NOT offered to the public; members only.

(e) That no purchase or contribution is necessary.

In full compliance with requirements 3(a) thru 3(e). Full & comprehensive rules are prominently displayed in the club. Drawing is open only to bona fide members and no contribution or donation is required. A suggested minimum donation of \$2.00 is requested, however, any paid-up member in good standing requesting a free entry prior to the deadline for the drawing each week will be issued an entry ticket.

(4) It is unlawful for any organization which, pursuant to the authority granted by this section, promotes, operates, or conducts a drawing by chance:

(a) To design, engage in, promote, or conduct any drawing in which the winner is predetermined by means of matching, instant win, or preselected sweepstakes or otherwise or in which the selection of the winners is in any way rigged;

Drawing is totally random.

(b) To require an entry fee, donation, substantial consideration, payment, proof of purchase, or contribution as a condition of entering the drawing or of being selected to win a prize. However, this provision shall not prohibit an organization from suggesting a minimum donation or from including a statement of such suggested minimum donation on any printed material utilized in connection with the fundraising event or drawing;

No contribution or donation is required. A suggested minimum donation of \$2.00 is recommended, however, any paid-up member in good standing requesting a free entry prior to the deadline for the drawing each week will be issued an entry ticket.

(c) To condition the drawing on a minimum number of tickets having been disbursed to contributors or on a minimum amount of contributions having been received;

Prize pool is determined by member contributions during the life of the Queen of Hearts board. No minimums or any other conditions apply.

(d) To arbitrarily remove, disqualify, disallow, or reject any entry or to discriminate in any manner between entrants who gave contributions to the organization and those who did not give such contributions;

Drawings are random and 'free' tickets are identical to those accompanied by a donation.

(e) To fail to promptly notify, at the address set forth on the entry blank, any person, whose entry is selected to win, of the fact that he or she won;

Notifications are generally in real time, but in all cases prompt.

Florida Statutes (and relevance to Queen of Hearts)

(f) To fail to award all prizes offered;

Prizes are awarded promptly per the posted Rules document.

(g) To print, publish, or circulate literature or advertising material used in connection with the drawing which is false, deceptive, or misleading;

Rules are clearly defined and followed.

(h) To cancel a drawing; or

Drawings are scheduled weekly and are never cancelled. Any change to schedule is due to holidays and is communicated well in advance.

(i) To condition the acquisition or giveaway of any prize upon the receipt of voluntary donations or contributions.

No contribution or donation is required. A suggested minimum donation of \$2.00 is recommended, however, any paid-up member in good standing requesting a free entry prior to the deadline for the drawing each week will be issued an entry ticket.

(5) The organization conducting the drawing may limit the number of tickets distributed to each drawing entrant.

No minimums per the Rules document prominently displayed in the social quarters.

(6) A violation of this section is a deceptive and unfair trade practice.

(7) Any organization which engages in any act or practice in violation of this section is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. However, any organization or other person who sells or offers for sale in this state a ticket or entry blank for a raffle or other drawing by chance, without complying with the requirements of paragraph (3)(d), is guilty of a misdemeanor of the second degree, punishable by fine only as provided in s. 775.083.

(8) This section does not apply to the state lottery operated pursuant to chapter 24.

Select Year:

The 2018 Florida Statutes

[Title XLVI](#)
CRIMES

[Chapter 849](#)
GAMBLING

[View Entire Chapter](#)

849.0935 Charitable, nonprofit organizations; drawings by chance; required disclosures; unlawful acts and practices; penalties.—

(1) As used in this section, the term:

(a) “Drawing by chance,” “drawing,” or “raffle” means an enterprise in which, from the entries submitted by the public to the organization conducting the drawing, one or more entries are selected by chance to win a prize. The term “drawing” does not include those enterprises, commonly known as “game promotions,” as defined by s. [849.094](#), “matching,” “instant winner,” or “preselected sweepstakes,” which involve the distribution of winning numbers, previously designated as such, to the public.

(b) “Organization” means an organization which is exempt from federal income taxation pursuant to 26 U.S.C. s. 501(c)(3), (4), (7), (8), (10), or (19), and which has a current determination letter from the Internal Revenue Service, and its bona fide members or officers.

(2) Section [849.09](#) does not prohibit an organization from conducting drawings by chance pursuant to the authority granted by this section, if the organization has complied with all applicable provisions of chapter 496 and this section.

(3) All brochures, advertisements, notices, tickets, or entry blanks used in connection with a drawing by chance shall conspicuously disclose:

(a) The rules governing the conduct and operation of the drawing.

(b) The full name of the organization and its principal place of business.

(c) The source of the funds used to award cash prizes or to purchase prizes.

(d) The date, hour, and place where the winner will be chosen and the prizes will be awarded, unless the brochures, advertisements, notices, tickets, or entry blanks are not offered to the public more than 3 days prior to the drawing.

(e) That no purchase or contribution is necessary.

(4) It is unlawful for any organization that, pursuant to the authority granted by this section, promotes, operates, or conducts a drawing by chance:

(a) To design, engage in, promote, or conduct any drawing in which the winner is predetermined by means of matching, instant win, or preselected sweepstakes or otherwise or in which the selection of the winners is in any way rigged;

(b) To require an entry fee, donation, substantial consideration, payment, proof of purchase, or contribution as a condition of entering the drawing or of being selected to win a prize. However, this paragraph does not prohibit an organization from suggesting a minimum donation or from including a statement of such suggested minimum donation on any printed material used in connection with the fundraising event or drawing;

(c) To condition the drawing on a minimum number of tickets having been disbursed to contributors or on a minimum amount of contributions having been received;

(d) To arbitrarily remove, disqualify, disallow, or reject any entry or to discriminate in any manner between entrants who gave contributions to the organization and those who did not give such contributions;

(e) To fail to promptly notify, at the address set forth on the entry blank, any person whose entry is selected to win of the fact that he or she won;

(f) To fail to award all prizes offered;

(g) To print, publish, or circulate literature or advertising material used in connection with the drawing which is false, deceptive, or misleading;

(h) To cancel a drawing; or

(i) To condition the acquisition or giveaway of any prize upon the receipt of voluntary donations or contributions.

(5) The organization conducting the drawing may limit the number of tickets distributed to each drawing entrant.

(6) A violation of this section is a deceptive and unfair trade practice.

(7) Any organization that engages in any act or practice in violation of this section commits a misdemeanor of the second degree, punishable as provided in s. [775.082](#) or s. [775.083](#). Any organization or other person who sells or offers for sale in this state a ticket or entry blank for a raffle or other drawing by chance, without complying with the requirements of paragraph (3)(d), commits a misdemeanor of the second degree, punishable by fine only as provided in s. [775.083](#).

(8) This section does not apply to the state lottery operated pursuant to chapter 24.

History.—s. 1, ch. 84-181; ss. 1, 2, ch. 88-115; s. 216, ch. 91-224; s. 1, ch. 96-253; s. 1825, ch. 97-102; s. 1, ch. 97-108; s. 2, ch. 2013-2.

Subject: Fwd: Letter to Victor Neal dated February 14, 2014

From: ejspal (ejspal@juno.com)

To: jeanne9343@yahoo.com;

Date: Thursday, May 15, 2014 10:51 PM

Sent via the Samsung Galaxy S™ III, an AT&T 4G LTE smartphone

----- Original message -----

From: "Ehrhardt, Robert" <Robert.Ehrhardt@myfloridalicense.com>
Date:
To: ejspal@juno.com
Cc: "Neal, Victor" <Victor.Neal@myfloridalicense.com>
Subject: Letter to Victor Neal dated February 14, 2014

Dear Florida State Elks Lodge Association,

My name is Bob Ehrhardt and I have been asked to review the questions you submitted to Captain Neal in a letter dated February 14, 2014. I apologize for the delayed response but I have been waiting on a valid email address for correspondence which was supplied to me yesterday. In regards to the Instant Bingo Pull Tab Machines and the Queen of Hearts Raffle Drawing Fundraiser, as long as you comply with the exceptions detailed in Florida Statutes § 849.0931 and Florida Statutes § 849.0935 both activities should be fine but I must warn you that my opinion should not be considered a grant of immunity. It is up to you and your posts to comply with the law and the Division treats each investigation on an individual basis.

I cannot speak to the 501(c) Solution Gaming Machines. I would strongly suggest that you hire an attorney to file declaratory judgment pursuant to Florida Statutes Chapter 86 in the judicial circuits where these games are in operation. The declaratory judgment will provide a legal authority that will be binding on all law enforcement entities that are operating within the judicial circuit that issues the judgment.

Robert L. Ehrhardt

ABT Prosecutor