Gambling: Private Clubs
17-A MRSA 954
17-A MRSA 952(8)

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Honorable Arthur C. Raymond
House of Representatives
State House
Augusta, Maine

Re: Card playing at private clubs which have liquor licenses.

Dear Representative Raymond:

This responds to your oral request for an opinion as to whether individuals may gamble in private clubs which have liquor licenses.

Preliminarily it should be noted that if the gambling which is taking place at a private club is being conducted within the scope of a license issued by the Chief of the State Police pursuant to 17 M.R.S.A. § 332, and in accordance with the provisions of 17 M.R.S.A. §§ 330-345, the gambling would be lawful. However, the question which I assume is the basis for your inquiry is whether such gambling is lawful absent a license. It is not possible to give an overall answer to this question, since the response will vary with the particular fact situation.

17-A M.R.S.A. § 954 provides that "[a] person is guilty of unlawful gambling if he intentionally or knowingly advances or profits from unlawful gambling activity." (Emphasis added). Gambling at cards at a private club is "unlawful," as that term is defined by 17-A M.R.S.A. § 952(11), because it is "not expressly authorized by statute." However, persons will be punishable under § 954 only if in the course of or in conjunction with the gambling they "advance gambling activity" or "profit from gambling activity," as those terms are defined by § 952(1) and (9).1/

1/ These definitions are set out in the appendix to this opinion.

Since the definitions of both "advance gambling activity" and "profit from gambling activity" carve out exceptions for "players," a person gambling in a private club will not violate §954 if he is a player. 17-A M.R.S.A. §952(8) defines a "player" as

> "a person who engages in social gambling solely as a contestant or bettor on equal terms with the other participants therein without receiving or becoming entitled to receive something of value or any profit therefrom other than his personal gambling winnings."

The definition of player, in turn, is dependent upon the meaning of the term "social gambling," which is defined by §952(8) as

> "gambling, or a contest of chance, in which the only participants are players and from which no person or organization receives or becomes entitled to receive something of value or any profit whatsoever, directly or indirectly, other than as a player, from any source, fee, remuneration connected with said gambling, or such activity as arrangements or facilitation of the game, or permitting the use of premises, or selling or supplying for profit refreshments, food, drink service or entertainment to participants, players or spectators."

Thus, if a person is gambling at a private club and the gambling constitutes social gambling, the person is by definition a "player" and consequently does not violate §954 since "players" are exempted from its prohibitions.

Of course, if the gambling does not constitute social gambling the participants would be guilty of a violation of §954. In this regard it should be noted that the language of the definition of social gambling--"something of value or <u>any</u> profit <u>whatsoever</u>, <u>directly or indirectly</u>,. . .from <u>any</u> source, fee remuneration" (emphasis added)--demonstrates a legislative intent that the social gambling exception be construed narrowly. Thus, if the private club sells or supplies at a profit any food or drink to the participants in the gambling, or to any persons who might at any time act as spectators, the gambling would not be social gambling. Likewise, if any of the participants in the gambling have paid the club a fee which represents, at least in part, payment for use of the premises, the gambling would not constitute social gambling and the participants would not enjoy the "player" exception. Under such circumstances the participants would be guilty of unlawful gambling under §954 since their

conduct would fall within the definition of "advance gambling activity" as they would be engaging in "conduct that materially aids. . . gambling activity," namely participation in the actual "playing phases" of the gambling.

Turning to the criminal liability of the private club, regardless of whether the gambling constitutes social gambling the person in charge of the club at the time the gambling occurs and the club itself, pursuant to 17-A M.R.S.A. § 60(1)(B), may be guilty of unlawful gambling if the person in charge of the premises knowingly permits the gambling to occur or continue. This is because the last sentence of § 952(1) includes within the definition of "advance gambling activity" the permitting of gambling activity to occur or continue by a person, other than a player, who has substantial proprietary or other authoritative control over the premises. The one exception to this definitional proscription is that created in the first sentence of § 952(1) exempting players and members of a player's family when the gambling takes place in their residence. Thus, if the manager of the private club is participating in the gambling and the gambling constitutes social gambling, neither the manager nor the club will be guilty of unlawful gambling. However, if the gambling does not constitute social gambling, or if it does constitute social gambling but the manager or other person in charge of the club is not participating, the manager and the club would be guilty of unlawful gambling.

In summary, then, participants in gambling at private clubs will commit the offense of unlawful gambling (17-A M.R.S.A. § 954) if their conduct does not constitute social gambling. The manager of the private club and the private club itself will commit the offense of unlawful gambling if the gambling at the club does not constitute social gambling, or, if the activity is coail gambling, if the manager or other person in charge of the club is not a player in the gambling. In view of the many different but commonly occurring circumstances which will remove gambling at clubs from the social gambling exception, we believe it is prudent to advise you that as a general rule unlicensed gambling may not be conducted at private clubs.

Because the definitional section of the gambling chapter is so very complex, the attempt to explain the interrelationship of those definitions in their application to your question may seem confusing. If you have further questions regarding the opinion or this subject in general, please do not hesitate to contact me.

Sincerely,

Joseph E. Brennan

JOSEPH E. BRENNAN
Attorney General

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APPENDIX

17-A M.R.S.A. §952(1) defines "advance gambling activity" in the following way:

> "A person 'advances gambling activity' if, acting other than as a player or a member of the player's family residing with a player in cases in which the gambling takes place in their residence, he engages in conduct that materially aids any form of gambling activity. Conduct of this nature includes, but is not limited to, bookmaking, conduct directed toward the creation or establishment of the particular game, contest, scheme, device or activity involved, toward the acquisition or maintenance of premises, paraphernalia, equipment or apparatus therefor, toward the solicitation or inducement of persons to participate therein, toward the actual conduct of the playing phases thereof, toward the arrangement of any of its financial or recording phases, or toward any other phase of its operation. A person also advances gambling activity if, having substantial proprietary control or other authoritative control over premises being used with his knowledge for purposes of gambling activity, he permits that activity to occur or continue or makes no effort to prevent its occurrence or continuation."

17-A M.R.S.A. §952(9) defines "profit from gambling activity in the following manner:

> "A person 'profits from gambling activity' if, other than as a player, he accepts or receives money or other property pursuant to an agreement or understanding with any person whereby he participates or is to participate in the proceeds of gambling activity."