STATE OF MICHIGAN

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LIQUOR CONTROL COMMISSION

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In the matter of the request of	)
K & G MANAGEMENT, LLC	)
D/B/A KRISTI'S POUR HOUSE	)
for a declaratory ruling regarding	)
MCL 436.1901(2)	)
	)

At the Michigan Liquor Control Commission (Commission) October 7, 2021, meeting in Lansing, Michigan.

PRESENT: Pat Gagliardi, Chair
Dennis Olshove, Commissioner
Geralyn Lasher, Commissioner

DENIAL OF DECLARATORY RULING REQUEST

On September 7, 2021, the Commission received a request for declaratory ruling under R. 436.1971 of the Michigan Administrative Code (Mich. Admin. Code), from Keith L. McEvoy, legal counsel on behalf of K & G Management, LLC (Petitioner).

Pursuant to Mich. Admin. Code R. 436.1973(1), the Commission has thirty (30) days to notify the Petitioner if a declaratory ruling shall be issued. On October 7, 2021, the Commission met in an open meeting at 10:30 a.m. at the Lansing office of the Commission and considered the Petitioner's request. After deliberation and discussion at the open meeting, the Commission denied the request for the declaratory ruling. As required by Mich. Admin. Code R. 436.1975, if a request for a declaratory ruling is denied, the Commission shall issue a concise written statement of its principal reasons for denial within thirty (30) days of the denial. For the reasons stated below, the request is denied.

The Petitioner is a licensee of the Commission and holds Class C and Specially

Designated Merchant licenses and permits at 211 E. Main St., Hart, MI 49420-1172 in Oceana County. The Petitioner was issued a Violation Warning Notice (Warning) by the Commission on July 12, 2021, regarding unlawful gambling on the licensed premises under Section 901(2) of the Michigan Liquor Control Code, MCL 436.1901(2), specifically bingo games.

The Petitioner raises questions like those raised previously in a declaratory ruling request concerning bingo games. The Commission denied that request, which had been filed by multiple entities, including *Hudsonville Winery, Inc.* There, the Commission decided that the questions had previously been resolved in Complaint CV-501753 against Saugatuck Brewing Company, Inc.

The Petitioner asserts that the Warning issued to it seemingly contradicts an Order entered on April 28, 2021, in the matter of *Hudsonville Winery, Inc.* Whether illegal gambling is occurring on the licensed premises is a very fact-specific inquiry that is more appropriately undertaken in an enforcement proceeding. The order the hearing commissioner issued in *Hudsonville Winery, Inc.* does not state factual findings concerning every aspect of the activity and states that it was based on the findings of fact in that case. That order is not binding precedent for any other case that comes before the Commission, so issuing a declaratory ruling to resolve a supposed “conflict” is not necessary.

The Petitioner maintains that the bingo games operated by it did not involve any consideration, which is an essential element of gambling. The Petitioner indicated that in *Hudsonville Winery, Inc.* Attorney General Opinion No. 645, dated November 18, 1947, was cited as support for this position. However, as the Attorney General opinion recognized, the Michigan Supreme Court, in cases such as *Sproat-Temple Theatre Corp. v. Colonial Theatrical Enterprise, Inc.*, 276 Mich 127 (1936), and *United-Detroit Theatre Corp. v. Colonial Theatrical Enterprise, Inc.*, 280 Mich 425 (1937), has determined that even though an activity may appear to be “free,” indirect consideration still can exist in the activity. And indirect consideration is sufficient to render the activity gambling. In the *United-Detroit Theatre* decision, the Supreme Court concluded that mere attendance was enough to constitute consideration. In particular, the Court held that the existence of prizes being offered to those who may not otherwise go to the venue is enough to constitute consideration. See 280 Mich at 429-430. In *Sproat-Temple Theaters*, the court recognized

that the distribution of prizes attracts persons to the business, and the business reaps a financial benefit, constituting "indirect consideration." 276 Mich at 130-131.

Therefore, for the reasons stated above, the Petitioners' declaratory ruling request is **DENIED**.

MICHIGAN LIQUOR CONTROL COMMISSION

Pat Gagliardi, Chair

Dennis Olshove, Commissioner

Geralyn A. Lasher, Commissioner

Date Mailed: November 5, 2021