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Office of the City Attorney  
Jayne W. Williams  
City Attorney

VIA FACSIMILE

October 22, 1990

Mark L. Eisenberg, Esq.  
~~Gatenhouse Plaza~~  
1290 "B" Street, Suite 109  
Hayward, California 94541

Re: Violation of Penal Code Section 330

Dear Mr. Eisenberg:

After our conversation on Friday, October 19, 1990, I have reviewed Penal Code Section 319 (lotteries) and 330 (gaming), as well as the cases interpreting those statutes. My research indicates that while the planned "Monte Carlo Night" activities at the Snow Building, do not violate Section 319, they do violate Section 330.

Unlike the analysis required for Section 319 which focuses on the presence of the three elements of prize, distribution by chance, and consideration, the two elements required by Section 330 are whether the game is one of those proscribed and that the games be played for money or representative value.

The "casino style games" you described in your letter of October 19, 1990, are clearly those which Section 330 proscribes. Second, the game is played for money or representative of value, as you stated in our phone conversation on October 19, 1990. Since both elements of Section 330 are present a violation of that section exists.

It appears, as a close reading of 87 Ops. Cal. Atty. Gen. 906 (1988) reveals, that you have confused the requirements of Penal Code Sections 319 and 330. The consideration element of Section 319 focuses upon what the players have paid for the chance to win. Conversely Section 330 focuses not on what if anything was paid for the chips, but rather that the chips are representative of value within the meaning of Section 330. Indeed, it does not


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matter whether the chips were acquired by gift or purchase. (87 Ops. Cal. Atty. Gen. 906 at p. 144) As long as the game involves "playing for chips which may be redeemed for merchandise, the chips represent the value of such merchandise, and hence are representative of value within the meaning of Section 330." (87 Ops. Cal. Atty. Gen. 906 at p. 144-145.)

Thus, while the proposed "Monte Carlo Night" activities of Temple Beth Shalom do not violate Penal Code Section 319 (lotteries), they do violate Penal Code Section 330 (gaming). As such, the proposed activity may not take place.

Very truly yours,

JAYNE W. WILLIAMS  
City Attorney

By:   
MARGARET J. FUJIOKA  
Assistant to the City Attorney

MJF:jrs

cc: Herbye White, Director, OPR  
Ceda Floyd, OPR  
Dr. Joel Parrott, Eastbay Zoological Society