



HENRY McMASTER
ATTORNEY GENERAL

December 11, 2006

The Honorable Tracy R. Edge
Member, House of Representatives
1423 Edge Drive
North Myrtle Beach, South Carolina 29582

Dear Representative Edge:

In a letter to this office you indicated that a group called Choose Children First has joined with several other organizations for a voter registration drive with promises of cash prizes to be awarded to participants via lottery style drawings. You have questioned whether the referenced drawing complies with State law. According to the website, schools in this State were allowed to participate in a voter registration drive. As set forth on the website,

Schools with the highest percent (one completed voter registration form-new or updated-per student) of newly registered voters will be entered into a drawing for a \$1,000 donation. A minimum of 10 schools will be drawn.

S.C. Code Ann. § 16-19-10 (2003) provides:

(w)hoever shall publicly or privately erect, set up, or expose to be played or drawn at or shall cause or procure to be erected, set up, or exposed to be played, drawn, or thrown at any lottery under the denomination of sales of houses, lands, plate, jewels, goods, wares, merchandise, or other things whatsoever or for money or by any undertaking whatsoever, in the nature of a lottery, by way of chances, either by dice, lots, cards, balls, numbers, figures, or tickets or who shall make, write, print or publish, or cause to be made, written, or published any scheme or proposal for any of the purposes aforesaid is guilty of a misdemeanor and, upon conviction, must be fined one thousand dollars and imprisoned for one year. One-third of the fine imposed shall be paid to the person, if any, who informed law enforcement officials or other appropriate authorities about the violation which led to the conviction. Each violation constitutes a separate offense.

Article XVII, Section 7 of the State Constitution sets forth that

[o]nly the State may conduct lotteries, and these lotteries must be conducted in the manner that the General Assembly provides by law. The revenue derived from the

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lotteries must first be used to pay all operating expenses and prizes for the lotteries. The remaining lottery revenues must be credited to a separate fund in the state treasury styled the 'Education Lottery Account', and the earnings on this account must be credited to it. Education Lottery Account proceeds may be used only for education purposes as the General Assembly provides by law. The game of bingo, when conducted by charitable, religious, or fraternal organizations exempt from federal income taxation or when conducted at recognized annual state and county fairs, is not considered a lottery prohibited by this section.

Typically, a raffle whereby an individual buys a ticket for the opportunity to win a prize based upon a random drawing is considered a lottery. See: Op. Atty. Gen. dated June 23, 2004. However, other games or events may also be considered a lottery. In Darlington Theatres, Inc. v. Coker, et al., 190 S.C. 282, 292, 2 S.E.2d 782, 786 (1939), the State Supreme Court determined that a lottery is

...a species of gaming, which may be defined as a scheme for the distribution of prizes or things of value by lot or chance among persons who have paid, or agreed to pay, a valuable consideration for the chance to obtain a prize.

Therefore, the three elements of a lottery are (1) the offering of a prize (2) for payment of some consideration (3) with the winner determined by chance. These elements must be present in any scheme in order for it to be considered a lottery.

As set forth above, while the Choose Children First proposal has the elements of a prize, the \$1,000.00 donation, and chance, in that the winner will be chosen by a drawing, it does not appear that there is the element of consideration, a payment for the opportunity to win the prize. As a result, in the opinion of this office, the proposal would not constitute a lottery.

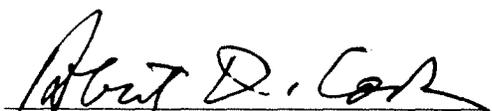
If there are any questions, please advise.

Sincerely,



Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Assistant Deputy Attorney General