



HENRY McMASTER
ATTORNEY GENERAL

March 20, 2009

The Honorable Mark Hammond
Secretary of State
State of South Carolina
P. O. Box 11350
Columbia, South Carolina 29211

Dear Mr. Hammond:

In a letter to this office you questioned whether a particular solicitation campaign associated with a charitable organization meets the consideration element of a lottery under South Carolina law. According to your letter, the campaign is as follows:

[p]otential donors visiting the website of the charitable organization have the opportunity to donate \$25 to the charitable purpose. In return for donating \$25, the donor will be entered into a drawing for a house. The donor will be entered into the drawing one time for each \$25 donation. Individuals who do not wish to donate \$25 may obtain a free entry form by sending in a written request with their contact information and a self-addressed, stamped envelope. There is no limit on the amount of free entries by individuals into the giveaway and all proceeds go to charity. The individual must return the entry form to the charitable organization by certified mail. Winners are determined by a random drawing from all eligible entries.

As set forth in an opinion of this office dated September 21, 2007, "...a raffle whereby an individual buys a ticket for the opportunity to win a prize based upon a random drawing is considered a lottery...However, other games or events may also be considered a lottery." In Darlington Theaters, 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 win a prize.

Consistent with such, the three elements of a lottery are (1) the offering of a prize; (2) the payment of some consideration; and (3) the determination of the winner by chance. All three elements must be present in any scheme in order for it to be considered a lottery.

S.C. Code Ann. § 16-19-10 states that

[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. (emphasis added).

Article XVII, Section 7 of the State Constitution provides 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 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.

In the opinion of this office, the scheme addressed by you constitutes a lottery in that there are present the element of a prize, i.e., the house, the element of chance, i.e., the random drawing in which the winner of the house is determined, and the element of consideration, i.e., the \$25 payment "donation"¹ for the opportunity to enter or the obtaining of a "free entry form" by the sending in of a written request with contact information and a self-addressed stamped envelope. While clearly the

¹The fact that the contribution is labeled a "donation" does not diminish the monetary amount paid from constituting "consideration" for purposes of a lottery. An opinion of this office dated June 23, 2004 noted that a lottery may not be legitimized merely by referring to the consideration paid as a "donation." See also: Op. Atty. Gen. dated January 21, 1974 (lottery whereby no fee would be charged for tickets, however, all persons who desire to participate would be requested to make a donation is nevertheless a lottery).

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\$25 dollar payment would constitute monetary consideration sufficient for purposes of determining a lottery exists, in the opinion of this office, the alternative whereby an individual may receive a "free entry form" in the manner addressed would also not prevent the scheme from being considered a lottery. In the opinion of this office, the ability to obtain a "free entry form" is a mere ruse designed to attempt to eliminate the element of consideration and, therefore, the determination that the referenced scheme is a lottery.

In Sun Light Prepaid Phonecard Co. Inc. v. State of South Carolina et al., 360 S.C. 49, 600 S.E.2d 61 (2004), the State Supreme Court distinguished between a scheme related to the sale of a legitimate product and a ruse used as a front to gamble. In that case, sellers of prepaid, long distance telephone cards brought an action following the State's seizure of cards and electronic phone card dispensers as being violative of State statutes governing illegal gambling devices. The Court noted that the main difference between the referenced dispensers and legitimate vending machines

...is that the vending machines dispense promotional game products that are legitimate because their companies are attempting to promote the sale of those products. The phone card dispensers, on the other hand, do not issue game pieces that are part of a legitimate promotion or sweepstakes. The product being sold to consumers is not the long distance phone service but a game of chance.

360 S.C. 55 fn.6. Here, likewise, in the opinion of this office, the means to participate without the actual payment of money by providing the ability to obtain a "free" entry form is a ruse, a mere attempt to circumvent this State's laws against a lottery unrelated to the sale of a legitimate product. In the situation involving the "free" entry form, the participant in fact gets nothing except an opportunity to enter an illegal lottery, a pure game of chance.

With kind regards, I am,

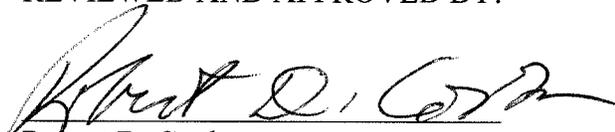
Very truly yours,

Henry McMaster
Attorney General



By: Charles H. Richardson
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REVIEWED AND APPROVED BY:



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