



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

September 28, 1995

The Honorable Joe Wilson
Senator, District No. 23
Box 5709
West Columbia, South Carolina 29171

Re: Informal Opinion

Dear Senator Wilson:

You have expressed concern about the possibility of the operation of an illegal lottery in South Carolina. You have noted that an Atlanta-based company is selling tickets for \$1 and \$2 promising potential payments of \$50,000. You have enclosed a letter from Harry L. Simpson, former I.R.S. agent as well as copies of the tickets being sold.

Apparently, the way the operation works is this. An individual purchases a collector's card for \$1 or 2. With the purchase of the card, is included an application form which an individual may fill out for eligibility in a contest. The applicant is required to "return this order form with a hand-written, self-addressed, stamped envelope", and the contest rules place a limitation upon the number of entries. Typically, the number of entries is limited to two per request, per envelope, per day. The application form also characterizes the entry as being "free".

Further, Mr. Simpson states in his letter:

[t]he advertisements ... alleged that there had been 23 ten thousand dollar winners and that all of them were from various places in South Carolina. The advertised odds state that there is one \$10,000 winner for every 250,000 tickets. A little multiplication reveals that \$5,750,000 in sales has occurred at a minimum. The exact dollar amount of sales can

The Honorable Joe Wilson
Page 2
September 28, 1995

not be ascertained without an investigation; however, evidence available through advertisements reveals that the amount is in millions of dollars. This is not a nickel and dime business.

Art. XVII, Sec. 1 of the South Carolina (1895 as amended) prohibits the operation of lotteries in South Carolina. S.C. Code Ann. Sec. 16-9-10 et seq. enforces this constitutional proscription by statute.

The South Carolina Supreme Court has set forth the essential elements of a lottery in Darlington Theatres v. Coker et al., 190 S.C. 282, 2 S.E.2d 782 (1939). There, the Court established that a lottery requires:

1. the offering of a prize;
2. the payment of money or other consideration for an opportunity to win the prize;
3. the awarding of the prize by chance.

Based upon my review of the referenced proposal, the three elements of a lottery are present. Clearly, prize and chance are involved. A contestant is given the opportunity to win as much as \$25,000 or \$50,000. And unquestionably, the contest involves no skill; winning depends entirely upon chance.

In my judgment, consideration is also present. While it is purported that the \$1 or \$2 charge is to purchase the card as a "collector's item", such is, in reality, the payment of consideration in order to enter the contest. Notwithstanding the characterization of the entry as "free", there is the payment of money in order to play. It would appear to me that the card has little intrinsic value, separate from the game itself. Indeed, as stated in Mr. Simpson's letter, "[t]he advertised odds state that there is one \$10,000 winner for every 250,000 tickets."

Moreover, such indirect consideration is, nevertheless, viewed as sufficient to establish a lottery. For example, in Op. Atty. Gen., December 12, 1989, an association provided coupon books which sold for a ten dollar donation and had a redemption value of between \$500 and \$1,000. Included in each book was a "free" bonus coupon which the patron could fill out and deposit at a local automobile dealership. Later, a drawing would be held to determine the winner of an automobile.

We concluded the scheme constituted a lottery. Quoting from the opinion, it was stated:

... the three elements of a LOTTERY would be present. The elements of prize and chance are present in that there would be a drawing for an automobile. While the bonus coupon is described as "free," such "free" coupon is included in a coupon book which must be purchased. In other words, it is my understanding that only those individuals who buy a coupon book would have access to the "free" coupon included in such books. Therefore, the third element of a LOTTERY, which is consideration, would be present. In such circumstances, a LOTTERY would exist.

Further, in G. A. Carney, Ltd. v. Brzeczek, 117 Ill.App.3d 478, 453 N.E.2d 756 (1983), the Court concluded that a similar enterprise was a lottery. A magazine offered as part of the purchase of \$1 an entry form to participate in a contest. Players were allowed to pick various combinations of three or four numbers. The winning numbers for each day were the same numbers drawn in the Illinois State Lottery. Participants were eligible to win cash prizes.

The Court rejected the argument that consideration in the scheme was lacking. Said the Court,

... the \$1 paid for the Minority News Review is an indirect payment to participate in a game of chance, even though it entitles the purchaser to a copy of the magazine. That the magazine itself may be worth the purchase price does not alter this conclusion ... It would appear that persons buying multiple copies of the same issue are paying consideration to enter the contest and not to read the magazine.

To the contention that it was also possible to get an application for free the Court responded:

[i]n our judgment, the obstacles to obtaining a free entry blank are so formidable, the publishers offer a free entry blank must be regarded as chimerical.

The case of Society Theatre v. City of Seattle, 118 Wash. 258, 203 P. 21 (1922) is also akin to this situation. Patrons of a local theater received a free ticket which entitled them to participate in a drawing. Contestants paid nothing extra for the drawing ticket. Concluding that the scheme was a lottery, notwithstanding the argument that consideration was absent, the Court held:

The Honorable Joe Wilson

Page 4

September 28, 1995

... it is argued that the element of consideration does not appear because the patrons of the theatres pay no additional consideration for entrance thereto, and pay nothing whatever for the tickets which may entitle them to prizes. But while the patrons may not pay, and the respondents may not receive any direct consideration, there is an indirect consideration paid and received. The fact that prizes of more or less value are to be distributed will attract persons to the theatres who would not otherwise attend. In this manner those obtaining prizes pay consideration for them, and the theatres reap a direct financial benefit.

203 P. at 22.

Finally, reference is made to Roundtree v. Ingle, 94 S.C. 231, 77 S.E. 931 (1912). Persons who traded at a Union furniture store were given a numbered card, giving them the opportunity to win a range. The Court stated that "[t]here can be no doubt that the scheme under which the winning card was drawn was a lottery." 94 S.C. at 233.

Accordingly, it is my opinion that all elements of a lottery -- prize, chance and consideration -- are present. Therefore, the scheme constitutes a lottery.

This letter is an informal opinion only. It has been written by a designated Assistant Deputy Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kind regards, I am

Very truly yours,



Robert D. Cook
Assistant Deputy Attorney General

RDC/an