

6037-Grubray



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

September 27, 1996

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

Re: Informal Opinion

Dear Senator Wilson:

You have asked if a drawing to be held by a local flea market constitutes a lottery. It is my understanding that the promoter of the drawing advertises that the tickets for the drawing are "free". A person can pick up a ticket (apparently at the flea market) and mail it in postage-paid. Extra tickets are provided to dealers by reserving space at the flea market and by "participating in our ad campaign." Extra tickets are provided to the public "when presenting ad at the office".

It is my opinion that this operation constitutes a lottery. I am enclosing a copy of an opinion written by me, dated January 11, 1996 which discusses this issue in considerable detail and resolves the question. I would point particularly to page 8 of the opinion wherein there is a discussion of a number of cases involving "free" tickets. Also pertinent to this question is the discussion on page 12 of the opinion. There, is discussed the case of Midwest v. Waaler, 44 Ill. App.2d 401, 194 N.E.2d 653 (1963) which outlines at length the question of consideration and concludes that "free ticket seekers entering the store became potential customers."

In addition, the opinion notes on page 7 that the mere fact that some tickets may be "free" did not escape the characterization of the scheme as a lottery where most of the scheme required payment of some kind. Here, large quantities of tickets are tied to dealers renting spaces or participating in the promoter's advertising campaign. As we note in the opinion, where an individual receives a higher chance of winning by paying

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consideration for additional chances, that one ticket may be free does not change the fact that the scheme is a lottery. See pp. 9-10 of the attached opinion for discussion of the "flexible participation scheme".

Finally, characterization of tickets as "free" is unwarranted. As noted on page 17 of the opinion "[e]ven those who participate 'free' must expend the time, effort and ... [other inconveniences] to submit an entry. The consideration is found in the detriment to the player in entering the contest and the benefit flowing to the promoter in the sale of additional products."

Accordingly, based upon the foregoing, it is my opinion that the proposed scheme is a lottery. Again, as stated in the January 11, 1996 Informal Opinion, our Supreme Court has not yet definitively addressed this issue and I can only predict how a court might rule in similar circumstances.

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
Enclosure