



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

December 4, 1997

Marion H. Baker, Jr., President
South Carolina Law Enforcement Officers' Association
Post Office Box 210709
Columbia, South Carolina 29221-0709

Re: Informal Opinion

Dear Mr. Baker:

You have asked whether it would be "permissible for the SCLEOA to conduct a raffle as a means of raising funds for our Association and under what guidelines must the raffle be conducted?" You state that a "raffle would be a means to generate funds for our Association to continue providing a \$5,000 line-of-duty death benefit, legal representation, lobbying efforts and many other services and benefits for law enforcement officers."

Law / Analysis

This Office has issued countless opinions which have concluded that raffles generally contain each and every one of the elements of a lottery. In an opinion dated June 2, 1983, we stated:

[n]otwithstanding Mrs. Burns' contention that some non-profit organizations conduct raffles, I am satisfied that raffles, when conducted in the traditional manner, contain all the elements of a lottery. The three elements are (1) the offering of a prize (2) for payment of some consideration (3) with the winner determined by chance. Darlington Theatres v. Coker, et al., 190 S.C. 282 (1939), 2 S.E.2d 782, very plainly defines the elements of a lottery, and the law is well settled. As you are aware, lotteries are prohibited under State law. Section 16-19-10, CODE OF LAWS OF SOUTH CAROLINA, 1976. The

Mr. Baker
Page 2
December 4, 1997

penalty for violation of § 16-19-10, includes a fine of \$1,000.00 and a term of imprisonment for one year. Additionally, the purchaser of lottery tickets is liable under § 16-19-20, CODE, for a fine of \$100.00. The present laws provide no exception for lotteries conducted by or on behalf of charitable organizations. There is an old case, Oliveros v. Henderson, 116 S.C. 77 (1921), 106 S.E. 855 which holds, in the context of Sunday work laws, that you look at the nature of the work, not the disposition of the proceeds.

It does not appear that a raffle may be legitimized by merely referring to the consideration as a 'donation'. While the issue has not been specifically addressed by our Supreme Court, courts in other jurisdictions have recognized that the mere characterization of consideration as "donation" does not necessarily avoid the laws which prohibit lotteries. The Courts have looked to the actual facts of the case to determine if consideration, by whatever name, exists. Our Court has recognized that even an indirect consideration is sufficient to sustain violation of the statute. Roundtree v. Ingle, 94 S.C. 231, 77 S.E. 931 (1913).

The same conclusion was reached in the following opinions: Op. Atty. Gen., June 2, 1977 ["(t)he fact that your lottery is to be held for humanitarian purposes is, unfortunately, immaterial."]; Op. Atty. Gen., March 17, 1975 ["under the Constitution of this State raffle schemes would be deemed a lottery and illegal"]; Op. Atty. Gen., January 21, 1974 [raffle whereby no fee would be charged for the raffle tickets, however all persons who desire to participate in the raffle would be requested to make a donation, is a lottery]; Op. Atty. Gen., September 21, 1972 [raffling of a television set would constitute a lottery if a prize is offered, value is paid for a ticket, and chance is involved in selection of the prize winner]; Op. Atty. Gen., February 21, 1970 ["a raffle as commonly undertaken is a lottery and is therefore prohibited by the laws of this State"].

It is true that S.C. Code Ann. Sec. 61-2-180 states that "[n]otwithstanding any other provision of law, a person or organization licensed by the department [of revenue] under this title may hold and advertise special events such as bingo, raffles and other similar activities intended to raise money for charitable purposes." Of course, it goes without saying that the General Assembly may not permit what the Constitution expressly prohibits. Accordingly, based on the foregoing authorities, it remains the opinion of this

Mr. Baker
Page 3
December 4, 1997

Office that raffles generally constitute a lottery (because elements of prize, chance and consideration are present) and are thus prohibited by the Constitution of South Carolina.

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