

1974 WL 27604 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 21, 1974

**\*1 Re: State Law regarding Lotteries.**

Mr. T. H. Rawl  
Lexington County Attorney  
Post Office Box 856  
Lexington, South Carolina 29072

Dear Mr. Rawl:

You have requested that this office advise you as to whether the following schemes constitute a lottery within the meaning of the laws of this State:

(1) a bingo night at which the participants are not required to pay a fee to play bingo, however they would be requested to make a donation, the payment of a donation not being a prerequisite to playing bingo, and all participants would be eligible to play whether they did or did not make any donation.

(2) a 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 which would not, however, be a prerequisite to participating in the raffle.

A lottery has been defined by the courts of this State as a scheme having the essential elements of: (1) the giving of a prize; (2) by a method involving chance; (3) for consideration paid by the participant.

The two schemes which you described clearly involve the giving of a prize by method involving chance, however the concurrence of the first and second elements are not sufficient, the element of the illegality is introduced only when the third element, consideration, is present. The schemes which you outlined request the payment of a donation of an unset amount, however the non-payment of a donation does not prevent one from participating in the bingo game or in the proposed raffle. Whether the requested donation constitutes payment of consideration is the determining factor in determining whether or not these schemes constitute a lottery.

Similar schemes or operations have been considered in this State and ruled upon by the courts. In the case of [Roundtree v. Ingle](#), 94 S.C. 231, 77 S.E. 931, it was held that a scheme whereby the purchase of an item of merchandise entitled one to a chance to win a prize, constituted a lottery. The consideration being found in the requirement of a purchase as a condition precedent to being entitled to participate. See also, [State v. Powell](#), 212 N.W. 169; [Matta v. Katsoulas](#), 212 N.W. 261. However, there are cases in which the court has determined that a lottery is not present when no payment is required to be made to entitle one to participate, [Darlington Theaters, Inc. v. Coker](#), 190 S.C. 282, 2 S.E.2d 782; and, when the purchase of a ticket is not a prerequisite to participation, [State v. Eames](#), 183 A. 590. Similar cases finding that no lottery is present when the participants are not required to make purchases, and no showing is made of prejudice of a legal right which all participants have, include [State of Texas v. Socony Mobile Oil Co.](#), 386 S.W.2d 169, and [People v. Eagle Food Centers](#), 202 N.E.2d 473.

The applicable law thus appears to be that when there is truly free participation no lottery is present. The better reasoned cases apparently hold that if the participant has an opportunity to participate free, without the requirement that he

purchase something or pay the consideration the lottery statute is not violated. The fact that the participant does not avail himself of the opportunity to participate free is of no consequence. People v. Eagle Food Centers (supra).

\*2 The law is adamant however that a scheme which seeks to evade the terms of this statute is unlawful, so that an operation which was in fact not a lottery could become one through over-persuasive requests for donations, or ruses whereby participants were required to pay an admission fee in order to gain entrance into the facility.

Based upon the foregoing it is the opinion of this office that the schemes which you proposed would not on their face constitute a lottery, however this opinion must be cautioned by the fact that the law pertaining to lotteries is less than clear within this State, therefore this opinion can not be free from doubt as to possible judicial interpretation. It is with this precautionary note that this opinion is rendered; and as in all instances where a criminal statute might be violated, it is urged that utmost caution and deliberation be utilized prior to effectuating such a plan.

Very truly yours,

Treva Ashworth  
Staff Attorney

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