

1974 S.C. Op. Atty. Gen. 49 (S.C.A.G.), 1974 S.C. Op. Atty. Gen. No. 3698, 1974 WL 21217

Office of the Attorney General

State of South Carolina

Opinion No. 3698

January 23, 1974

*1 David H. Crum, Esquire

Attorney at Law

East Butler Street

Denmark, SC 29042

Dear Mr. Crum:

Your recent letter addressed to Mr. Frank Rogers has been forwarded to my attention.

The first of the two questions you have posed is whether or not the requirement that one would have to attend a drawing in order to be eligible to win transforms the scheme into a lottery?

In [Darlington Theatres Inc. v. Coker](#) 190 S. C. 282, 2 S.E.2d 782 (1939) at page 291, our Supreme Court defined the three essential elements necessary to constitute a lottery as: '(1) the giving of a prize (2) by a method involving chance and (3) for a consideration paid by the contestant or participant.'

Your question raises the issue as to whether or not the requirement of the contestant's presence at the drawing constitutes consideration. [Darlington Theatres](#) discusses [Maughs v. Porter](#) 157 VS. 415, 161 S.E. 242, in which the Virginia Court held that the detriment suffered by the contestant in attending a public sale for the sole purpose of entering the drawing was sufficient consideration, as the contestant had no other reason for attending such sale. Our Supreme Court, however, distinguished the Virginia Court's opinion without deciding as to whether or not South Carolina would follow this minority position.

Unless some other form of consideration is passed from the participant to the operators of the scheme or it is shown that the plan is merely a device to evade the lottery statutes, it is the opinion of this office that the scheme lacks the necessary consideration and therefore does not constitute a lottery.

. . . gratuitous distribution of property by lot or chance, if not resorted to as a device to evade the law, and if no consideration is derived directly or indirectly from the party receiving the chance does not constitute a lottery. [Darlington Theatres](#) at p. 293 quoting 17 R.C.L. 1222.

The second question posed was whether or not the contest could be limited to licensed drivers or persons over eighteen years of age without causing the drawing to be in violation of our lottery statutes.

It would appear that such a restriction, particularly the limiting of the participants to licensed drivers, in a contest in which an automobile is the prize, would not transform the contest into a lottery.

I enjoyed my recent visit with you and your family. If our office may be of future assistance do not hesitate to call upon us.
Very truly yours,

Patricia O. Brehmer

Assistant Attorney General

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