

1973 S.C. Op. Att'y. Gen. 193 (S.C.A.G.), 1973 S.C. Op. Att'y. Gen. No. 3554, 1973 WL 21011

Office of the Attorney General

State of South Carolina

Opinion No. 3554

June 27, 1973

**\*1 A scheme whereby an employee credit union will give away an automobile to an individual whose name and number will be picked by chance, the said individual receiving one chance entitling him to participate for each \$10.00 added to his savings account, constitutes a lottery within the meaning of Article 17, Sec. 7, Constitution of the State of South Carolina 1895, and Section 16-501, et seq., Code of Laws of South Carolina 1962.**

S. C. State Representative

You have requested that this Office advise you as to whether the following operation would constitute a 'lottery' within the meaning of Article 17, Section 7, Constitution of the State of South Carolina, 1895, and Section 16-501, et seq., Code of Laws of South Carolina 1962.

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 the consideration paid by the participant.

The operation you described clearly includes the giving of a prize, by a method involving chance; however, the concurrence of the first and second elements is not sufficient, the element of the illegality is introduced only when the third element, or consideration, is present. The method which you outlined requires the deposit of \$10.00 into the participant's savings account in order for him to receive a chance to win the prize. Whether the requirement of the deposit constitutes a paying of consideration is the determining factor in construing this operation as 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 entitles 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. In *Darlington Theatres, Inc. v. Coker, Sheriff*, 190 S. C. 282, 2 S. E. 2nd 782, the court found that a lottery was not present in that no payment was required to be made to entitle one to participate, participants were not required to be in or near the theatre, there was no requirement that the winner had ever purchased a ticket from the theatre, and there was no requirement that a ticket be purchased in order for the winner to claim the prize.

Comparing Roundtree (supra) to Darlington Theatres, Inc. (supra) the distinguishing factor seems to be that the participants in the latter case were required to suffer no direct or indirect detriment nor did the sponsor of the prize receive any thing which could be construed as a benefit, either direct or indirectly.

Consideration is generally defined as:

Any benefit conferred, or agreed to be conferred upon the promisor, by any other person, to which the promisor is not lawfully entitled, or any prejudice suffered, or agreed to be suffered, by such person, other than such that he is at the time of consent lawfully bound to suffer, as an inducement to the promisor. *Hogan v. Supreme Camp of the America Woodmen*, 146 Fla. 413, 1 So. 2d 256; Black's Law Dictionary (4th Ed.) 'Consideration,' at 379. See also *Shane of Miami, Inc. v. Greybow, Inc.*, 232 S. C. 161, 101 S. E. 2d 486; *Evatt vs. Campbell*, 234 S. C. 1, 106 S. E. 2d 447.

\*2 The reasoning of *Darlington Theatres, Inc.* (supra) appears to equate the element of consideration in the lottery sense with the common law definition as set forth above. Using this reasoning, a lottery would result if there was a chance and a prize for consideration which at common law would support a contract. *Furst v. A & G Amusement Co.*, 128 N. J. L. 311, 25 A. 2d 892. Applying this reasoning to the question which you posed, it would appear that a detriment or prejudice does result to the participants in this particular operation in that they are necessarily relinquishing their rights to deposit or not deposit their money and the additional right to deposit their money where they should so desire, in order to obtain a chance to win the prize. This detriment, which appears to be more direct than indirect, would apparently constitute consideration in the 'lottery' sense. It additionally appears that the second party to this operation receives a direct benefit as a result of having the use of certain deposits for a period of time to which he would not otherwise be entitled. This clearly indicates that consideration does exist, and apparently would do so in the 'lottery' sense.

It is therefore the opinion of this Office that consideration is present, and that the operation you proposed does constitute a 'lottery' within the meaning of the laws of this State and as such would be illegal.

See: 29 A. L. R. 3rd 888, *Gambling Laws Promotion Schemes*; Words and Phrases Vol. 25 A Lottery at 438; 54 C. J. S. Lotteries Sec. 2 at 848; 38 Am. Jur. 2nd, Gambling, Sec. 7 at 113.

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