

MEMORANDUM OF LAW

DATE: July 16, 1993

TO: Craig Boyd, READ/San Diego, Library Department

FROM: City Attorney

SUBJECT: Fund-Raiser

You recently sent a memo with questions about the legality of a fund-raising raffle for READ/San Diego, part of the San Diego Public Library. You stated you wanted to sell tickets for chances to win donated prizes. The legal restriction on a raffle scheme is found in the scheme itself and not in the location of sale or cost of a ticket. If the raffle mechanism is a lottery, it is illegal. Absent the elements of a lottery, it is legal.

California Penal Code section 319 provides a definition of lotteries, in which raffles are included:

A lottery is any scheme for the disposal or distribution of property by chance, among persons who have paid or promised to pay any valuable consideration for the chance of obtaining such property or a portion of it, or for any share or any interest in such property, upon any agreement, understanding, or expectation that it is to be distributed or disposed of by lot or chance, whether called a lottery, raffle, or gift-enterprise, or by whatever name the same may be known.

The penalty for engaging in lotteries is found in Penal Code section 320: "Every person who contrives, prepares, sets up, proposes, or draws any lottery, is guilty of a misdemeanor."

The California Supreme Court has stated that a lottery has three essential elements: "(1) a prize; (2) distributed by chance; and (3) consideration." *Cal. Gas. Retailers v. Regal Petroleum Corp.*, 50 Cal. 2d 844, 851 (1958).

Since you plan to award donated prizes, the first element is met. You also said there would be a drawing for the prizes,

thereby meeting the second element of chance. Attempts have been made to introduce some elements of skill into a lottery-type game, so it would contain both skill and chance, and thereby be outside of the definition of a lottery. But courts have held that even when both elements are present, the dominant character of a game or scheme determines whether it is one of skill or chance.

The third element, consideration, is met when a person has paid valuable consideration for a chance of winning a prize, that is, has hazarded something of value on the chance. *Cal. Gas. Retailers v. Regal Petroleum Corp.*, 50 Cal. 2d 844 (1958). Buying a raffle ticket in order to have a chance at winning a prize is a clear example of a lottery. A game does not cease to be a lottery if some participants are allowed to receive tickets without paying for them but others must pay for a chance to win. *People v. Shira*, 62 Cal. App. 3d 442, 460 (1976). Where a donation is requested for a raffle ticket, but there is also a general and indiscriminate distribution of tickets free to any and all who ask, and if all those receiving the tickets are permitted to participate and claim the prize if they win, then the element of consideration is missing and the game is legal. Hence in your promotion and distribution of the raffle tickets, it must be clear that no payment is required. This can be accomplished by clearly stating that a ticket can be received without payment or that no purchase is necessary to participate. Such a disclaimer eliminates the element of consideration thereby taking the scheme outside the definition of a lottery. *Cal. Gas Retailers*, 50 Cal. 2d at 858.

READ/San Diego is a non-profit corporation/non-profit status, and you have planned this as a fund-raising event, but that in itself does not provide a defense to the prohibition against raffles. The only exception for charitable organizations is found in California Penal Code section 326.5 which authorizes cities and counties to authorize certain organization to conduct bingo games for charitable purposes only.

Conclusion

If the above guidelines are followed, so that a purchase is not required to win, the fund-raiser you propose is legal. Since any funds received would be donations rather than sales, your other questions about the legality of sales are moot.

If you need any additional information, we would be glad to assist you.

JOHN W. WITT, City Attorney

By

Mary Kay Jackson

Deputy City Attorney

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cc William W. Sannwald,

Library Director

Chris McFadden,

Coordinator, READ/San Diego

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