

MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date August 1, 1977

George Orestis, Director

Dept. State Lottery Commission

From Phillip M. Kilmister, Assistant

Dept. Attorney General

Subject Auctioneering of a Lottery Ticket by Purchaser

This responds to your request for advice as to whether a person may sell a lottery ticket which that person has purchased, to another, who offers the highest price for that ticket.

The purchaser (highest bidder) of a lottery ticket owned by another, the value of which is uncertain and determinable solely by chance, would be engaged in a wagering or gambling contract, which, if not authorized by statute, would not be legal.

At common law, courts would not enforce a contract in violation of law, and it has long been the common law of Maine that "all wagers are unlawful" and hence unenforceable. Lewis v. Littlefield, 15 Me. 237; Ellis v. Beale, 18 Me. 337; Stacy v. Foss, 19 Me. 336.

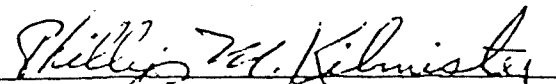
Resort need not be had to ancient common law relating to gambling contracts in order to resolve the question as to whether or not the auctioneering of lottery tickets is illegal. There is an express statutory prohibition of such conduct.

The terms of 8 M.R.S.A. § 358 provide as follows:

"No person shall sell a ticket or share at a price greater than that fixed by rule or regulation of the commission. No person other than a licensed lottery sales agent shall sell lottery tickets or shares, except that nothing in this section shall be construed to prevent any person from giving lottery tickets or shares to another as a gift.

"Any person convicted of violating this section shall be guilty of a misdemeanor."(emphasis supplied)

The unambiguous language of 8 M.R.S.A. § 358 negates any statutory interpretation that the purchaser of a ticket may resell, auction, or otherwise dispose of same, other than by gift or donation.


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