

MAINE STATE LEGISLATURE

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Lottery Gifts of Tickets
STATE OF MAINE 8 M.R.S.A. § 358

Inter-Departmental Memorandum Date October 26, 1977

To Robert M. Beaudoin, Marketing Mgr. Dept. Lottery
F. Phillip M. Kilmister, Assistant Dept. Attorney General
Subject Gift of Lottery Tickets by an Advertising Agency

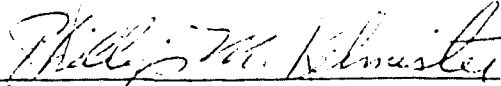
In your memorandum under date of October 4, 1977 addressed to this Office, you have requested that we render a legal opinion directly to a New York based advertising agency, in relation to the legality of their giving away Maine Lottery tickets with the sale of their products.

Although this Office cannot render legal advice to private individuals or organizations, the question posed by your memo is certainly of sufficient interest to the Lottery Commission so as to merit an answer by this Office directly to you.

In my opinion, the purchase of lottery tickets for the purpose of giving them away in conjunction with the sale of another product or service, does not constitute a permissible gift, within the exemption language of 8 M.R.S.A. § 358, which reads 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."

The giving away of a lottery ticket upon the consummation of the sale of a product or service does not represent a genuine gift, based solely upon the donative intent of the donor, as is envisioned by the above-quoted exemption language. Rather, the so-called "gift," can only be construed as a sales promotion device by the seller, and the donee's receipt of a lottery ticket is predicated solely upon his supplying of legal consideration to the donor, to wit: the purchase of the alleged donor's product or service.


PHILLIP M. KILMISTER
Assistant Attorney General

PMK:jg