

MAINE STATE LEGISLATURE

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Lottery OUT of State Sales
Lottery OUT of State Solicitations

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STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

January 5, 1978

To: John McSweeney, Chairman, Maine State Lottery Commission
From: Sarah Redfield, Assistant Attorney General
Re: Out-of-State Subscriptions to the Maine State Lottery

This is in response to your letter of December 13, 1977, in which you requested an opinion as to whether or not the Lottery Commission may allow out-of-state subscriptions to the lottery, and, if so, whether the fact that the Commission did not "solicit" such business would remove them from liability under certain federal laws.

As a general matter, this office prefers not to construe federal law, but rather to refer such requests to the appropriate federal officials. However, for your information Title 18 U.S.C. § 1961 defines as "racketeering activity" any act indictable under section 1953 and Title 18 U.S.C. § 1962(c) makes it unlawful for any person engaged in an enterprise affecting interstate commerce to participate directly or indirectly in "racketeering" activities.

Title 18 U.S.C. § 1953 provides in pertinent part that:

"§ 1953. Interstate transportation of wagering paraphernalia

(a) Whoever, except a common carrier in the usual course of its business, knowingly carries or sends in interstate or foreign commerce any record, paraphernalia, ticket, certificate, bills, slip, token, paper, writing, or other device used, or to be used, or adapted, devised, or designed for use in (a) bookmaking; or (b) wagering pools with respect to a sporting event; or (c) in a numbers, policy, bolita, or similar game shall be fined not more than \$10,000 or imprisoned for not more than five years or both.

"(b) This section shall not apply to (1) parimutuel betting equipment, parimutuel tickets where legally acquired, or parimutuel materials used or designed for use at racetracks or other sporting events in connection with which betting is legal under applicable State law, or (2) the transportation of betting materials to be used in the placing of bets or wagers on a sporting event into a State in which such betting is legal under the statutes of that State, or (3) the carriage or transportation in interstate or foreign commerce of any newspaper or similar publication, or (4) equipment, tickets, or materials used or designed for use within a State in a lottery conducted by that State acting under authority of State law."
(Emphasis supplied.)

In addition, Title 18 U.S.C. § 1302 provides that:

"Whoever knowingly deposits in the mail, or sends or delivers by mail:

"Any letter, package, postal card, or circular concerning any lottery, gift enterprise, or similar scheme offering prizes dependent in whole or in part upon lot or chance;

"Any lottery ticket or part thereof, or paper, certificate, or instrument purporting to be or to represent a ticket, chance, share, or interest in or dependent upon the event of a lottery, gift enterprise, or similar scheme offering prizes dependent in whole or in part upon lot or chance;

"Any check, draft, bill, money, postal note, or money order, for the purchase of any ticket or part thereof, or of any share or change in any such lottery, gift enterprise, or scheme;

"Any newspaper, circular, pamphlet or publication of any kind containing any advertisement of any lottery, gift enterprise, or scheme of any kind offering prizes dependent in whole or in part upon lot or chance, or containing any list of the prizes drawn or awarded by means of any such lottery, gift enterprise, or scheme, whether said list contains any part or all of such prizes;

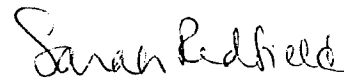
"Any article described in section 1953 of this title--

"Shall be fined not more than \$1,000 or imprisoned not more than two years, or both; and for any subsequent offense shall be imprisoned not more than five years."

Title 18 U.S.C. § 1307(b) provides that:

"(b) The provisions of sections 1301, 1302, and 1303 shall not apply to the transportation or mailing to addresses within a State of tickets and other material concerning a lottery conducted by that State acting under authority of State law."
(Emphasis supplied.)

These provisions, on their face, appear to prohibit the use of the mails for transporting lottery tickets and the like except intrastate. Nevertheless, you may well wish to consult the appropriate federal officials as to their interpretation. In this regard, it may be helpful to you to note that the United States Attorney's Office is currently preparing a complaint to be filed against New Hampshire in a similar situation. (A copy of the draft complaint is attached for your information.) Given the statutory language, so long as it remains the position of the relevant federal officials that state lotteries are included in its coverage, this office cannot advise you to, nevertheless, sell lottery tickets in interstate commerce outside of the State, whether such sales are solicited or not.



SARAH REDFIELD

Assistant Attorney General

SR/ec
Enc.

UNITED STATES DISTRICT COURT

DISTRICT OF MAINE
SOUTHERN DIVISION

LAHNSA 284.21

United States of America,)
)
 Plaintiff)
 v.) Civ. No. _____
)
 Edward J. Powers, Executive Director)
 New Hampshire Sweepstakes Commission;)
 Edward Sanel, Sr., Chairman,)
 New Hampshire Sweepstakes Commission;)
 Alphonse J. Corriveau, Member,)
 New Hampshire Sweepstakes Commission;)
 George A. Langley, Member,)
 New Hampshire Sweepstakes Commission;)
 and their successors in office,)
)
 Defendants)

18 USC. 1964, 1965
 1961, 1962
 28 " 1345
 gambling laws
 Violation: 1961 (F)(A), (B)
 1953
 1952
 1302

Complaint for Injunction

1. The action arises under Title 18, United States Code, Section 1964(b) as more fully appears.
2. This is civil action brought by the United States of America to restrain and enjoin all named defendants, in their capacities as officers and members of the New Hampshire Sweepstakes Commission [hereafter "the Commission], and their successors in office, from conducting or participating in the conduct of the affairs of the Commission through a pattern of racketeering activity in violation of Title 18, United States Code, Section 1962(c).
3. This Court has jurisdiction of this action under Title 18, United States Code, Section 1964(a), 1965(a) and Title 28, United States Code, Section 1345.
4. The defendants are members or officers of the Commission, an instrumentality of the State of New Hampshire.
5. The Commission has its principal offices at 125 North Main St., Concord, New Hampshire 03301.
6. Plaintiff has information to the effect and does believe that all defendants are residents of the State of New Hampshire.
7. The defendant Edward J. Powers was at all times relevant hereto Executive Director of the Commission and has received mail at the Commission's address listed in paragraph 5.
8. The defendant Edward Sanel, Sr., was at all times relevant hereto Chairman of the Commission.
9. The defendants Alphonse J. Corriveau and George A. Langley were at all times relevant hereto members of the Commission.

10. In November 1971, the defendants, in their capacity as officers and members of the Commission, decided to commence a subscription program whereby lottery subscriptions would be sold by mail to persons residing in any State of the United States.

11. Under such lottery subscription program, the Commission, through its agents and employees, responds to any request received by mail for access to lottery materials by sending an application form for a lottery game known as the 50-50 Sweeps by mail to the requestor.

12. Subscriptions to the 50-50 Sweeps are also supplied by mail and over the counter within the State of New Hampshire, and such merchandising as occurs totally within New Hampshire is not the subject of this complaint.

13. Upon the receipt of a properly completed application form received by mail, and accompanied by proper payment, the Commission admits the applicant in the 50-50 Sweeps for a minimum period of six weeks unless the lottery number specified in the application has previously been taken by some other player.

14. Applications are also accepted by mail and over-the-counter from applicants within the State of New Hampshire, and such acceptance as occurs from persons physically within the State of New Hampshire is not the subject of this complaint.

15. Upon acceptance of an application, the Commission mails to the subscriber a notice of confirmation, acknowledgment or lottery ticket confirming his subscription to hold the lottery number chosen for the period designated.

16. Such confirmations are also delivered by mail and over-the-counter to applicants within the State of New Hampshire, and such deliveries as occur to persons physically within the State of New Hampshire are not the subject of this complaint.

17. Should any subscriber to the 50-50 Sweeps have the number he selected drawn as a winning number in such lottery, bank checks in payment of winnings are mailed to said subscriber.

18. Bank checks in payment of winnings are also mailed to addresses within the State of New Hampshire and in payment of winning lottery wagers placed entirely within the State of New Hampshire, and such mailings are not the subject of this complaint.

19. All checks and money orders relevant to this action as are issued by or to out-of-state subscribers are collected by facilities in interstate commerce.

20. The operation of the 50-50 Sweeps subscription program as described above was initiated by the defendants, and the defendants have the power to alter or amend it so as to put an end to out-of-state sales by mail.

21. The 50-50 Sweeps subscription program as described is not mandated or authorized by the law of New Hampshire.

22. In an average month, more than 1,000 such subscriptions are held in the State of Maine, the majority of which are sold by mail in interstate commerce.

23. Such subscriptions are sold by mail in interstate commerce to all the remaining States of the United States.

24. Subscribers in States of the United States other than New Hampshire provide approximately 70% of the business derived from the 50-50 Sweeps subscription program.

25. Title 18, United States Code, Section 1964 empowers this Court to enjoin violations of Title 18, United States Code, Section 1962.

26. Title 18, United States Code, Section 1962(c) forbids any person employed with an enterprise engaged in interstate commerce to conduct the affairs of an enterprise through a pattern of racketeering activity.

27. The defendants, and each of them, are "persons" within the meaning of that term as defined in Title 18, United States Code, Section 1961(3) in that they are individuals capable of holding legal interest in property.

28. The Commission is an "enterprise" within the meaning of Title 18, United States Code, Section 1961(4) in that it is a legal entity, and the Commission is engaged in interstate commerce by reason of the operation of the subscription program.

29. The mailings described above constitute racketeering activity in three particulars:

a. Said mailings constitute acts in violation of the gambling laws of several states into which they are mailed, said acts being punishable by imprisonment for more than one year thus being acts of "racketeering activity", as defined in Title 18, United States Code, Section 1961(1)(A).

b. Said mailings constitute acts in violation of Title 18, United States Code, Section 1953, in that said mailings are knowingly made in interstate commerce containing records, paraphernalia, tickets, slips, papers, writings and other devices to be used and adapted, devised and designed for use in games similar to numbers and policy, thus being acts of "racketeering activity" as defined in Title 18, United States Code, Section 1961(1)(B).

c. Said mailings constitute acts in violation of Title 18, United States Code, Section 1952 in the following particulars:

- i) Said acts are carried out in violation of the laws of every State into which they are mailed save the States of New Hampshire and Connecticut.
- ii) Said acts are carried out in violation of Title 18, United States Code, Section 1953;
- iii) Said acts are in violation of Title 18, United States Code, Section 1302.
- iv) Said acts constitute the use of a facility in interstate commerce, that is the mails, undertaken with intent to carry on and facilitate the carrying

on of a business enterprise involving gambling in violation of the laws described in paragraphs 29(c)(i) through (iii), above.

- v) After the use of said facility additional acts tending to carry on and facilitate the carrying on of said business enterprise were committed.

Thus, the mailings were acts of racketeering activity as defined in Title 18 United States Code, Section 1961(1)(B).

30. Said mailings constitute a "pattern of racketeering activity" as defined in Title 18, United States Code, Section 1961(5) in that more than two such mailings have occurred within ten years and since November 1971.

31. Said mailings continue until the date of this complaint.

WHEREFORE, plaintiff, United States of America, prays as follows:

a) That the above named defendants, their successors in office and such other persons as may be acting in concert or participating with them, be perpetually and permanently restrained and enjoined from directly or indirectly mailing, causing to be mailed, sending or causing to be sent in interstate commerce any:

i) Subscription applications to any lottery conducted now or hereafter by the Commission.

ii) Documents acknowledging, confirming or in any way informing any customer of any lottery conducted now or hereafter by the Commission that said customer holds a certain number or has been allowed to participate in any way in such lottery.

iii) Checks or money orders received in payment of subscriptions or tickets to any lottery conducted now or hereafter by the Commission, save such checks as are received in person in or by mail from addresses within the State of New Hampshire.

iv) Bank checks or any other instruments used or intended for use in paying winning players in any lottery now or hereafter conducted by the Commission, save such winnings as are paid upon winning subscriptions or tickets as were both purchased and received within the State of New Hampshire.

b) That defendants, and their successors in office, be ordered and directed to submit under oath, through the person holding the office of Executive Director or any equivalent office of the Commission hereafter establishes, to the United States Attorney for the District of Maine beginning on a day fixed by the Court and every three months thereafter for a period of five years, a written report stating for that period the number of subscription applications, acknowledgements, confirmations, tickets, checks or money orders mailed, caused to be mailed, shipped, caused to be shipped or sent in a manner in interstate commerce by the Commission; and such information as the Court may require to carry out the purpose of Title 18, United States Code, Section 1964.

c) That each defendant, upon leaving employment or office with the Commission, be required to inform his successor, in writing, of the terms and conditions of this order.

d) For such other further and different relief which the Court may deem just and proper, together with the costs and disbursements of this action.

GEORGE J. MITCHELL
United States Attorney

UNITED STATES DISTRICT COURT

DISTRICT OF MAINE
SOUTHERN DIVISION

United States of America,)
)
 Plaintiff)
)
 v.) Civ. No. _____
)
 Edward J. Powers, Executive Director,)
 New Hampshire Sweepstakes Commission,)
 et al.,)
 Defendants)
)

Motion for Service of Summons Pursuant to 18 U.S.C. 1965(b)

The United States prays that the Court issue an Order directing issuance of summonses by the Clerk of this Court which, together, with copies of the complaint in this action, be forwarded to the United States Marshal for the District of New Hampshire and served upon Thomas D. Rath, Deputy Attorney General, the State of New Hampshire, attorney for all defendants named herein and agent authorized to receive process in this matter, and in support thereof refers to the allegations of plaintiffs complaint filed this day and states as follows:

1. The defendant, as shown by paragraph 22 of said complaint, is transacting substantial business in and is, therefore, transacting its affairs in the State of Maine within the terms of Title 18 United States Code, Section 1965(a).
2. This action is brought under the provisions of Title 18, United States Code, Section 1964.
3. The procedure hereby requested is authorized by Title 18, United States Code, Section 1965(b) and Rule 4(e), Fed.R.Civ.P.

Respectfully submitted,

GEORGE J. MITCHELL
United States Attorney

UNITED STATES DISTRICT COURT

DISTRICT OF MAINE
SOUTHERN DIVISION

United States of America,)
Plaintiff)

v.)

Civ. No. _____

Edward J. Powers, Executive Director,)
New Hampshire Sweepstakes Commission,)
et al.,)
Defendant)

ORDER

Upon ex parte motion of the plaintiff United States and upon consideration of the statements contained within said motion and the facts set out in the plaintiff's complaint filed this date, it is hereby

O R D E R E D

1. That the Clerk of this Court cause a summons to be issued for each of the defendants herein and cause said summons, together with copies of the complaint filed herein, and copies of the aforesaid motion of the United States and this order, to be forwarded to the United States Marshal for the District of New Hampshire; and

2. That the said United States Marshal for the District of New Hampshire affect service of the above documents upon Deputy Attorney General Thomas D. Rath of the State of New Hampshire, attorney for all defendants named herein and agent authorized to receive process in this matter.

UNITED STATES DISTRICT JUDGE

DATE