



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WAGGONER GARR
ATTORNEY GENERAL**

May 4, 1964

Honorable Wallace Shropshire
County Attorney
Travis County Courthouse
Austin, Texas

Opinion No. C-251

Dear Mr. Shropshire:

Re: System of wagering known
as "Calcutta Pool"

By letter dated April 10, 1964, you requested an opinion as to whether the lottery statute is violated by a scheme of wagering known as a Calcutta Pool. In your letter, you point out that this Calcutta Pool is normally operated in conjunction with golf tournaments, tennis matches, skeet and trap shooting tournaments and matched horse races. On the day of the event in question an organizer will proceed to auction off to the highest bidder the respective participants in the event taking place. The high bidder pays the amount of his bid to the organizer who holds the pot, or the Calcutta. The individual who has been the high bidder of the participant who wins the sporting event wins the pot or pool. These Calcutta Pools normally have no relation or sponsorship of the individual or promoter of the sporting event itself; although in instances, for the privilege of conducting a Calcutta Pool, the individual or promoter of the event will receive a percentage of the Calcutta Pool. In many instances the money in the pool will be distributed between those being the high bidder on the participants in the events, placing first, second and third in the event.

Article 654 of Vernon's Penal Code provides:

"If any person shall establish a lottery or dispose of any estate, real or personal, by lottery, he shall be fined not less than one hundred nor more than one thousand dollars; or if any person shall sell, offer for sale or keep for sale any ticket or part ticket in any lottery, he shall be fined nor less than ten nor more than fifty dollars."

It is our opinion that this scheme is violative of Article 654 of Vernon's Penal Code in that the same constitutes a lottery. A lottery is defined in Featherstone v. Independent

Service Station Asso., 10 S.W.2d 124 (Tex.Civ.App. 1928) as a scheme for distribution of prizes, by lot or chance, where one on paying money or giving other things of value to another obtains some token that entitles him to receive a larger or smaller value or nothing, as some formula or chance may determine.

As long as some consideration is actually paid for the right to participate in the scheme, it matters not to whom the consideration flows. Featherstone v. Independent Service Station Asso., supra. In the fact situation under discussion, there could be no doubt of a valuable consideration.

S U M M A R Y

A system of wagering known as a "Calcutta Pool" violates Article 654 of Vernon's Penal Code.

Respectfully submitted,

WAGGONER CARR
Attorney General of Texas

By: 
CHARLES B. SWANNER
Assistant Attorney General

CBS/lis

APPROVED:

OPINION COMMITTEE

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APPROVED FOR THE ATTORNEY GENERAL
BY: Stanton Stone