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February 17, 1999

The Honorable John Cornyn
Attorney General of Texas
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FILE # ML-40689-99 RECEIVED

Attn: Elizabeth Robinson
Chair, Opinion Committee

ID # 40689

FEB 23 1999

Opinion Committee

Re: Formal Attorney General Opinion Request

Dear General Cornyn:

Pursuant to Section 402.043 of the Texas Government Code, I respectfully request your opinion on whether a certificate of deposit may be lawfully offered as a prize at a raffle conducted pursuant to the Charitable Raffle Enabling Act, V.T.C.S. article 179f. Subsection (g) of Section 3 of the act provides that

A prize offered or awarded at a raffle may not be money (emphasis added). Except as provided by Subsection (k) of this section, the value of a prize that is offered or awarded at the raffle and that is purchased by the organization or for which the organization provides any consideration may not exceed \$50,000.00.

A request for an attorney general opinion on this matter was made by the Bexar County Criminal District Attorney's Office in 1991. An informal advisory opinion was issued by the Attorney General on June 28, 1991 under ID# 11701 and 10824. A copy of this informal opinion is enclosed.

The informal opinion found that "the word 'money' refers to either currency or coins accepted as legal tender of the United States." Since a certificate of deposit is not accepted as legal tender of the United States, the informal opinion concluded that it may be used as a prize at a raffle conducted pursuant to the act.

The informal opinion points out that the act fails to define the term "money". The opinion cites Section 312.002 (a) of the Texas Government Code that requires that words used in civil statutes generally "be given their ordinary meaning." A review of the legislative history of H.B. 240 (71st Legislature 1989) was also conducted. The opinion points out that House Sponsor Rep. T. Smith used the word "cash" when he was addressing the prohibition against using money as a prize. His remarks were made during a public hearing on H.B. 240 before the House Committee on State Affairs.

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This writer, however, questions the conclusion drawn in the informal advisory opinion. Writer believes a certificate of deposit is a negotiable instrument. It is, therefore, synonymous with the term money.

"Negotiable instrument" means

an unconditional promise or order to pay a fixed amount of money, with or without interest or other charges... V.T.C.S., Bus. & C., Section 3.104(a).

"Instrument" means

a negotiable instrument. Id., Section 3.104(b).

"Certificate of Deposit" is defined as

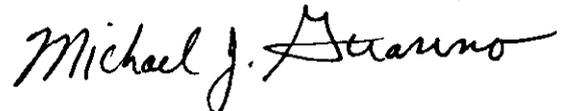
an instrument containing an acknowledgment by a bank that a sum of money has been received by the bank and a promise by the bank to repay the sum of money. A certificate of deposit is a note of the bank. Id., Section 3.104(j). See also Ames v. Great Southern Bank (1984, Tex) 672 SW2nd 447, 38 UCCRS 897, reh'g of cause overr (July 11, 1984).

It is apparent to writer that a bank simply acts as a contractual depository for the money that will be awarded to a raffle winner. The purchaser of a raffle ticket is betting on the chance to win money that has been deposited with a bank. The certificate of deposit is merely the negotiable instrument that evidences the deposit and the terms by which the money is held. Other types of negotiable instruments include a check, a cashiers check and a travelers check.

Writer concludes that a certificate of deposit may not be lawfully offered as a prize at a raffle conducted under the authority of the Charitable Raffle Enabling Act.

A formal attorney general opinion on this matter would be greatly appreciated. Thank you for your assistance with this matter.

Sincerely yours,



MICHAEL J. GUARINO
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Galveston County, Texas

CC: Mr. Robert P. Scamardo
Diocese of Galveston-Houston

Honorable John B. Holmes, Jr.
Harris County District Attorney

Mr. Ted Wilson
Harris County Assistant District Attorney