

RICHARD J. MILLER

County Attorney

P.O. Box 1127
Belton, Texas 76513

Bell County, Texas

(254) 933-5135
1-800-460-2355
FAX (254) 933-5150

RECEIVED

APR 16 2003

OPINION COMMITTEE

RECEIVED

APR 16 2003

OPEN RECORDS DIVISION

April 11, 2003

Greg Abbott
Attorney General
P.O. Box 12548
Austin, TX 78711-2548

FILE # ML-43060-03
I.D. # 43060

Re: Request for Opinion on "Reverse Raffles"

RQ-0040-GA

Dear General Abbott:

I am requesting an opinion from your office regarding the legality of so-called "reverse raffles."

Attached is a copy of a flyer distributed by one organization that reflects the following approach: a qualified non-profit organization initially complies with the requirements of Chapter 2002 of the Texas Occupations Code as regards charitable raffles. There is a legitimate charitable purpose for which the proceeds of the raffle will be spent, less reasonable overhead costs; the tickets make the appropriate disclosures; the tickets are sold as required by Section 2002.054; and no prize exceeds \$50,000 in value.

Prior to the event, the organization will sell a maximum of 200 out of 210 printed tickets for \$77.00 each. Up to this point I have no question. However, at the time of the drawing, after the 150th paid-for ticket is drawn, nine of the ten extra tickets will be auctioned off to those in attendance. After the 200th ticket is drawn, the tenth extra ticket will also be auctioned off to the highest bidder, guaranteeing that it will be among the last ten tickets drawn for prizes. In addition, as the drawing progresses, holders of drawn tickets can buy extra "chances" for their ticket by paying \$8.00 per chance (or three chances for \$20.00). The holders of the first, seventy-fifth, and one hundred twenty-fifth tickets drawn will receive some portion of the \$77.00 they originally paid for those tickets.

It is my understanding that persons holding raffle tickets in the audience may also bid among themselves for their tickets.

The final remaining ten tickets, including the 210th ticket that was auctioned off, compete for the final three prizes, indicated on the flyer, which are designated for the 208th, 209th, and 210th tickets drawn.

Under The Charitable Raffle Enabling Act, *Tex. Occ. Code Ann. §2002 (Vernon Pamphlet 2003)*, a "raffle" is defined as

...the award of one or more prizes by chance at a single occasion among a single pool or group of persons who have paid or promised a thing of value for a ticket that represents

a chance to win a prize. *Sec. 2002.002(6)*.

In addition, Section 2002.055 requires, among other information, that the ticket price be printed on each raffle ticket sold or offered for sale. Likewise, Section 2002.056(a) excludes money as a prize to be offered or awarded at a raffle. The purpose of the restriction on prize value is to preclude a raffle from being a form of profit-making gambling. *Op. Tex. Att'y Gen. No. JC-0111 (1999)*.

Under Chapter 47 of the Penal Code, a "lottery" is defined as:

...any scheme or procedure whereby one or more prizes are distributed by chance among persons who have paid or promised consideration for a chance to win anything of value, whether such scheme or procedure is called a pool, lottery, raffle, gift, gift enterprise, sale, policy game, or some other name. *Sec. 47.01(7)*.

Under Section 47.03 of the Penal Code, it is a Class A Misdemeanor for a person who intentionally or knowingly:

(4) sells chances on the partial or final result of or on the margin of victory in any game or contest...

(5) for gain, sets up or promotes any lottery or sells or offers to sell or knowingly possess for transfer, or transfers any card, stub, ticket, check, or other device designed to serve as evidence of participation in any lottery...

Tex. Penal Code Ann. §47.03(a)(4), (5) (Vernon 1994). The transfer of a raffle ticket can still be for gain, even if the gain is intended for charity. *Op. Tex. Att'y Gen. No. JC-0480 (2002)*. It is defense under Section 47.02 that a person making a bet was permitted to do so under Chapter 2002, Occupations Code, but that same defense is not provided a person under Section 47.03.

Thus, I would appreciate your opinion as to the following questions:

1. Is it a violation of Section 2002.056(a) for raffle ticket holders to receive some portion of their purchase price as a result of a chance drawing?
2. Does the fact that Chapter 2002, Occupations Code, specifies that a charitable raffle ticket shall have a purchase price printed on it prohibit the auctioning off of that ticket for a different (and likely greater) cost at the charitable raffle event? If so, is such auctioning of raffle tickets a violation of Section 47.03, Penal Code, if done intentionally and knowingly?
3. Do the side transactions between ticket holders themselves, with respect to purchasing another's raffle tickets, constitute a gambling violation under the Penal Code or Occupations Code?
4. Is the buying of extra "chances" for a ticket to be put pack in the hopper and possibly

drawn again a violation of either the occupations Code or the Penal Code?

I would appreciate your consideration of these questions.

Yours very truly,

A handwritten signature in black ink, appearing to read "Rick Miller". The signature is written in a cursive style with a large initial "R" and a long, sweeping underline.

Rick Miller
Bell County Attorney

Encl.