**STATE OF TENNESSEE**
# OFFICE OF THE ATTORNEY GENERAL

May 23, 2014

Opinion No. 14-58

Lawfulness of Lottery-Ticket Pool

## QUESTION

Is it lawful to conduct a lottery-ticket pool in which Tennessee lottery ticket holders pool their tickets and share in any prizes awarded on winning tickets?

## OPINION

No. Such a lottery-ticket pool is "gambling" within the meaning of Tenn. Code Ann. § 39-17-501, does not fall within any of the exceptions to "gambling" provided in Tenn. Code Ann. § 39-17-501(1), and therefore is unlawful.

## ANALYSIS

Article XI, § 5, of the Tennessee Constitution prohibits the sale of lottery tickets in Tennessee but states that the General Assembly may authorize a state lottery that meets certain specified conditions. The same provision prohibits "[a]ll other forms of lottery not authorized herein," except for certain annual events operated for the benefit of a tax-exempt charity. Tennessee criminal law provides in relevant part:

> (1) Gambling is contrary to the public policy of this state and means *risking anything of value for a profit whose return is to any degree contingent on chance*, or any games of chance associated with casinos, including, but not limited to, slot machines, roulette wheels and the like. For the purposes of this chapter gambling does not include:
>
> (A) A lawful business transaction;
>
> (B) Annual events operated for the benefit of charitable § 501(c)(3) organizations that are authorized pursuant to a two-thirds (2/3) approval of the general assembly, so long as such events are not prohibited by the state constitution; or

> (C) A state lottery of the type in operation in Georgia, Kentucky, and Virginia in 2000 and authorized by amendment to the Constitution of Tennessee, if the lottery is approved by the general assembly[.]

Tenn. Code Ann. § 39-17-501(1) (emphasis added).

Purchasing a Tennessee lottery ticket, therefore, is not gambling, under the exception in subdivision 501(1)(C). But participating in a lottery-ticket pool—an organized plan, managed by a third party who is not affiliated with the Tennessee Education Lottery Corporation, under which Tennessee lottery ticket holders enter their tickets in a pool and agree to give up their right to any prize awarded on one of their tickets in exchange for the right to share in any prize awarded on any winning ticket in the pool (including their own)—*is* gambling within the meaning of this statute. Because participants in such a pool give up the chance to win a full prize on one of their own tickets, they are "risking [something] of value for a profit whose return is to any degree contingent on chance." Tenn. Code Ann. § 39-17-501(1).[1] *See Attorney General v. Powerpick Player's Club of Michigan, LLC,* 287 Mich. App. 13, 783 N.W.2d 515, 524 (2010) (finding lottery-ticket pool illegal because it involved a *second* bet that a participant would be assigned to a winning pool).

Such a lottery-ticket pool does not fall within any of the three exceptions to the term "gambling" in Tenn. Code Ann. § 39-17-501(1). First, the pool is not a "lawful business transaction" under § 39-17-501(1)(A). The term "lawful business transaction" includes any futures or commodities trading. Tenn. Code Ann. § 39-17-501(4). As this Office noted in 2004, the term "lawful business transaction" as used in this statute was intended to include transactions that, like futures or commodities trading, are authorized and regulated by other statutory schemes. Tenn. Att'y Gen. Op. 04-042 (Mar. 12, 2004).

Second, the pool is not within the class of "[a]nnual events operated for the benefit of charitable § 501(c)(3) organizations that are authorized pursuant to a two-thirds (2/3) approval of the general assembly." Therefore, it does not satisfy the criteria for the exception under § 39-17-501(1)(B).

Finally, the pool is not "[a] state lottery of the type in operation in Georgia, Kentucky, and Virginia in 2000 and authorized by amendment to the Constitution of Tennessee, if the lottery is approved by the general assembly," under § 39-17-501(1)(C). The Tennessee lottery is governed by the Tennessee Education Lottery Implementation Law, Tenn. Code Ann. §§ 4-51-101 to -206. This statutory scheme

[1] For this reason, the pool described here is distinguishable from the arrangement found not to be a separate lottery in *U.S. Postal Service v. Amada*, 200 F.3d 647 (9th Cir. 2000) (service that accepted funds from general public and purchased lottery tickets for pool participants held not to be a "lottery"). The common-law definition of "lottery" applied in *Amada* is also different from Tennessee's statutory definition of "gambling." *See id.* at 651.

gives the Tennessee Education Lottery Corporation the power, among others, to initiate, supervise, and administer the operation of the lottery.

> "Lottery," "lotteries," "lottery game," or "lottery games" means any game of chance *approved by the board [of directors of the Tennessee Education Lottery Corporation] and operated pursuant to this chapter*, including, but not limited to, instant tickets, on-line games, and games using mechanical or electronic devices. . . .

Tenn. Code Ann. § 4-51-102(8) (emphasis added). Prizes in a lottery-ticket pool originate with Tennessee lottery tickets, but the pool is not approved or operated by the TELC. Instead, the pool is governed by contracts among the participants.[2]

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[2] This opinion does not address the circumstance in which people pool their money toward the purchase of one or more lottery tickets consistent with the rules and regulations of TELC.