

Before the
Federal Communications Commission
Washington, D.C. 20554

LETTER
January 29, 1996

Released: February 9, 1996

IN REPLY REFER TO:
1800C1-CN/CW
95080198

Sincerely,

Norman Goldstein, Chief
Complaints and Investigations Branch
Enforcement Division
Mass Media Bureau

Mr. Dwight J. Moore
11324 Davenport Street
Omaha, Nebraska 68154

Dear Mr. Moore:

This is in response to your August 11, 1995, request for clarification of our 1991 declaratory ruling regarding the application of the Charity Games Advertising Act of 1988, 18 U.S.C. § 1307, to three types of pickle card schemes and a keno game. In that letter ruling, we concluded that the third pickle card scheme you described (Pickle Game III) and the keno game were not actually conducted by a nonprofit or governmental entity.

Section 1307(a) of the United States Code permits broadcast advertising of lotteries that are authorized or not otherwise prohibited by the state in which they are conducted and which are conducted by not-for-profit organizations or governmental entities. Section 73.1211 of the Commission's Rules, 47 C.F.R. § 73.1211, basically follows the language of the statute. For organizations to qualify for the Section 1307(a) exemption, they must actually conduct the lottery. When determining what "conducted" means, the Commission is still guided by the factors set out by Congress and enumerated in our 1991 declaratory ruling.

In brief, as set forth more fully in our 1991 ruling, for the Section 1307(a) exemption to apply, the nonprofit or governmental organization must have ultimate control of the day-to-day operations of the lottery. Although it is possible for a nonprofit or governmental entity to contract with outside operators to assist in conducting the lottery, the nonprofit or governmental entity must have ultimate control, with some type of system in place to allow for the necessary control and oversight. In your letter, you requested clarification of the factors that would meet this requirement. There are no set factors, and each lottery must be analyzed on a case-by-case basis. However, indicia of such control include a central computer system which accounts for all tickets and a dual auditing system which tracks the flow of revenues.

In your letter, you indicated that several Nebraska cities now have central computer systems and keno administrators who oversee the day-to-day functioning of city lotteries. Such a system of central control and oversight suggests that, depending upon the specific facts which exist in each city, the lotteries in those cities may be "conducted" by governmental entities.

I trust the foregoing has been informative.