

## LOTTERIES AND GAMES OF CHANCE

For groups looking to raise funds or generate interest from members and non-members alike, a prize drawing or raffle may seem to be the ideal solution. Unfortunately, many of these groups are unaware that such games of chance are subject to strict regulation at both the federal and state level, and sponsorship of a prize drawing may put the organization in violation of these laws.

As a general rule, the laws of all 50 states and the District of Columbia prohibit private parties from sponsoring promotions that qualify as "lotteries." Lotteries are defined to include the following three elements: 1) a prize; 2) distribution of the prize determined by the element of chance; and 3) payment of money or some other form of consideration as a requirement for entry in the promotion.

Of course, local groups, school clubs, and booster organizations across the country run drawings that may in fact be illegal lotteries, and state law enforcement has neither the time nor the inclination to pursue all these small-time violations. But an organization wishing to participate in a lawful prize promotion should consider the following options.

### **Sweepstakes**

One method by which an organization may sponsor a legal prize drawing is to remove the element of consideration. In a sweepstakes drawing, the organizer may request donations in exchange for contest entries or may provide entries upon purchase of another item; however, the contest promotions must make clear that no purchase is necessary to receive an entry and the organizer must publicize the means by which entrants can receive a free entry.

While the sweepstakes method of organizing a drawing seems fairly straightforward, in practice this is not the case. In the first place, the "consideration" requirement applies to past purchases as well as current ones. For example, a membership organization cannot hold a sweepstakes which is only open to members of that group; in such a case, the membership fee will be deemed "past consideration" for entry into the drawing. Second, several states have enacted statutes placing additional requirements on organizations wishing to hold a sweepstakes. In Florida and New York, for example, organizations are required to register a sweepstakes where the prize exceeds \$5000 in value, and many states require certain disclosures to be made about the contest or restrict the use of certain language in promotional material.

Most importantly, use of mail, telephone, or any broadcast medium to promote the sweepstake makes the contest subject to federal regulations protecting consumers against misleading or deceptive advertising. These regulations require a sweepstakes promoter to make a number of disclosures about the

contest, including the odds, the value of the prizes, and contact information for parties wishing to receive the official rules or the names of contest winners.

## **Contests**

A second means of creating a prize promotion that is not an illegal lottery is to remove the element of chance; that is, by awarding the prize based on some demonstration of skill. For example, a prize can be awarded to the individual who recruits the most new members during a membership drive, or to the person who achieves the best score at a charity bowling tournament. However, a contest sponsor must ensure that the “skill” being demonstrated is in fact a valid skill. A prize awarded to the individual who most closely guesses the number of jellybeans in a jar is not a contest of skill, and such a contest may again run afoul of state regulations against lotteries. Furthermore, some states have chosen to impose regulations on contests as well, such as Arizona, which requires registration with the state attorney general’s office for certain types of contests.

## **Charitable Raffles**

Finally, many states provide an exception to the general proscription on lotteries for events deemed a “charitable raffle.” A raffle includes a prize distributed by chance where participants have paid some form of consideration to enter; therefore, in all respects it meets the definition of the word “lottery.” However, many states have chosen to allow certain organizations to sponsor raffles for the purpose of generating charitable funds.

Unfortunately, the charitable raffle exception is not available to organizations in all areas of the country. Several states—among them, Arkansas, Hawaii, Utah, and Wyoming—have enacted regulations that prohibit even charitable raffles from occurring within the state. Still other states place tight restrictions on the types of organizations that qualify for such events; e.g., in Virginia, an organization must have been registered to do business in Virginia for a period of three years, must have at least 50% of its membership consist of Virginia residents, and must be approved by the Department of Agriculture and Consumer Services to make charitable solicitations.

Finally, because such raffles contain all the required elements to be deemed lotteries, state regulation of these events tends to be more extensive than for sweepstakes or contests. Such regulation is likely to include necessary disclosures to contest entries, reporting requirements to state officials, and/or restrictions on the monetary value of the prizes awarded.

## **Conclusion**

In most U.S. states, prize drawings may be a viable means for a nonprofit organization to generate funds; however, careful attention to federal laws and the

laws of the individual state is necessary to ensure the legality of a particular promotion. Groups wishing to run a prize drawing are advised to consult their state attorney general's office for state-specific information. For those seeking general information about state raffle and lottery regulation, websites such as [http://www.ticketprinting.com/raffle\\_tickets/raffleticketlaws.aspx](http://www.ticketprinting.com/raffle_tickets/raffleticketlaws.aspx) provide a good starting point for additional research.

If you have questions about this article, or about any legal matter concerning your ASCE section or branch, please contact Tom Smith, ASCE General Counsel, at (800) 548-2723 x6061 (e-mail: [tsmith@asce.org](mailto:tsmith@asce.org)) or Tara Hoke, Assistant General Counsel, at (800) 548-2723 x6151 ([thoke@asce.org](mailto:thoke@asce.org)).

## EXAMPLE RULES

1. The Annual ASCE Renewal Drawing is open to all legal residents of the United States who are 18 years of age or older at the time of entry. Employees of ASCE and members of their immediate families and households are not eligible.
2. To Enter: Members in dues paying categories and Life Members who renew by [Date] are automatically entered to win.
3. No purchase or membership necessary to win. To receive an entry with no purchase or membership, send a postcard labeled "ASCE Drawing Entry" to ASCE Member Renewal Drawing, 1801 Alexander Bell Drive, Reston, VA 20191. The postcard must include the entrant's complete name, member/customer identification number (if applicable), e-mail address, and mailing address. Limit: one entry per person.
4. This sweepstakes is subject to all federal, state, and local laws and regulations. Void where prohibited or restricted by law.
5. Prize drawing will be held by ASCE Staff on [Date]. Decisions made by ASCE Staff are final and not open to challenge.
6. Prizes to be awarded are as follows: [Prizes and estimated retail values.] Odds of winning depend on the number of entries received. For a list of winners, write to ASCE, 1801 Alexander Bell Drive, Reston, VA 20191, Attn: General Counsel. All requests must be received by [Date].
7. Contest rules are subject to change by the ASCE Staff. By entering the contest, participants agree to accept these official rules and the decisions of the contest sponsor as final and binding in all respects.
8. Each award member is responsible for submission and payment of the appropriate taxes for any prizes he/she may receive.
9. This contest is sponsored by the American Society of Civil Engineers, 1801 Alexander Bell Drive, Reston, VA 20191.