

Date Issued: May 10, 1984 (AGO 84-25)

Requested by: Gail Hagerty
Burleigh County State's Attorney

- QUESTION PRESENTED -

Whether an educational organization, as defined in chapter 53-06.1 of the North Dakota Century Code, must obtain a state gaming license to conduct a raffle in which the first prize exceeds \$1,000.00 and the aggregate of the prizes exceeds \$2,000.00 in value.

- ATTORNEY GENERAL'S OPINION -

It is the opinion of the Attorney General that an educational organization, as defined in chapter 53-06.1, N.D.C.C., must obtain a state gaming license for a raffle in which the first prize exceeds \$1,000.00 and the aggregate of the prizes exceeds \$2,000.00 in value.

- ANALYSIS -

Section 53-06.1-03(1), N.D.C.C., states:

53-06.1-03. LICENSURE - EXCEPTIONS FOR RAFFLES AND BINGO - CITY AND COUNTY LICENSURE - FEES - SUSPENSION AND REVOCATION.

1. Eligible organizations desiring to conduct games of chance shall annually apply for a license from the attorney general and shall include with the application a fifty dollar license fee. However, an eligible organization desiring to conduct raffles or bingo in which the primary prize does not exceed one thousand dollars, and the aggregate does not exceed two thousand dollars, shall apply directly to the governing body of the city in which it conducts its principal activities or, if its principal activities are conducted within a county but outside the limits of a city, it shall apply to the board of county commissioners for a license. Applications for the conduct of raffles and bingo subject to authorization by a city or county shall be made on forms provided by the attorney general and shall be accompanied by a ten dollar permit fee payable to the city or county governing body.

Section 53-06.1-05, N.D.C.C., relating to educational organizations, college fraternities and sororities, states:

53-06.1-05. LOCAL APPROVAL FOR EDUCATIONAL ORGANIZATIONS, COLLEGE FRATERNITIES, AND SORORITIES FOR RAFFLES AND BINGO. An educational

organization, college fraternity, or sorority shall apply in writing to the governing body of the city in which it is located, or to the board of county commissioners if the educational organization or the college is located outside the geographical limits of a city, for permission to conduct raffles or bingo at least thirty days prior to each occasion. The application shall state the time, place, and educational, charitable, patriotic, or other public-spirited uses to which the proceeds will be devoted. An applicant fraternity or sorority shall include a signed acknowledgment by the administration of the college or university that the applicant is a recognized fraternity or sorority. The governing body may at its own discretion, and upon application, grant permission for raffles and bingo to be held at specifically designated times and places for specific uses covering a one-year period. The governing body may by ordinance or resolution establish authorization fees not to exceed ten dollars for an authorization for one occasion and not to exceed twenty-five dollars for an authorization covering more than one occasion. If the governing body, at its own discretion, chooses to authorize raffles or bingo pursuant to this chapter, the governing body may do so by resolution.

Although section 53-06.1-05, N.D.C.C., does not state any prize limitation, section 53-06.1-03, N.D.C.C., does set forth limitations which, if exceeded, require a state license. This apparent conflict should be resolved, if possible, to give effect to both statutes. To do this, we interpret section 53-06.1-05, N.D.C.C., to allow local licensure of educational organizations for raffles and bingo if the first prize does not exceed \$1,000.00 in value and the aggregate of all the prizes does not exceed \$2,000.00 in value.

In further support of this position, we look to the legislative history. The addition of "educational organizations" into section 53-06.1-05, N.D.C.C., occurred in the 1983 Legislative Session. This came about because of the introduction of Senate Bill 2485. Senate Bill 2485 would have eliminated the requirement that educational organizations obtain any local approval whatsoever for raffles if the first prize did not exceed \$1,000.00 and the aggregate of all the prizes did not exceed \$2,000.00. The Senate Political Subdivision Committee heard testimony discussing the small size of the raffles and the difficulty of obtaining permits from city governments that may only meet once a month. Committee discussion led to the possibility of an annual local permit. It was decided to include "educational organizations" in section 53-06.1-05, N.D.C.C., since that section was already proposed for amendment in Senate Bill 2067, and because that bill already allowed college fraternities and sororities to receive an annual permit for twenty-five dollars.

The question was posed as to whether this bill would then just be added to Senate Bill 2067 with those restrictions. The response of some committee members was that the restrictions were already there. Senate Bill 2485 was voted out a "do not pass" and Senate Bill 2067 was amended to include "educational organizations." This discussion is found on the recorded tape, Number 14, of the Senate Political Subdivisions Committee, counter numbers 000-585 and 820-910, of the 1983 Legislative Assembly.

It can thus be observed that the intent of adding educational organizations to section 53-06.1-05, N.D.C.C., was to allow an annual permit for small raffles and not to allow raffles by educational organizations to exceed the prize limitations and only obtain a local license.

- EFFECT -

This opinion is issued pursuant to section 54-12-01, N.D.C.C. It governs the actions of public officials until such time as the question presented is decided by the courts.

ROBERT O. WEFALD
Attorney General

Prepared by: John E. Jacobson
Assistant Attorney General