

**LETTER OPINION**  
**94-L-298**

November 1, 1994

The Honorable Andrew Maragos  
House of Representatives  
125 6th Avenue NE  
Minot, ND 58701

Dear Representative Maragos:

Thank you for your letter inquiring about the Pro Fantasy Football Challenge advertisement which was in the US Today and whether a North Dakota resident could legally operate a sports pool.

I have reviewed the advertisement and discussed it with our Gaming staff. It is unclear from the advertisement whether a game of chance is being conducted. You will note that no purchase is necessary to receive a copy of the official rules and a one-time team selection entry form. If it costs nothing to participate in this contest, no game of chance would be involved.

I also noted that the advertiser is asking for \$24.95. Since we do not have a copy of the official rules and do not know how this contest is being conducted, I cannot tell if the \$24.95 is the cost to participate in this contest, as a one time fee, or if it is only the cost of receiving written materials on a weekly basis concerning "standings reports." It is possible that the \$24.95 is being paid not for the chance to win the listed prizes but, rather, only for the written weekly statistical information.

If, however, the official rules require payments for the chance to win the listed prizes, it is possible that this contest may be a game of chance. The advertisement does not disclose sufficient information to make this determination.

You also ask whether a North Dakota resident would commit a criminal offense by running a contest whereby entrants paid fees and were rewarded for their success

in choosing the outcome of professional football games each week. The statutory definition of "gambling" includes "risking any money . . . for gain, contingent, wholly or partially, upon . . . the . . . outcome of [a] sporting event, over which the person taking the risk has no control." N.D.C.C. ? 12.1-28-01. Therefore, if the entrants were required to pay a fee to participate in the contest, the conduct of such a sports pool would constitute gambling under N.D.C.C. ch. 12.1-28, and thus be illegal unless operated in accordance with N.D.C.C. ch. 53-06.1. N.D.C.C. ? 53-06.1-07 authorizes sports pools only if operated by eligible organizations licensed by the attorney general at gaming sites authorized by the local government body and approved by the attorney general. N.D.C.C. ? 53-06.1-09 places further limitations on sports pools (must clearly post rules, maximum wager is five dollars, and amounts paid in prizes may not exceed ninety percent of the gross proceeds). Based on the above statutes, it is my opinion that the operation of a sports pool by a private individual would be a criminal offense.

Sincerely,

Heidi Heitkamp  
ATTORNEY GENERAL

rpb/vkk