

Award of prize in game promotion

Number: INFORMAL

Date: June 27, 2002

The Honorable Evelyn J. Lynn
Representative, District 27
140 South Atlantic Avenue, Suite 202
Ormond Beach, Florida 32176-6621

Dear Representative Lynn:

This is in response to your request on behalf of a constituent for assistance in determining whether section 849.094(2), Florida Statutes, requires that a prize in a game promotion be awarded. The Division of Consumer Services in the Department of Agriculture has advised your constituent that the game promotion he is conducting is not in compliance with section 849.094(2), Florida Statutes.

This office has previously addressed similar promotions conducted pursuant to section 849.0935, Florida Statutes. In Attorney General Opinion 93-85, the question was asked whether a promoter could cancel or reserve the right to cancel a drawing by chance. Under the provisions of section 849.0935, Florida Statutes, a promoter has no authority to cancel a drawing. In Attorney General Opinion 93-59, this office concluded that it is unlawful to fail to notify the person whose entry is selected to win that he or she has won, or to fail to award the prizes in the manner and at the time stated in the brochure or advertisement for the drawing.

Section 849.094, Florida Statutes, governs game promotions in connection with the sale of consumer products or services. Subsection (3) of the statute requires the operator of a game promotion in which the total announced value of the prizes offered is greater than \$5,000 to file with the Department of Agriculture and Consumer Services (department) a copy of the rules and regulations of the game promotion and a list of all prizes and prize categories at least seven days before commencement of the game promotion. Under these circumstances, the operator of a game promotion must establish a trust account with a balance sufficient to pay or purchase the total value of the prizes offered or, in lieu thereof, obtain a surety bond equivalent to the value of the prizes. Verification of the trust account or the surety bond must be filed with the department at least seven days before commencement of the game promotion.

Section 849.094(2), Florida Statutes, makes it unlawful for any operator:

"(a) To design, engage in, promote, or conduct such a game promotion, in connection with the promotion or sale of consumer products or services, wherein the winner may be predetermined or the game may be manipulated or rigged so as to:

1. Allocate a winning game or any portion thereof to certain lessees, agents, or franchises; or
2. Allocate a winning game or part thereof to a particular period of the game promotion or to a particular geographic area;

(b) Arbitrarily to remove, disqualify, disallow, or reject any entry;

- (c) To fail to award prizes offered;
- (d) To print, publish, or circulate literature or advertising material used in connection with such game promotions which is false, deceptive, or misleading; or
- (e) To require an entry fee, payment, or proof of purchase as a condition of entering a game promotion."

In addition to various other provisions making the Department of Agriculture and Consumer Services the appropriate state agency to oversee game promotions, section 849.094(8), Florida Statutes, empowers the department to promulgate rules and regulations it deems advisable for the operation of such promotions. Moreover, when the department or the Department of Legal Affairs has reason to believe that a game promotion is being operated in violation of section 849.094, Florida Statutes, it may bring an action in circuit court to enjoin its continued operation. Moreover, violations of section 849.094, Florida Statutes, may also constitute violations of Part II, Chapter 501, Florida Statutes, the "Florida Deceptive and Unfair Trade Practices Act." Under this statute, the operator of a promotion may be subject to a civil penalty of up to \$10,000 per violation.

In this instance, the Department of Agriculture and Consumer Services has advised your constituent, the operator of a game promotion, that he may be in violation of section 849.094(2), Florida Statutes, regarding predetermined winners and the failure to award prizes. Given the department's oversight of such game promotions and enforcement authority in conjunction with the Department of Legal Affairs, this office must presume the correctness of that department's evaluation of the facts in this case.

Sincerely,

Lagran Saunders
Assistant Attorney General

ALS/tgk