

Gambling by telephone and Internet & Advertisements

Number: INFORMAL

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The Honorable Steven A. Geller
Representative, District 101
400 South Federal Highway, #204
Hallandale, Florida 33009-6433

Dear Representative Geller:

As a result of your observation of a proliferation of advertising for Internet gambling, you request assistance in formulating an effort to combat illegal gambling by telephone and by use of the Internet.

State law prohibits an individual in Florida from placing a bet or wager by wire communication or by use of the Internet. However, as this office has observed, the burgeoning growth of the Internet and the difficulty in adopting and implementing durable and effective enforcement mechanisms, makes any effort to regulate the Internet's use better suited to federal legislation, rather than a patchwork attempt by individual states.[1]

To combat this problem, however, this office has instituted a program pursuant to 18 United States Code section 1084, whereby, upon notification that the lines of a company subject to regulation by the Federal Communications Commission are being used to facilitate illegal wagering, a letter signed by the Attorney General and the Commissioner of the Florida Department of Law Enforcement is sent informing the Local Exchange Company of the illegality of such activities. The carrier is directed to discontinue services to the entity engaging in wagering by wire and informed of the criminality of actions by any person or entity that aids or abets the commission of a criminal act in Florida. Enclosed is a copy of one such letter for your review.

In addition, Florida law makes it unlawful for any person in this state to promote any lottery for money or anything of value or to advertise any lottery scheme or device.[2] Moreover, anyone who engages in any game of cards, keno, roulette, faro, or other games of chance, by any device whatsoever, for money or other things of value, is guilty of a misdemeanor of the second degree.[3] In addition to the illegality of lotteries and games of chance for money, under Florida law any person who is found guilty of making misleading advertisements is guilty of a misdemeanor of the first degree.[4] The term misleading advertisement includes

"any statements made, or disseminated, in oral, written, or printed form or otherwise, to or before the public, or any portion thereof, which are known, or through the exercise of reasonable care or investigation could or might have been ascertained, to be untrue or misleading, and which are or were so made or disseminated with the intent or purpose, either directly or indirectly, of selling or disposing of real or personal property, services of any nature whatever, professional or otherwise, or to induce the public to enter into any obligation relating to such property or

services." [5]

Given that gambling not authorized by Florida law is illegal in this state, and that the advertisement of such illegal activity may be considered false and misleading, this office's position is that those engaged in the advertisement of illegal gambling are engaged in an illegal activity and should be prosecuted.

While this office has taken action in addressing the growing problem of illegal wagering by wire and the Internet, resolution of the problem will require concerted efforts in support of federal regulation of such activities. As a legislator, your decision to take up the challenge of formulating a method to combat illegal gambling over telephone lines and the Internet is laudable. This office will continue to take any action that is permissible under current law to stop illegal wagering.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/tgk

Enclosure

[1] See Op. Att'y Gen. Fla. 95-70 (1995).

[2] Section 849.09(1), Fla. Stat.

[3] Section 849.08, Fla. Stat.

[4] See s. 817.41, Fla. Stat., making it unlawful to make misleading advertisements, and s. 817.45, Fla. Stat., stating that any person convicted of violating section 817.41, Florida Statutes, is guilty of a misdemeanor of the first degree).

[5] Section 817.40(5), Fla. Stat.