

Advertisements for sports betting and gambling cruises

Number: INFORMAL

Date: April 09, 1998

The Honorable Sharon J. Merchant
Representative, District 83
Florida House of Representatives
The Capitol 221
Tallahassee, Florida

Dear Representative Merchant:

You have expressed your concern about the legality of radio advertisement for sports wagering and have asked for my comments. Attached to your letter are copies of two radio advertisements, the first relating to the placing of bets by telephone.

Late last year, I received a letter from then Representative Geller who similarly observed a proliferation of advertising for gambling via the Internet and by telephone. In responding to Representative Geller, this office recognized that state law prohibits an individual in Florida from placing a bet or wager by wire communication or by use of the Internet.[1]

As I advised Representative Geller, 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.

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] In addition, under Florida law any person who is found guilty of making misleading advertisements is guilty of a misdemeanor of the first degree.[3] 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, I advised Representative Geller that it is this office's position that those engaged in the advertisement of illegal gambling are engaged in an illegal activity and should be prosecuted. This office's position on this issue remains unchanged.

The second advertisement concerns cruises which offer gambling; the advertisement, however, does not provide sufficient information regarding the cruise to determine whether it is advertising an illegal activity. If the betting or wagering on such ship does not occur until the ship is outside Florida waters, the advertisement of the cruise would not necessarily constitute an advertisement of illegal gambling and, therefore, may not constitute a false and misleading advertisement.

I trust that the above comments will be of assistance.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/tgk

Enclosure

[1] See Inf. Op. to Representative Steven A. Geller, dated December 12, 1997, a copy of which is enclosed.

[2] Section 849.09(1), Fla. Stat. *And see* s. 849.08, Fla. Stat., providing that persons engaging in games of chance, by any device whatsoever, for money or other things of value, are guilty of a misdemeanor of the second degree.

[3] 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 s. 817.41, Fla. Stat., is guilty of a misdemeanor of the first degree. *And see* s. 817.40(5), Fla. Stat., defining the term "misleading advertising" to include:

"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."