Sale or Advertising of state lottery tickets unlawful

Number: AGO 74-14

Date: November 04, 1998

Subject:
Sale or Advertising of state lottery tickets unlawful

RE: CRIMINAL LAW--SALE OR ADVERTISING OF LOTTERY TICKETS UNLAWFUL

To: David H. Bludworth, State Attorney, West Palm Beach

Prepared by: George R. Georgieff, Assistant Attorney General

QUESTIONS:

1. Are the provisions of s. 849.09, F. S., applicable to lawful out-of-state lotteries, e.q., is someone who possesses in Florida a ticket for the New York State Lottery or who sells such a ticket in Florida guilty of violating this statute?

2. Is a newspaper that publishes an advertisement which promotes such a lottery guilty of assisting in the promoting of a lottery in violation of s. 849.09, F. S.?

SUMMARY:

One cannot lawfully acquire or sell an interest in a lottery in Florida although he can possess such an interest (ticket) if it was acquired by him in some other jurisdiction. No newspaper or other medium can lawfully publish an advertisement promoting a lottery prohibited in Florida even though it be legal in another jurisdiction.

As I read the specific provisions of s. 849.09, F. S., I find no basis on which to conclude that it exempts from its proscriptive sanction anyone who acquires in Florida a ticket for the New York State Lottery (where it is ostensibly legal) or anyone who sells such a ticket in Florida. I specifically invite your attention to paragraphs 849.09(1) (g), (h) and (i) which directly prohibit the two activities made the object of your inquiry.

For purposes of this interpretation, it is unimportant that the acquisition or sale of a lottery ticket concerns a lottery legal somewhere else. In other words, the lottery could be legal in 49 of the 50 states and still be illegal in Florida. Therefore, you are advised that, absent any exceptions within the statutory language to which I referred, it is unlawful for a person to acquire a lottery ticket in Florida regardless of whether it represents an interest in a lottery which is legal somewhere else. It is also a violation of s. 849.09, *supra*, for anyone in Florida to sell an interest in a lottery so characterized.

I do not interpret any of the provisions of s. 849.09, *supra*, as prohibiting persons in Florida from simply possessing a ticket to lotteries legal somewhere else, lawfully acquired by them in

another jurisdiction.

Your second question relating to the publication of an advertisement promoting such a lottery in Florida is clearly covered by paragraphs 849.09(1)(d), (e), (i), (j), and perhaps (k). That is to say, it is unlawful for a newspaper or any other medium to publish an advertisement which promotes a lottery in Florida, regardless of whether said lottery is legal in some other jurisdiction.