

September 2, 1998
Re: IO-98-116

As you requested, I reviewed my response to Captain -- in IO-98-74. The research I did supported the commission's decision that the door prize you received was a prohibited gift. The case to which your lawyer referred was not relevant to your situation. That case, United States v. Amirikian, 197 F.2d 442 (1952), involved a contest, where the prize was to be awarded for the best research paper on a technical subject. The prize was offered by a foundation "to stimulate scientific interest and scientific research" in the development of a specific type of industry. The court held that the performance by the winning author constituted adequate "consideration" to create a binding, enforceable contract between the foundation and the winning author. "Consideration" is a required to create a contract.

In your case, many people were asked to sign their names to a ticket for a "drawing" where one ticket signer would win a prize. This situation is more like the situation described in Farnsworth on Contracts, Farnsworth, E. Allan, Little, Brown, and Company, Boston, 1990, at page 87, §2.9:

An employer promises an employee the gift of a gold watch as a present "if you will stop by my office to pick it up." The employer uses the same language that it would use if bargaining - the promise is conditioned on the employee's stopping by the office. But it is evident that, in making the promise, the employer is not bargaining for the employee's stopping by the office; in making the promise, the employer's purpose is not to obtain that action, but simply to make a gift of the watch. Stopping by the office is merely a condition of a gratuitous promise - an unenforceable gratuitous promise.

The case of *Mid-Atlantic Coca-Cola Bottling Co., Inc. v. Chen, Walsh, & Tecler*, 296 Md. 99 (1983) is also relevant. In that case, Coca-Cola had a promotion where they offered prizes to people whose bottle caps were printed with certain words. In holding that the contest was not an illegal lottery, the Maryland Court of Appeals held that this offer was for a prize. The court said, "The prizes are, in short, 'gifts entirely unsupported by any valuable consideration moving from the taker". *Id.* at 108.

In short, it is my conclusion that the informal opinion IO-98-74 was correct and that you are required to return the door prize given to you by a donor whose work is subject to your review. This conclusion is required by law and is not meant as a reflection on your integrity.

If you have any further questions or concerns, please call any time.

Sincerely,
Betsy K. Dawson
Executive Director