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7 MAY 1981

Memorandum for D. Lowell Jensen
Assistant Attorney General
Criminal Division

Re: Application of Federal Gambling Laws to Sales of State
Lottery Tickets in Indian Territory and Federal Reservations
Within the Sponsoring States

You have requested our opinion whether, under federal law, the State of Arizona may legally conduct a lottery within Indian country, National Parks or other federal enclaves (hereafter jointly "federal areas") within the State. A conclusion that no federal law generally prohibits such state activity. However, the State might well have to comply with any pertinent regulations, ordinances, or other provisions of law applicable to the particular federal areas involved.

The provisions of federal law which might impose criminal penalties for the conduct of lotteries are 18 U.S.C. §§ 1094, 1301-02, 1304, and 1952-53. Section 1094(b) prohibits the transmission by wire, in interstate or foreign commerce, of certain wagering information. Section 1094 exempts from this prohibition the transmission of wagering information "from a State where betting on that . . . contest is legal into a State in which such betting is legal." A State which has a legal lottery, therefore, would not violate § 1094 by transmitting lottery information by wire into a federal area within the State as long as the federal area is considered part of the "State" for purposes of § 1094(b).

Sections 1301-02 and 1304 are federal criminal statutes directly concerned with lotteries. Section 1301 prohibits the transport of lottery tickets in interstate or foreign commerce. Section 1302 prohibits the mailing of lottery tickets or related matter. Section 1304 prohibits broadcasting information about lotteries over a federally licensed radio station. The foregoing prohibitions are qualified, in the case of state-run lotteries, by § 1307, subsection (a) of which permits States to publish or broadcast information or advertisements concerning state-run lotteries in a newspaper or broadcast facility within the State

or an adjacent State which conducts a lottery. Section 1307(b) permits the transportation or mailing of lottery tickets or related material within the State conducting the lottery. Section 1307(c) defines "State" to mean "a State of the United States . . . or any territory or possession of the United States." Taken as a whole, these provisions would not prohibit a State from conducting a lottery in a federal area within the State so long as the area was considered part of the "State" and not a separate "possession" or "territory" of the United States.

Section 1952 prohibits travelling in, or using a facility of, interstate or foreign commerce in aid of illegal gambling activities. Section 1953 prohibits the transportation in interstate or foreign commerce of wagering paraphernalia. Sections 1952 and 1953 contain no provisions exempting activities of state officials. However, these sections would not prohibit a State from conducting lottery activities in federal areas if the State does not transport goods in, travel in, or use the facilities of, interstate commerce. 1/ "Interstate commerce" is defined in 18 U.S.C. § 10 to include "commerce between one State, Territory, Possession, or the District of Columbia and another State, Territory, Possession, or the District of Columbia." A State would violate the above prohibitions, therefore, only if the activity in question involved commerce with another State, territory, or possession. The statutory question would seem to be whether, for purposes of sections 1952 and 1953, federal areas should be considered "territories" or "possessions" rather than part of the "State" in which they are located.

Our analysis of each of the relevant provisions of federal law has led to the same conclusion: if, for purposes of these statutes, a federal area is considered to be part of the "State" in which it is located, rather than a separate "territory" or "possession" of the United States, that State is not prohibited by such provisions from conducting lottery activities within the federal area. Our research has uncovered no general definition in statutes or in the case law of the words "territory" or "possession." Certainly federally owned land within federal areas should generally be considered "Territory or other Property belonging to the United States" for purposes of the power of Congress, under Article IV, § 3, cl. 2, to make needful rules or regulations.

1/ In addition, § 1952 is not violated unless the gambling activity involved is independently illegal under state or federal law. As noted in this memorandum, we believe that Arizona may conduct a state-sponsored lottery in federal areas without violating any generally applicable provision at state or federal law.

However, the pertinent statutory references to "territory" or "possessions" of the United States are, in our opinion, narrower than this constitutional provision. By the words "territory" and "possession" Congress probably had in mind federally controlled areas not within any existing State which exercised a degree of self government -- areas such as the Virgin Islands and Guam, or Alaska and Hawaii before their accession to statehood. Cf. Dinns v. United States, 194 U.S. 486, 491 (1904). This construction is supported by the rule that ambiguous criminal statutes should be narrowly construed. See Whalen v. United States, 445 U.S. 684, 695 n.10 (1980); United States v. Bass, 404 U.S. 336, 347 (1972). It also comports with a common-sense reading of these statutes. We conclude, therefore, that a State would not violate the criminal statutes cited above by conducting a state-sponsored lottery on federal areas within that State.

In addition to these federal laws, state criminal laws are generally adopted for federal enclaves by 18 U.S.C. § 13 and, for Indian reservations, by 18 U.S.C. § 13 and § 1152. However, we are informed that a state-conducted lottery is legal under the laws of Arizona. These assimilative crimes provisions would therefore not bar the State from conducting a lottery on federal areas within its borders.

While we believe that Arizona's proposed conduct of a lottery in federal areas would not violate substantive federal criminal laws or state laws adopted for federal enclaves and Indian reservations, the State may be subject to pertinent regulations, ordinances, or other provisions of law applicable to particular federal areas. For example, if the governing tribe enacted an ordinance prohibiting the conduct of a lottery on an Indian reservation, there would be a serious question regarding the authority of the State to sell lottery tickets on the reservation, at least with respect to sales made on tribal lands or to enrolled members of the governing tribe. Cf. State of Washington v. Confederated Tribes, 447 U.S. 134 (1980). Similarly, we believe that the State would generally have to abide by valid regulations promulgated by the Department of the Interior or the National Park Service to govern conduct on National Park lands. A determination whether the State could legally conduct a lottery on federal areas, despite regulations, ordinances, or other provisions of law to the contrary, could be made only after a detailed analysis of the relevant legal materials, including the instruments establishing the federal area, the powers of the law applying body, and the like.

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