

Charlie Adams

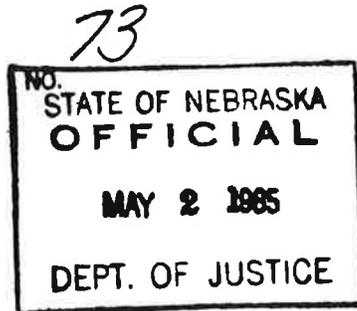
DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

TELEPHONE 402/471-2682 • STATE CAPITOL • LINCOLN, NEBRASKA 68509

April 30, 1985

ROBERT M SPIRE
Attorney General
A EUGENE CRUMP
Deputy Attorney General



Senator John DeCamp
1116 State Capitol
Lincoln, NE 68509

Dear Senator DeCamp:

This is in reply to your letter with an attachment offering the sale of tickets to what is called "The Michigan Instant Lottery". You ask if this violates any Nebraska laws. In a supplemental letter, you state that this is needed for a legislative purpose.

The material refers to a game in which you simply rub the latex coating away and you know "instantly" if you have won and the value of your prize. It also states various ticket prices, such as five tickets for \$12. It refers to winners, such as under \$50 and over \$50, and as high as \$1 million in a drawing.

We assume that all of the elements considered by the Supreme Court of Nebraska as necessary for a lottery, i.e., chance, prize and consideration, are present. As you know, under Article 11 of Chapter 28 of the Nebraska statutes and under our Constitution, gambling is prohibited, except as specifically authorized by the Constitution and by the Legislature in carrying out the constitutional provision. This advertisement does not appear to qualify for any of the exempt categories.

Neb.Rev.Stat. §28-1110 (Reissue 1979) provides as follows:

It shall be no defense to a prosecution under any provision of this article relating to a lottery that the lottery itself is drawn or conducted outside this state and is not in violation of the laws of the jurisdiction in which it is drawn or conducted.

L. Jay Bartel
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In addition to that, the Supreme Court of Nebraska has held in two recent cases that where the requisite elements of the completed crime are committed in different jurisdictions, any state in which an essential part of the crime is committed has jurisdiction of the offense. State v. Hilpert, 213 Neb. 564; State v. Manchester, 213 Neb. 670.

In our opinion, using the mail to send solicitation into Nebraska resulting in a person in Nebraska sending money for lottery tickets and the return of the lottery tickets to the person in Nebraska would constitute an essential part of the commission of the crime in the State of Nebraska.

The Uniform Extradition Act contains a provision that a person committing an act in one state intentionally resulting in a crime in another state may be extradited. This has been adopted by Nebraska and is contained in Neb.Rev.Stat. §29-734. A same or similar provision is contained in the laws of most other states. See also, State v. Holeb, 188 Neb. 319.

Sincerely,

ROBERT M. SPIRE
Attorney General



Mel Kammerlohr
Senior Assistant
Attorney General

MK:dr

cc: Patrick J. O'Donnell
Clerk of the Legislature