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#91067

STATE OF NEBRASKA
OFFICIAL
SEP 16 1991
DEPT. OF JUSTICE

DATE: September 10, 1991

SUBJECT: Interpretation of the requirement in Neb.Rev.Stat. § 9-639 (Cum. Supp. 1990) (amended 1991 Neb. Laws, LB 427, § 61) that no licensed manufacturer - distributor of lottery equipment or supplies "shall participate in the conduct or operation of any lottery conducted by any county, city, or village."

REQUESTED BY: M. Berri Balka, State Tax Commissioner

WRITTEN BY: Don Stenberg, Attorney General
L. Jay Bartel, Assistant Attorney General

You have requested our opinion regarding the interpretation of a portion of the Nebraska County and City Lottery Act, Neb.Rev.Stat. §§ 9-601 to 9-653 (Reissue 1987 and Cum. Supp. 1990) (amended 1991 Neb. Laws, LB 427) [the "Act"].

Section 9-640(1) of the Act, as amended by LB 427, provides, in pertinent part: "No county, city, or village licensed to conduct a lottery or a licensed operator shall purchase, lease, or otherwise obtain any lottery equipment or supplies except from a manufacturer-distributor licensed in Nebraska."

In your request, you state that Electronic Data Technology ["EDT"], a manufacturer-distributor of lottery equipment and supplies, was licensed in Nebraska on November 16, 1989. You further state that EDT has entered into various agreements regarding the sale or lease of lottery equipment to licensed political subdivisions and licensed lottery operators in the state under which EDT is compensated by payments based on a percentage of the gross receipts derived from the use of such equipment.

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The question you have requested us to consider relates to the interpretation of Neb.Rev.Stat. § 9-639 (Cum. Supp. 1990) (amended, 1991 Neb. Laws, LB 427, § 61), which provides:

> No manufacturer-distributor shall be licensed to conduct any other activity under the Nebraska County and City Lottery Act. No manufacturer-distributor shall hold a license to conduct any other kind of gambling activity which is authorized or regulated under Chapter 9 except as provided in section 9-632. No manufacturer-distributor or employee, agent, or spouse of any manufacturer-distributor shall participate in the conduct or operation of any lottery conducted by any county, city, or village or any other kind of gambling activity which is authorized or regulated under Chapter 9 except to the exclusive extent of his or her statutory duties as a licensed manufacturer-distributor and as provided in sections 9-233.01, 9-235, 9-330, and 9-332.

(Emphasis added).

The specific question you have asked us to address is whether a licensed manufacturer-distributor may lawfully lease lottery equipment to a county, city, village or lottery operator if the lease agreement requires payments based upon a percentage of the gross receipts or amount wagered, or whether this type of arrangement constitutes unlawful participation by a manufacturer-distributor in the "conduct or operation" of a lottery prohibited by § 9-639.

A fundamental principle of statutory construction is to attempt to ascertain legislative intent and to give effect to that intent. County of Lancaster v. Maser, 224 Neb. 566, 400 N.W.2d 238 (1987). The reasons for the enactment of a statute, and the purposes and objects of the act, may be guides in attempting to give effect to the intent of lawmakers. State v. Jennings, 195 Neb. 434, 238 N.W.2d 477 (1976). A statute should be interpreted in such a manner as to give effect to the purpose and intent of the Legislature as ascertained from the entire language of the statute in its plain and ordinary sense. NC+ Hybrids v. Growers Seed Ass'n, 219 Neb. 296, 363 N.W.2d 362 (1985). A statute should be construed in the context of the mischief sought to be remedied and the purpose to be served. In re Boundaries of McCook Public Power District, 217 Neb. 11, 347 N.W.2d 554 (1984).

The word "participate" is defined as "to have or take a part or share with others (in some activity, enterprise, etc.); to partake." Webster's Unabridged Dictionary 1306 (2d ed. 1983). The word "participate" is employed in § 9-639 in the context of precluding a manufacturer-distributor (or any employee, agent, or spouse of any manufacturer-distributor) from participating in the "conduct or operation" of a lottery conducted by any county, city, village, or licensed lottery operator. "Conduct" is defined as "1. the act of leading; guidance; . . . 2. management; handling."

Webster's Unabridged Dictionary 380 (2d ed. 1983). "Operation," in turn, is defined, in part, as follows: "2. The condition of being in action or at work. 3. The power to act; force; influence. 4. A process or action that is part of a series in some work." Id. at 1253.

In light of the foregoing definitions, it appears the term "participate in the conduct or operation" in § 9-639 was intended to preclude licensed manufacturers (or their agents, employees, or spouses) from direct involvement in the management or running of lotteries conducted under the Act, as opposed to the type of contingent financial interest involved in the sale or lease of lottery equipment utilized by political subdivisions or lottery operators under the agreements provided for our review. The apparent legislative purpose behind inclusion of this restriction was to prevent any appearance or perception that a non-operator was managing or controlling the actual conduct or operation of any lottery authorized under the Act. The financial arrangements contained in the agreements provided do not seem to fall within the purview of the perceived mischief or evil sought to be remedied by the Legislature in enacting this prohibition.[1]

Indeed, another portion of the Act contains specific language prohibiting lottery operators from possessing any financial interest in any manufacturer. Section 9-642(1) (amended 1991 Neb. Laws, LB 427, § 63) provides:

> No individual, partner in a partnership or officer or director of a corporation applying for a lottery operator license or licensed as a lottery operator shall be connected with or interested in, directly or indirectly, any person, partnership, firm, corporation, or other party licensed as a distributor or manufacturer or manufacturer-distributor under section 9-233.01, 9-235, 9-330, 9-332, or 9-632.

Thus, if the Legislature had intended to establish a broader restriction limiting manufacturers from possessing some contingent financial interest as the result of their sale or lease of equipment to lottery operators, such as provided for under the agreements submitted for our review, it certainly knew how to

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[1] While the plain language of § 9-639 supports this conclusion, we note that we have reviewed the legislative history of the statute to ascertain if any different legislative intent is indicated by such history. Our review of this history reveals no evidence of any contrary intent.

employ statutory language sufficient to accomplish this result. Significantly, the type of limiting language employed in § 9-642(1) was not utilized in § 9-639.

In sum, it is our conclusion that the phrase "participate in the conduct or operation" of a lottery in § 9-639 should not be construed to prohibit financing agreements for the sale or lease of lottery equipment between a licensed manufacturer-distributor and counties, cities, villages, or lottery operators under which a percentage of the gross receipts or amount wagered is paid for lottery equipment sales or leases. Nothing in either the language or history of the Act evinces a legislative intent to prohibit the sale or lease of lottery equipment pursuant to arrangements of this nature.

Very truly yours,

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APPROVED:

Attorney General

7-163-7.6