



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

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FILE NO. 10-001

SPORTS & GAMING:
Public Library District's
Operation of a Raffle

The Honorable John J. Millner
Minority Spokesperson, Senate Criminal
Law Committee
State Senator, 28th District
290 Springfield Drive, Suite 225
Bloomington, Illinois 60108

Dear Senator Millner:

I have your letter inquiring whether a public library district qualifies as either a "charitable organization" or an "educational organization," as those terms are used in section 2 of the Raffles Act (230 ILCS 15/2(b) (West 2008)), thereby permitting the library district to seek a license to operate a raffle. For the reasons set out below, it is my opinion that public library districts have not been granted the requisite authority to operate raffles. Consequently, under current Illinois law, a public library district may not operate a raffle under any provision of the Raffles Act.

BACKGROUND

Criminal Code of 1961

Section 28-1 of the Criminal Code of 1961 (the Criminal Code) (720 ILCS 5/28-1 (West 2009 Supp.)), as amended by Public Act 96-1203, effective July 22, 2010) addresses the offense of gambling and provides:

(a) A person commits gambling when he:

(1) Plays a game of chance or skill for money or other thing of value, unless excepted in subsection (b) of this Section; or

* * *

(7) Sets up or promotes any lottery or sells, offers to sell or transfers any ticket or share for any lottery; or

* * *

(9) Knowingly drafts, prints or publishes any lottery ticket or share, or any policy ticket, slip, record, document or similar device, except for such activity related to lotteries, bingo games and raffles authorized by and conducted in accordance with the laws of Illinois or any other state or foreign government; or

(10) Knowingly advertises any lottery or policy game, except for such activity related to lotteries, bingo games and raffles authorized by and conducted in accordance with the laws of Illinois or any other state[.]

* * *

(b) Participants in any of the following activities shall not be convicted of gambling therefor:

* * *

(6) Lotteries when conducted by the State of Illinois in accordance with the Illinois Lottery Law. * * *

* * *

(8) Raffles when conducted in accordance with the Raffles Act.

As used in the Criminal Code (720 ILCS 5/1-1 *et seq.* (West 2008)), the term "lottery" refers to:

any scheme or procedure whereby one or more prizes are distributed by chance among persons who have paid or promised consideration for a chance to win such prizes, whether such scheme or procedure is called a lottery, *raffle*, gift, sale or some other name. (Emphasis added.) 720 ILCS 5/28-2(b) (West 2008).

Under section 28-1 of the Criminal Code, a person¹ generally may not operate a raffle without violating the State's criminal statutes. Subsection 28-1(b)(8) carves out an exception, however, for raffles conducted in accordance with the Raffles Act (230 ILCS 15/0.01 *et seq.* (West 2008)).

Raffles Act

Section 2 of the Raffles Act authorizes counties and municipalities to establish a system for licensing organizations that meet the specified statutory criteria to operate raffles.

Section 2 of the Raffles Act further provides:

(b) *Licenses shall be issued only to bona fide religious, charitable, labor, business, fraternal, educational or veterans' organizations that operate without profit to their members and which have been in existence continuously for a period of 5 years immediately before making application for a license and which*

¹For purposes of the Criminal Code, the term "person" refers to "an individual, public or private corporation, government, partnership, or unincorporated association." 720 ILCS 5/2-15 (West 2008).

have had during that entire 5 year period a bona fide membership engaged in carrying out their objects, or to a non-profit fundraising organization that the licensing authority determines is organized for the sole purpose of providing financial assistance to an identified individual or group of individuals suffering extreme financial hardship as the result of an illness, disability, accident or disaster.

For purposes of this Act, the following definitions apply.

* * * Charitable: An organization or institution organized and operated to benefit an indefinite number of the public. The service rendered to those eligible for benefits must also confer some benefit on the public. Educational: An organization or institution organized and operated to provide systematic instruction in useful branches of learning by methods common to schools and institutions of learning which compare favorably in their scope and intensity with the course of study presented in tax-supported schools. (Emphasis added.)

Pursuant to the Raffles Act, the Village of Schaumburg (the Village) has established a system for licensing qualifying organizations to operate raffles within its corporate limits. The correspondence enclosed with your opinion request indicates that, over the years, the Schaumburg Township Public Library District (Library District), a library district governed by the provisions of the Public Library District Act of 1991 (the Library Act) (75 ILCS 16/1-1 *et seq.* (West 2008)), has applied for, and the Village has routinely granted, a license to conduct a raffle to benefit the Schaumburg Township Food Pantry. Recently, however, the Village questioned whether the Library District is eligible to receive a license under the Raffles Act.

ANALYSIS

As a preliminary matter, it is necessary to determine whether a public library district is authorized to operate a raffle generally. Under article VII, section 8, of the Illinois

Constitution of 1970, "[t]ownships, school districts, special districts and units, designated by law as units of local government, which exercise limited governmental powers or powers in respect to limited governmental subjects shall have only powers granted by law." Library districts are neither townships nor school districts. Under this provision, if library districts are considered special districts or designated as units of local government by law, however, then library districts possess only those powers expressly granted to them by the Constitution or by statute, together with those powers that are necessarily implied therefrom to effectuate the powers that have been expressly granted.

The framers of the Illinois Constitution did not define the criteria for identifying a special district. In *Chicago Transit Authority v. Danaher*, 40 Ill. App. 3d 913 (1976), however, the Illinois Appellate Court articulated the following criteria in concluding that both the Chicago Transit Authority (the CTA) and the Chicago Housing Authority (the CHA) were special districts for purposes of the Illinois Constitution:²

The words "special district," so far as they are used in reference to units of government, have a technical meaning. A "special district" is a relatively autonomous local government which provides a single service. They have also been characterized as "possessing a structural form, an official name, perpetual succession, and the right to make contracts and to dispose of property." (See 1973 Illinois Attorney General's Opinions, 102, 104, No. S-601, dated

²Both the CTA and the CHA are established pursuant to statute, are designated by statute as municipal corporations, have the power to contract, purchase, and dispose of property, have eminent domain power, and possess "considerable autonomy." *Danaher*, 40 Ill. App. 3d at 914. Neither has the power to tax, but each has the power to issue bonds and to solicit and accept Federal and State grants. The CTA's statutory duty is to acquire, construct, own, operate, and maintain, for public service, a public transportation system within Cook County. The CHA's duty is to prepare, carry out, construct, and operate low income housing projects. *Danaher*, 40 Ill. App. 3d at 914.

June 27, 1973.) Although there is nothing in the record of the 1970 convention to which we have been referred which defines "special districts," we are firmly convinced that both CTA and CHA possess those features which bring each within the technical meaning of the term "special district," as commonly understood. *Danaher*, 40 Ill. App. 3d at 917.

Public library districts are established by statute, possess structural form, and enjoy perpetual succession. *See* 75 ILCS 16/30-25, 30-35, 30-40 (West 2008). They possess the power to levy taxes for the establishment, maintenance, and support of public libraries (75 ILCS 16/35-5 (West 2008)) and the authority to enter into specific contracts relating to library services and library activities (*see, e.g.*, 75 ILCS 16/30-55.20, 30-55.30, 30-55.32, 30-55.40, 30-55.50, 40-40 (West 2008)). Further, public library districts autonomously carry out the single service of establishing, supporting, and maintaining a public library or libraries within their districts. 75 ILCS 16/30-55 (West 2008). They are authorized to exercise the power of eminent domain (75 ILCS 16/30-55.80, 30-55.82 (West 2008)), and they possess the authority to dispose of property. 75 ILCS 16/30-55.30 (West 2008). Public library districts operating in accordance with the Library Act possess all of the attributes of a special district. 1978 Ill. Att'y Gen. Op. 170, 173.

As special districts, public library districts are subject to the limitations of article VII, section 8, of the Illinois Constitution. Thus, library districts may only operate a raffle if the power to do so has been granted to them by the Constitution or by statute, or may be implied from those powers expressly granted. Under the Library Act, a library district may levy a tax for the establishment, maintenance, and support of the library (75 ILCS 16/35-5 (West 2008)); exercise exclusive control over the expenditure of money collected for the library and deposited

to the credit of appropriate funds (75 ILCS 16/30-55.10 (West 2008)); and receive donations of money or property for the benefit of the library (75 ILCS 16/30-75 (West 2008)). Nothing in the Library Act, however, confers on public library districts the authority to operate a raffle or lottery or to donate monies in their possession to other non-library purposes (*see generally* 1978 Ill. Att'y Gen. Op. 165 (absent statutory authority, a home rule city may not donate city funds to a county); 1974 Ill. Att'y Gen. Op. 64 (absent statutory authority, a non-home-rule county may not make a gift or donation of the rental value of its real property to the Federal government)),³ nor can that authority be implied from the powers that are expressly granted to public library districts. Accordingly, it is my opinion that, absent a grant of specific statutory authority, a public library district may not operate a raffle.

Because the Library District lacks the authority under Illinois law to operate a raffle, your question regarding whether a public library district qualifies as a "charitable organization" or an "educational organization" is moot.⁴ Nevertheless, I would note that during debate on House Bill 2976, which became Public Act 81-1365, effective August 5, 1980, and

³Subsection 25-25(c) of the Library Act (75 ILCS 16/25-25(c) (West 2008)) provides that "[p]ersonal property of intrinsic value only to libraries may be donated to other public libraries" as part of the process to dissolve a public library district and wind up its affairs.

Further, subsection 30-55.32(a)(1) of the Library Act (75 ILCS 16/30-55.32(a)(1) (West 2008)) provides that when the board of trustees of a library district determines to sell or otherwise dispose of real or personal property that it deems no longer necessary or useful for library purposes that "[p]ersonal property of any value may be donated or sold to any other tax supported library or to any library system operating under the provisions of the Illinois Library System Act[.]"

⁴Similarly, my conclusion that public library districts lack the authority to operate raffles also moots the arguments raised by the Library District's attorney based on the Internal Revenue Code of 1986 (26 U.S.C. §1 *et seq.*). *See* Letter from John E. Juergensmeyer, Juergensmeyer and Associates, to Rita Elsner, Village Attorney, Village of Schaumburg (March 20, 2008).

which originally enacted the Raffles Act, the House sponsors described the purposes sought to be achieved by the Raffles Act:

This is a Bill that licenses on a local level, chances. *This allows cities and counties * * * to license * * * not-for-profit corporations*, the use of chances or raffles, within their jurisdiction. The Bill allows the cities and counties, it allows them to, it is not mandatory. *They allow not-for-profit corporations that have been in existence at least five years, and have benevolent attitudes in their organization [to be licensed]*. (Emphasis added.) Remarks of Rep. Giorgi, May 13, 1980, House Debate on House Bill No. 2976, at 161.

This Bill arose last year in Rockford where a Roman Catholic Church group planned to have a raffle and the State's Attorney got involved and said they could not do that. So, to combat that effort, within two weeks, Representative Giorgi and myself obtained in Rockford more than 2,000 signatures to try to put a raffle issue in the State Statutes. This Bill would do just that and it would legalize raffles for the whole State. *It will allow VFW's, Boy Scout Groups, Church Groups, Labor Union Groups, and all types of charitable groups to raise money for their charities*. (Emphasis added.) Remarks of Rep. Hallock, May 13, 1980, House Debate on House Bill No. 2976, at 162-63.

Nothing in Representative Giorgi's comments suggests that the Raffles Act was intended to allow public library districts or other special districts to qualify for a raffles license. Similarly, Representative Hallock's examples of organizations that would be eligible for a license do not include public library districts or any other governmental entities. Thus, the legislative history of the Raffles Act strongly suggests that the General Assembly did not intend to extend its provisions beyond not-for-profit organizations to permit governmental entities such as public library districts to receive a license to operate a raffle.

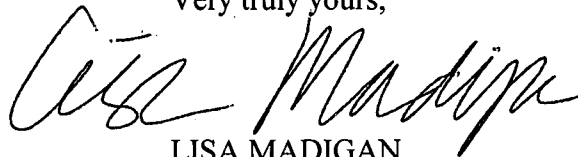
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CONCLUSION

Special districts, such as public library districts, possess only those powers expressly granted to them by the Constitution or by statute, together with those powers necessarily implied therefrom. Under the Public Library District Act of 1991, public library districts do not have the authority to operate a raffle. Consequently, it is my opinion that the Schaumburg Township Public Library District may not receive a raffles license, nor may it operate a raffle under current Illinois law.

If you believe that public library districts should be authorized to operate raffles, you may wish to address this issue through amendatory legislation.

Very truly yours,

A handwritten signature in black ink, appearing to read "Lisa Madigan". The signature is fluid and cursive, with the first name "Lisa" written in a larger, more prominent script than the last name "Madigan".

LISA MADIGAN
ATTORNEY GENERAL