

Illegal Raffle Incident Is a Good Reminder for PACs and Nonprofits

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A recent dust-up in the nation's heartland serves as a timely reminder that PACs and nonprofits must review – and follow – state law when it comes to fundraising. In late May, the *Kansas City Star* ran a story alleging that U.S. Senate candidate Dave Lindstrom's campaign committee had violated state law by raffling a Kansas City Chiefs jersey signed by Kansas City Chiefs quarterback and Super Bowl LIV champion Patrick Mahomes.

So what was the problem here? Was this some obscure state campaign finance provision that bans raffles? Not at all; in fact, it's a matter of state gambling law and applies to all types of entities, not just campaigns. As the Kansas Racing and Gaming Commission confirmed for the *Star*, a raffle conducted by an entity other than a qualifying nonprofit is considered an illegal lottery under Kansas law. This type of provision is not unusual nor particular to Kansas; most states and the District of Columbia have a similar legal construct. The default rule in most places is that a "lottery" – a raffle or other contest that involves the elements of (1) a prize, (2) chance, and (3) consideration – constitutes illegal gambling and is thus prohibited by the state criminal code. Often – but not always – a separate "charitable gaming" statute creates a carveout to allow certain types of nonprofit organizations to conduct raffles, usually under some type of license from the state. But PACs are not eligible for charitable gaming licenses, and, depending on how the statute is written, 501(c)(4) and 501(c)(6) organizations may not be eligible, either.

Ignoring state prohibitions on lotteries is not a good idea. State gambling laws are usually part of the criminal code and thus subject to enforcement by local prosecutors. While it may be unlikely for any particular raffle to draw attention from a local prosecutor, it's not

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unheard of; previously, another federal campaign committee received a letter from a county District Attorney informing the candidate that state law prohibited his campaign from raffling off tickets to the NCAA basketball tournament.

The best way to ensure that your organization or PAC fundraising efforts do not land you in the press – or in a courtroom – is to vet the terms of the contest under state law. For example, many states take a more relaxed approach to a “sweepstakes.” The exact requirements for a legal sweepstakes contest vary from state to state, so it is important to review state law before planning your fundraising contests.

During the coronavirus (COVID-19) pandemic, we have seen an uptick in PACs interested in holding nationwide online sweepstakes contests as they seek to replace their in-person events. Importantly, these contests must comply with the state gambling laws in *each state* where at least one contest participant resides. A PAC can generally accomplish this by adopting contest rules that act as a kind of “least common denominator” across the various state laws. That said, note that a handful of states have legal provisions that may prohibit their residents from participating altogether. Moreover, let’s not forget that the Federal Election Commission (FEC) has its own rules as they relate to raffles or sweepstakes.

Our Election Law & Government Ethics Practice frequently advises PAC and nonprofit clients on their sweepstakes contests and other fundraising incentive programs. We are available to assist your organization or PAC in navigating the issues under both federal and state law.