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# STATE CONDUCTED LOTTERIES

GOVERNMENT

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SEP 22 1970

## HEARING

BEFORE THE

### SUBCOMMITTEE ON

### CLAIMS AND GOVERNMENTAL RELATIONS

OF THE

## COMMITTEE ON THE JUDICIARY

## HOUSE OF REPRESENTATIVES

NINETY-THIRD CONGRESS

SECOND SESSION

ON

### H.R. 6668 and Companion Bills

TO AMEND TITLE 18 OF THE UNITED STATES CODE TO PERMIT THE TRANSPORTATION, MAILING, AND BROADCASTING OF ADVERTISING, INFORMATION, AND MATERIALS CONCERNING LOTTERIES AUTHORIZED BY LAW AND CONDUCTED BY A STATE, AND FOR OTHER PURPOSES

APRIL 24, 1974

SERIAL NO. 46



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## STATE CONDUCTED LOTTERIES

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WEDNESDAY, APRIL 24, 1974

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON CLAIMS AND  
GOVERNMENTAL RELATIONS OF THE  
COMMITTEE ON THE JUDICIARY,  
*Washington, D.C.*

The subcommittee met at 10:30 a.m., pursuant to notice, in room 2237, Rayburn House Office Building, Hon. Harold D. Donohue [chairman of the subcommittee] presiding.

Present: Representatives Donohue, Mann, Jordan, and Lott.

Also present: William Shattuck, counsel, and Alan F. Coffey, Jr., associate counsel.

Mr. DONOHUE. This hearing will come to order.

We are meeting this morning for the purpose of considering H.R. 6668 and companion bills which have for their purpose the amendment of title 18 of the United States Code to permit the transportation, mailing, and broadcasting of advertising, information, and materials concerning lotteries authorized by law and conducted by a State, and for other purposes.

I would like to acknowledge at this time the presence of our able and distinguished colleague from Pennsylvania, Hon. Joshua Eilberg, as our first witness.

### TESTIMONY OF HON. JOSHUA EILBERG, A U.S. REPRESENTATIVE FROM THE FOURTH DISTRICT OF PENNSYLVANIA

Mr. EILBERG. Mr. Chairman, I thank you very much for calling me, and I address you now for the sole purpose of introducing our witness from Pennsylvania, and I understand he will be called in the regular order.

I simply want to say, Mr. Chairman and members of the committee, that Mr. Henry Kaplan came from the private sector a few years ago to government service in the State of Pennsylvania. He was a successful businessman, and drawing upon his experience and good judgment he became the executive director, the first and only executive director of the Pennsylvania Lottery Commission. He set the commission up, started the whole commission. The system is now earning about \$60 million per year, and he has engineered a terrific success with this operation in Pennsylvania. And he comes here today to give you the benefit of his experience. And I know that his testimony will be worthwhile. I know the man and have been in contact with him while he has been executive director of the commission, and I simply

want to say that I thoroughly support the subcommittee bill. And I cosponsored it in the form of H.R. 3806, which is one of the companion bills.

And I thank you very much for this opportunity, Mr. Chairman. Mr. DONOHUE. Thank you very much, Congressman.

We will now acknowledge the presence and call upon him as our next witness. Hon. Paul Findley of Illinois.

**TESTIMONY OF HON. PAUL FINDLEY, A U.S. REPRESENTATIVE  
FROM THE 20TH DISTRICT OF ILLINOIS**

Mr. FINDLEY. Thank you, Mr. Chairman and members of the subcommittee.

I appreciate this opportunity to appear here today. I appreciate this opportunity to explain the provisions of H.R. 12235, which differs from the language of Chairman Rodino's proposal. My bill would permit the interstate mailing and broadcast of any information concerning all the lotteries which are legal.

By way of background, I am president and majority stockholder of the Pike Press, a weekly newspaper in Pittsfield, Ill., with a circulation of about 7,000. I have in my hand here lottery tickets for the State of Massachusetts, and the State of New Jersey. These tickets, along with lottery information from three other States, were received through the mails through the Postal Service by an Illinois resident. And here is a copy of a check for \$25 from the Maryland State Treasurer's office, and this check was mailed to that same individual as a prize in the weekly drawing of the lottery.

Lottery application forms which I have in my hand here have been received by this same person in Illinois through the mails from Michigan and New Hampshire in addition to New Jersey, Maryland and Massachusetts. Although 18 USCA 1302 expressly forbids the mailing of all lottery information, here is proof in my hand here that five of the eight States which are currently conducting State lotteries are violating that provision of the United States Code.

They are blatantly violating Federal law by sending this material through the mail. Now, the other States with legal lotteries that are conducted by State agencies may also be using the mails for this purpose, but I am not aware of it. I have received a response from the Department of Justice to my inquiry concerning these activities. The letter, signed by Assistant Attorney General W. Vincent Rakestraw, assured me that, quote:

The Department of Justice is aware of the practices of a variety of state lottery agencies which involve the use of the mails and other interstate facilities in apparent violation of federal criminal statutes. At the present time, the Criminal Division is studying the problem and evaluating alternative courses of prosecutive action.

All of the bills being considered today by this subcommittee attack a situation which hinders the administration of State-operated, that is legal, lotteries, and also newspapers and broadcasting stations which are losing revenue or risking the violation of law because they must, by law, refuse lottery advertising. However, just as some State lottery agencies choose to ignore the statute and to blatantly violate Federal law, some newspapers print whatever they desire. The Wash-

ington Post of this city and the Star-News of this city have repeatedly mailed issues of their newspapers carrying advertising such as these for the Maryland State lottery.

I have here tearsheets from both the Star-News and Washington Post including advertising which advertises the Maryland State lottery, and these full-run editions, including the lottery advertising, were carried through the mails in violation of law. Both the newspapers readily admit to carrying these advertisements in all editions, including those which are mailed.

In response to an inquiry that I made, an official of the display advertising department of the Star-News called the situation "ambiguous"—I put that word in quotes—and said it was "not a significant problem." It is curious that a newspaper would regard the violation of a Federal law as not a significant problem, but that is the way he put it. An attorney for the Washington Post was indignant when he was questioned by my office about my inquiry, and informed me that the Washington Post management has "worked something out with the Justice Department." He refused to disclose whatever arrangements he claims to have made with the Department of Justice.

In an inquiry I just made of the representative of the Department of Justice in the hearing room today, he disclosed that the Department of Justice has made no arrangement with the Washington Post. Clearly, both of these highly esteemed newspapers—one in a sense the conscience of the Nation's capital during the Watergate era—and both of them very vigilant for the enforcement of law against everyone in this country, including public officials and Members of Congress, are nevertheless violating postal regulations. And equally clearly, the Department of Justice is looking the other way.

But while the bills introduced by Chairman Rodino and others are certainly a step in the right direction, they do not deal with the problems that I have cited. They do not go far enough. My bill is comprehensive. It would permit the advertisement of any legal lottery, whether it is conducted by the State or not. This would include those conducted by charitable organizations which are legal in the State in which they are conducted.

While the Post and the Star-News, both of which have substantial resources, including legal resources, carry these illegal advertisements under the very nose of the Justice Department, small country newspapers like the one in which I have an interest in Illinois are effectively kept from carrying even small ads for the local legal church raffle.

I would like to place in the record, if I could, Mr. Chairman, a text from the article of the March 1974 Illinois Publisher, which is a publication of the Illinois Publishers Association, which warns small newspaper publishers that they stand to lose their second-class mailing permit if they carry a raffle advertisement for a charitable organization. I will not read the text of the article.

Mr. DONOHUE. It may be inserted.

[See "Fund Raising Raffles Can't Be Advertised" of Hon. Paul Findley's statement at p. 5.]

Mr. FINDLEY. Thank you, Mr. Chairman.

This article could have noted that large newspapers commonly carry advertisements for State lotteries with not so much as a word of warning from the Justice Department.

By bill would permit newspapers and broadcast stations to carry lottery information with no regard for State boundaries. It is obvious that radio signals do not respect political boundaries. It is also equally obvious that even the smallest country newspaper does have some circulation beyond the borders of the State in which it is published, and it is impractical for a newspaper, of small size at least, to alter the content of the publication just to satisfy a limitation on the legality of lottery information. And to prohibit a radio or television station from broadcasting lottery information simply because of the strength of its transmitter or its proximity to a State boundary, I think, is unreasonable.

My bill, like the others being considered here today, makes no moral judgment about lotteries. The establishment of a State lottery is a decision which is made by the individual State legislature. A national lottery would be another matter, but is not the subject of the hearings today. Personally, I do not believe that a lottery is a desirable way to raise revenue for any level of government, but I do think that once a State has adopted this method information concerning that lottery should be permitted to be broadcast and should be permitted to be carried in publications through the mail.

I do not believe that my bill would, as some have charged, force States not having a lottery to get into the business of establishing one. Citizens of States not having lotteries are already being solicited, as I have noted, for participation in out-of-State lotteries, as evidenced by the materials I have displayed here today.

The illegality of these activities has not deterred those who wish to gamble. A law rendering these activities legal would not automatically make gamblers of those who are not already so inclined.

By this argument, one would expect California and other States surrounding Nevada to legalize gambling because of the money taken from these States by Nevada gambling establishments. This has not happened, and there is no reason to believe that anything similar would occur in States not having legal lotteries. However, if this fear remains and a stricter bill is reported, it should be coupled with a stern admonition to the Justice Department to prosecute all who violate the law.

Thank you, Mr. Chairman.

[The prepared statement of Hon. Paul Findley follows:]

STATEMENT BY HON. PAUL FINDLEY, A REPRESENTATIVE FROM THE STATE OF ILLINOIS

Mr. Chairman: I appreciate the opportunity to appear here today to explain the provisions of H.R. 12235, the bill which I have introduced to permit the interstate mailing and broadcast of any information concerning all legal lotteries.

I am the president and majority stockholder of the Pike Press, a weekly newspaper in Pittsfield, Illinois, with a circulation of about 7,000.

I have with me lottery tickets for the Massachusetts and New Jersey State Lotteries. They, along with lottery information from three other states, were received through the mails by an Illinois resident. This is a copy of a check for \$25 from the Maryland State Treasurer's office, mailed to the same individual as a prize in the weekly drawing.

Lottery application forms have been received by him from Michigan and New Hampshire in addition to New Jersey, Maryland and Massachusetts.

Although 18 USCA 1302 expressly forbids the mailing of lottery information, here is proof that five of the eight states currently conducting state lotteries are doing just that.

They are blatantly violating Federal law by sending this material through the mail. Other states with legal lotteries may also be mailing lottery materials, but I am not aware of any such activities outside the five states which I have mentioned.

I have received a response from the Justice Department to my inquiry concerning these activities. The letter, signed by Assistant Attorney General W. Vincent Rakestraw, assured me that, "The Department of Justice is aware of the practices of a variety of state lottery agencies which involve the use of the mails and other interstate facilities in apparent violation of Federal criminal statutes. At the present time, the Criminal Division is studying the problem and evaluating alternative courses of prosecutive action."

All the bills being considered today by this subcommittee attack a situation which hinders not only the administration of legal lotteries, but also newspapers and broadcasting stations which are losing revenue because they must, by law, refuse lottery advertisements.

However, just as some state lottery agencies choose to ignore the statute, some newspapers print whatever they desire. The Washington (D.C.) Post and the Star-News have repeatedly carried advertisements such as these for the Maryland state lottery.

Both papers readily admit to carrying these advertisements in all editions, including those which are mailed. The display advertising department of the Star-News calls the situation "ambiguous" and said it was "not a significant problem." A counsel for the Washington Post indignantly questioned the motives of my inquiry and informed me that the Post management has "worked something out with the Justice Department." He refused to disclose whatever arrangement he claims to have with the Department.

Clearly, both of these highly esteemed newspapers—one the conscience of the Nation's capital during the Watergate era—are violating postal regulations. And equally clearly, the Department of Justice is looking the other way.

I applaud the interest in this problem shown by Chairman Peter Rodino and his acknowledgment that a change in the statutes is necessary.

But, while the bills introduced by Mr. Rodino and others are certainly a step in the right direction, they do not deal with the problems I have cited.

My bill is comprehensive. It would permit the advertisement of any legal lottery, whether it is conducted by the state or not. This would include those conducted by charitable organizations which are legal in the state in which they are conducted.

While the Post and Star-News, both of which have substantial legal resources, carry these illegal advertisements under the very nose of the Justice Department, small country papers are effectively kept from carrying even small ads for the local legal church raffle.

This is an article from the March 1974 Illinois Publisher, a publication of the Illinois Publishers Association, which warns small newspaper publishers that they stand to lose their second-class mailing permit if they carry a raffle advertisement for a charitable organization.

#### "FUND RAISING RAFFLES CAN'T BE ADVERTISED"

"Dick Cardwell, Hoosier Press Association legal counsel, was asked this question:

"In your February 11 Bulletin, you discussed the federal court decision about lottery winners. I'm afraid the "legalese" wasn't too helpful to our specific problem. Our newspaper has been a strong supporter of a country festival and we'd like to continue to promote its activities. The festival's board of directors this month decided to raffle off a compact car as a money-making project. How can we mention the fact this raffle has been planned? How much discretion does the local postmaster have in permitting publication of news items telling about these plans?"

"Cardwell replied:

"The item may have been "legalese" because this question is in legal flux at this time. Federal criminal postal laws (18 U.S.C. S1302) quite clearly prohibit newspapers from containing any "advertisement" of any lottery or "any list of prizes drawn or awarded . . . whether said list contains any part or all of such prizes." Violation subjects one to fines up to \$1,000 or imprisonment up to two years, or both. The Postal Service has administratively interpreted "advertisement" broadly to include any mention of a lottery, either as a paid ad or in a news story.

'Broadcasters in states where there are state-conducted lotteries have been trying to get determinations of their rights to mention them in the face of a criminal statute similar to that relating to newspapers (18 U.S.C. S1304) and under regulations of the Federal Communications Commission.

'One federal appeals court (Second Circuit Court of Appeals) said that prohibition of broadcasting "any information concerning any lottery" was too broad when subjected to First Amendment attack and limited the scope of the federal criminal statute to information "directly promoting a particular existing lottery."

'Another federal appeals court (Third Circuit Court of Appeals) said last January that a FCC statement prohibiting announcement of a winning number in a state-conducted lottery was unconstitutional. It said, further that the statutory prohibition had to be limited to paid advertising.

'Federal appeals courts do not have to agree with one another, just as state courts are entitled to their own interpretations of the law. The U.S. Supreme Court often notes disagreements among federal circuits, or state courts, and brings them into uniformity with a decision. It might do this in the Third Circuit court case, which is on appeal.

'So, what can you mention about the festival's raffle? Our advice in the February 11 Bulletin was that we would not want to rely on the latest decision as "gospel" or make the assumption it invalidates anti-lottery provisions in Indiana laws. That's exactly what we meant. We wouldn't mention anything about it and if the festival can't come up with a better fund-raising idea than an illegal scheme, that's its fault.'

This article could have noted that large newspapers commonly carry advertisements for state lotteries with not so much as a word of warning from the Justice Department.

My bill would permit newspapers and broadcast stations to carry lottery information with no regard for state boundaries. Radio signals do not respect political boundaries. To prohibit a radio or television station from broadcasting lottery information simply because of the strength of its transmitter and its proximity to a state boundary is unreasonable.

My bill, like the other being considered here today, makes no moral judgments about lotteries. The establishment of a state lottery is a decision which is made by the individual state legislature. A national lottery would be another matter, but such is not the subject of these hearings. I do not believe that a lottery is a desirable way to raise revenue, but I do think that once a state has adopted this method, information concerning that lottery should legally be permitted to be broadcast or published.

I do not believe that my bill would, as has been charged, force states not having a lottery into establishing one. Citizens of states not having lotteries are already being solicited for participation in out-of-state lotteries as evidenced by the materials I have displayed here today. The illegality of these activities has not deterred those who wish to gamble. A law rendering these activities legal would not automatically make gamblers of those who are not already so inclined.

By this same argument, one would expect California and other states surrounding Nevada to legalize gambling because of the money taken from these states by Nevada gambling establishments. This has not happened and there is no reason to believe that anything similar would occur in states not having legal lotteries.

However, if this fear remains and a stricter bill is reported, it should be coupled with a stern admonition to the Justice Department to prosecute all violators.



#### WHO CAN JOIN

Any person 18 years or over can obtain as many numbers as desired. Through the Clover Club, Lottery numbers can be obtained for yourself or can be purchased as gifts for others.

#### HOW TO JOIN

Fill out this application form. Completed applications may be presented to any Licensed Lottery Sales Agent or Office of the New Jersey State Lottery along with cash, check or money order.

Membership Period	Price
12 weeks	\$ 6.00
24 weeks	\$12.00
52 weeks	\$25.00

(Two weeks free!)

Within three weeks, a membership card will be forwarded to you from Lottery Headquarters. This will indicate your assigned six-digit Lottery number and starting and ending dates. Participation in the Lottery will commence as of the starting date shown on your card.

#### NUMBER ASSIGNED BY COMPUTER

You will be assigned a random six-digit Lottery number selected by the computer at Lottery Headquarters. This number will be yours exclusively for the duration of your membership.

#### GUARANTEED RENEWAL OPTION

You can renew your assigned number for 12, 24 or 52 weeks by presenting a renewal form (furnished with membership card) to any Licensed Lottery Agent or Lottery Office three weeks prior to the expiration date of your membership together with cash, check or money order. On renewal, you have the option to request a new number.

#### CLAIMING PRIZES

By participating in the New Jersey State Lottery through membership in the Clover Club, your name and address is stored in our computer. Each week, after the winning weekly number is selected, all Clover Club members' numbers are searched to determine if they are eligible for prizes. If so, prizes are paid automatically and forwarded to the member. There is no need for a Clover Club member to appear at the drawing. A member's name and notification is also provided in the event of eligibility in 50¢ million-*aire* drawings. These features are of particular importance and value to out-of-state members.

#### PRIZE STRUCTURE

If your Clover Club number exactly matches all or part of the 6-digit weekly winning number, you've won! Drawings are held every Thursday A.M.

For Example: If the Weekly Winning Number is 1 2 3 4 5 6

123456 (all 6 digits match) . . . . . wins \$50,000  
x23456 (last 5 digits match) . . . . . wins \$4,000  
xx3456 (last 4 digits match) . . . . . wins \$400  
xxx456 (last 3 digits match) . . . . . wins \$40  
xxxx56 (last 2 digits match) . . . . . wins entry into 50¢ Millionaire Semi-Final Drawing.

12xxxx (first 2 digits match) . . . . . also wins entry into 50¢ Millionaire Semi-Final Drawing.

12x456 . . . . . wins entry into 50¢ Millionaire Semi-Final drawing and \$40.

#### RULES

1. Application is acknowledgement of interest to participate in the New Jersey State Lottery and is subject to acceptance by the Lottery.

2. Applications accompanied by personal checks will be subject to collection and clearance of said checks.

3. Allow 3 weeks for processing. Failure to receive your membership card within this period should be made known to the New Jersey State Lottery, State House, Trenton, N.J. 08625.

4. Participation in the Clover Club will be subject to the provisions of the "Rules and Regulations" and the "Lottery Law" of the N.J. State Lottery.

Thank you for your membership in the Clover Club. It not only gives you a chance to win money, but benefits education and institutions in the State of New Jersey.

**N.H. 50/50 SWEEPS  
EXAMPLE OF  
WINNING NUMBER  
COMBINATIONS**



<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	Five digit match: You win \$5,000 and are entered in the Hundred Grand Super Draw.
<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	
<b>X</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	First four or last four digit match: You win \$200 and are entered in the Hundred Grand Super Draw.
<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	
<b>X</b>	<b>X</b>	<b>3</b>	<b>4</b>	<b>5</b>	First three or last three digit match: You win \$20 and are entered in the Hundred Grand Super Draw.
<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	
<b>X</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	Three middle digit match: You win \$20 and are entered in the Hundred Grand Super Draw.
<b>X</b>	<b>X</b>	<b>X</b>	<b>4</b>	<b>5</b>	
<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>5</b>	Last digit or last two-digit match: Sign your ticket and turn it in for Last-Digit drawing. If your ticket is drawn, you win \$10 and are entered in the Hundred Grand Super Draw.
<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>5</b>	
<b>SCRAMBLE BONUS:</b>					Any combination of the winning five digits, in any order, wins \$20 and you are entered in the Hundred Grand Super Draw.
All weekly winners are entered in \$100,000 drawing.					

# UNITICKET<sup>®</sup>

**Pick your own  
number.  
Write your own  
ticket.**

You can win up to \$100,000 in the N.H. Sweepstakes with your favorite 5-digit number when you buy UNITICKET for 52, 24, 12 or 6 weeks. Use your phone number, your birth date, wedding anniversary date or any other 5-digit combination. Only five digits to match to win big. Also many weekly winners of \$200, \$20 and \$10. UNITICKET makes a great gift for any occasion. Win up to \$100,000. Winners every Friday. No need to watch the weekly winning number. You will be notified when you win. It's automatic. It's great. It's UNITICKET.

I WANT MY UNITICKET<sup>®</sup> NUMBER FOR

- 6 weeks, \$3.00       24 weeks, \$12.00  
 12 weeks, \$6.00       52 weeks, \$25.00

Not valid until confirmed by N.H. Sweepstakes Commission. Confirmation will be submitted within 3 weeks.

Name \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_

State \_\_\_\_\_ Zip Code \_\_\_\_\_

Cash       Check       Money Order

**HERE ARE MY 3 CHOICES OF 5-DIGIT NUMBERS:**

1st choice: \_\_\_\_\_

2nd choice: \_\_\_\_\_

3rd choice: \_\_\_\_\_

If your choices have already been taken, you will be assigned a number as close to your 1st choice as possible.

Present this form to any authorized Sweeps agent or to Sweeps office, Concord, N.H.

N.H. SWEEPSTAKES COMMISSION  
 125 N. Main St. Concord, N.H. 03301 (603) 271-3391

**Millions in aid to education since 1964**

PRINT CLEARLY IN SPACES PROVIDED!

**THE GAME**

MASSACHUSETTS STATE LOTTERY

**SEASON TICKET APPLICATION**

Applicants must be at least 18 years of age

**SEASON TICKET HOLDER**

FIRST NAME \_\_\_\_\_ MIDDLE INITIAL \_\_\_\_\_ LAST NAME \_\_\_\_\_

TITLE (JOB) \_\_\_\_\_

STREET ADDRESS \_\_\_\_\_

CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP \_\_\_\_\_

PHONE (AREA CODE) \_\_\_\_\_

TELEPHONE NO. \_\_\_\_\_

PLEASE FILL IN RETURN ADDRESS ON REVERSE SIDE

DATE \_\_\_\_\_

**FOR AGENT'S USE ONLY**

NAME \_\_\_\_\_ NUMBER \_\_\_\_\_

AGENT NUMBER \_\_\_\_\_

Check  One

RENEWAL  NEW

**D 270920**

FOR SPECIAL OCCASION SPECIFY

REASON \_\_\_\_\_

DATE \_\_\_\_\_

Allow Approximately 3 Weeks For Processing This Application

**PLAN DESIRED - Check  One**

**WEEKLY GAME NUMBERS DESIRED**

\$50.00 ONE NUMBER FOR 10 WEEKS NUMBER \_\_\_\_\_

\$10.00 ONE NUMBER FOR 20 WEEKS NUMBER \_\_\_\_\_

TWO NUMBERS FOR 10 WEEKS 1ST NUMBER \_\_\_\_\_ 2ND NUMBER \_\_\_\_\_

\$25.00 ONE NUMBER FOR 52 WEEKS NUMBER \_\_\_\_\_

TWO NUMBERS FOR 26 WEEKS 1ST NUMBER \_\_\_\_\_ 2ND NUMBER \_\_\_\_\_

FOUR NUMBERS FOR 13 WEEKS 1ST NUMBER \_\_\_\_\_ 2ND NUMBER \_\_\_\_\_ 3RD NUMBER \_\_\_\_\_ 4TH NUMBER \_\_\_\_\_

**PAYMENT - Check  One**

CASH  CHECK  MONEY ORDER

AMOUNT ENTERED \$ \_\_\_\_\_

MAKE CHECKS PAYABLE TO MASSACHUSETTS STATE LOTTERY COMMISSION

**INSTRUCTIONS**

Complete the entire form for all new and renewal applications. If you wish to select your own 6-digit Weekly Game number, print clearly in the number spaces provided. If your choice is not available you will be assigned a number closest to your choice. If you wish the Lottery computer to select 6-digit numbers at random for you, leave the number spaces blank.

Present this application to any authorized Lottery Agent with payment. Agent will sign and detach stub below. Alternatively, application may be presented to Massachusetts State Lottery Commission at address on reverse side. In this case, detach stub, fold your check or money order in half and place on bottom section of application. Then fold application in half from top to bottom and press edges to firmly seal form. By submitting this application the applicant agrees to abide by the rules and regulations of the Massachusetts State Lottery Commission.

This is your Receipt - Tear all along perforation

**APPLICANT'S RECEIPT AND RECORD**SEASON TICKET APPLICATION **D 270920***Robert A. Carr***THE GAME***William E. Carroll*

MASSACHUSETTS STATE LOTTERY

MASSACHUSETTS STATE LOTTERY

FORM 7-67

RECORD OF PLAN AND NUMBERS

PLAN CHECK  ONE

\$50.00 \$10.00 \$25.00

1ST NUMBER \_\_\_\_\_ 2ND NUMBER \_\_\_\_\_ 3RD NUMBER \_\_\_\_\_ 4TH NUMBER \_\_\_\_\_

PAYMENT CHECK  ONE

CASH CHECK MONEY ORDER

AMOUNT ENTERED \$ \_\_\_\_\_

MASSACHUSETTS STATE LOTTERY COMMISSION

100 STATE STREET, BOSTON, MASS. 02109

File in approximately 3 weeks. If the application is accepted by the Massachusetts State Lottery Commission, the applicant specified on the Season Ticket Holder will receive confirmation of the acceptance of his application in the form of Season Tickets showing assigned Weekly Game Numbers, Million Dollar Game Numbers, and dates for which the tickets are valid. If Season Tickets issued contain errors or omissions the Commission shall not be liable therefor, but shall issue corrected tickets to be effective at the time of their issue upon written request and the return of the tickets issued in error. Correct applications to the Lottery will begin on the effective date shown on the Season Ticket and will end on the Expiration Date shown.



# SEASON TICKET APPLICATION

Order your  
Season Ticket now.  
It's a great  
new way to play.

You can't miss a chance to win!

The Season Ticket gives you automatic entry into every Weekly Drawing for the time period you buy (ranging from 10 to 52 weeks).

We tell you if you win!

No need to check the Winning Weekly Game Number because winnings are automatically and promptly forwarded to you. You'll even be notified if you become eligible to participate in the Million Dollar Game. That makes the Season Ticket the perfect way for out-of-staters to play The Game!

You can pick your own lucky number!

For the first time you can choose the number or numbers. Play your license number . . . birth date . . . the children's ages . . . any combination of 6-digit numbers that makes you feel lucky.

It's a great new gift idea!

What other gift could turn into a million dollars (\$50,000 a year for 20 years)?

**HOW TO WIN:** Each week two winning numbers are drawn, one for the WEEKLY GAME and one for the MILLION DOLLAR GAME.

For example, if the Winning WEEKLY GAME NUMBER is 123456,

XXX456	wins \$	25
XX3456	wins \$	250
X23456	wins \$	2,500
123456	wins	\$50,000

#### MILLION DOLLAR GAME

For example, if the Winning MILLION DOLLAR NUMBER is 78956,

XX956	wins \$	25
X8956	wins \$	100
78956	wins \$	500 and competes in the

#### MILLION DOLLAR DRAWING.

1st Prize	\$1,000,000 (\$50,000 per year for 20 years)
2nd Prize	\$ 100,000 (\$10,000 per year for 10 years)
3rd Prize	\$ 10,000 (eight winners)

FROM \_\_\_\_\_

PLEASE PRINT

ZIP

STATE TREASURER'S OFFICE

ROOM 104

100 CAMBRIDGE STREET

BOSTON, MASSACHUSETTS 02202





**A Great New  
Way to Play!**

## SUBSCRIPTION APPLICATION

**YOU CAN'T MISS  
A CHANCE  
TO WIN!**

The Twin Win Subscription gives you automatic entry into every Weekly Drawing for the time period you buy (ranging from 13 to 52 weeks).

### WE TELL YOU IF YOU WIN!

No need to check the Winning Weekly Number because winnings are automatically and promptly forwarded to you. You'll even be notified if you are a finalist in the Million Dollar Drawing. That makes the Twin Win Subscription the perfect way for out-of-staters to play Twin Win!

### IT'S A GREAT NEW GIFT IDEA!

What other gift could turn into a million dollars (\$50,000 a year for 20 years)?

**ORDER YOURS TODAY!**

#### HOW YOU WIN

ASSUME the winning number is 123456.

IF YOU HAVE	YOU WIN	IF YOU HAVE	YOU WIN
123456	\$50,000	12245X	\$1,000
X23456	\$1,000	1224XX	\$100
XX3456	\$100	123XXX	\$25
XXX456	\$25	XX34XX	\$5

X represents any non-matching number.

#### MILLIONAIRE FINALIST NUMBER

If you have the Millionaire Finalist Number (with all 5 digits in exact order) you win \$500 and will be invited to the Millionaire Party where you may win:

1st PRIZE	\$1,000,000 (\$50,000 a year for 20 years)
2nd PRIZE	\$100,000 (\$10,000 a year for 10 years)
3rd PRIZE	\$10,000
4th PRIZE	\$5,000 (seven winners)

Winner agrees to abide by Maryland Lottery Commission rules.

STATE OF MARYLAND  
SUITE 350—THE ROTUNDA  
711 WEST 40TH STREET  
BALTIMORE, MD. 21211

ZIP

FROM

PLEASE PRINT

Application No.

**B 091614**SUBSCRIPTION APPLICATION FOR  
**Chance of a Lifetime Club**

(Applicant must be at least 18 years of age)

LAST NAME										FIRST NAME									
MAILING ADDRESS																			
MAILING ADDRESS																			
CITY										STATE					ZIP CODE				
AREA CODE					TELEPHONE NUMBER														
GIFT FROM: ENTER GIVER'S NAME																			

Fold Here

Fold Here

PLAN DESIRED: Check (✓) choice:

 12 WEEKS  
\$6.00 24 WEEKS  
\$12.00 52 WEEKS  
\$25.00  
(2 Weeks Free)

LOTTERY NUMBERS: The Michigan Lottery uses three-digit numbers to determine winners. If you want our computer to assign randomly your numbers no further action on your part is required. If you want to select your own numbers, please complete the five choice boxes below. Each choice must be a different number. We will try to give you your choices in order of preference.

DESIRED LOTTERY NUMBERS:

1ST	2ND	3RD	4TH	5TH
-----	-----	-----	-----	-----

THE LOWER PART OF THIS FORM IS YOUR RECEIPT. WHEN YOU HAVE COMPLETED THE FORM, TEAR OFF THE RECEIPT AT THE PERFORATED LINE. FORWARD THE UPPER PART OF THIS FORM ALONG WITH YOUR CHECK OR MONEY ORDER TO: The State of Michigan, Drawer E, Lansing, Michigan 48904.

Tear Off Here

Tear Off Here

Application Number

**B 091614****KEEP THIS RECEIPT**THE STATE OF MICHIGAN  
Drawer E  
Lansing, Michigan 48904

PLAN DESIRED:

 12 WEEKS  
\$6.00 24 WEEKS  
\$12.00 52 WEEKS  
\$25.00

LOTTERY NUMBERS SELECTED:

1ST	2ND	3RD	4TH	5TH
-----	-----	-----	-----	-----

As a Michigan Lottery subscriber, you will receive two different three-digit numbers. If your first two number choices are available they will be assigned to you. If not, we will assign two of your choices which are available. If none of your choices are available, we will assign two numbers which are as close to your first two choices as possible. See additional information on the reverse side of this form.

PLEASE REFER TO THE ABOVE APPLICATION NUMBER IN ANY CORRESPONDENCE.



## The Chance of a Lifetime

Fill out this application and enclose your check or money order to cover the plan you desire, and you will automatically be entered every week in the "World's Richest Lottery." Allow 3 weeks for delivery of your membership, which will indicate your two assigned lottery numbers and the dates of drawings for which you are eligible.

Here's how you win: For example, if the weekly Winning Numbers are: **123** **456**... you are a \$25 winner if you have either of these numbers shown on your membership such as:

**123** **649** or **456** **721**  
**537** **123** or **884** **456**

Prize checks will be forwarded to Club members automatically. If *both* sets of numbers match both Weekly Winning Numbers, such as:

**123** **456** or **456** **123**

...you will qualify and be invited to a Super Drawing. All qualifiers will win one of the Super Drawing Prizes:

\$200,000 (One Winner)  
 \$ 50,000 (Variable)\*  
 \$ 10,000 (Three Winners)

\*Each Super Drawing will have at least one \$50,000 prize with another \$50,000 prize added for each Qualifier above five.

Winners of \$25 are eligible for a subsequent elimination drawing to determine 120 semi-finalists for a Million Dollar Drawing. Semi-finalists are notified by the Bureau of State Lottery and invited to compete for the following prizes:

\$1,000,000 (One Winner)  
 \$ 100,000 (One Winner)  
 \$ 50,000 (One Winner)  
 \$ 5,000 (Seven Winners)  
 \$ 1,000 (110 Winners)

Join the "Chance of A Lifetime" Club and participate in the "World's Richest Lottery" every week. Club memberships make perfect gifts for special occasions. Get in on the fun today!!

STATE OF MICHIGAN

Drawer E

Lansing, Michigan 48904

**WELCOME TO THE CLOVER CLUB**

"Dues" are only 50¢ a week, but the benefits are tremendous. You have a chance to win from \$40 to \$1,000,000. Present this form to any licensed New Jersey Agent no later than 3 weeks prior to expiration date of your present membership together with the appropriate "dues". On renewal, you have the option to request a new number. Keep the entire card below. Your Membership Card is on the RIGHT... your handy renewal form on the LEFT.



Here is your membership card in the  
**CLOVER CLUB**  
(SOCKET REDEMPTION PLAN)  
**GOOD LUCK!**

NEW JERSEY  
 STATE LOTTERY

*Ralph F. Batch*

RALPH F. BATCH  
 EXECUTIVE DIRECTOR



MEMBERSHIP  
 CARD

*William T. Cahill*

WILLIAM T. CAHILL  
 GOVERNOR

NEW JERSEY  
 STATE  
 LOTTERY  
**CLOVER CLUB**

LOTTERY NUMBER

STARTING DATE

10/19/72

ENDING DATE

01/04/73

SERIAL

NUMBER

Membership in the Clover Club entitles you to participate in America's Most Rewarding Lottery — The New Jersey State Lottery . . . from the starting to the ending dates as indicated on your card. You have been assigned a random 6-digit Lottery Number selected by our computer. This number is entered electronically in every Thursday drawing during your membership.

Membership in the Plan is valid for the drawing dates for the regular 50¢ weekly lotteries as set forth on the face of this card and participation in the drawings and determination of winners are subject to the N. J. Lottery Law and the Rules and Regulations of the N. J. State Lottery Commission in effect at the date of any drawing. You need not file a claim form if you are a winner. Provision has been made for direct award of prizes to all winners and automatic notification in the event of eligibility in 50¢ "Millionaire" drawings. In order to renew your subscription without interruption, the State Lottery must be advised at least three weeks prior to your expiration date, and the request for renewal must be accompanied by your check or money order. Renewals may be made through your Lottery Agent or to the State Lottery, Trenton, N. J. No refund or assignment of ticket permitted. Notification of change of address is the sole responsibility of registered member. You will not be permitted to change your lottery number indicated hereon during the period specified.

---

SIGN HERE

**CLAIMING PRIZES** By participating in the New Jersey Lottery Clover Club your lottery number, name and address are stored in our computer. Each week after the winning number is selected, your number is checked to determine if you are a winner. If so, your prize will be forwarded promptly and AUTOMATICALLY. You will also be notified if you are eligible for a 50¢ Millionaire Drawing. **There is no need for you to appear at a Claim Center in order to obtain your prize.**

DEAR SEASON TICKET HOLDER,

THIS IS YOUR SEASON TICKET AND CONFIRMATION THAT THE MASSACHUSETTS STATE LOTTERY HAS RECORDED YOUR NAME AND NUMBERS FOR ALL WEEKLY DRAWINGS STARTING WITH THE EFFECTIVE DATE AND ENDING WITH THE EXPIRATION DATE SHOWN. THE SEASON TICKET MAY BE CUT OUT AND HELD BY YOU AS A RECORD OF YOUR WEEKLY GAME NUMBER AND MILLION DOLLAR GAME NUMBER.

THANK YOU FOR PLAYING

MORE INFORMATION ON RENEWAL AND PRIZES ON THE REVERSE SIDE

STATE TREASURER'S OFFICE  
100 CAMBRIDGE STREET - ROOM 104  
BOSTON, MASS. 02202

SUBSCRIBER NO.

YOUR CURRENT NUMBERS

PLEASE RENEW MY NUMBERS FOR

CIRCLE ONE 10 WEEKS 20 WEEKS 52 WEEKS

(TO CHANGE NUMBERS USE REVERSE SIDE)



RENEWAL STUB



GIFT FROM




  
 MASSACHUSETTS STATE LOTTERY

*Robert Q. Crane*  
 STATE TREASURER

*William E. Ferrault*  
 DIRECTOR

It benefits the 351 cities and towns of Massachusetts

**HOW TO WIN.** Each week two winning numbers are drawn: one for the WEEKLY GAME and one for the MILLION DOLLAR GAME.

**WEEKLY GAME**

For example, if the Winning WEEKLY NUMBER is 123456,  
 XXX456 wins \$ 25  
 XX3456 wins \$ 250  
 X23456 wins \$ 2,500  
 123456 wins \$50,000

**MILLION DOLLAR GAME**

For example, if the Winning MILLION DOLLAR NUMBER is 78956,  
 XX956 wins \$ 25  
 X8956 wins \$100  
 78956 wins \$500 and competes in the

**MILLION DOLLAR DRAWING**

1st Prize \$1,000,000  
 (\$50,000 per year for 20 years)  
 2nd Prize \$100,000  
 (\$10,000 per year for 10 years)  
 3rd Prize \$10,000  
 (eight winners)

ALL PRIZES WILL BE FORWARDED TO YOU AT THE ADDRESS ON THE ATTACHED RENEWAL STUB

TO CHANGE ANY OF YOUR 6-DIGIT WEEKLY GAME NUMBERS PLEASE COMPLETE THE ITEMS BELOW

CHECK ONE	1 NO. 10 WKS. \$5	1 NO. 20 WKS. \$10	1 NO. 52 WKS. \$25	1 NO. 15 WKS. \$10	2 NOS. 26 WKS. \$25	4 NOS. 13 WKS. \$25
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WEEKLY GAME

NUMBERS DESIRED

(ONLY AS MANY AS

PLAN CALLS FOR, PLEASE)

AMOUNT ENCLOSED \$

MAKE CHECKS PAYABLE TO MASSACHUSETTS STATE LOTTERY COMMISSION

TO KEEP YOUR SAME LUCKY WEEKLY GAME NUMBER(S), MAKE SURE THAT YOUR RENEWAL IS RECEIVED BY THE LOTTERY AT LEAST FIVE WEEKS PRIOR TO THE EXPIRATION DATE.



## CONGRATULATIONS!

You are a winner in the Maryland State Lottery.

Enclosed is your check for having one of the correct winning combinations in the Lottery.

Save it or spend it . . .

but we hope you use part of it to play the Lottery again.

Your check has a letter to the right of your name that indicates which winning combination your ticket had that coincided with the winning number drawn by the Lottery.

### EXPLANATION:

code

- A. You had the correct 6 digit match in the Weekly Drawing. You've won \$50,000.
- B. or C. You matched correctly 5 digits in the Weekly Drawing. You've won \$1,000.
- D. or E. You matched correctly 4 digits in the Weekly Drawing. You've won \$100.
- F. or G. You matched correctly 3 digits in the Weekly Drawing. You've won \$25.
- H. You matched correctly the two center digits in the Weekly Drawing. You've won \$5.
- I. You will be a participant in the Million Dollar Drawing. This check is your \$500 payment.
- J. You were a weekly qualifier in the Million Dollar Preliminary Drawing. You had two correct serial digits. You've won \$100.
- K. You were a Lottery Number Scramble Winner having all the proper digits, but not in exact order. You've won \$35.
- L. You were a Serial Number Scramble Winner having all the proper digits, but not in exact order. You've won \$35.

If your ticket won more than one prize, a separate check will be issued. The enclosed check is payment in full only for the prize indicated by the letter. If you have further questions, please check the "How to Play" folder available wherever Lottery Tickets are sold. If your questions are still unanswered, check with the nearest Lottery Claims Center.

Thank you again for playing the Lottery. Good luck. We hope you play again and win again.

P.S. While winnings in the Lottery are exempt from Federal Excise Tax, they are subject to State and Federal Income Tax.



[The following is extracted from a full-page advertisement, which appeared in the Washington Post, Jan. 3, 1974:]



[The following is extracted from a full-page advertisement, which appeared in the Washington Star-News, Jan. 16, 1974:]



Mr. DONOHUE. Thank you.

Any questions, Mr. Lott?

Mr. LOTT. No, sir. I would just like to thank the gentleman for his testimony.

Mr. DONOHUE. Any questions from counsel?

Mr. SHATTUCK. No, Mr. Chairman.

Mr. DONOHUE. Our next witness, if he is present, will be our esteemed colleague from Maryland, Hon. Lawrence Hogan.

Mr. SHATTUCK. Mr. Chairman, I believe Mr. Hogan has left the room, but he left his statement with the subcommittee which can be placed in the record.

Mr. DONOHUE. If there is no objection, it will be made a part of the record.

[The prepared statement of Hon. Lawrence J. Hogan follows:]

STATEMENT OF HON. LAWRENCE J. HOGAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MARYLAND

Mr. Chairman, my name is Lawrence J. Hogan and I represent Maryland's 5th Congressional District.

As the sponsor of H.R. 13250, a bill to exempt State-conducted lotteries from certain prohibitions of Federal law, I am pleased to see this Subcommittee holding hearings on a matter of growing importance.

Title 18 of the United States Code contains several sections regulating the transmittal of lottery information, which in my opinion should be amended in order to respond to the realities of State-conducted lotteries which were not contemplated at the time these provisions were enacted.

The current Federal law prohibits the mailing of lottery tickets or the use of mail for the notification of winners or payment of prizes. The law also prohibits the transportation across state boundaries of any potential claim to a gambling prize. Thus, states with legal lotteries which appeal to the out-of-state market usually require that names and addresses be recorded on the tickets and that the tickets themselves be left inside the state. Receipts are issued as records of tickets, but do not represent claim instruments. The procedure is costly and annoying to many potential players.

Federal statutes also ban the transmittal of lottery information across state lines, either by newspaper or radio and television broadcasting. Newspapers are permitted, however, to carry the winning numbers; radio and television, by a ruling of the Federal Communications Commission may not even transmit this limited information.

While these prohibitive statutes are on the books, they are not now being enforced. To me, this is hypocritical. There have also been many instances of the unfairness with which the federal anti-lottery laws have been administered. For example, in August, 1964, an Elmira, New York, resident was arrested and charged with violation of the Interstate Transportation of Wagering Paraphernalia statute. He had purchased 75 New Hampshire Sweepstakes tickets in Kenne, New Hampshire, and transported the acknowledgements back to Elmira, New York. In October, 1968 he was finally acquitted. This arrest received nationwide publicity and seriously damaged the sales of tickets for the New Hampshire Sweepstakes. In spite of the millions of tickets that have been taken across State lines, this man has been the only one singled out for prosecution under this Federal statute as far as the activities of the State legalized lotteries are concerned.

Mr. Chairman, it is apparent that many states are getting into the lottery business, not only to raise much needed revenues, but also in an effort to compete with organized crime for the gambling dollar. Eight states have launched lotteries in the past decade, and another twenty are expected to follow suit in the next few years. Hence there is a need for a change in the Federal laws which impede the operation of those lotteries which my bill provides for.

I strongly believe that the federal and state governments should be working closely together to insure that State legalized lotteries are operated in the public interest. This can be accomplished only through free dissemination of informa-

tion by the media and by joint cooperation on security, prize distribution and financial accountability. It is self-defeating for the Federal government to restrict and impede the decision of sovereign states to raise supplemental revenue through lotteries. Paradoxically, we, at the same time engage in revenue sharing programs through LEAA and faster cooperative federal-state efforts to combat illegal gambling activities by organized crime.

It makes little sense for the federal laws to exempt pari-mutuel racing and to deprive the use of the mails, radio and television to State lottery programs. The absurdity is manifested by the nightly broadcast of daily double results at private dog and horse tracks while the public is denied the right to be informed of the weekly lottery number in a state-run lottery.

The 91st Congress enacted legislation, P.L. 91-452, to establish the Commission on the Review of the National Policy Toward Gambling. The purpose of this Commission is to review and evaluate existing federal statutes as they relate to gambling and make the appropriate recommendations to Congress. I was appointed to this Commission and have been fortunate to participate in its activities. On April 3, the Commission held hearings here on Capitol Hill and called in experts in the field of State-conducted lotteries to furnish input for their evaluation of State lotteries. Many of those witnesses made reference to the need to abolish these restrictive statutes.

Mr. Edward J. Powers, Executive Director of the New Hampshire Sweepstakes Commission had this to say:

"There are many bills now pending in Congress to amend the federal anti-lottery laws to permit sovereign states free access to interstate channels of communication, including the use of the mails, radio and television. The participation of millions of citizens each week in legalized state lotteries makes it virtually impossible for the current Federal lottery laws to be fairly and impartially enforced. The time has come for a Commission such as yours to recognize the need for change and to help bring these laws into the 20th Century. We urge that you recommend the Congress, particularly the House Judiciary Committee, take prompt and favorable action to reconcile the many inconsistencies with the realities of present day society."

The Commission also heard from Mr. James L. Slicher, the former Director of the Maryland State Lottery. Mr. Slicher expressed similar sentiments.

"Federal statutes and regulations restrict us in a number of areas. We are not able to reach the mass markets by use of electronic media and newspapers that have extensive mailings out-of-state circulation, are required to replat at additional expense. We have difficulty in notification and education of unclaimed winners due to these restrictions."

There was a time in this country when lotteries were permitted to freely publicize the results of their drawings. The original 13 colonies established revenue-raising lotteries and several of the Nation's oldest universities trace their financial origins back to 18th Century lottery wheels. By 1830, authorized and unauthorized lotteries collected an estimated \$60 million, five times the estimated Federal budget at that time. A series of scandals, however, turned public opinion and the Congress against lottery promotion, and by 1900 the legal lottery had disappeared.

Mr. Chairman, my bill, H.R. 13250, and others before this Subcommittee, would exempt State-conducted lotteries from certain prohibitive sections of Federal law. More specifically, my bill would amend Title 18 of the USC, Section 1084, to make it clear that nothing in that section would preclude the transmission of lottery information interstate as long as the information emanated from a jurisdiction where the lottery is State-conducted and is transmitted into a jurisdiction which permits bets or wagers on the former State's lottery.

Additionally, Section 1307(a) of my proposed legislation would render Section 1301 nugatory with respect to State-conducted lotteries. Thus the interstate transportation of lottery tickets, advertisements, and prize lists would be permitted generally. Inasmuch as the proposed Section 1307(a) does not indicate that the tickets, etc., must be transmitted solely under the authority of an appropriate state agency, a private individual would also be protected if he transports legal lottery tickets interstate. Moreover, a private individual would also be protected if he transports the ticket to any jurisdiction even though that jurisdiction may not permit the placing of bets on lotteries. Finally, any person who receives such tickets would be protected even if betting on lotteries were not permitted in his State as long as he receives a ticket originating from a State where State-conducted lotteries are permitted.

My proposed Section 1307 would insure that lottery information could be broadcast over radio and television generally. The absence of a provision to the effect that the broadcast must emanate from a station located within the jurisdiction where the State-conducted lottery is intended to mean that a station located in any State would be protected in broadcasting lottery information as long as that information pertained to, or was originally authorized by, the appropriate agency or another jurisdiction where State-conducted lotteries are permitted.

The FCC is given concurrent jurisdiction with the Department of Justice, with respect to Section 1304 of Title 18, USC. This has been held evident in the case of *FCC v. American Broadcasting Company* in 1954. My bill would also preclude this section from applying to any State-conducted lottery.

Mr. Chairman, the heart of the problem relates to the inconsistent efforts of the Federal Government to enforce these laws.

I am certain you will agree that laws must have the respect and support of the people if they are to be effectively enforced.

Mr. DONOHUE. Our next witness will be Mr. William S. Lynch of the Department of Justice. He is Chief of the Organized Crime and Racketeering Section of the Criminal Division.

**TESTIMONY OF WILLIAM S. LYNCH, CHIEF OF THE ORGANIZED  
CRIME AND RACKETEERING SECTION OF THE CRIMINAL DIVI-  
SION OF THE DEPARTMENT OF JUSTICE**

Mr. LYNCH. Thank you, Mr. Chairman.

My name is William S. Lynch. I am Chief of the Organized Crime and Racketeering Section of the Criminal Division of the Department of Justice, and I am representing Attorney General Saxbe, whom you asked to appear before you to present the Department's position on H.R. 6668 and companion bills.

It has long been the policy of the Federal Government to refuse to permit any facility of interstate commerce or transportation to be used to disseminate lottery material and information. Federal laws designed to suppress such interstate lottery traffic go back to June 8, 1872. Subsequent statutes were enacted by Congress in 1895, and, using the 1872 statute as amended in 1890, have been incorporated into the statutes currently known as 18 United States Code 1301, 1302, 1303, 1304, and 39 United States Code 3005.

Congress originally enacted these laws to counter the deleterious effects of the Louisiana lottery. Promoters of the Louisiana lottery attempted to attract participants not only from Louisiana but also from other States through mail transactions.

This activity threatened to increase when the Louisiana lottery announced it would move its operations to the high seas after its franchise by the State of Louisiana terminated. Outbursts and protests from victimized States whose citizens were being harassed by unsolicited lottery materials resulted in congressional action. This series of events occurred in the 1890's.

From the date of the original statutory enactments, betting activities, not only from the Louisiana lottery, which conducted its operations outside the U.S. boundaries, but also from European lotteries, substantially and effectively evaded the use of the mail to solicit participants from among the U.S. citizenry.

Furthermore, illegal lottery operations were springing up within the United States. Such activities were interstate in character, utiliz-

ing the rapid communications systems and facilities of interstate travel to advance their lottery schemes across State lines.

The ingenuity of these lottery operators, both from abroad and at home, spurred Congress into enacting legislation designed to curtail these evasive and illegal operations. Using the original 1890 statute, as amended in 1895, Congress extracted its basic tenets proscribing the importation, interstate transportation, and the mailing of any lottery advertisement for incorporation into our present antilottery statutes.

These statutes were all enacted in an environment of hostility towards lotteries when most, if not all, States prohibited the chartering and operation of lotteries. By contrast, a number of States today are legally operating lottery programs, planning to operate them, or are considering their operation in their State legislatures.

Originally enacted to protect citizens from unsolicited mailings of letters and circulars concerning State-franchised lotteries, the anti-lottery statutes now prohibit solicited as well as unsolicited mailings concerning legally operated State lotteries.

Throughout the last 15 years, the Justice Department has received an increasing number of citizen and State complaints involving this unsolicited interstate activity. The complainants often request the Department to take some affirmative action to stop this activity.

Since the recently renewed interest in State-operated lotteries, similar requests by private citizens as well as States which do not conduct lotteries have been made. It is within this context that we are asked to present the Department's views of the pending legislation.

H.R. 6668 proposes to amend title 18 of the United States Code to permit the transportation, mailing and broadcasting of advertising, information and materials concerning lotteries authorized by law and conducted by a State, and for other purposes. The text of this bill is substantially identical to H.R. 2374, as amended, proposed during the 92d Congress, second session.

Assistant Attorney General Henry E. Petersen, then Deputy Assistant Attorney General, testified before Subcommittee No. 2 of the House Committee on the Judiciary on October 13, 1971, presenting the Department's views relating to H.R. 2374 and related bills. Mr. Petersen stated that the Department would not object to the enactment of H.R. 2374 if amended as he had suggested.

In essence, this suggestion to amend the bill would promote the policy decisions of those States who determined to conduct lotteries as well as protect the policy determinations of still other States who rejected lotteries.

"Under such a bill," Assistant Attorney General Petersen testified:

States which either conduct lotteries and permit betting on other State lotteries, or merely permit betting on other State lotteries, could freely use the mails and the facilities of interstate commerce to transmit material and information to each other. At the same time such a State would not be permitted to enter into any lottery-related transaction with a person in a State which has not sanctioned lotteries or the betting thereon.

This type of statute would, then, permit the expansion of a legal State lottery to the fullest extent consistent with the lottery laws of her sister States. At the same time, it would protect and uphold the laws of those States which have determined that lotteries are not in the best interest of its citizens.

The bill would not, however, dilute the ability of the Federal Government to move strongly against illegal lotteries with interstate ramifications. Also, it should be emphasized that this bill applies only to State-conducted lotteries and not to any other gambling activities, even though conducted by the States.

As a result, the original H.R. 2374 was reported with an amendment on August 2, 1972, and committed to the Committee of the Whole House on the State of the Union. The amendment was responsive to Mr. Petersen's recommendations made in his testimony on October 13, 1971, with the exception that the mailing and transportation of lottery materials were restricted to intrastate facilities within those State legally operating lotteries. The Department supported the enactment of this amended bill.

The reintroduction of amended H.R. 2374 as H.R. 6668 elicits the same support from the Justice Department. We recognize that a number of States are reconsidering their formerly hostile attitudes and policies toward lotteries. Some State legislatures have already approved the operation of lotteries by State agencies.

However, we also appreciate that just as many States—indeed, many more States—do not desire either to operate lotteries within their boundaries or to permit betting by mail on lotteries legally conducted in sister States.

The rationale for State-operated lotteries is that, where legal lotteries are operated under State authority, the people benefit by honestly run operations and the State benefits by accumulating substantial amounts of revenue. Where these legal lotteries solicit patrons from other States whose policies do not favor lotteries nor lottery betting, the State lottery agency may continue to benefit from its revenue shares, but the citizens of sister States are harassed by unsolicited applications for lottery tickets and are utilizing the facilities of interstate commerce to frustrate the policies set down by their own State legislatures.

The relatively new Commission on the Review of the National Policy toward Gambling, established under title VIII of the Organized Crime Control Act of 1970, conducted hearings in April of this year. Several State officials presented their respective States' views concerning the present lottery statutes and the effects of their lottery operations. The executive director of the New Hampshire Sweepstakes Commission testified that the antilottery statutes are antiquated and unresponsive to the needs of today. He stated:

State legalized lotteries operated in the public interest can be accomplished only through full disclosure by the media of all activities and by joint cooperation as regards security, prize distribution and financial accountability. It is self-defeating for the Federal Government to restrict and impede this decision of sovereign States to raise supplemental revenue while at the same time it engages in revenue-sharing and expects cooperative Federal-State efforts to combat illegal gambling activities inspired by organized crime. It makes little sense for the Federal laws to exempt parimutuel racing and to deprive the use of the mails, radio and television to State lottery programs.

This was the testimony of Edward J. Powers, executive director of the New Hampshire Sweepstakes Commission. The State Treasurer of the Massachusetts State lottery and other speakers also emphasized this feeling of frustration.

Mr. Goldman, president of Systems Operations, Inc., a subsidiary of Mathematica, Inc., testified before the Gambling Commission on April 3, 1974, that today most State-operated lotteries are conducted by means of a central computer with information key-punched into its memory banks concerning every aspect of the lottery operation. This method prevents ticket alterations and duplications, improper

claims, and thefts. It further operates to hinder organized criminal groups from infiltrating or stealing from these State lotteries. The people participating in State lotteries today are in sharp contrast to those victimized by the old Louisiana lottery.

According to Mr. Goldman:

Over 80 percent of the adult population in States operating lotteries have purchased lottery tickets at one time or another, almost 60 percent of these purchasers spend only \$1 or 50 cents per purchase. Most purchases are by persons with yearly family incomes between \$6,000 to \$25,000, and are within the age bracket of 25 to 55 years.

Thus, the original reasons underlying the antilottery statutes are not effective nor responsive to the attitudes and policies of many State legislatures and their constituencies.

These attitude changes should necessarily be reflected by comparable changes in the law. Similar legislation has been pending in the last two Congresses. We hope that this Congress will act to resolve the dilemma facing not only the Justice Department, but also the many States which operate lotteries. These reasons have persuaded the Department to favor the enactment of H.R. 6668.

That is my statement, Mr. Chairman. I would be happy to answer any questions.

Mr. DONOHUE. Mr. Mann?

Mr. MANN. No questions, Mr. Chairman.

Mr. DONOHUE. Mr. Lott?

Mr. LOTT. Thank you very much for your statement, Mr. Lynch. Are you favoring the enactment of H.R. 6668 with no recommended changes or corrections at this time, or do you expect some?

Mr. LYNCH. Well, let me get out my copy of H.R. 6668. On proposed section 1307 (a) (1) and (2). There seems to be a question of whether or not there is a different treatment of the radio and television industry as distinguished from the newspaper industry.

As I read that provision, the newspaper published in that State may publish advertisements, et cetera, conducting or relating to the lottery conducted by that State. I think that it could be read that (2) provides that a radio or television station located in the State conducting such a lottery could broadcast that kind of material as to that State-authorized lottery and any other State lottery.

If that language could be clarified a little bit to indicate that what this proposes to do is to permit the sovereign decision of the State to promote lottery activities in that State by that State-run lottery, it should be confined to that State and that State lottery.

Mr. LOTT. Any other particular sections?

Mr. LYNCH. No.

Mr. LOTT. Perhaps you are bringing up a question.

What about it?

Mr. Findley mentioned the "Washington Post." That is a unique and perhaps difficult situation, as they do in their immediate area serve at least two States or three, and there is a Maryland lottery, and yet they are not publishing in that State.

What about that situation?

Mr. LYNCH. It certainly would not seem to apply. That is, the language of the statute as proposed, unless I am mistaken, would not apply to the "Washington Post."

Mr. LOTT. Well, perhaps these questions are premature at this particular time, but I wanted to see if you had comments on any particular section.

Mr. LYNCH. I agree completely with Congressman Findley. That is to say, I think most newspapers attempt to comply with the law by deleting in their mailed issue any references to a list of prizes or advertisements relating to a State-operated lottery in that State. And if newspapers in other parts of the country can comply with the law, I am sure that our local newspapers can comply with the law.

Mr. LOTT. Thank you, Mr. Chairman.

No further questions.

Mr. DONOHUE. Ms. Jordan?

Ms. JORDAN. I have no questions, Mr. Chairman.

Mr. DONOHUE. You were present when Congressman Findley testified, were you not?

Mr. LYNCH. Yes, I was.

Mr. DONOHUE. He raised a question about the "Washington Post" and the "Star-News" continuing ads and copies of that paper possibly were put into the mail and mailed into, say, Virginia or Maryland or West Virginia.

Was the Department of Justice conscious of that practice?

Mr. LYNCH. Congressman, we have asked the postal authorities to give us a rundown on how all of these lotteries are now operating and whether or not they are operating in violation of title 18 provisions. I had seen an advertisement of the Maryland lottery that was circulated, I am told, by the "Washington Post." But it is in the form of an insert, and I have no knowledge that indeed that insert was part of a mailed edition, rather than an insert that would be placed, either carried by truck or placed in the newspaper when it arrived in Maryland.

Mr. LOTT. Will the Chairman yield to me on that?

Mr. DONOHUE. Yes.

Mr. LOTT. What do you mean by an insert?

An extra leaf?

Mr. LYNCH. Yes, an advertising insert.

Mr. LOTT. I think, just for the record, I think that there have been regular articles in "The Washington Post."

Thank you, Mr. Chairman.

Mr. LYNCH. But I am not sure—Well, I am not sure they went with the mailed editions. If they went with the mailed editions, we will have to take a look at it.

Mr. DONOHUE. Are there further questions?

Mr. COFFEY. Mr. Chairman, if I might.

Mr. DONOHUE. Yes.

Mr. COFFEY. Mr. Lynch, you were here when Congressman Findley testified. He mentioned that his legislation would remove the prohibition not only with respect to State-conducted lotteries, but charitable organizations operating in those States where, again, it is legal. And I think other legislation has been introduced, similar to Mr. Findley's bill, by Mr. Fish from New York.

I wonder if the Justice Department would care to comment on what their view is to extending it beyond State-connected lotteries to include church groups and nonprofit groups?

Mr. LYNCH. I think it would depend upon the enabling legislation in the States. State-conducted lotteries do appear to have the built-in

safeguards referred to in my statement and reflected in Mr. Goldman's statement and the statement of Mr. Powers. It has been our experience in some areas that what purport to be charitable organization lottery activities are indeed simply evasions by people who are regularly engaged in illegal gambling activities, in an attempt to comply with what is generally felt to be a lack of enthusiasm by any law enforcement organization to proceed against church bingo and activities such as that.

So it would depend on what kind of regulations were in effect to guarantee that the church or charitable organization conducting a lottery was indeed getting the benefits of the lottery.

Mr. COFFEY. But again, my point would be that H.R. 6668, which is one of the bills we are considering this morning, the language of which the Justice Department apparently generally supports, limits itself to State-conducted lotteries.

Mr. LYNCH. That is correct, yes.

Mr. COFFEY. Thank you.

Mr. DONOHUE. Mr. Shattuck?

Mr. SHATTUCK. No questions, sir.

Mr. DONOHUE. Thank you very much, Mr. Lynch.

Mr. LYNCH. Thank you, Mr. Chairman.

Mr. DONOHUE. Our next witness will be Mr. Charles C. Carella, Director of the New Jersey Lottery.

#### TESTIMONY OF CHARLES C. CARELLA, EXECUTIVE DIRECTOR, NEW JERSEY STATE LOTTERY COMMISSION

Mr. CARELLA. Thank you, Mr. Chairman.

I have a statement here which I would like to file with the committee.

Mr. Chairman, my name is Charles C. Carella, Executive Director of the New Jersey State Lottery, and I thank you for this opportunity to appear here before you today to present my views on proposed amendments to the Federal laws governing lotteries.

As you may know, sir, there are eight States which currently have lotteries in operation and the creation of a lottery is under consideration in another 16 States by active legislation. Yet, despite these statistics and the repetition of the existing lotteries as revenue producers, there continues to exist in the Federal statutes serious impediments to the full realization by States of the potentials of their lotteries. Particularly, I am concerned by the prohibitions, as they affect States, contained in title 18 of the United States Code, chapter 61, sections 1301 to 1304.

My purpose in coming before you today, sir, is not to ask for a repeal of these sections, but to urge that a limited exclusion from their application be granted to the sovereign States along the lines expressed in H.R. 6668.

I believe you are all familiar with the background of the Federal legislation relating to lotteries. It was part of the antilottery movement in the later part of the 19th century stimulated by the scandalous Louisiana State lottery of the early 1890's.

Certainly, its enactment at that time was in the public interest and necessary to protect innocent persons from being victimized by dishonestly operated lotteries. Although it is true that the public attitude

after the Louisiana scandal could be characterized as "antilottery," this is not the situation today.

First, I want to stress that the legislation before you provides an exemption only for those lotteries that are actually conducted or operated by sovereign States or the District of Columbia, Puerto Rico, or possessions.

Second, in the last 10 years, starting with the State of New Hampshire, that we have had State-run lotteries, there have been no problems or abuses which have reflected unfavorably upon the integrity of the State operations. The lotteries in all these States are well-regulated and very closely supervised by the State agencies charged with their administration.

At this juncture, sir, I would like to take a few moments to describe for you the background and operation of the New Jersey lottery.

The New Jersey State lottery was authorized by an amendment to the New Jersey State Constitution by public referendum in the general election of November 11, 1969. 81.5 percent of the voters casting ballots in said election voted favorably for the adoption of a lottery.

A State Lottery Planning Commission consisting of two members from the Senate, two members from the General Assembly, the State Treasurer, and two members from the public was established by the Governor in December of 1969. They were charged with the responsibility of conducting background studies of lotteries and the recommendation of appropriate legislation for the operation of a State lottery.

The Planning Commission Report was submitted to the Governor of the State of New Jersey and the Legislature on February 9, 1970.

The New Jersey State Lottery Law was adopted by the legislature and signed by the Governor on February 16, 1970. The Lottery Commission, together with an Executive Director, were appointed by the Governor on April 2, 1970. Into the enabling legislation passed by the legislature was written the requirement that 30 percent of the gross receipts of the lottery were to go to State Aid to Education and Institutions, and I might add, sir, that at the present time that percentage is approximately closer to 46 percent, 47 percent, or 45 percent, rather than the 30 percent.

The sale of the first weekly lottery tickets commenced on December 16, 1970. The first drawing was held on Thursday, January 7, 1971. The drawing of a winning number for the weekly lottery is held every Thursday morning at 11 a.m., with the exception of Thanksgiving day when it is held on the previous Wednesday.

The objectives of the New Jersey State Lottery are: first, to generate revenue to defray the cost of certain public demands so as to minimize the burdens of the taxpayer; second, to provide excitement to those who wish to flirt with Lady Luck; third, to divert money from the illegal rackets, thus adversely affecting the organized crime.

The success of the New Jersey lottery is attributable to three essential features: the design of the lottery concept; the structure of the operational organization; public confidence and trust in its integrity.

The design of the weekly lottery concept is based on the following significant ingredients:

No. 1, frequency of play;

No. 2, 50-cent price of the lottery ticket;

No. 3, simplicity of the winning prize structure—all prize awards based on a single universal number;

No. 4, convenience of purchase—tickets may be acquired in many various places of business;

No. 5, ease of sales, tickets sold by number only, no name, address or other identifying data required;

Six, first prize of sufficient magnitude to modify average individual's mode of living;

And then there are many prizes of lesser amounts.

On November 29, 1972, we inaugurated our daily lottery. It encompasses two characteristics, namely daily frequency and instant payoff of winners.

I might add, sir, that the daily lottery is a computerized system, which is in effect throughout the State of New Jersey.

The game plan of the daily lottery was conceived with the following objectives:

Appealing to a market place separate from the players participating in the weekly lottery;

Many prize awards of smaller denominations, a maximum prize pool of approximately 50 percent;

Administratively compatible with the procedures, the computer programs and the operational system of the weekly lottery;

More competitive with the organized syndicate's numbers game; Instant payoff.

The prize structure of the daily lottery is similar in many characteristics to the weekly lottery, with the exception that it is based upon a five digit number rather than a six digit number.

The maximum number of cash winners mathematically existing within the concept of the daily lottery prize structure is on the average of 38,160 per million tickets sold. This frequency of prize awards is equivalent on the average to one winner in every 26 sold tickets.

The selection of the winning daily number occurs every day at 4 p.m.

It is of interest to note that a specifically designed telephone answering system was developed for the New Jersey State Lottery by the New Jersey Bell Telephone Company. It required 9 months of engineering and implementation. It is a statewide network whereby anyone may call a single number—990-1234—24 hours a day and receive information concerning the winning lottery numbers.

The number of calls made to this network has exceeded 1.5 million during the period of a month, at an extra cost of at least 10 cents per call to the ticket holder.

Research studies and market surveys have been conducted on behalf of the New Jersey State Lottery by independent organizations well recognized for their expertise and renowned in their area of endeavors.

The individual surveys established the following characteristics of the lottery ticket purchasers:

Number one, the New Jersey State Lottery is overwhelmingly supported by 82 percent of the New Jersey residents. Support is strongest among male, higher income, and white residents, but at least 75 percent of each of the major demographic groups in the State favor the lottery with the exception of the nonwhites who register 67 percent approval;

82 percent of adults in the State have bought lottery tickets. Approximately 40 percent of the State's residents spend at least \$1 a week on the lottery;

Nonwhites and women are less frequent users and buy fewer tickets than whites or men;

Among the various age groups, 50 to 59 are both the heaviest users and the biggest purchasers;

Blue collar workers and high school graduates are heavier users and purchasers than both other occupational or educational groups.

The market survey in August 1971 pointed out that:

Eight out of 10 consumers have purchased New Jersey lottery tickets one or more times. Five percent who have not purchased any tickets claim that, "someone buys them for me";

Seven out of 10 purchasing households, 71 percent, consider themselves to be regular or frequent purchasers of weekly New Jersey lottery tickets;

A profile of the regular purchasers of lottery tickets shows: Just slightly more male than females—53 percent versus 47 percent; 82 percent of the buyers are 35 years of age or older; 71 percent of the buyers earn more than \$7,500 per year; 68 percent of the buyers have a high school education or better.

In a market survey of May 1972:

Eight out of 10 persons 18 years of age and over have purchased New Jersey State lottery tickets;

81 percent of whites say they have purchased lottery tickets. Only 65 percent of blacks say they have purchased lottery tickets;

The profile of the buyer of State lottery tickets are most likely to be males with a middle or upper income, 50 years of age and at least a high school graduate.

In a market survey in January 1973:

A profile of the characteristics of the daily lottery ticket regular buyers shows that more than one-half—53.3 percent—are families earning \$10,000 or more. More 30-39 years old buy than any other age group—25 percent—with 40-49 and 50-59 year olds the next largest buying groups respectively—19.2 percent, 18.8 percent—over one-half—54.8 percent—have a minimum of high school graduate level education. Slightly more men—52.1 percent—than women—47.9 percent—are regular buyers. The overall average number of days per week they buy is 1.9. Most of them are also buyers of weekly tickets.

In the determination as to whether the new Jersey State Lottery has been successful, we ask the statistics to speak for themselves. When the books of the New Jersey State Lottery are closed for the fiscal year ending June 30, 1974, we will have achieved the following financial accomplishments during the period from the first drawing on January 1, 1971 through June 30, 1974:

No. 1, the sale of 827 million tickets.

No. 2, gross revenue, \$413 million.

No. 3, a net profit of \$214 million will be transferred to the State of New Jersey for aid to education and institutions.

No. 4, more than \$184 million in prizes.

No. 5, more than 4 million prize winners.

No. 6, \$25 million paid to the business community of New Jersey in the category of sales commission and fees for their participation.

And No. 7, the creation of 34 millionaires.

It is therefore an incredible paradox to realize that despite the support of the public and the substantial benefits that can accrue to a State from a well-administered legalized State lottery, that these archaic Federal laws remain in force which impede the full realization of benefits and unreasonably thwart the basic right of citizens to keep informed regarding the lottery.

Because these laws prohibit information concerning a lottery to be broadcast over radio or television, prevent the distribution of lottery tickets or information through the U.S. mails, and prohibit publication of any lottery information in newspapers that are distributed outside the State, substantial numbers of New Jersey citizens are experiencing tremendous difficulties in finding out State lottery information.

In attempting to overcome the information gap, the public has been telephoning the New Jersey State Lottery Commission. The volume of incoming calls to the Commission on Thursdays, the day of the weekly drawing, is tremendous. In order to insure that it would be able to respond to the public demand for information, the lottery commission had to have the New Jersey Bell Telephone Co. install automatic answering and announcement machines. The number of calls to this number is approximately 125,000 to 130,000 per week.

As some of you may know, there is a decision in the Third Circuit Court of Appeals, rendered by Hon. John Gibbons on January 2, 1974, holding that it is legal for a local New Jersey station to broadcast winning lottery numbers. This decision is based on the fact that the winning number is news and is not primarily intended to promote lotteries.

The Federal Communications Commission has filed a petition for a writ of certiorari to the U.S. Supreme Court in this case. Although this decision will be of assistance, it does not permit us to advertise or to disseminate basic information to the public relating to prizes, drawings, availability of tickets and unclaimed prizes.

It can be stated that the present broad Federal restrictions are:

Causing a loss in potential revenues;

Are preventing a large portion of the population from obtaining through the media the information they desire regarding the lottery, which is one reason why at any given time there is an average of 10 percent in uncollected prize moneys totaling millions of dollars; and

Third, resulting in substantial additional administrative costs, due to the fact that the lottery commission cannot mail but must hand deliver any promotional or informational material relating to the lottery to anyone inside or outside the State.

In my judgment, the course that you should pursue is to approve, without further delay, the amendments that are contained in H.R. 6668 so that sovereign States which choose to operate their own lottery will be excluded from the broad coverage of chapter 61 of title 18 of United States Code.

Thank you, Mr. Chairman.

Mr. DONOHUE. Mr. Mann?

Mr. MANN. No questions.

Mr. DONOHUE. Ms. Jordan?

Ms. JORDAN. I would just comment, Mr. Carella, that you present a picture of the very successful operation of a lottery in New Jersey,

and it strains me to see how the passage of this bill would presently help you operate more efficiently if the picture you present to us is an accurate one.

Mr. CARELLA. I am sure, madam, that our sales would increase and we would be in a much better position, obviously, if we were able to utilize the tools of the media. Quite frankly, much of the sales that we have realized in the beginning of the lottery were without the competition of our sister States, and also we have come from 1971 down to 1974, and we must get out information. We must get it out on a much more frequent basis. We must get it out in volume. We are being deluged. We cannot, obviously, give out unclaimed prize information in the newspapers.

So that I say, if you are reading the highly successful operation of the State of New Jersey as a deterrent to this, I say to you quite frankly that there is no telling what we could have done if we had the proper media.

Ms. JORDAN. What do you do with unclaimed prize money?

Mr. CARELLA. The unclaimed prize money is held for a period of 1 year, and then that year expires, it reverts back to the State treasury for the intended purposes in the statute.

Ms. JORDAN. And in the statute, you provide for the contribution of some 30 percent—you say it is now 45 percent—to education and institutions. What happens to the rest of the revenue?

Mr. CARELLA. Forty-five percent goes back in prizes, approximately 45 percent goes into the State institutions and education, and the balance is for commission fees and operating expenses.

Ms. JORDAN. No further questions, Mr. Chairman.

Mr. DONOHUE. Mr. Shattuck?

Mr. SHATTUCK. Yes, Mr. Chairman.

I would just like to ask Mr. Carella what is the current status of the proceeding in the Supreme Court? Has certiorari been granted?

Mr. CARELLA. It has not as yet is my understanding, sir. The petition for a writ of certiorari had been filed. There was a stay in effect which has spent itself. In other words, there is no injunctive relief at the present time in New Jersey. In fact, in the third circuit, we would be able to supply the media with the winning number. In fact, what has happened is that the various stations have refused to broadcast it. In any event, some have and some have not, but it is presently petitioned. But certiorari has not been granted at this point.

Mr. SHATTUCK. I see.

Thank you very much.

Mr. DONOHUE. Mr. Coffey?

Mr. COFFEY. Thank you, Mr. Chairman.

Mr. Carella, were you present when Congressman Findley testified?

Mr. CARELLA. Yes, sir.

Mr. COFFEY. He mentioned during the course of his testimony, and I believe held up lottery application forms received by an Illinois resident, and he indicated that there were lottery application forms from the States of New Jersey, Maryland, and Massachusetts. I just wondered if you would like to comment about the fact that there was a New Jersey application form sent.

Mr. CARELLA. I did not see what he held up, but it may well be a membership in the Clover Club, which is a club in New Jersey which

gives you your own, personal number, lottery number, for a period of weeks. I am not sure what he did hold up, sir.

Mr. COFFEY. If it was an application form like that which you described, would that not be a violation of title 18?

Mr. CARELLA. I would have to say this; that there may well be, in the concept of this club, no violation of the statute; because, in effect, you may not be mailing a lottery ticket. But again, as I said, that may be the position, and the answer to the question that was raised. I do not know what he held up.

Mr. COFFEY. Thank you.

Mr. DONOHUE. It is our understanding that there is nothing in the law at the present time that would prevent any newspaper that circulated within the State of New Jersey from publishing lottery information.

Mr. CARELLA. That is correct. The newspapers within the State of New Jersey, at the present time, publish the winning number and things of that nature. That is correct.

Mr. DONOHUE. And is there a statutory restriction that would prevent a radio station from broadcasting the number within the State?

Mr. CARELLA. That also may be correct, but again, I am not so sure as to whether or not they will do it.

Mr. DONOHUE. And if that is so, the people that your lottery is attempting to serve—that is, the people of New Jersey—can obtain the information very readily by reading their own newspaper.

Mr. CARELLA. Unfortunately, Mr. Chairman, in the State of New Jersey the major media come from either Philadelphia or New York City. On television, we have channels 2, 4, 5, 7, 9, 11, and 13, all of which are based in the State of New York. In the southern part of the State, there is channel 3, which supplements the numbers I just gave you, which I believe is based in Philadelphia; so that the general media which are used by the citizens of the State of New Jersey are out-of-State-based.

Mr. DONOHUE. Would you not say that the people of New Jersey basically read papers that are published in New Jersey?

Mr. CARELLA. I would say that right now, there is one daily newspaper on a statewide circulation, with a number of others in smaller areas, but there is again a tremendous circulation of New York newspapers and Philadelphia newspapers.

Mr. DONOHUE. How many newspapers would you say are published in New Jersey?

Mr. CARELLA. I do not have that figure, sir. But I am telling you that there is only one—and that is the Newark Star and Ledger—which has a statewide circulation on a daily basis. The others may be in small, on a county basis.

Mr. DONOHUE. And how many newspapers, again may I ask, are published in the State of New Jersey, approximately?

Mr. CARELLA. I do not know. I would say—you know, there are a substantial number of newspapers, but some of them may be weeklies, and with reference to those weeklies, we—because of their mailing newspapers—we cannot advertise in a weekly newspaper?

Mr. DONOHUE. How many dailies are published?

Mr. CARELLA. I do not know the answer to that question.

Mr. DONOHUE. You do not have an approximation?  
Mr. CARELLA. No, but I could get the information to you, if you wish it?

Mr. DONOHUE. Yes, please.

Mr. CARELLA. Surely.

[The material supplied for the record follows:]

BOZELL & JACOBS, INC.,  
Trenton, N.J., April 29, 1974.

Hon. HAROLD D. DONOHUE,  
House of Representatives, Longworth House Office Building,  
Washington, D.C.

DEAR CONGRESSMAN DONOHUE: We have been requested by Executive Director of the New Jersey State Lottery, Charles C. Carella, to forward the enclosed list of New Jersey's daily newspapers to your attention.

Sincerely,

JO TUBSI.

#### DAILY NEWSPAPERS

Asbury Park Evening News, Press Plaza, Asbury Park, N.J. 07712.  
Bridgeton Evening News, 100 E. Commerce Street, Bridgeton, N.J. 08302.  
Burlington County Times, Route 130, Willingboro, N.J. 08046.  
Camden Courier News, P.O. Box 3600, Somerville, N.J. 08876.  
Camden Courier Post, Southern N.J. Newspapers, Inc., Camden, N.J. 08101.  
Daily Dover Advance, 87 East Blackwell Street, Dover, N.J. 07801.  
Elizabeth Journal, 295 North Broad Street, Elizabeth, N.J. 07207.  
Ocean County Daily Observer, P.O. Box 449, Toms River, N.J. 08753.  
Morristown Daily Record, 55 Park Place, Morristown, N.J. 07960.  
Red Bank Daily Register, 105 Chestnut Street, Red Bank, N.J. 07701.  
Woodbury Times, 309 South Broad Street, Woodbury, N.J. 08096.  
Hudson Dispatch, 400 38th Street, Union City, N.J. 07087.  
Trenton Times, 500 Perry Street, Trenton, N.J. 08605.  
Passaic Herald News, 988 Main Street, Passaic, N.J. 07055.  
New Brunswick Home News, 123 Howe Lane, New Brunswick, N.J. 08903.  
Jersey Journal, 30 Journal Square, Jersey City, N.J. 07306.  
Millville Daily, 129 East Main Street, Millville, N.J. 08332.  
Paterson Morning News, News Plaza, Paterson, N.J. 07509.  
New Jersey Herald, 2 Spring Street, Newton, N.J. 07860.  
News Tribune, 1 Hoover Way, Woodbrige, N.J. 07095.  
Ocean County Daily Times, 121 Second Street, Lakewood, N.J. 08701.  
Atlantic City Press, 1900 Atlantic Avenue, Atlantic City, N.J. 08401.  
The Record, 150 River Street, Hackensack, N.J. 07602.  
Shore Record, 70 South 7th Avenue, Long Branch, N.J. 07740.  
Free Press, 198 Chambers Street, Phillipsburg, N.J. 08865.  
Newark Star-Ledger, Star Ledger Plaza, Newark, N.J. 07101.  
Today's Sunbeam, 93 Fifth Avenue, Salem, N.J. 08079.  
Trentonian, 600 Perry Street, Trenton, N.J. 08602.  
Vineland Times Journal, 7 South Seventh Street, Vineland, N.J. 08360.

Mr. SHATTUCK. Mr. Chairman, if I might. I think that your line of questioning has raised another point that Mr. Carella might be able to comment upon.

Have you had a chance to examine the bill with specific application to the television and radio stations? I refer specifically to the language on page 2, which would permit certain information to be carried and broadcast by television and radio stations, where the station is "located in a State conducting such a lottery."

From your remarks in reply to the chairman's question, it would appear that this might remove some difficulty in broadcasting that information in the areas you have described as being the metropolitan areas served by some other States.

Mr. CARELLA. What I would say in answer to that, sir, is that, quite frankly, we would be hopeful of having a bill which would permit the giving of information interstate, so that we would be able to give it over the New York channels.

Mr. SHATTUCK. When this legislation's predecessor was considered in this committee, there was some information supplied to the committee that the stations for the New Jersey community were physically located in New York; that the transmitting facilities were located in New York because it was more advantageous to use the high buildings there for their towers, and so on. I presume this is still the case?

Mr. CARELLA. I believe so. That is probably channel 13.

Mr. SHATTUCK. Thank you.

Mr. CARELLA. Thank you.

Mr. DONOHUE. Thank you, Mr. Carella.

Mr. CARELLA. Thank you, Mr. Chairman.

Mr. DONOHUE. We will now hear from Mr. Russell Shannon.

#### TESTIMONY OF RUSSELL W. SHANNON, MASSACHUSETTS STATE LOTTERY COMMISSION

Mr. SHANNON. Mr. Chairman, thank you for this opportunity to appear before your committee.

My name is Russell W. Shannon, and I am an attorney for the Massachusetts State Lottery Commission. I wish to express the strong support of the commission and its chairman, State Treasurer Robert Q. Crane, and Governor Francis W. Sargent for reform of the Federal laws which restrict the power of the States to operate lotteries to raise badly needed revenue.

I have a few general remarks which I would like to address to the committee at this time in support of what has already been said this morning, and what I am sure will be said by some of the lottery directors.

The Federal statutes presently in effect were broadly drawn to combat the Louisiana State lottery, and later amended to combat organized crime. They either do not cover, or they specifically exempt, nearly all types of gambling and organizations conducting gambling which were legal at the time they were enacted. But there were no legal State lotteries when these statutes were enacted, and thus no provision for lotteries operated by State agencies was made in them.

The net result is that the activities of State lotteries are heavily restricted even within the borders of their own States by Federal criminal law, including the Federal Organized Crime Control Act. For purposes of Federal law, we are, in many respects, treated as criminal activities.

A State lottery is a State agency, and is a business. Yet, it is a Federal crime for us to mail certain types of lottery materials, even to an address within our own State; to make use of an ICC-licensed carrier for the transportation of materials, even within our own State; to advertise or even receive promotional coverage on a radio or television station; to use most services of a federally chartered or insured bank. It is a crime for a newspaper to carry our advertising, or a nonnews story about us in a paper which is mailed even to an address within our own State.

The Massachusetts lottery is very popular with the citizens. It is operated in a secure and efficient manner. It is a valuable source of revenue for the State, and aids in combating the illegal gambling activities of organized crime. Last year, the Massachusetts State Lottery Commission raised over \$35 million in revenue, which was distributed to the cities and towns to help lower the property tax, and meet ever-increasing demands for public services. We could have raised much more had we not been prevented by Federal law from adopting normal business practices available to all other State agencies and other legitimate businesses, such as the use of mails and radio and television for advertising and for conveying information.

The present restrictions on the use of the mails for the transportation and use of lottery materials and information, and newspapers containing lottery advertisements, needlessly limit our ability to communicate to the people of Massachusetts, increase operating costs, and reduce the amount of revenue we are able to generate for the State. The unavailability to us, of radio and television restricts our ability to advertise and to inform the public of news and information of interest to them.

In closing, I wish to thank the committee for giving us this opportunity to present our views, and to support H.R. 6668 and similar bills which would give Federal recognition to the right of the States to work out their own policies toward gambling and the raising of needed revenues.

Thank you.

Mr. DONOHUE. Mr. Mann?

Mr. MANN. No questions.

Mr. DONOHUE. Ms. Jordan?

Ms. JORDAN. No questions, Mr. Chairman.

Mr. DONOHUE. Mr. Shattuck?

Mr. SHATTUCK. No questions, Mr. Chairman.

Mr. DONOHUE. Mr. Coffey?

Mr. COFFEY. No questions.

Mr. DONOHUE. We will now hear from Mr. Henry Kaplan, executive director, Bureau of State Lotteries, Department of Revenue, Department of the Treasury, State of Pennsylvania.

**TESTIMONY OF HENRY H. KAPLAN, EXECUTIVE DIRECTOR, BUREAU OF STATE LOTTERIES, DEPARTMENT OF REVENUE, DEPARTMENT OF THE TREASURY, STATE OF PENNSYLVANIA**

Mr. KAPLAN. Thank you, Mr. Chairman.

I am afraid some of this is going to be repetitive, but if I may, I will read my statement.

Mr. DONOHUE. If you could summarize the highlights, in the interest of time, it would be appreciated.

Mr. KAPLAN. Yes, sir. I have left a copy for the record.

Mr. DONOHUE. We will make the entire statement a part of the record.

Mr. KAPLAN. Thank you.

I have utilized my paper to indicate the inconsistency, incongruities in the application, unwittingly, of present Federal legislation. At the present time, it is common knowledge, I believe that there are illicit

number games, there are sports betting pools, there are all sorts of gang-controlled gambling practices that, in fact, do use the facilities afforded by radio and television. Take a sports bet. The odds are broadcast, point spreads in football games; "Nick the Greek" is a well-known national celebrity, and the product of all this permissible broadcasting has been to aid and abet the activities of the gambling syndicates.

Now, I am not recommending that the broadcast of sports events be eliminated or curbed. I am stating this as an example of incongruity. A State lottery conducted within the laws of the State is denied the privilege that, unwittingly, the gambling syndicates use. I give as an example what has happened in Pennsylvania in the past several weeks, and I will read.

There are two daily newspapers in Pittsburgh, Pennsylvania's second largest city. For the past several weeks, because of a labor dispute, that city has been without newspaper coverage or distribution. Lottery sales have been considerably affected, but of even greater concern is the difficulty, and possible impossibility for some who have bought lottery tickets, to determine whether their tickets have or have not been winning ones. It does not appear that the illegal operators have this problem. They do have the radio and television broadcast of the race results, sporting events, and so forth, to provide this information to their clientele.

Aprespos of that, there are millions of dollars of unclaimed prizes resting in the lottery funds of those States that have lotteries. It is believed that many of these prizes would have been claimed had the radio and television broadcast of lottery information been permitted. It is apparent that if a lottery is within the legal framework of the State, the denial of the use of broadcast media to disseminate lottery news tends to act against the public interest in this particular area.

That is basically the summary of the thrust of the statement that I have prepared, and for the sake of brevity I want to thank you for this opportunity to be here.

Mr. DONOHUE. Thank you, Mr. Kaplan. Your entire statement will be made a part of the record.

[The prepared statement of Mr. Henry H. Kaplan follows:]

STATEMENT OF HENRY H. KAPLAN, EXECUTIVE DIRECTOR, BUREAU OF STATE LOTTERIES, PENNSYLVANIA

Thank you for this opportunity to present the following comments concerning the proposed legislation that would alleviate the present Federal restrictions on the broadcasting and the use of the U.S. Mails with regard to State-operated lotteries.

From the beginning of sales in March 1972, the Pennsylvania Lottery has grossed over \$275 million; awarded more than \$126 million in prizes, and earned approximately \$125 million in net revenue. The proceeds in Pennsylvania are devoted entirely to assisting senior citizens of our State. Specifically, the profits are employed to provide property tax assistance, rent assistance, and free urban mass transit service for the elderly.

It may be of interest that a marketing research survey taken in our state indicates the following:

1. Over 85% of our adult population have purchased lottery tickets at one time or another.

2. Purchasing is almost level across the broad spectrum of our population by age, sex, race and income with a few exceptions. Only a small percentage of purchasing takes place within the younger group (ages 18 to 25), the older group (over 55), the lower incomes (\$6,000 and less per year) and the higher incomes (over \$25,000 per year).

3. The average weekly purchase by each lottery player is \$1.60.

4. Well over 80% of our population agree that a public lottery is a good means to raise funds for public benefit.

Public lotteries are neither new nor unique. They have existed since the Middle Ages in Europe, and today more than 40 other countries operate lotteries. Lotteries, that is legitimate lotteries, are not new to the United States either. For example, a lottery provided the funds for the Virginia Company to start the Colony of Jamestown. George Washington, Thomas Jefferson and Benjamin Franklin all sponsored lotteries for various causes. Early American colleges and religious organizations used lotteries to help finance their building programs.

Unfortunately, the apparent lack of tight governmental controls and monitors, such as existed in present state lotteries, provided the setting for some of the privately run lotteries to become corrupt. After charges of fraud were brought against the Louisiana Company, which operated a lottery on a national scale in the 1890's, the Federal government passed legislation which restricted the use of mails to promote or advertise lotteries and forbade interstate traffic in lotteries. The intent of this legislation obviously was to combat the activities of *privately* owned and operated lotteries that existed at *that* time.

Today, through narrow interpretation by Federal agencies, these laws have been used to restrict legal State-operated lotteries, while illegal gambling syndicates, in essence, are permitted to benefit from the interstate dissemination of the results of a variety of sports events that are the subject of these well organized operations. This concept of enforcement is counter-productive since it appears to deliberately discourage public participation in a tightly-controlled and honestly conducted legal form of wagering, reducing its potential revenues, while at the same time does not take cognizance of the support it provides the illicit entrepreneur.

It is difficult to rationalize certain practices which are a matter of common knowledge, in relation to state sanctioned lotteries when we consider the following:

Race results, including handles and payouts, are freely disseminated through the broadcasting media and channeled through the press while the matter of broadcasting of state lottery numbers is vehemently opposed by the F.C.C. under the guise of protecting the public. People legally betting on races are present at the tracks or legal off-track betting parlors. It would appear, one of the primary beneficiaries of the broadcast race results are the illegal bookmaking operations. If the real purpose of these Federal restrictions for broadcasting is to proscribe illegal gambling activities, then the opposite of that objective is being aided and is abetted.

Winning numbers for the illegal "numbers" games are derived from racing results or Treasury balances which are freely disseminated throughout the nation without restrictions on broadcasting, newspaper mailing or interstate travel. It is totally incongruous to believe that, at the present time, a legitimate State-controlled and honestly operated program for raising funds for the public good is being hampered while other forms of wagering are being given unlimited reign unfettered by Federal control.

No one has yet explained the rationale that permits odds on sporting events, including point spreads, to be transmitted throughout the nation via the newspapers and the broadcasting media while legal lottery results, in and of themselves newsworthy items, are, according to the F.C.C., a proscribed activity. It is not difficult to conclude that broadcasting these point spreads encourages illegal activities; even the innocuous 5 or 10¢ sport pool card that Johnnie may purchase in his school yard. It is submitted that state-operated lotteries are at least as innocuous, and the use to which the revenues produced in Pennsylvania are utilized are at the very minimum as worthwhile as the altruistic purposes to which illegal gambling operators apply their earnings. It would appear that if "Nick the Greek" is to be given nationwide coverage and is considered a national celebrity, certainly state conducted lotteries should be accorded no less a privilege within its own borders.

Even in the commercial sphere, business enterprizes are provided an unlimited privilege of promoting their projects and prize give-a-ways which, in a technical sense, are a form of lottery when one considers that the receipt of any prizes results from a quid-pro-quo; that is the participation by the customer in entering the "free" lottery or drawing or purchasing a product in order to entitle him to enter and win a contest prize. That is analogous to one who would purchase, for a cash consideration, a lottery ticket in the hopes of winning a prize.

There are two daily newspapers in Pittsburgh—Pennsylvania's second largest city. For the past several weeks, because of a labor dispute, that city has been without newspaper coverage or distribution. Lottery sales have been considerably affected—but of even greater concern is the difficulty and possible impossibility for some, who have bought lottery tickets to determine whether their tickets have or have not been winning ones. It does not appear that the illegal operators are having this problem. They do have the radio, and television broadcast of race results, sporting events, etc. to provide the information to their clientele.

Appropos of that, there are millions of dollars of unclaimed prizes resting in the lottery funds of those states that have lotteries. It is believed that many of these prizes would have been claimed, had the radio and television broadcast of lottery information been permitted. It is apparent that if a lottery is within the legal framework of a state, the denial of the use of broadcast media to disseminate lottery news tends to act against the public interest in this particular area.

A review and hopefully a modification of the present stultifying legislation is one that warrants your favorable consideration. It is gratifying that it is receiving your attention.

It is also encouraging to note the recent Third Circuit Court of Appeals decision which held that state lottery numbers may be broadcast as news. The unanimous decision of the nine sitting judges was that the F.C.C. refusal to permit broadcasting of winning state lottery numbers violated the First Amendment guarantees of freedom of speech and freedom of the press. The court noted that many millions of citizens purchase state lottery tickets, and rejected the F.C.C. argument that state lottery numbers were not of interest to the public. It is disappointing that the F.C.C. has appealed that ruling to the U.S. Supreme Court. Public officials and the judicial system are being tied up in a last attempt to unwittingly maintain the present advantages to illegal gambling. The F.C.C. claim that state lottery numbers are not news, when over 3½ million tickets per week are sold in Pennsylvania alone, is unrealistic as well as specious. However, one cannot predict the outcome of this appeal as well as the time factor involved. At best, the decision of the Third Circuit Court of Appeals related only to the question of broadcasting of a winning lottery number, and not to the essence of the bills presently before this committee.

The Pennsylvania Bureau of State Lotteries has afforded what has proven to be a popular and enjoyable means for the public to legally participate in a lottery. It is making the lives of our senior citizens less burdensome. We could provide much more for public benefit if archaic broadcast and mailing restrictions were removed. Compared to what is presently within permissible air wave tolerances, it is hard to conceive that broadcasting of lottery information would be damaging to the public good or morals. Perhaps then we might accomplish our third goal of making in-roads into the uncounted vast sums presently being channeled into organized crime.

In conclusion, it is submitted that the reasons which prompted the passage of the Federal legislation in the last century are no longer applicable today. If the reason for law fails to exist then the law should not be so narrowly applied or operative and should be removed. Insofar as the legislation in question does curtail illegal activities and organized crime, it should remain unchanged; but to the extent that it inhibits an activity of a state sanctioned lottery, which could advance the goal of curbing illegal gambling, that activity should not only be encouraged but should be promoted. We respectfully urge that this Committee act favorably upon the proposed legislation that will remove the present Federal restrictions on State conducted lotteries.

Mr. DONOHUE. Any questions?

Mr. MANN. No questions.

Mr. DONOHUE. Ms. Jordan?

Ms. JORDAN. No questions.

Mr. DONOHUE. Do you have any questions?

Mr. SHATTUCK. Thank you.

May I just direct a question to you concerning the relationship—any comments that you might want to make concerning the relationship between your lottery and the other lotteries in close proximity; that is, New Jersey and New York?

Mr. KAPLAN. We now also have Maryland, and I understand that Ohio will have a lottery this fall, so we are completely surrounded.

Mr. SHATTUCK. I see.

Well, my question is really directed as a result of the question that the chairman made concerning the problems faced by New Jersey. It is served by Pennsylvania newspapers and New York newspapers, and there is a commuter population in each State. Do you contemplate, or have you had, any difficulty concerning the administration of these lotteries? Are they competing, or is there any problem that you might want to address?

Mr. KAPLAN. This is a personal point of view. I have never considered a Gimbel's-Macy relationship to exist between Pennsylvania, New Jersey, and the other States. I do feel that, as all of the States that surround Pennsylvania have their lotteries, then the interest and the participation in the lottery will be primarily within the State.

Obviously, certain people who work in New Jersey and travel to Pennsylvania will be buying some of our lottery tickets. They will be buying it properly, within the State. The reverse will happen. I think these things balance out. I do not visualize any problem. As a matter of fact, with reference to what Mr. Carella indicated, Pennsylvania is fortunate. We have a lot of radio and television stations within the State. I would support legislation that covers stations—or I would have no objection to those stations that cover parts of New Jersey or parts of Ohio, or whatever the case may be. I see as a public service broadcasting certain information concerning those lotteries from Pennsylvania, since it reaches the people who buy their lottery tickets, as being perfectly proper and in order, and I do not think it will affect what we are doing.

Mr. SHATTUCK. It is essentially a practical problem that can be met.

Mr. KAPLAN. Yes, sir, I do believe that Pennsylvanians, primarily, buy Pennsylvania lottery tickets. I think people from New Jersey primarily buy New Jersey lottery tickets.

Mr. SHATTUCK. Thank you very much.

Mr. KAPLAN. Thank you.

Mr. DONOHUE. Our next witness will be Mr. McMaster.

**TESTIMONY OF JOHN F. McMASTER, PRESIDENT, NEW ENGLAND PRESS ASSOCIATION AND PUBLISHER OF THE PUBLIC SPIRIT AND THE FORT DEVENS DISPATCH; ACCOMPANIED BY WILLIAM G. MULLEN, NATIONAL ASSOCIATION OF NEWSPAPERS**

Mr. McMASTER. Good morning, Mr. Chairman. The National Newspaper Association is honored by your invitation to participate in these hearings. I am a newspaper publisher myself and have taken the prerogative to do a little editing so that I can keep my statement as brief as possible. However, you do have the entire statement for the record.

Mr. DONOHUE. Thank you. Without objection the full statement will be included in the record.

[The material referred to follows:]

STATEMENT OF THE NATIONAL NEWSPAPER ASSOCIATION ON H.R. 6668 AND RELATED BILLS TO PERMIT CERTAIN ACTIVITIES CONCERNING LOTTERIES AUTHORIZED BY LAW

Good morning, Mr. Chairman. The National Newspaper Association is honored by your invitation to participate in these hearings.

My name is John F. McMaster and I am accompanied here today by William G. Mullen, Secretary and General Counsel of the National Newspaper Association. I publish *The Public Spirit* in Ayer, Mass., a newspaper that has been published for 104 years. I also publish the *Ft. Devens Dispatch*, a military base newspaper. Each is a weekly publication and their total combined circulation is 11,000 of which about one-half is distributed by mail.

I also currently serve as the President of the New England Press Association, which represents about 250 daily and weekly newspapers out of approximately 300 newspapers in the six New England states.

At the present time, I am also a member of the National Newspaper Association's Government Relations Committee which is responsible for formulating and recommending policies on federal legislation for the Association.

Mr. Mullen and I appear here on behalf of both the National Newspaper Association and its affiliate, the New England Press Association. NNA coordinates all of its activities very closely with 47 affiliated state and regional newspaper associations such as N.E.P.A.

INTRODUCTION

In view of the fact that this is the first time that either of our organizations has appeared before your Subcommittee, perhaps we should begin by providing you with a brief summary of the purposes of NNA and the composition of its membership.

NNA is a Nebraska not-for-profit corporation. Its founding dates back to 1885 when it was originally formed as the National Editor's and Publisher's Association. That name was quickly changed to the National Editorial Association, which stood until the last several years, when it was once again changed to the present name to more accurately reflect the modern scope and purpose of the Association.

NNA is the only national trade association which is open to all daily and weekly community newspapers. Its purposes are to unite newspaper editors and publishers for the promotion of the newspaper industry and to provide a medium whereby the best interests of the communities served by our members may be likewise promoted.

In addition, NNA is concerned with improving standards of journalism and with teaching its members improved methods of managing and conducting newspapers.

There are 7,641 weekly newspapers in the United States, according to NNA's own 1974 National Directory of Weekly Newspapers. The total circulation of all these weeklies is nearly 35 million, while readership is estimated to be almost 140 million. The average circulation of these weeklies is about 4,500. The circulation of some weekly newspapers however is as low as 100, while others are as high as 300,000 (when all publications of a single publishing company serving a single suburban area are counted). NNA presently counts approximately 5,300 weekly newspapers as members.

There are an additional 950 daily newspapers which belong to NNA out of a total of 1,750 dailies in the United States. NNA members in the daily newspaper field tend to be those published in smaller to medium-sized communities with an average circulation of approximately 10,000.

NNA estimates that more than 85% of its member newspapers rely almost exclusively on mail service for delivery to subscribers. While few community daily newspapers rely exclusively on the mails for delivery, most use the mails to a small degree at least, mainly for delivering copies to subscribers beyond local carrier delivered area. The same holds true for weekly newspapers in suburban areas.

There are a substantial number of daily newspapers, however, nearly 300, which rely on the mail for delivering a very large number of copies to subscribers in outlying areas or in a nearby state.

The membership of the New England Press Association nearly parallels the types of newspapers represented by NNA.

#### NNA POLICY RELATIVE TO FEDERAL LOTTERY LEGISLATION

The current policy of the National Newspaper Association with regard to the subject legislation is derived from a resolution adopted with the unanimous approval of nearly 700 members present at the Convention of the National Newspaper Association held in Portland, Oregon, July 21, 1972. The resolution approved by the membership at that meeting reads:

Whereas, the National Newspaper Association Board of Directors and the Government Relations Committee have considered the need for amendments to federal laws which prohibit advertising and reporting of state-sponsored lotteries and other activities made legal by the states.

THEREFORE, be it resolved that the National Newspaper Association support and work for federal legislation to achieve this purpose.

Earlier in the same meeting, the Association's Board of Directors had approved a motion that the Association support legislation which would allow the advertising and/or reporting of any activity which is legal in a given state. The motion received the unanimous approval of the full Board of Directors.

This policy was reaffirmed as recently as October, 1973 during the Annual Business Meeting of the Association, when it was reported that the NNA Government Relations Committee had firmly recommended the continuance of this policy.

A similar policy has been adopted by NEPA.

#### LEGISLATIVE RECOMMENDATIONS

While NNA recognizes that the principal bill under consideration by the Committee, H.R. 6668 would greatly improve the present situation which restricts the advertising and reporting of events relative to state-conducted lotteries, NNA recognizes too that this legislation solves only a part of the problem faced by newspaper publishers and editors.

The Committee has been adequately briefed by your own staff and other witnesses as to the various problems associated with existing laws, amendments to which are now under consideration. Newspaper publishers are principally concerned with the prohibitions in federal laws against the reporting of events connected with state lotteries or the listing of prize winners in newspapers which travel across state lines by any means or which travel through the United States Mail. The same prohibitions apply equally to advertising in newspapers in the mail or crossing state lines by other means.

Specifically, NNA believes that H.R. 6668 is inadequate in the following respects, so far as newspapers are concerned:

1. It only permits advertisements, lists of prizes of information concerning a lottery conducted by a state in a newspaper published *within* that state; it does not permit a newspaper published in another state to carry the information of the other state's lottery even though the state where the newspaper is published may have its own lottery. The newspaper would only be able to carry information concerning the lottery in its own state.

For example, a newspaper published in New York could only carry information about the New York State Lottery. It could not carry news or information or advertising for lotteries in New Jersey, Pennsylvania, New England, or any other states, even though the lotteries in those states are conducted by the states under authority of state law.

2. So far as the mail prohibitions are concerned, H.R. 6668 would not permit a newspaper containing lottery information, news or advertising to be mailed to an addressee living *outside* the state of publication.

For example, a newspaper published in New York containing information about the New York lottery could not be mailed to a subscriber living in New Jersey, Pennsylvania, or New England here even though those states have their own legally authorized state-conducted lotteries.

3. Of equal importance, H.R. 6668 does not even consider other types of lotteries, such as bingo games, raffles and others, which are being legalized by states in ever increasing numbers. The National Newspaper Association on behalf of newspapers in every state, believes that newspapers should be allowed to carry news and advertising for any type of lottery operation which has been made legal under authority of state law.

4. Likewise, the National Newspaper Association strongly believes that no newspaper should be prohibited from carrying advertising, news stories or lists of winners for any lottery legally authorized by a state. H.R. 6668 only partially remedies this situation. We believe that this committee should approve legislation authorizing newspapers in states which do not have lotteries to carry advertising, news stories, or lists of prizes and winners for lotteries operating under authority of state law.

NNA SUPPORTS H.R. 12235

NNA has endeavored to keep track of and examine all of the bills which have been introduced on this subject. Of those now pending before this Subcommittee, we believe that H.R. 12235 is most satisfactory to the needs of newspaper publishers and editors. For that reason, we strongly urge the Committee to consider approval of this bill.

Basically, H.R. 12235 allows any newspaper of general circulation to carry advertisements, lists of prizes, or information concerning lotteries which are lawful in the state where conducted. The definition of lottery, however, does not include the placing or acceptance of bets or wagers on sporting events or contests.

H.R. 12235 also permits newspaper of general circulation which contain advertisements, list of prizes or information concerning lotteries which are legal in the state where conducted to be mailed to subscribers living in other states.

ARGUMENTS

Mr. Chairman, as representatives of smaller newspapers throughout the country, we believe that present laws are discriminatory against smaller newspapers, both daily and weekly. Large newspapers which are carrier-delivered and which circulate principally within the state where published, can now carry advertisements, news stories and lists of winners for any type of lottery, whether it be state-conducted or simply state-authorized. These newspapers with their huge circulations can afford to replate the pages where such ads appear so that copies being sent by mail or out of state by other means can be changed to eliminate the lottery ads or other information.

Small newspapers, however, cannot afford such "split" editions. For the small amount of revenue which such advertising brings to them, it does not make economic sense for them to attempt to replate the pages containing lottery ads or other information so that copies going in the mail do not carry the proscribed information.

This being the case, smaller newspapers are foreclosed from carrying any information concerning lotteries whatsoever, even though their readers are likely supporters of state lotteries, or at least interested observers.

It is our understanding that many state-conducted lotteries are not producing the revenues originally anticipated by their backers. We believe that a principal reason for this revenue deficiency has been the lack of advertising in newspapers and other media on behalf of these lottery programs. The same is true with regard to bingo, raffles and other types of lotteries, now being authorized by several states. Lottery promotions are thereby restricted to less effective media, increasing their expense, and decreasing their efficiency.

Lotteries have been authorized principally for the purpose of charity, and educational funding, but they fail to receive the support of much of the public since the public is not aware of their existence. This could change drastically were newspaper advertising as well as news coverage to be allowed.

As newspaper people, we believe that advertising can make the difference between a lottery that is simply "breaking even" and one that could be completely successful. It is incongruous that the Congress, at a time when the federal government is encouraging a rebirth of state and local activity and self-reliance through such programs as revenue sharing, stands in the way of those states which have decided to try a state lottery as a means of raising needed revenues.

According to the Steering Group On Federal-State Problems Relating To State Lotteries, 14 states and the Virgin Islands now have legislation establishing state-conducted lotteries. Several more states including Illinois, Washington, Montana, and Iowa have authorized bingo games, raffles and other lotteries, the proceeds of which are directed to be used for charitable or educational purposes.

The conduct and promotion of all types of legal lotteries is inequitably inhibited by present statutory restraints at the federal level. We believe it is time for the Congress to recognize the rights of individual states to conduct their lawful business without undue federal interference, particularly when that interference is based on archaic and obsolete laws.

These obsolete laws were first enacted in 1890 in furtherance of the federal government's policy of refusing to permit any facility of interstate commerce or transportation to be used in connection with illegal private lotteries. While the federal government may have a legitimate concern with restricting the promotion of private lotteries because of their possible control by organized crime forces, this is certainly not the case where lottery operations are either conducted by a state or by charitable or educational organizations within a state under authority of state law. The legislation we support would not risk making the mails, or interstate transportation available for the promotion of illegal lotteries.

The states involved, all sovereign bodies, have made the decision, notwithstanding arguments in opposition, that their citizens want lotteries. These decisions have been reached on both social and economic grounds. The benefits of state conducted lotteries run both to the state and to the people. The people benefit by having honest lotteries, many times in place of illegal and dishonest lotteries, and the state benefits by having substantial amounts of revenue fed into its treasury.

It is time for Congress to take action to insure that the actions of the federal government do not frustrate policy decisions of these states which have already decided in favor of lotteries of one type or another and other states which are expected to do so in coming months and years.

NNA sincerely believes that the time has come for Congress to seriously examine a law first enacted by the 51st Congress. Responsible organizations estimate that 30 states will have lotteries in 5 to 10 years. Is it not time for Congress to decide that what may have been appropriate for 1890 and following decades, is no longer appropriate in the 1970's?

Once a citizen pays his money to the state lottery, those funds become the property of the state. Yet, no newspaper moving through the mails or across state lines is allowed to carry a single story or advertisement about those state funds even though millions of dollars are often involved. The same is true of funds generated by lotteries conducted by charitable or educational organizations, which, although they do not belong to the state, are still "public" since the operators of such lotteries must make sure that they are properly accounted for as directed by the state law. Yet newspapers are prohibited from discussing such lottery programs in their news or advertising columns. This would appear to make it easy for dishonest lottery operators to engage in practices which would benefit the public at large.

This may be why Ontario, Canada, according to information given to NNA, requires lotteries to list winners in newspapers. This may be a philosophy which this committee will want to consider adopting. It would also aid states holding millions of dollars in unclaimed winnings.

We think it is obvious that present laws seriously impair the First Amendment to the U.S. Constitution. The inhibitions on a free press are so obvious in fact that NNA believes that little mention is necessary.

A Federal Court of Appeals in New Jersey recently spoke to the problems which such laws encounter when juxtaposed against the First Amendment, in ruling that a Federal Communications Commission ruling forbidding the broadcasting of an announcement of a winning number in the New Jersey lottery violates the First Amendment. In its decision the Court commented:

"The primary value of these items to the public is in conveying the latest news as promptly as possible so that it has the opportunity to be informed of news items of possible immediate public concern." (Quoting an earlier Supreme Court case, *Rosenbloom v. Metromedia*, 1971.)

"The FCC reasons that because the winning number is of interest to only a limited class of persons (a mere 2,750,000 ticketholders on a typical Thursday), it is not an item of news, and hence is not protected information . . . we reject the premise that the size of the class of persons interested determines what is news."

"The First Amendment makes clear that it is beyond the competency of any governmental agency to determine, that any item of information is, for any news medium, not news."

"We conclude that the FCC misconstrued the Congressional mandate in the Communications Act of 1934. Nothing in that statute was intended to permit the exercise by the FCC of control over editorial decisions of broadcast journalists."

(*New Jersey State Lottery Commission v. U.S.*, Jan. 2, 1974, U.S.C.A., 3rd Cir. No. 72-1878; Case on appeal to the U.S. Supreme Court.)

We hope the Committee will keep the First Amendment in mind when drafting legislation on this topic so that it does not unintentionally create new problems in this area.

Attached to our statement you will find copies of two clippings. I believe you will find these to be refreshing examples of how two editors chose to deal with the current federal prohibitions on lotteries.

#### NNA URGES EXPEDITIOUS ACTION

In conclusion, Mr. Chairman, NNA urges the committee to move expeditiously on this long-awaited legislation. The present laws cause our members substantial difficulty which can only be remedied through effective legislation. Quick action by this subcommittee will make final congressional action of this legislation possible yet in this session of Congress.

Thank you for your attention. We will be happy to provide answers to any questions you may have.

## Vashon-Maury Island Beachcomber, Vashon, Washington

### 2nd class censors

So you want to hold a raffle. Or maybe you're planning an island version of the Irish sweepstakes. Or perhaps your group has talked the powers that be into giving you a license to run bingo games.

Well, fine. Just don't come to us. You will not be reading about raffles, lotteries, sweepstakes, or bingo games in this paper. We will not be writing about them in the news columns; you won't be seeing pictures of the elated winners when their lucky number is drawn out of the bin; and you won't be able to buy advertising space for your money-raising effort.

Indeed, you say. What kind of puritanical press have we here? What have you guys got against the sport of gambling, especially when it's for a good cause, you might ask.

Not a thing, we reply. It's just that our free press, guaranteed by the First Amendment, is not so totally free after all. In case you would like a little review of the Constitution, Article I of the Bill of Rights says in part, "Congress shall make no law...abridging the freedom of speech, or the press..."

In spite of that guarantee, there is one federal agency that packs a lot of wallop when it comes to abridging the freedom of the press: The United States Postal Service.

The power of the postal authorities to stop the free flow of information has been demonstrated countless times since post-Civil War days, when the federal postal

obscenity law was passed. Their off-time arbitrary and capricious enforcement of the law, which enabled them to prohibit people from using the mail service, was frequently in direct conflict with the courts.

But their controls are not limited to obscenity, whatever that is. The federal code, along with postal service regulations, prohibits the dissemination of lottery information.

So even if your raffle or bingo game is for the noblest of causes, we cannot print one word without endangering our second class mailing privileges. And if we can't mail second class, we're going to have to peddle our bicycles pretty hard to get our papers delivered Thursday morning.

Wait a minute, you object. Isn't there a large Seattle daily paper holding a "lucky number sweepstakes?" Howcum?

Well, it appears they can get by with it because their papers are circulated by hand, not through the mails. So what it all boils down to is rank discrimination. The big boys can get away with things the little guys can't. It will take an act of Congress (and we mean that quite literally) to alleviate the discrimination.

Oh, yes. There is one circumstance which would allow us to publicize your raffle. If it's a fraud, we can write all about it. Anything that occurs in the courts is open to all the publicity the press wants to give it.

So if your raffle is an honest one, mum's the word. If not, see you in court.

m.m

## Lapeer Co. Press, Lapeer, Michigan

### We can't tell where to buy lottery tickets

Beginning Nov. 13, your state government will be selling lottery tickets. But your federal government will not allow mailed newspapers to tell you much about

it, in news stories or in advertising.

The tickets will be sold at 37 stores and bars in Lapeer County. The Press had planned to list them in this space. But the postal dept said this would be against the law and The Press would risk losing its mailing permit.

A post office spokesman in Detroit said mailed newspapers could legally print no ads and only "newsworthy" stories concerning the lottery. Asked to define "newsworthy," he said it would be legal to publish the names of lottery winners. But it would not be legal to publish where the winning tickets might be bought.

If you bought this copy of The Press at a newsstand, you'll find a

State of Michigan lottery ad on page 10A. But if you got your Press through the mail, you'll find a blank space on page 10A.

A postal official was asked to comment on the obvious hypocrisy of a state government holding a lottery which the federal government says is illegal to advertise through the mail. He agreed it was "ridiculous" and added "please don't use my name."

Comment was also sought from The Press editor but he had gone home to throw up. †

There is no ad in this space because your Federal Government says it is illegal for mailed newspapers to advertise a lottery run by your State Government. (See article on front page.)

Mr. McMASTER. There are several points pertaining specifically to newspapers that I think we should point up.

My name is John McMaster and I am accompanied here today by William Mullen who is the secretary and general counsel for the National Newspaper Association.

I publish *The Public Spirit*, in Ayer, Mass., a newspaper that has been published for 104 years, and presently covers a six-town area. I also publish the *Fort Devens Dispatch*, a military base newspaper. Each is a weekly publication and their total combined circulation is 11,000 of which about one-quarter is distributed by mail.

I also currently serve as the president of the New England Press Association, which represents about 250 daily and weekly newspapers out of approximately 300 newspapers in the six New England States.

At the present time, I am also a member of the National Newspaper Association's government relations committee. Mr. Mullen and I appear on behalf of both the National Newspaper Association and its affiliate, the New England Press Association. NNA coordinates all of its activities very closely with 47 affiliated State and regional newspaper associations such as N.E.P.A. and of course, we have five of our six New England States with lotteries so this is of some interest to us.

Just a couple of numbers to point up what the organization is. There are 7,641 weekly newspapers in the United States, according to NNA's 1974 National Directory. The total circulation of all these weeklies is nearly 35 million, while readership is estimated to be almost 140 million. The average circulation of these weeklies is about 4,500. The circulation of some weekly newspapers is as low as 100, and others, of course, go as high as 300,000, when all the publications of a single publishing company, a small chain serving a single suburban area are counted. NNA presently counts approximately 5,300 weekly newspapers as members.

There are an additional 950 daily newspapers which belong to NNA out of a total of 1,750 dailies in the United States.

The current policy of the National Newspaper Association with regard to the subject legislation is derived from a resolution adopted with the unanimous approval of nearly 700 members present at the convention of the NNA held in Portland, Oreg., July 21, 1972. The resolution approved by the membership at that meeting reads:

Whereas, the National Newspaper Association Board of Directors and the Government Relations Committee have considered the need for amendments to federal laws which prohibit advertising and reporting of state-sponsored lotteries and other activities made legal by the states.

Therefore, be it resolved that the National Newspaper Association support and work for federal legislation to achieve this purpose.

A similar policy has been adopted by the New England Press Association.

While NNA recognizes that the principal bill under consideration by the committee, H.R. 6668 would greatly improve the present situation which restricts the advertizing and reporting of events relative to State-conducted lotteries, NNA recognizes, too, that this legislation solves only a part of the problem faced by newspaper publishers and editors.

Newspaper publishers are principally concerned with the prohibitions in Federal laws against the reporting of events connected with State lotteries or the listing of prize winners in newspapers which travel across State lines by any means or which travel through the U.S. mail in any way. The same prohibitions apply equally to ad-

vertizing in newspapers in the mail or crossing State lines by other means.

Specifically, NNA believes that H.R. 6668 is inadequate in the following respects, so far as newspapers are concerned. I think these are important, so I will list them for you. I will take only a minute.

It only permits advertisements, lists of prizes or information concerning a lottery conducted by a State in a newspaper published within that State; it does not permit a newspaper published in another State to carry the information of the other State's lottery, even though the State where the newspaper was published may have its own lottery. The newspaper would only be able to carry information concerning a lottery in its own State.

My own paper, for example, covers a six-town area adjacent to the New Hampshire border, and I am sure that you can see the problems that are involved.

For example, a newspaper published in New York could only carry information about the New York State lottery, and that only when it is not circulated in the mail within the State. It could not carry news or information or advertising for lotteries in New Jersey, Pennsylvania, New England or any other States, even though the lotteries in those States are conducted by the States under the authority of State law.

So far as the mail prohibitions are concerned, H.R. 6668 would not permit a newspaper containing lottery information, news or advertising to be mailed to an addressee living outside of the State of publication.

I think that *The Public Spirit* is typical in this regard. We mail about 300 copies a week to virtually every State in the Union. This is small, but these are people who have moved away from my area and want to keep up with their hometown. And of course, most weekly newspapers are in that category. They must mail outside of their States.

For example, a newspaper published in New York containing information about the New York lottery could not be mailed to a subscriber living in New Jersey, Pennsylvania, or New England, even though those States have their own legally authorized State-conducted lotteries.

Of equal importance, H.R. 6668 does not even consider other types of lotteries, such as bingo games, which are, as you know, being approved in several States, raffles, and several others, which are being legalized in States in ever-increasing numbers. The National Newspaper Association, on behalf of newspapers in every State, believes that newspapers should be allowed to carry news and advertising for any type of lottery operation which has been made legal under the authority of State law.

Likewise, the National Newspaper Association strongly believes that no newspaper should be prohibited from carrying advertising, news stories or lists of winners for any lottery legally authorized by a State. H.R. 6668 only partially remedies this situation. We believe that this committee should approve legislation authorizing newspapers in States which do not have lotteries to carry advertising, news stories, or

lists of prizes and winners for lotteries operating under authority of State law.

Of those now pending before the subcommittee, we believe that H.R. 12235 is most satisfactory to the needs of newspaper publishers and editors. We for that reason strongly urge the committee to consider approval of this bill.

Basically, H.R. 12235 allows any newspaper of general circulation to carry advertisements, lists of prizes, or information concerning lotteries which are lawful in the State where conducted. The definition of lottery, however, does not include the placing or acceptance of bets or wagers on sporting events or contests.

H.R. 12235 also permits newspapers of general circulation which contain advertisements, lists of prizes or information concerning lotteries which are legal in the State where conducted to be mailed to subscribers living in other States.

Our arguments, I would just point out very quickly and just pick out the pertinent sentences—we believe the present laws are discriminatory against smaller newspapers, both daily and weekly. Large newspapers which are carrier-delivered and which circulate principally within the State where published, can now carry advertisements, news stories, and lists of winners for any type of lottery, whether it be State-conducted or simply authorized.

These newspapers with large circulations can afford to replate the pages where such ads appear so that copies being sent by mail or out of State by other means can be changed to eliminate the lottery ads or other information.

Smaller newspapers, however, cannot afford such split issues. For the small amount of revenue that such advertising brings them, it does not make economic sense for them to attempt to replate the pages containing lottery ads or other information so that copies going in the mail do not carry that information. For example, in my case it costs \$60 for me to replate one page. With a weekly newspaper, we could guess that maybe we would have a \$50 advertisement involved and probably not much more than that, so that it is an economic problem with us.

As newspaper people, we believe that advertising can make the difference between a lottery that is simply breaking even and one that could be completely successful. I think some of our previous speakers have commented on that. It is incongruous that the Congress, at a time when the Federal Government is encouraging the rebirth of State and local activity and self-reliance through such programs as revenue sharing, stands in the way of those States which have decided to try a State lottery as a means of raising needed revenues.

The legislation that we support does not risk making the mails or interstate transportation available for the promotion of illegal lotteries.

It is time for Congress to take action to insure that the actions of the Federal Government do not frustrate policy decisions of these States which have already decided in favor of lotteries of one type or another and other States which are expected to do so in the coming months and years.

Once a citizen pays his money to the State lottery, those funds become the property of the State. Yet, no newspaper moving through

the mails, even within a State or across State lines, is allowed to carry a single story or advertisement about those State funds, even though millions of dollars are often involved.

We think it is obvious that the present laws seriously impair the first amendment to the U.S. Constitution. The inhibitions on a free press are so obvious in fact that NNA believes that little mention is necessary.

Attached to our statement you will find copies of two clippings. I believe you will find these to be refreshing examples of how two editors chose to deal with the current Federal prohibition on lotteries.

In conclusion, Mr. Chairman, NNA urges the committee to move expeditiously on this long-awaited legislation. The present laws cause our members substantial difficulty, which can only be remedied through effective legislation. Quick action by this subcommittee will make final congressional action possible yet in this session of Congress.

Thank you for your attention. We will be happy to provide answers to any questions you might have. And may I also say, thank you for scheduling this hearing. We have been waiting anxiously for many months.

Mr. DONOHUE. Mr. Mann?

Mr. MANN. No questions.

Mr. DONOHUE. Ms. Jordan?

Ms. JORDAN. No questions, Mr. Chairman.

Mr. DONOHUE. Our next witness will be Mr. John B. Summers, general counsel of the National Association of Broadcasters.

Mr. MULLEN. Thank you, Mr. Chairman.

Mr. SHATTUCK. Is Mr. Summers in the room?

[No response.]

Mr. DONOHUE. Our next witness will be Mr. Ralph Batch.

#### TESTIMONY OF RALPH F. BATCH, FORMER DIRECTOR OF THE NEW JERSEY STATE LOTTERY, ADVISOR TO THE ILLINOIS STATE LOTTERY

Mr. BATCH. Thank you, Mr. Chairman.

My name is Ralph F. Batch. I was the executive director of the New Jersey Lottery for approximately 4 years until January of 1974. I was the past President of the National Association of State Lotteries until several months ago.

Mr. Carella mentioned the New Jersey State Planning Commission, Lottery Planning Commission. I was selected by the Governor of New Jersey to serve on that Commission, as one of the two members of the public. Currently, I have been invited by the Governor of the State of Illinois to assume the responsibilities of the Superintendent of the Illinois State Lottery when it becomes effective.

I will try to avoid any repetition and will endeavor to perhaps assume the position of representing the public, rather than as an executive director on two pertinent points today that I believe may be of assistance to you in your decision process.

The State of Illinois did enact in the Illinois lottery law providing for an implementation of the State lottery. Said law will be effective as of July 1, 1974. We are actively engaged in the planning phase of

structuring the lottery program, and although Illinois cannot state with experience as to the disadvantages imposed by the restrictions of the existing antilottery legislation, it did become quite evident that the complexities inflicted by the limitations established under the current federal legislation adversely effects the administration or the setting up of the administration of a new State lottery.

Perhaps if for no other reason, the present legislation should be modified so as to benefit the residents in the State where lotteries are duly authorized an equal opportunity to obtain news significant to a large segment of its population through the media of radio and television. And to prohibit otherwise in my opinion is a disservice to the public interest. Mr. Carella touched on the fact that the Federal Communications Commission had ruled that the broadcast announcement of the winning number in the weekly New Jersey lottery was not only news, but the third circuit court of appeals held that it was "hot news".

As you are well aware, and your record will show, that decision was reached—there were two hearings on it. The third circuit court of appeals originally heard it as a three-judge panel. They reheard it and they sat en banc with all eight judges sitting, and it was a unanimous decision by those eight judges.

Their decision, I think, Mr. Carella touched on sufficiently as being a violation of the first amendment. However, as a consequence of the fact that their original ruling prohibited the use of the radio and television for the announcement of the winning number, the New Jersey State Lottery did construct a very expansive telephone network. And it was mentioned that it took 9 months to construct it and engineer it, and there were as many as 1.5 million calls per month at a cost to the public of \$150,000, because of the 10 cents per call. The point that I would like to make is that I think that it is an imposition on the public that they are anxious for such information, that it could be readily made available to them by virtue of the passage of H.R. 6668.

You mentioned, Mr. Chairman, the fact that they could read their newspaper and get the number. That should seem to a logical person sufficient. But the drawing in New Jersey occurs at 11 o'clock in the morning. The larger newspapers in the State are morning papers, and people are not interested in waiting for tomorrow's newspaper to find out what the winning number was today. It is published in those newspapers.

And one other point that I may make at this time is that there are 21 daily newspapers in the State of New Jersey, Mr. Chairman. But perhaps even more significantly to me is the fact that every effort is made by State-operated lotteries to live in a fishbowl, to expose themselves completely to the public. So that their integrity would never be challenged. I have always strongly felt that the public is entitled to witness the selection of the winning number. It is a vital part in the integrity of a State-operated lottery. In order to do that, they do travel from one end of the State to another and publicly have the selection of the winning number. But I believe that the public would be much better served if that drawing could be held on a TV network at the time that it actually occurs, and then the entire population interested could view the selection of that winning number.

One other thing that was touched on briefly in previous testimony was the unpaid and unclaimed lottery prize awards. During the first year and one-half of the operation of the New Jersey Lottery there

was an amount of more than \$6,800,000, \$6,800,000 of unclaimed prize money. I contend that that would have been significantly reduced, and the public again, would have benefited, had they had the opportunity to utilize radio and television to inform them as to the winning number and to better inform them with reference to the manner in which the lotteries operate, so that they would be more aware as to whether they were a winner or not.

Mr. Chairman, I know it is going to be a long day and I am not going to belabor the things that you have heard or what you will hear. But only from the standpoint that the public, I am confident, would be served, and I urge you to look favorably upon H.R. 6668.

Thank you, sir.

Mr. DONOHUE. Mr. Mann?

Mr. MANN. Just an observation, Mr. Chairman.

I can see some rather interesting results coming from an 11 a.m. television drawing. I suspect that the interest of some would be such that each business would have a television set for its employees, and I am sure that the employees would try to make that correspond to the morning coffee break. It is just the modern world.

Mr. BATCH. Maybe perhaps, if that were a problem and the industry were disrupted, the hour of the day of the selection is generally attuned more to the convenience of the public as to when it can most quickly be inserted into a newspaper. If you had a television network, perhaps your hour of selecting your winning number would be more at the 6 o'clock or later time.

Mr. MANN. It occurred to me earlier when you mentioned not being able to wait on the next morning's paper that there could be a different time.

Mr. BATCH. You always have that controversy, sir, where you have your morning newspapers and your evening newspapers. And if you give it at one time you are discriminating against or in favor of.

Mr. MANN. No further questions, Mr. Chairman.

Mr. DONOHUE. I might mention that at this hearing our esteemed colleague, Congressman McClory was here, and he wanted you to know that he is quite interested in your position.

Mr. BATCH. Thank you, Mr. Chairman.

Representative McClory has been very courteous and gracious to us.

Mr. DONOHUE. Thank you very much.

Mr. BATCH. Thank you.

Mr. DONOHUE. We will now hear from Mr. Herbert Robbins.

#### TESTIMONY OF HERBERT ROBBINS, DIRECTOR OF THE LEGISLATURE OF MICHIGAN'S WASHINGTON OFFICE

Mr. ROBBINS. Mr. Chairman, my name is Herbert Robbins. I am the director of the Legislature of Michigan's Washington Office.

In order to be even briefer than my statement, I would like to submit it for the record and touch on just three points.

Mr. DONOHUE. In view of the hour, it is now 12 o'clock, we would be pleased if you would be brief.

Mr. ROBBINS. Thank you.

First, the Legislature of Michigan believes that each State has the right to determine whether or not to conduct a lottery within its borders. The Federal Government should not restrict such activity

within a State, and that the undoubted authority and responsibility of the Federal Government to control activities between States should be carefully balanced so as not to be a pretext for advancing one State's interest at the expense of other States, or of exercising a Federal veto over legitimate State decisions.

Second, the Legislature of Michigan supports H.R. 6668 and similar bills. We would specifically point out three similar bills introduced by members of Michigan's Congressional Delegation, H.R. 1485 by Representatives Broomfield, Brown, Cederberg, Diggs, Dingell, William Ford, Harvey, Nedzi, and Riegle; H.R. 6554 by Representative O'Hara; and H.R. 6536 by Representative Vander Jagt.

Third, I would like to point to the steering group on Federal-State problems relating to State lotteries, which is a group located here in Washington, D.C. On page 2 of that statement, we suggest several ways of expanding the language of H.R. 6668, which we think are consistent with the purpose of that act, and specifically as to the broadcasting we would suggest that the exemption from Federal prohibitions against promoting or advertising State-run lotteries on FCC-licensed radio and television stations located within a State or a State adjacent to a State promoting or advertising a State lottery, if (a) the State in which the radio or television station is physically located also has a State lottery, (b) the State or portion thereof, is within the broadcast area assigned to the station by the FCC, and (c) local businesses regularly purchase advertising from the station to reach their local customers.

Thank you, sir.

Mr. DONOHUE. If you desire to have your complete statement made a part of the record, it will be so ordered.

Mr. ROBBINS. Thank you, sir.

[The prepared statement of Herbert Robbins follows:]

STATEMENT OF HERBERT A. ROBBINS, DIRECTOR OF THE LEGISLATURE OF MICHIGAN'S  
WASHINGTON OFFICE

Mr. Chairman. My name is Herbert Robbins. I am the Director of the Legislature of Michigan's Washington office. At the direction of my principals, I have been involved in efforts to remove Federal restrictions on the use of the mails and the media as they apply to State lotteries. I thank you for this opportunity to appear before this committee to discuss what the leadership of the Legislature of Michigan believes to be the overriding policy consideration—the proper relationship between the Federal government and the States.

Simply stated, we believe (1) that each State has a right to determine whether or not to conduct a lottery within its borders; (2) that the Federal government should not restrict such activity within a State, and (3) that the undoubted authority and responsibility of the Federal government to control activities between States should be carefully balanced so as not to be a pretext for advancing one State's interest at the expense of other States or for exercising a Federal veto over legitimate State decisions.

As the leadership of Michigan's Legislature see the question of Federal restrictions on the use of the mails and the media by a State-run lottery, the issue is *not* whether a State should or should not have a lottery. Rather, it is the responsibility of each State through its legislative process to make this determination. As you know, States have come out both ways on this issue. The Legislature of Michigan has authorized a lottery only after long consideration and exhaustive debate. The Members of the Legislature, just as the Members of Congress, are accountable to the voters and are keenly aware of their responsibilities. We would therefore urge that this committee perceive its responsibility as being limited to Federal-State relationships and not to the setting of a policy on gambling.

Turning, then, to the consideration of Federal-State relations, the Legislature of Michigan would urge this committee to support legislation to remove all prohibitions of the use of the mails and the media for the conduct, promotion, and advertisement of a legal State lottery within that State. To this end the Legislature of Michigan supports H.R. 6668 and similar bills. We would specifically point to three similar bills introduced by members of Michigan's Congressional delegation: H.R. 1485 by Representatives Broomfield, Brown, Cederberg, Diggs, Dingell, William Ford, Harvey, Nedzi, and Riegle; H.R. 6454 by Representative O'Hara, and H.R. 6536 by Representative Vander Jagt. Furthermore, our Legislature subscribes to the Report of the Steering Group on Federal-State Problems Relating to State Lotteries which I have attached to my testimony and request that it be inserted into the record of these hearings. That report suggests several specifications for broadening the interstate promulgation of information about State lotteries which I believe are consistent with Federal concern for protecting the rights of States that do not conduct lotteries.

In conclusion, I would urge your committee to pass a bill which provides equitable treatment to both States that operate lotteries and States that do not, and which leaves States as free as possible to conduct legitimate State business to the fullest extent possible.

REPORT OF THE STEERING GROUP ON FEDERAL-STATE PROBLEMS RELATING TO STATE LOTTERIES

Fourteen States and the Virgin Islands now have legislation establishing State-run lotteries. The conduct and promotion of these legal lotteries is presently inhibited by Federal government restraints (18 U.S.C. 1301-1304) on the use of the mails and the media. In recognition of a State's right to conduct its lawful business without undue Federal interference, nineteen bills have been introduced in the House of Representatives to provide exemption from mail and/or media prohibitions. Nevertheless, the responsible subcommittee of the House Judiciary Committee has not scheduled hearings on this important matter.

On January 16, directors of nine State offices in Washington met at the Council of State Government Headquarters to consider appropriate State action to gain Congressional action. A steering group of four State Office directors was chosen to investigate the potential for getting a hearing before the Subcommittee on Claims and Governmental Relations of the House Judiciary Committee and report back to a meeting of representatives of all States that conduct lotteries.

A meeting has now been scheduled for Monday, February 11, at 3:00 p.m. in room 135 of the Cannon House Office Building. In addition to representatives of the governors and legislatures of the affected States, the steering group has invited (1) Lottery Commissioners, (2) representatives of trade associations interested in removing Federal restrictions on State lotteries, and (3) Congressmen (and/or their staff assistants) who have sponsored or co-sponsored legislation to exempt State-run lotteries.

It is the intention of the steering group to report on the status of legislative activity, organize an effort to obtain Congressional action, establish specifications for such legislation, and bring together States interested in intervening in the case of *New Jersey Lottery Commission v. U.S.*, which the Federal Communications Commission has announced it will appeal to the Supreme Court. The following is a summary of specifications that the steering group agrees would meet the minimal requirements of the States:

1. exemption from all Federal prohibitions on the use of the mails and FCC licensed radio and television stations with respect to the operation of State lotteries (except the sale or offer of sale of tickets outside the State) and the reporting of information about State lotteries;
2. exemption from Federal prohibitions against promoting or advertising via the mails within a State, and with respect to newspapers and magazines, between States to retailers and subscribers, and
3. exemption from Federal prohibitions against promoting or advertising State-run lotteries on FCC licensed radio and television stations located within a State, or in a State adjacent to the State promoting or advertising a State lottery if (a) the State in which the radio or television station is physically located also has a State-run lottery, (b) the State, or portion thereof, is within the broadcast area assigned to the station by the FCC, and (c) local businesses regularly purchase advertising from the station to reach their local customers.

The steering group recognizes that the above listed specifications do not completely eliminate Federal restrictions on the promotion and advertisement of

State lotteries, nor do they provide a special or beneficial treatment of State lotteries as some bills before the Judiciary Committee propose. Rather, they are based on three principles. First, that Congress should recognize the right of a State to conduct its lawful business, including a State-run lottery, without undue interference from the Federal government. Second, the right of a State to conduct a lottery should not infringe on the right of other States that do not conduct lotteries. Third, there should be no infringement of the constitutional guarantee of freedom of the press.

The steering group has concluded that there is a reasonable opportunity to gain Congressional action if sufficient interest is expressed to Representative Harold Donohue, Chairman of the responsible subcommittee of the House Judiciary Committee. To accomplish this purpose members of the Congressional delegations of affected States should be urged to personally contact Representative Peter Rodino, Chairman of the House Judiciary Committee, Representative Edward Hutchinson, the ranking minority member, and Representative Harold Donohue, Chairman of the Subcommittee on Claims and Governmental Relations. In view of important and time-consuming duties now before the Judiciary Committee it is only logical to assume that action on State lottery exemption legislation will be scheduled only if there is sufficient interest demonstrated. With fourteen States and the Virgin Islands now conducting lotteries, the affected States should be able to demonstrate the importance of this issue.

HERBERT A. ROBBINS,

*Director, Legislature of Michigan, Washington Office.*

JOHN P. SENSENIG,

*Director, Washington Office, Commonwealth of Pennsylvania.*

MARGARET HUGHES,

*Assistant Director, Washington Office, New York State.*

RENEE STEWART,

*Director, Washington, Office of the Governor, State of Connecticut.*

(Additional material furnished for the record by Mr. Herbert Robbins is as follows:)

JANUARY 3, 1973.

HON. WILLIAM G. MILLIKEN,  
*Governor of Michigan,  
State Capitol Building, Lansing, Mich.*

DEAR GOVERNOR MILLIKEN: Enclosed is a sampling of editorial comments on current U.S. Postal Service regulations prohibiting the mailing of newspapers containing lottery advertisements.

A resolution aimed at eliminating this antiquated and troublesome prohibition died in committee last year, but as the first article enclosed indicates, Representative Broomfield intends to revive it.

A change in the law would be beneficial for us, and would make our advertising more appealing to some papers. Some very large and very small papers are currently putting up with some headaches caused by the federal regulations, and there is really no necessity for such problems.

A note from your office to the Michigan delegation urging their support of Representative Broomfield's proposal (or any other) would be helpful. Enclosure of these clippings (or some of them) might put the issue in perspective for our members of Congress.

Your support of a similar change in the regulations of the Federal Communications Commission (FCC) rules prohibiting radio and television coverage of the lottery would also be helpful. Again, as in the mail regulations, the prohibitions are antiquated.

The Michigan Lottery cannot realize its full potential unless changes are made in federal laws originally designed without state-run lotteries in mind.

We have had fine support from the media, both print and electronic, in our early stages of development. We should not make their job more difficult by retaining these restrictions.

Your assistance in this matter, as always, will be appreciated.

Sincerely,

GUS HARRISON,  
*Commissioner.*

Enclosure.

Dear Congressman -----:

As it is well known Michigan has adopted a lottery and the first ten weeks of operation have indicated that it has been accepted overwhelmingly by the citizens of the State of Michigan. Such success, of course, accrues to the financial betterment of the state.

Although we are delighted with the initial response to the lottery, we are deeply concerned with the inability of the telecommunications media to be able to cover the Michigan lottery. Regulations of the Federal Communications Commission prohibit radio and television coverage of the lottery. Also, postal regulations prohibit mailing of newspapers which contain advertisements regarding state lotteries.

Last session Representative William S. Broomfield drafted legislation which would amend existing federal regulations to make advertisements with respect to state lotteries much easier. I urge your support in Representative Broomfield's proposal as well as other legislation which will allow the Michigan Lottery to maximize its full potential.

Your assistance in obtaining this favorable legislation for the citizens of the State of Michigan is gratefully appreciated.

Sincerely,

GOVERNOR.

STATE OF MICHIGAN BUREAU OF STATE LOTTERY,  
Lansing, Mich., January 25, 1973.

Representative WILLIAM S. BROOMFIELD,  
Rayburn House Office Building,  
Washington, D.C.

Lottery Commissioner Gus Harrison said today that a resolution introduced in Congress by U.S. Representative William S. Broomfield (R-Royal Oak) could assist the Michigan Lottery greatly in informing the public about the lottery.

Broomfield's resolution, co-sponsored by eight other Michigan Congressmen, would permit the transportation, mailing and broadcasting of advertising, information and materials relating to state-authorized lotteries.

Similar legislation was considered in Congress last year, Harrison said, but since that time the number of states operating lotteries has increased to 10 (Michigan, New York, Pennsylvania, Connecticut, New Jersey, New Hampshire, Massachusetts, and South Dakota have operational lotteries, and Maryland and Washington are preparing to launch lotteries.)

"With one-fifth of the states now operating lotteries and several others likely to get into the business this year," Harrison said, "Mr. Broomfield's resolution would appear to have a good chance of passage."

Harrison said passage of the resolution might take care of the following problems:

1. Prohibition against *broadcasting* the Weekly Lottery Numbers on radio or television. Currently, radio and television are highly restricted in terms of what they can say about the lottery. They cannot, for instance, broadcast the winning numbers or tell the public where to buy tickets. The Bureau of State Lottery somewhat reluctantly has purchased advertising time on CKLW radio in Windsor, Ontario, to be able to reach some of its audience in the Detroit metropolitan area.

2. Prohibition against *mailing* editions of newspapers containing lottery advertising or "promotion." This restriction has caused problems for the Bureau as well as licensed agents who would advertise the availability of lottery tickets if the restrictions were eliminated.

"In these and other areas," Harrison said, "we are faced with restrictions which were created before the initiation of legitimate state-run lotteries. We feel that the integrity of modern governmental lotteries has been adequately demonstrated in the 10 years since state-run lotteries have been in existence. The elimination of these restrictions now seems reasonable."

Harrison said that Elmer White, Executive Secretary of the Michigan Press Association has been especially helpful in dealing with existing advertising and news restrictions and is working for a change in those restrictions.

He said Broomfield's resolution (HR 1485) was co-sponsored by the following Michigan Congressmen: Rep. Garry Brown (R-Schoolcraft), Rep. Elford Cederberg (R-Bay City), Rep. Charles C. Diggs (D-Detroit), Rep. John D. Dingell (D-Dearborn), Rep. William O. Ford (D-Taylor), Rep. James Harvey (R-Saginaw), Rep. Lucien N. Nedzi (D-Detroit), and Rep. Donald W. Riegle, Jr. (R-Flint).

EDITOR: Your support of this resolution would be greatly appreciated. You may express your opinion by writing to Representative Broomfield or other Michigan legislators. Representative Broomfield's address is:

WASHINGTON, D.C., July 3, 1973.

In just six months, Michigan's lottery already has proven to be a big winner. Gross receipts total \$82 million with \$37 million of that going directly to the treasury as profit.

Another \$37 million went out as winnings to lucky ticket holders with the remaining \$8 million going for operating costs and commissions to ticket agents.

Yet, according to lottery officials, the Michigan lottery still has not reached its maximum potential as a money-maker for the state.

It won't as long as antiquated federal laws that prohibit sending newspapers through the mail that carry lottery information and ban the use of radio and T.V. for advertisements are wiped off the books.

These are the two most effective advertising techniques available to any business. Take away this handicap and there is little doubt that lottery ticket sales would skyrocket.

Last fall, I introduced legislation to repeal these outdated laws. Six months later prospects look good for action by the House of Representatives.

My bill has been sponsored or introduced by almost forty other members of Congress. Hearings very likely will be held this year although no firm date has been set. The Judiciary Committee already has notified the Justice Department to be prepared to submit testimony on my legislation.

Like an ostrich that sticks its head in the sand everytime it sees something it does not like, the Federal government seems to think that banning lottery advertisements in the media will make lotteries go away. Washington could not be more mistaken.

First of all, Washington has no business interfering with a legal and legitimate state agency such as the Lottery Bureau. The people of Michigan have every right to run and promote a legalized lottery as long as they do not try to solicit sales in other states.

Secondly, with or without advertising, the lottery is going to survive. By throwing up these senseless obstacles the Federal government is forcing Michigan officials to go to Canadian radio stations for advertising.

So far, the people of Michigan have sent \$100,000 across the border so that lottery details could be beamed back into the state. Our state advertising media cannot accept those ads thanks to Uncle Sam.

Newspapers have not fared too well either. Postal authorities in Pennsylvania warned that sending a newspaper through the mail with just the winning lottery number printed might be a violation. Fortunately, Michigan officials have not been as rigid.

Yet, the fear of prosecution hangs heavy over any newspaper and many are justifiably confused as to what they legally can and cannot do. If the law is vague, we should rewrite it; if it is unnecessary, it should be repealed.

Actually, these laws were never intended for state-run lotteries in the first place. They were aimed at the racketeers who rake in big profits through the numbers game. The numbers went underground and still flourish while legal lotteries suffer the consequences.

So, who is kidding who, Uncle Sam? Eight states already have lotteries and another two are about to begin with a half-dozen more giving the idea serious consideration. Some predict that before long every state will have its own lottery.

The fact is that state lotteries are the best weapons against the numbers racket. The state pays-off bigger winnings and it is much safer than dealing with the underworld.

Besides, the state gets badly needed revenues without resorting to taxes. In West Germany, they have nation-wide lotteries that have the full support of their Federal government. Profits from those lotteries were big enough to finance the multi-million dollar Munich Olympics.

It would be too much to expect Washington to give that kind of cooperation. The best we can hope for is that the gag on newspapers and broadcasters will be removed so Michigan can get on with the business of running a successful lottery.

Mr. DONOHUE. We will now hear from Mr. Edward Powers.

**TESTIMONY OF EDWARD J. POWERS, PRESIDENT, NATIONAL ASSOCIATION OF STATE LOTTERIES AND EXECUTIVE DIRECTOR OF THE NEW HAMPSHIRE SWEEPSTAKES COMMISSION**

Mr. POWERS. Mr. Chairman, members of the committee, I have a prepared statement that I had presented to your committee, Mr. Chairman.

Mr. DONOHUE. Without objection, it will be made a part of the record.

[The prepared statement of Edward J. Powers follows:]

**STATEMENT OF EDWARD J. POWERS, EXECUTIVE DIRECTOR, NEW HAMPSHIRE SWEEPSTAKES COMMISSION**

Thank you for this opportunity to express our views to your Committee. This is a singular occasion for the New Hampshire Sweepstakes because we have been trying to obtain a congressional hearing for ten years. In fact, our own Congressman Louis C. Wyman introduced the first bill in 1964 to amend the archaic federal antilottery laws. Our Congressman James C. Cleveland is the present sponsor of H.R. 13130. We are very pleased that our goals now have a chance to be realized. There is at least a glimmer of light at the end of the tunnel.

I speak to you today principally as Executive Director of the New Hampshire Sweepstakes Commission, and also as President of the National Association of State Lotteries. Both of these agencies have a common interest in the objectives being sought.

The heart of the problem relates to the inconsistent efforts of the federal government to enforce, in our present jet age, laws that were enacted in the stage-coach era. We are certain you will agree that laws must have the respect and support of the people if they are to be effectively enforced. We are all too familiar with the price society has paid in the past to learn this lesson. It is my purpose to illustrate the absurdity of the federal position in modern day society and to urge your committee to report favorably on the bills that would modify the present federal antilottery laws, as regards their application to sovereign States.

We strongly believe that the Federal and State Governments should be working closely together to ensure that State legalized lotteries are operated in the public interest. This can be accomplished only through full disclosure by the media of all activities and by joint cooperation as regards security, prize distribution and financial accountability. It is self-defeating for the Federal Government to restrict and impede this decision of sovereign States to raise supplemental revenue while at the same time it engages in revenue sharing and expects cooperative Federal-State efforts to combat illegal gambling activities inspired by organized crime. It makes little sense for the Federal laws to exempt pari-mutual racing and to deprive the use of the mails, radio and television to State lottery programs. The absurdity is manifested by the nightly broadcast of daily double results at dog and horse tracks while the public is denied the right to be informed of the weekly lottery number.

There are many instances of the unfairness with which the Federal antilottery laws have been administered. We have good reason to believe that the Federal Government took unusually harsh positions against the New Hampshire Sweepstakes program to ensure its failure and to discourage other States from adopting this concept of raising revenue. New Hampshire was not treated as a sovereign

State but as an orphan and stepchild in the Federal system. States that have entered the lottery business in the last few years have not run the same gauntlet. Of course, we realize that the pioneer must always chart the paths and bear the burdens of the unexplored. The main reason the program survived was that the people wanted it.

Lest you feel that I am overdramatizing the early days of this singular endeavor, I would like to share with you a few of our experiences in trying to pierce the iron curtain that was being erected around our State.

In the early part of 1964 the U.S. Attorney in Boston warned Boston newspapers not to carry our list of prize winners in their mail or out-of-State editions. He alerted them to the broad restrictions contained in Sections 1301 and 1302 of Title 18, U.S. Code, which were enacted prior to the turn of the century. His admonition was given in spite of the fact that newspapers for years had run lists of Irish Sweepstakes winners with little or no interference as a result of a favorable opinion given by Postmaster General James Farley in 1934. The April 2, 1934 edition of "Time" gives an interesting account of the fight between New York newspapers and the U.S. Post Office regarding the listing of Irish Sweepstakes winners. It then goes on to say:

"Democratic Postmaster Jim Farley, unlike his predecessor, has a sporting background. He likes sporting people, goes to races and fights. For nearly ten years he ran the New York State Boxing Commission. Last fortnight Postmaster Jim Farley took steps to make sure that there would be no dearth of news about winners on this year's Grand National by announcing that the Post Office would follow 'a liberal policy' in constraining the statute about lottery information. That let down the bars. Even the New York Sun forgot its hidebound caution long enough to print the list of U.S. ticketholders in the Irish Hospital Sweepstakes." (Exhibit 1)

You and I know the rest, and for years thereafter we all read with interest the stories about the Irish Sweepstakes winners. When we asked the Post Office officials to explain this inconsistency in their policy, they replied they could not find Mr. Farley's statement but that in any event it was merely an "opinion" and not a "ruling". The fact that Mr. Farley's "opinion" had changed the interpretation of the mail statute for 30 years apparently made no difference. One thing seems clear, however, namely: Officials of the Irish Sweepstakes apparently had more influence in Washington than officials of the New Hampshire Sweepstakes. (Exhibit 2)

As a result of the U.S. Attorney's warning, Boston and New Hampshire newspapers related their mail and out-of-State editions to delete lists of our prize winners. In the early years, many newspapers declined to accept ads or print lists of prize winners as a news story even in their local editions. As the years went by, some newspapers began printing lists of winners as news stories in all of their editions. Although most of them today remove ads from their mail editions, we notice ads in Boston newspapers distributed in N.H. Postal Inspectors have contacted newspaper editors on frequent occasions to threaten prosecution and possible loss of mail privileges where lists of prize winners and lottery ads have appeared in mail editions. These visits continue to this day. It is unfortunate this valuable investigative time of experienced Postal Inspectors has been used for this purpose rather than in combatting serious criminal violations.

This type of enforcement makes a mockery out of the American system of criminal justice. If alleged violations had occurred, they should have been referred to the U.S. Attorney for an opinion as to prosecution, or other appropriate action. In the absence of such action, there should be no further harassment of newspapers by Postal Inspectors. U.S. Attorneys are declining prosecution on thousands of technical and alleged violations of Federal law every day across the Nation and that ends the investigation. Some newspapers succumbed to the threats while others have been determined to exercise their freedom of the press rights guaranteed by the 1st Amendment to the Constitution. This entire matter is very mystifying. In the first place, we can find no court case where a newspaper has been prosecuted for mailing its editions with lottery prize winners or advertisements and this statute (Section 1302—Title 18, U.S.C.) has been on the Federal books for almost a century. In the second place, it is hard to understand the attitude of the press in this matter. In any other field, if the press were told by the Federal Government it could not print something it felt the public had a right to know, the uproar would be deafening. The current situation has become so confusing that it is impossible to describe accurately the policy from

State to State. It depends on the attitude of the local Federal officials. The Federal position seems to change and adjust with the ease that a chameleon changes color, but is as hard to pin down as mercury on a marble table.

Another example of the double standard that has existed involved a plan of merchants in Portsmouth, New Hampshire, to give away N.H. Sweepstakes tickets to their customers in the summer of 1965. There was nothing for the customers to purchase and all they had to do was register for a drawing. They were told by the Postmaster and a Post Office official in Boston that this information could not be included in their ad since this would be promotion of a lottery.

We had learned that in 1962 and 1963 the Greater Cincinnati Gasoline Dealers Association in Cincinnati, Ohio, did virtually the same thing in a promotional effort to advertise and give away Irish Sweepstakes tickets. Officials of the Association wrote to the Post Office to obtain clearance in connection with the ads to appear in newspapers. The proposal was approved on the basis that there was nothing to buy and that their promotion appeared to be acceptable for mailing under the terms of the postal lottery statute. In any event, full page ads of this promotion were published in the Post and Times-Star, Cincinnati, Ohio, on several occasions. When we complained to the Post Office about this discrimination against the New Hampshire Sweepstakes, the General Counsel declined to answer our specific questions but instead quoted us sections of the Federal mail statute. This was another case where no satisfaction was received and Portsmouth newspapers reluctantly declined to publish the ads. (Exhibits 3 and 4)

In 1964-65 the Federal 10 percent tax on lotteries was under review by Congress. The Internal Revenue Service had ruled that New Hampshire must pay this tax and purchase tax stamps for all persons selling Sweepstakes tickets. This was in spite of the fact that the basic purpose of the statute was directed toward illegal forms of gambling. An incongruous situation existed at the race tracks where State employees selling Sweepstakes tickets had to exhibit tax stamps, whereas employees of the race track selling pari-mutual tickets did not.

Prior to the action taken by Congress in July 1965 to exempt a State Sweepstakes associated with a horse race from the tax, Secretary of the Treasury, Henry A. Fowler, in a letter dated June 5, 1965 to Governor John W. King, stated as follows:

"The Treasury Department believes that an exemption from the wagering taxes for the New Hampshire Sweepstakes program would raise two very basic issues. First, the various Federal excise taxes have historically been applied equally to State as well as private activities. We do not see any basic reason for departing from this standard in this case. To do so would set a precedent that could well affect other areas in the future.

"The second fundamental issue involves the social and law enforcement implications that would flow from any Federal encouragement of lotteries. Although New Hampshire is presently the only State with a lottery, its success could well lead other States to consider adopting lotteries. An exemption for the New Hampshire lottery will have then established a precedent for giving the same treatment in other cases even though the lotteries may not be run well or may involve the use of other than State employees to carry out some of the functions, such as ticket selling. Moreover, law enforcement agencies advise us that organized crime—with the attendant enforcement problems—is very likely to enter the picture unless the lotteries are tightly controlled by the States. As indicated above, such tight control may not be universal in the future as lotteries are adopted by other States." (Exhibit 5)

But attitudes changed by 1973. On September 5, 1973 a conference of lottery officials was held in Washington, D.C. in the offices of the Internal Revenue Service with Commissioner Donald C. Alexander. The purpose of the conference was to determine whether the lottery States were properly following the requirements of the Federal Wagering Tax Statute of using horse races to determine ultimate prize winners. Whereas Secretary Fowler had previously concerned himself with the "social and law enforcement implications of lotteries", Commissioner Alexander declared that the position of the Federal Government was one of neutrality on the moral and social issues, and that the Internal Revenue Service was only concerned with its responsibility in administering and interpreting the laws under its jurisdiction.

Believe it or not, all of the lottery States do their drawings in part against post positions of races previously run at race tracks. This is done in connection

with the weekly lottery number or the final phase of drawings where the major prizes are awarded. It annoys and confuses the public. The people just cannot understand why a sovereign State must go through a farce of this type in order to conform with a statute that has lost relationship with the real world. Of course, the U.S. Supreme Court has declared this wagering tax statute as unconstitutional as far as illegal forms of gambling are concerned. Incidentally, we are still waiting to hear from IRS as to any decision on the conference that we held in September 1973.

Another Federal discrimination against the New Hampshire Sweepstakes occurred in August 1964. An employee of a newspaper, Anthony Fabrizio, traveled to Keene, New Hampshire from Elmira, New York, to purchase 75 tickets for himself and friends. He returned to Elmira, N.Y. with the acknowledgements of purchase where he was arrested by the FBI and charged with violation of the Interstate Translation of Wagering Paraphernalia statute. The Federal indictment was dismissed by the Federal judge on the basis that the statute was not intended for application against a legalized lottery such as existed in New Hampshire. The case was appealed to the U.S. Supreme Court by the Department of Justice and the U.S. Supreme Court in effect ruled that the statute could apply under certain circumstances. This man was tried in Rochester, New York, in October 1968 and he was acquitted by a trial jury. When he was arrested in 1964, there was nationwide publicity and our sales were seriously damaged. Very little attention was given to his acquittal four years later.

In spite of the millions of tickets that have been taken across State lines during these years, this man is the only one who has been singled out for prosecution under this Federal statute as far as activities of State legalized lotteries are concerned. After New Jersey started in the lottery business, many articles appeared in the newspapers describing how persons from Pennsylvania were buying tickets in large blocks in New Jersey and taking them back to resell. To our knowledge, no Federal prosecutive action was ever taken. Things had gone too far to hold back the tide.

The man from Elmira is a bitter citizen today. He doesn't feel his Government treated him fairly in that it did not use the same standards for others. There was no question about his having transported acknowledgements across State lines, but the jury obviously did not feel his actions warranted a Federal conviction.

New Hampshire has also been the victim of discrimination in connection with radio and television broadcasts. In 1963 when New Hampshire radio stations requested guidelines from the FCC, it advised them that promotion and advertising of a lottery were prohibited and even cautioned them about broadcasting "news" stories. It gave as an example of "news" a story that a person was denied his prize because of his race. With this as a standard, we have had a virtual blackout. (Exhibit 6)

In 1964 and 1965 the New Hampshire Sweepstakes race was nationally televised but the announcer was prohibited from even mentioning the word "Sweepstakes." He was also prohibited from interviewing major prize winners who were present at the track and who had won prizes of \$50,000 and \$100,000. After other States entered the lottery business, the FCC modified its regulation to permit bonafide news stories as well as interviews with prize winners and lottery officials. But this did not remove the fear of our local stations as regards the possible loss of their licenses because the 1st Amendment freedoms had already been chilled.

For example, in August 1971 a drawing was held at the Plymouth State Fair. The Governor of the State was present to award a \$50,000 check to a New Hampshire resident who had just won this prize. A reporter from our only commercial television station was at the Fair with his camera. He admitted this was the news story of the day at the Fair but declined to take film of the presentation due to FCC restrictions. The following day a network program televised the luncheon of a Millionaire Club in New Jersey. The winners were interviewed at length about the prizes they had won in the New Jersey lottery and what they intended to do with their winnings. As a result of this type of discrimination, we complained to our TV station as well as to FCC. All we could obtain in response were some legalisms. No real effort was made by FCC to resolve the problem even though a sovereign State was protesting the manner with which FCC policies were interpreted and applied in practice. (Exhibit 7)

A Sweepstakes drawing is held every Friday morning at a preannounced location in New Hampshire at which prizes from \$5,000 to \$100,000 are awarded. Invitations to radio stations and our one TV station to appear are declined on the basis that their Washington lawyers have advised them to refuse to broadcast lottery information even though there are permissible areas for radio and TV stations to do so. The FCC has couched these permissible areas in such terms that stations are still fearful of even making a judgment on an obvious news story. On November 19, 1973, the David Susskind program devoted an entire hour to interviewing persons who had won \$1 million in such lottery States as New York, New Jersey and Pennsylvania. We have been unable to obtain this type of coverage. Our small stations do not have the clout of the networks. As a result of the Susskind program, we directed a strong letter of protest to the Chairman of the FCC dated December 4, 1973. As of this date, we have had no reply to this letter. (Exhibit 8)

It has been our desire to work closely with the Federal Government and to design a program that could function effectively within the framework of Federal restrictions. This is one of the reasons we initially decided on the name and address feature whereby all tickets were retained by the Sweepstakes Commission. We felt this would eliminate possible interstate problems and enable us to identify our prize winners without depending on out-of-State newspapers to publish winning numbers. We realized that Federal officials were concerned about racket penetration and escalation of law enforcement problems. We shared this concern and every decision we made took these factors into account. We believe that the degree of understanding and cooperation on the part of Federal officials in this entire matter is best illustrated by a letter we received from Assistant Attorney General Fred M. Vinson, Jr. of the Department of Justice dated September 23, 1966. We had asked him for assistance in resolving a question about the Federal antilottery statutes. He replied as follows:

"While we sincerely appreciate the interest you have shown in this matter, nonetheless, the Department of Justice is not authorized to give specific legal advice to persons not connected with the Federal Government. We are, therefore, unable to comply with your request for an advisory opinion." (Exhibit 9)

It is interesting to note that while the Department of Justice would not give advisory opinions to a State agency, the U.S. Attorney in Boston gave advisory opinions to newspapers about the mail statute. Also, the U.S. Post Office gave advisory opinions to the Greater Cincinnati Gasoline Dealers Association. In other words, apparently the U.S. Government gives advisory opinions on a selective basis.

Ironically, shortly before we received Mr. Vinson's letter, the Internal Revenue Service had asked us to cooperate by furnishing lists of prize winners on a weekly basis and sending Form 1099 to major prize winners each year. Cooperation can be strained when it is a one way street. It is suggested that possibly your Commission may wish to examine the quality, character and nature of Federal-State relationships. We think our founding fathers intended that the State and Federal Governments work in harmony in the public interest on all matters of mutual concern.

In contrast to the Federal attitude towards State lotteries, it is interesting that the Department of Interior has been operating a lottery of its own in awarding oil and gas leases. This was the subject of an extensive article in the Wall Street Journal on March 27, 1967. In the article, a Post Office Department Attorney is reported as admitting that these oil and gas lease drawings, if conducted under any other auspices, would come within the Federal restrictions. This type of double standard does not enhance the Federal image for fairness and objectivity. (Exhibit 10)

There are other examples of this total problem but these illustrations should provide sufficient basis for concluding that the Federal policy on the mails, radio, television and interstate transportation of lottery tickets speaks with many tongues.

The New Hampshire Sweepstakes celebrated its 10th anniversary last month. During these ten years it has distributed close to \$18 million to the State school districts and many millions more into the State's economy in payments to New Hampshire prize winners, payroll, banks, sales outlets and suppliers of equipment and services. Those opposed to this concept of raising revenue claimed that the program would bring crime, racket penetration, counterfeiting of tickets and

that it would be a tax on the poor. We have proved that none of these dire predictions had any merit. We have demonstrated that a State can operate a legalized lottery with the safeguards and internal controls necessary to prevent infiltration by organized crime and, at the same time, maintain public faith and confidence. The last time the people of New Hampshire voted on the Sweepstakes question, the count was almost 7 to 1 in favor of the continued sale of tickets.

Because we have been denied the principal channels of communication, this concept of raising revenue has not as yet been truly tested in the marketplace. You are requested to bear this in mind in your deliberations about the revenue produced by these programs. The full revenue potential has, obviously, not been realized. We have a consumer product that must be merchandised and prompted to maintain public enthusiasm and interest as do all other consumer products. We cannot fully accomplish this under the present restrictions. In addition, we have many unclaimed prizes due to the communication gap with the public as well as increased administrative costs.

In contrast with the relationship with federal officials, the States have been cooperating fully with each other. We have formed the National Association of State Lotteries which now comprises ten States and two Provinces in Canada. It is anticipated that there will be three more States in the Association within the next few months. We regularly exchange information with regard to security, promotion and marketing, prize schedules and financial controls. We feel that we all benefit through this type of close relationship and we learn from each other. We hope that through the vision and efforts of your Committee the same healthy relationship will some day exist with the federal government.

There are many bills now pending in Congress to amend the federal antilottery laws to permit sovereign States free access to interstate channels of communication, including the use of the mails, radio and television. The participation of millions of citizens each week in legalized State lotteries makes it virtually impossible for the current federal lottery laws to be fairly and impartially enforced. The time has come for Congress to recognize the need for change and to bring these outmoded laws into the 20th century. We hope that Congress will take prompt and favorable action to reconcile the many inconsistencies with the realities of present day society.

#### EXHIBITS

1. Time magazine, April 2, 1934—"Liberality on Lotteries." Letter dated November 10, 1966 from Solicitor General Thurgood Marshall to the U.S. Supreme Court, summarizing the enforcement activities of the federal government as regards Irish Sweepstakes tickets. This resulted from a request to the Department of Justice from Chief Justice Earl Warren during the case of United States vs. Fabrizio. This exhibit is included to illustrate the paucity of federal prosecutive action over the years relating to the Irish Sweepstakes.

2. Letter dated October 12, 1966 from Saul J. Mindel, Assistant General Counsel, Post Office Department, Washington to Edward J. Powers, Executive Director, New Hampshire Sweepstakes Commission. Re: Liberal policy adopted by Postmaster James Farley.

3. Letter dated August 4, 1965 to Saul J. Mindel, Assistant General Counsel, U.S. Post Office Department, Washington, from Edward J. Powers, New Hampshire Sweepstakes Commission. Re: Greater Cincinnati Gasoline Dealers Association lottery and proposed Portsmouth promotion.

4. Letter dated September 3, 1965 to Edward J. Powers, New Hampshire Sweepstakes Commission from Saul J. Mindel, Assistant General Counsel, U.S. Post Office Department, Washington. Re: Portsmouth Chamber of Commerce ticket prizes and Greater Cincinnati Gasoline Dealers Association lottery.

5. Letter dated June 5, 1965 to Governor John King (New Hampshire) from Henry H. Fowler, Secretary of the Treasury, Washington. Re: Exemption from Wagering Taxes.

6. Letter dated October 1963 to U.P.I. Broadcasters Association, Portsmouth, N.H., from Ben F. Waple, Secretary, Federal Communications Commission, Washington, Re: Standard set by FCC for Sweepstakes "News."

7. Letters relating to Plymouth (N.H.) Fair:

August 31, 1971, Memo from Edward J. Powers to N.H. Attorney General Warren B. Rudman, re: WMUR-TV handling of news relating to Sweepstakes program.

August 31, 1971, Letter from Edward J. Powers to Sam Phillips, General Manager, WMUR-TV, re: handling of news relating to sweepstakes program.

September 1, 1971, Letter to Dean Burch, Chairman FCC from Edward J. Powers relating to WMUR-TV handling news of Sweepstakes program.

September 2, 1971, Letter to Sam Phillips, WMUR-TV regarding bona fide news stories relating to Sweepstakes program.

September 15, 1971, Letter to Edward J. Powers from Sam Phillips, WMUR-TV concerning their policy, re: broadcasting news referring to Sweepstakes program.

September 20, 1971, Letter to Sam Phillips, WMUR-TV, from Edward J. Powers, re: policy regarding Sweepstakes news.

October 4, 1971, Letter to Edward J. Powers from Sam Phillips WMUR-TV regarding Advisory Opinion relating to broadcast of Sweepstakes news.

October 1, 1971, Letter from law offices of Cohn & Marks, Washington, D.C. to Ben F. Waple, Secretary to FCC, requesting an Advisory Opinion as to extent of broadcast re: lottery drawings. (Enclosure with October 4, 1971 letter to Edward J. Powers.)

December 15, 1971, Letter to Edward J. Powers from Dean Burch, FCC re: Sweepstakes news permissible for broadcast.

8. December 4, 1973, Letter to Dean Burch, FCC from Edward J. Powers, re: David Susskind program with Millionaire Lottery Club members on November 19, 1973.

9. Letter dated September 23, 1966 to Edward J. Powers, from Fred M. Vinson, Jr., Assistant Attorney General, re: inability to provide an advisory opinion.

10. Wall Street Journal article dated March 27, 1967, re: "Uncle Sam's Lottery".

11. Letter to Rosel H. Hyde, Chairman, Federal Communications Commission, Washington, D.C. dated November 12, 1968, challenging FCC statement to the effect that there was clear congressional intent to cover all lotteries whatever their source, "because of their harmful effects upon the public." (Exhibit 11)

12. Letter dated December 5, 1968 from Rosel H. Hyde, Chairman, FCC, in response to letter of November 12, 1968. This letter makes reference to objective of FCC "to suppress the use of interstate communication facilities in aid of illegal gambling." (Exhibit 12)

13. Letter dated November 12, 1968 to Congressman Louis C. Wyman, Washington, D.C., advising him of correspondence with FCC. (Exhibit 13)

14. Letter dated November 27, 1968 to Attorney General Ramsey Clark, Washington, D.C. about purchasing copies of New York Daily News in New Hampshire which contained lists of prize winners of the New York lottery. (Exhibit 14)

15. Letter dated December 20, 1968 from the Assistant Attorney General, Fred M. Vinson, Jr., responding to letter from the Attorney General dated November 27, 1968 where he stated that, "The Department of Justice cannot render advice as to whether a particular activity involves criminal activity." (Exhibit 15)

16. Letter dated January 2, 1969 sent to all major newspapers in New Hampshire setting forth opinion given by Assistant Attorney General Fred M. Vinson, Jr. as to publicizing news stories about the New Hampshire Sweepstakes prize winners. (Exhibit 16)

17. Letter from Harold E. Clancy, President and Publisher, Boston Herald-Traveler Corporation, Boston, Massachusetts, dated January 29, 1969 in answer to a request from the New Hampshire Sweepstakes Commission to list prize winners as news stories. Mr. Clancy's remarks illustrate the confusion that has prevailed about what is permissible for publication. This letter also confirms the contact by the U.S. Attorney in Boston in 1964 to warn newspapers about publishing lists of New Hampshire Sweepstakes winners. (Exhibit 17)

18. Letter dated March 28, 1969 to Congressman Louis C. Wyman, Washington, D.C. which referred to an article in the Chicago American which listed the names and numbers of Irish Sweepstakes winners. This issue of the paper apparently had no special handling and went through the mails and across State lines. This letter to Mr. Wyman also refers to a March 26, 1969 broadcast over Channel 7 WNAC Boston in which pictures were shown of a woman who won \$125,000 in the Irish Sweepstakes. (Exhibit 18)

19. Letter dated May 15, 1969 to Congressman Louis C. Wyman, Washington, D.C. which attached an Associated Press story about wives of U.S. Senate leaders

collecting their Kentucky Derby winnings by mail. The story states that a Post Office Department spokesman said that mail collections of this nature are a violation of the federal lottery law, but that such collections are common. Further, that action is taken only in those cases where there is a complaint or repeated violations. (Exhibit 19)

20. Letter dated October 1, 1969 to the Chairman, Federal Communications Commission, Washington, D.C. about broadcast on September 29, 1969 of major prize winners in the New York Lottery on the Merv Griffin Show, a nationally televised CBS program. (Exhibit 20)

21. Letter dated October 31, 1969 from Rosel H. Hyde, Chairman, FCC, responding to our letter of October 1, 1969. Mr. Hyde's letter again illustrates the confusion between what is a "bona fide news story" and what constitutes "announcements which directly promote a lottery." (Exhibit 21)

22. Letter dated November 12, 1964 to Assistant Attorney General Will Wilson, Washington, D.C., asking for clarification as to publication of news stories about the New Hampshire Sweepstakes. (Exhibit 22)

23. Letter dated November 25, 1969 to Congressman Louis C. Wyman, Washington, D.C. with regard to possible meeting with Assistant Attorney General Will Wilson listing possible items for discussion. (Exhibit 23)

24. Letter dated December 2, 1969 to Editor of the Wall Street Journal, New York City, enclosing circular advertising U.S. Government Public Drawing to award oil and gas leases on public lands. (Exhibit 24)

25. Editorial dated January 6, 1971 in Portsmouth Herald entitled: "Let's Get It Straightened Out." (Exhibit 25)

26. Editorial in Portsmouth Herald dated June 21, 1972 captioned, "Congressman Harrington's Bill On Lotteries Should Be Expedited." (Exhibit 26)

27. Editorial dated June 23, 1972 in Laconia, New Hampshire Citizen captioned, "Anti-Lottery Farce." (Exhibit 27)

28. Letter dated March 13, 1974 from James A. Higgin, Advertising Manager, The Connecticut Valley Reporter, Lebanon, New Hampshire, to U.S. Attorney William Deachman, Federal Building, Concord, New Hampshire, in which he complains about unfair enforcement of lottery mail statute by U.S. Post Office. Mr. Higgin had been contacted by a Postal Inspector about mailing editions of The Connecticut Valley Reporter containing lottery information. (Exhibit 28)

29. Memorandum which was posted on the bulletin board at WMUR-TV (Channel 9), Manchester, New Hampshire, reading as follows:

"There is to be no mention what-so-ever on the air about the New Hampshire Sweepstakes . . . it's progress, promotions or winners, etc.

"An FCC regulation prohibits this and although we are very sympathetic to the cause of the Sweepstakes Commission, our hands are tied and our license in jeopardy should we violate this ruling.

"Please read and initial."

Copy: Sam Phillips.

Initialed by: Ed Williams, Fred Kocher, Tom Bonnar, Ron Amadon, and Bruce Graham.

Sam Phillips is the General Manager of WMUR, New Hampshire's only commercial TV station, and Ed Williams was the News Director.

30. April 15, 1974 Editorial in Manchester Union Leader (New Hampshire) captioned: "PROGRESS DESPITE ADVERSITY"

[From Time, Apr. 2 1934]

#### EXHIBIT 1

##### LIBERALITY ON LOTTERIES

Three years ago a Buffalo, N.Y. autoworker named Clayton Woods bought an Irish Hospital Sweepstakes ticket on Gregalach in the Grand National Steeplechase at Aintree. When Gregalach came in second, Clayton Woods was richer by \$886,360. Cried he: "I'll buy that horse Gregalach and keep him in a velvet stall."\*

To most newspaper readers, stories like Clayton Woods' are of lively interest. Nonetheless, it looked for a time as if the U.S. Press might not be allowed to

\*Instead of buying Gregalach a velvet stall, Clayton Woods retired, bought himself a Canadian summer cottage, a fine house near Buffalo, where he was living last week. How much money he has left, he refuses to say. He often visits the factory where his old friends work, owns a shabby car in which he goes on solitary hunting trips.

print this most familiar form of human interest feature. After the Derby of 1931, when more stories about lottery winners burgeoned in the newspapers, Republican Postmaster General Walter Folger Brown pointed a monitory finger at a Federal statute which makes lottery information unailable, under penalty of \$1,000 fine and two years imprisonment. Press Associations, always quick to bow to Washington orders, promptly ceased handling lottery news. In November, the New York *Daily News* defiantly printed the names of ticket holders in a lottery on the Manchester Handicap. Nervously the *Times* and *Herald Tribune* followed suit in editions which did not pass through the post office. For the next two years papers that carried stories about lottery winners were careful not to offend the scruples of Postmaster Brown by omitting them in mail editions.

Democratic Postmaster General Farley, unlike his predecessor, has a sporting background. He likes sporting people, goes to races and fights. For nearly ten years he ran the New York State Boxing Commission. Last fortnight Postmaster General Farley took steps to make sure that there would be no dearth of news about winners on this year's Grand National by announcing that the Post Office would follow a "liberal policy" in construing the statute about lottery information. That let down the bars. Even the New York *Sun* forgot its hidebound caution long enough to print the lists of U.S. ticket holders in the Irish Hospital Sweepstakes. Last week, when Miss Paget's Golden Miller won the Grand National at Aintree (see p. 40), U.S. newspaper readers once more enjoyed in full the vicarious pleasure of seeing someone else win a lot of money.

In Woodside, L.I., lived the biggest U.S. winner—Mrs. William Meringer, whose ticket on Golden Miller was worth \$150,000. She got her ticket, she said from her Austrian husband. William Meringer told an unlikely story of how he had come by it. Into the Bronx restaurant where he worked as chef there had walked one evening a sleek fat man who had called for a dish of *hasenpfeffer*, Chef Meringer's specialty.<sup>1</sup> After he had eaten three plates of it, he sent for the cook, gave him the sweepstakes ticket for a reward. Chef Meringer said he planned to send his son William to college.

In Baltimore, reporters discovered a grocery store proprietor named David Dussell who had won \$3,400 and explained why he was not surprised at his good fortune: "Two years ago I won \$5,700 at Bowie on a parlay ticket and in 1905-1 I won the same amount."

In Marblehead, Mass., William H. Sweet, 61-year-old fisherman who had won \$50,000, and looks like Calvin Coolidge, said he did not know what he would do with the money. Asked by a photographer to smile, Fisherman Sweet snarled: "Well, you'll have to wait a minute. I can't get one started. . . ."

In Wollaston, Mass., Dentist Peter R. Mackinnon, when told he had won \$3,400 continued to drill a patient's tooth. Said he. "I've been buying tickets on every-thing for twelve years."

Ralph Mazzarello, porter in Filene's Boston Store, won \$37,500. Said his mother, "If Ralph spends the money for a trip to Italy that would be the finish. There wouldn't be any more money."

OFFICE OF THE SOLICITOR GENERAL,  
Washington, D.C., November 10, 1966.

Re: United States v. Fabrizio (No. 47).

HON. JOHN F. DAVIS,  
Clerk, Supreme Court of the United States,  
Washington, D.C.

DEAR MR. DAVIS: At the oral argument of the above cause, the Chief Justice requested a report of the number of federal prosecutions based on the mailing or transportation of Irish Sweepstakes tickets during the past five years. This letter is submitted in response to this request, and I would appreciate it if you would circulate copies to each of the Justices.

Our records are not maintained in such a fashion as to reveal readily the facts underlying our prosecutions. Consequently, accurate statistics on the number of prosecutions relating to the Irish Sweepstakes are not available. In order to respond to the Chief Justice's inquiry within a reasonably short time, it has

<sup>1</sup> His *hasenpfeffer*: Use cotton-tail rabbits. Chop meat into quarters. Put meat in pickling and leave for three days. Cut onions in small pieces and put them in pan until they are golden brown. Add flour. Brown the meat in separate pan, then add to onions and flour. Add "stock." Stir in a small amount of strained tomatoes. Remove the meat from the pan. Strain the gravy. Thicken it with sour cream and flour.

been necessary to rely on the recollections of persons having general supervision of the enforcement of the relevant statutes.

In this fashion, we have learned of two prosecutions in the last five years. One arose out of the seizure of 1,800,000 Irish Sweepstakes tickets from the steamship *Irish Elm* in Norfolk, Virginia, in 1963. Two persons were tried for attempting to smuggle the tickets into the United States, but the jury was unable to agree on a verdict and the case was not retried. *United States v. Thomas V. Sanderlin and E. A. Knewstep*, N.D. Va., Crim. No. 12-695. In September 1962, three persons were indicted by a federal grand jury in New Jersey for unlawfully importing Irish Sweepstakes tickets. The case was dismissed after the defendants were tried in a State court for offenses growing out of the same transaction, *United States v. Frank J. Gardner, et al.*, D. N.J., No. 427-62.

The Post Office Department has informed us that there were a number of prosecutions of dealers in Irish Sweepstakes tickets in the 1950's but that, since then, the Sweepstakes' method of distribution seems to have changed. That Department advises that Irish Sweepstakes tickets are characteristically sent from abroad in sealed, first-class wrappers, without a return address. When the Post Office has reason to believe that a letter or package from abroad contains prohibited matter, the addressee is asked to consent to the opening of the letter or package so that it may be examined for customs purposes. If he refuses to do so, the mail is returned to the country of origin as undeliverable. In New York City alone, in May 1966, 45,000 pieces of mail were so handled. For June 1966, the figure was 25,000. The postal authorities believe that a substantial portion of such undeliverable mail contains sweepstakes tickets of foreign countries including Irish Sweepstakes tickets.

Many Irish Sweepstakes tickets, however, are sent from abroad in such small quantities that the sealed wrapper gives no clue as to the contents. On occasion, such packages are delivered to persons who did not solicit the tickets. When, through complaints by the addressees or by other means, the Post Office obtains the foreign address to which (according to the enclosed material) money for the tickets is to be sent, a "lottery order" is issued, directing that mail to that address not be forwarded out of the country. There are presently 716 lottery orders outstanding related to the Irish Sweepstakes.

Sincerely,

THURGOOD MARSHALL,  
*Solicitor General.*

EXHIBIT 2

POST OFFICE DEPARTMENT,  
OFFICE OF THE GENERAL COUNSEL,  
Washington, D.C., October 12, 1966.

Mr. EDWARD J. POWERS,  
*Executive Director, New Hampshire Sweepstakes Commission,*  
Concord, N.H.

DEAR MR. POWERS: This will acknowledge your letter dated September 15, 1966, in which you refer to a "liberal policy" Postmaster General James A. Farley supposedly adopted in March of 1934, regarding lottery information.

Our files contain no record of the said "ruling"; it is understood that what it actually consisted of was an oral statement by Mr. Farley to the Press, shortly after taking office, and having to do with reports of Irish Sweepstakes winners.

The position which the Department has consistently taken over the years is that announcements of lottery winners, whether the Irish Sweepstakes or any other lottery, are nonmailable under the terms of the law, 18 U.S.C. Code § 1302 (Postal Manual 124.51). This is reflected in the enclosed copy of an opinion given by this office to a Miss Izora Scott, in 1938, as well as in the several notices which have been published in the Postal Bulletin, on the subject, copies of which are also enclosed.

For The General Counsel:

Sincerely yours,

SAUL J. MINDEL,  
*Assistant General Counsel Mailability Division.*

Enclosures.

AUGUST 4, 1965.

MR. SAUL J. MINDEL,  
*Assistant General Counsel, U.S. Post Office Department,  
 Washington, D.C.*

DEAR MR. MINDEL: On August 5, 6, and 7 the merchants of Portsmouth, through the coordination of the Portsmouth Chamber of Commerce, plan to give away New Hampshire Sweepstakes tickets to shoppers as a means of stimulating business. It was the intention of the Chamber of Commerce to mail the attached "Special Notice" to the merchants describing how the promotion would work. There was no requirement that the shopper purchase anything in order to participate. An opinion was requested of Mr. G. R. Kenney, Superintendent, Mailing Requirement Section, Boston, Massachusetts, as to the mailability of this promotional circular. Mr. Kenney expressed the opinion by his memo dated July 13, 1965, "that this promotion is in violation of (18 U.S. Code 336) since the circular contains reference to a lottery and, therefore, indirectly advertises same. The prize of a sweepstakes ticket represents a chance or interest in, or dependent upon the event of a lottery."

Your attention is directed to correspondence you had in 1962 and 1963 with Mr. John "Mike" Kunnen, President, Greater Cincinnati Gasoline Dealers Association, 3410 Glenway Avenue, Cincinnati 5, Ohio, in connection with a promotional scheme to advertise and give away Irish Sweepstakes tickets. The winners were decided by drawings of license numbers of automobile owners in and around Hamilton County. I have in my possession full page advertisements of this promotion that were published in the Post and Times Star, Cincinnati, Ohio on several occasions, including June 10, 1963, as well as the advertisement of "winning auto license numbers drawn for June in the Irish Fortune Sweepstakes" of July 3, 1963. You will recall that Mr. Kunnen had considerable correspondence with you regarding this promotion. On November 30, 1962 you advised Mr. Kunnen as follows:

"The proposed advertisement which you enclose contains the language, 'IT'S FREE . . . NOTHING TO BUY . . . \* \* \*'. Prizes will be awarded those whose safety lane ticket numbers are posted at any participating service station.

"Inasmuch as it is understood that the opportunity to check one's number, as well as the selection of the winning numbers, is in no way contingent upon a purchase or the furnishing of any other consideration, matter relating to this promotion appears to be acceptable for mailing under the terms of the postal lottery statute, 18 U.S. Code 1302 (Postal Manual 124.51)."

It further appears that your chief concern was whether the U.S. mail would be used to consummate the purchase of the Irish Sweepstakes tickets for the winners. Your letter of January 7, 1963 to Mr. Kunnen stated,

"I note that the United States mails will not be used to consummate any transaction with regard to the Bonus Prize Irish Sweepstakes Ticket. There would be a question of misrepresentation, of course, only if the conditions are such that you would not be able to deliver the prize to the winner. If you are satisfied that you will be in a position to make such delivery, assuming the ticket wins, there would appear to be no difficulty on this score insofar as an accurate representation of the prospective prize is concerned."

It is very difficult for this office to reconcile the opinion you furnished Mr. Kunnen and the opinion given by Mr. Kennedy regarding the promotion of the Portsmouth merchants. The Portsmouth merchants are not promoting the New Hampshire Sweepstakes but merely are using our tickets as a means of stimulating their business. There is no requirement that the shopper purchase anything and, therefore, no consideration is involved. Incidentally, Mr. Kunnen's correspondence with you also made it clear that there would be advertising in the daily newspapers of their give-away program.

It seems rather startling that there was no prohibition for the use of the mails for a promotion involving the Irish Sweepstakes, whereas a similar promotion involving New Hampshire Sweepstakes tickets received a negative opinion.

I would appreciate it very much if you would review this matter and advise whether there is any essential difference between the promotion of the Greater Cincinnati Gasoline Dealers Association and that of the Portsmouth merchants.

Thank you for your cooperation.

Very truly yours,

EDWARD J. POWERS,  
*Executive Director.*

## EXHIBIT 4

POST OFFICE DEPARTMENT,  
OFFICE OF THE GENERAL COUNSEL,  
Washington D.C., September 3, 1965.

Mr. EDWARD J. POWERS,  
Executive Director, New Hampshire Sweepstakes Commission,  
Concord, N.H.

DEAR MR. POWERS: It is regretted that prompt reply was not made to your letter dated August 4, 1965, regarding proposed announcements by the Portsmouth Chamber of Commerce that tickets in the New Hampshire Sweepstakes would be given as prizes by local stores.

You make reference to rulings this office gave to Mr. John Kunnen, President, Greater Cincinnati Gasoline Dealers Association, concerning a plan in which prizes were awarded according to drawings from auto license tag numbers.

Under date of November 30, 1962, we advised Mr. Kunnen:

"The submitted advertisement refers to the bonus prize as an 'Irish Fortune'. This reference, per se, would not be the subject of objection. However, it should be pointed out that 18 U.S. Code 1302 (copy herewith) prohibits the use of the mails in any way in connection with a lottery. Section 1305a of Title 19, U.S. Code (the Customs statute) prohibits the entry of any lottery matter into the United States. Therefore, there is a definite possibility that if the bonus winner receives a lucky Irish Sweepstakes ticket, and the mails are used to consummate the transaction, he may run into difficulty in the effort to collect his prize. This being so, it may constitute a misrepresentation to offer such a prize."

Under date of January 7, 1963, we wrote:

"I note that the United States mails will not be used to consummate any transaction with regard to the Bonus Prize Irish Sweepstakes Ticket. There would be a question of misrepresentation, of course, only if the conditions are such that you would not be able to deliver the prize to the winner. If you are satisfied that you will be in a position to make such delivery, assuming the ticket wins, there would appear to be no difficulty on this score insofar as an accurate representation of the prospective prize is concerned."

The above of course goes only to the question of misrepresentation. In our opinion to Mr. Kunnen dated October 1, 1962, he was told by this office:

"However, the Irish Sweepstakes is, of course, a lottery within the meaning of Section 1302. Therefore, reference to the scheme in your advertising might well constitute an advertisement of the sweepstakes, per se, rendering it nonmailable."

For The General Counsel:

Sincerely yours,

SAUL J. MINDEL,  
Assistant General Counsel, Mailability Division.

## EXHIBIT 5

THE SECRETARY OF THE TREASURY,  
Washington, D.C., June 5, 1965.

Hon. JOHN W. KING,  
Governor of New Hampshire,  
Concord, N.H.

DEAR GOVERNOR KING: President Johnson asked me to reply to your letter, dated May 19, 1965, requesting his support of Senator McIntyre's bill to exempt the New Hampshire Sweepstakes program from the Federal excise taxes on wagering.

The Treasury Department has carefully analyzed the issues involved in granting such an exemption. In this regard, Assistant Secretary Stanley Surrey met last year with Senator McIntyre and Mr. Millmet (counsel to the New Hampshire Lottery Commission) to discuss the Treasury Department's views with regard to such an exemption.

The Treasury Department believes that an exemption from the wagering taxes for the New Hampshire Sweepstakes program would raise two very basic issues. First, the various Federal excise taxes have historically been applied

equally to State as well as private activities. We do not see any basic reason for departing from this standard in this case. To do so would set a precedent that could well affect other areas in the future.

The second fundamental issue involves the social and law enforcement implications that would flow from any Federal encouragement of lotteries. Although New Hampshire is presently the only State with a lottery, its success could well lead other States to consider adopting lotteries. An exemption for the New Hampshire lottery will have then established a precedent for giving the same treatment in other cases even though the lotteries may not be run well or may involve the use of other than State employees to carry out some of the functions, such as ticket selling. Moreover, law enforcement agencies advise us that organized crime—with the attendant enforcement problems—is very likely to enter the picture unless the lotteries are tightly controlled by the States. As indicated above, such tight control may not be universal in the future as lotteries are adopted by other States.

It is because of these basic considerations that the Treasury Department does not favor exempting State operated lotteries from the Federal wagering taxes.

I hope this analysis of the underlying issues involved in Senator McIntyre's bill will be helpful to you.

Sincerely yours,

HENRY H. FOWLER.

EXHIBIT 6

FEDERAL COMMUNICATIONS COMMISSION,  
Washington, D.C., October 1963.

Mr. RICHARD G. ROZEK,  
President, U.P.I. Broadcasters Association, Seacoast Broadcasting Corp., Portsmouth, N.H.

DEAR MR. ROZEK: Your recent inquiry asked about the broadcaster's role in relation to the New Hampshire Sweepstakes. You asked to be specifically informed as to whether or not the Commission would authorize the transmission of numbers and winners along with other similar information.

It should be pointed out initially that the Commission's lottery rules (Sections 3.122, 3.292, and 3.656) implement the statutory prohibition against the broadcast of lottery information as set out in the United States Criminal Code, 18 U.S.C. 1304. The enforcement of the statutory prohibition is the responsibility of the Department of Justice, and this Commission may not authorize actions contrary to the criminal statute.

In view of the above, the answer to your question must be found in the code itself, which provides:

"Whoever broadcasts by means of any radio station for which a license is required by any law of the United States, or whoever, operating any such station, knowingly permits the broadcasting of, any advertisement of or information concerning any lottery, gift enterprise, or similar scheme, offering prizes dependent in whole or in part upon lot or chance, or any list of the prizes drawn or awarded by means of any such lottery, gift enterprise, or scheme, whether said list contains any part or all of such prizes, shall be fined not more than \$1,000 or imprisoned not more than one year, or both."

Therefore, it would appear that the Commission can not authorize the transmission of numbers and winners and similar information relating to the New Hampshire Sweepstakes.

In your letter you stated that it was assumed that legitimate news about the lottery is authorized by the Commission. It must be pointed out that this assumption may not be justified in view of the statutory prohibition quoted above. In advising as to the interpretation of a similar statute applicable to the mailing of lottery information (18 USC 1302), the Post Office Department has stated (*The Law v. Lotteries*, p. 10, March, 1963 edition, copy enclosed):

"In administering this part of the law, an exception has been made for newspaper articles which have a news value in their own right, and in which the lottery element is only incidental to a newsworthy event. The law is not designed to suppress information of news value to the public which is only incidentally connected with a lottery; for example, a report that the winner of a raffle was

denied his prize because of his race. Notwithstanding the incidental reporting of the lottery's results, such a news story would be regarded as available."

This indicates that only in unusual cases would information of a lottery be available as news. Since the interpretations of the lottery law by the Department of Justice, Post Office Department and the Commission are generally consistent, great care must be exercised in broadcasting lottery information under the guise of a news story.

In November 1962, the Commission issued a public notice addressed to all its licensees concerning the broadcast of lottery advertisements in violation of 18 USC 1304. Copies are enclosed for your information and use. We would recommend that you inform your membership of the possible penalties involved in activities contrary to the statute and the Commission's rules and regulations.

It is hoped that the above information will prove to be helpful.

Very truly yours,

BEN F. WAPLE,  
Secretary.

EXHIBIT 7

STATE OF NEW HAMPSHIRE,  
August 31, 1971.

From: Edward J. Powers, Executive Director.

Subject: Complaint against WMUR-TV (Channel 9) in handling news relating to Sweepstakes program.

To: Attorney General Warren B. Rudman.

Reference is made to our memo dated August 26, 1971 requesting that you give consideration to filing a Declaratory Judgement suit in U.S. District Court, Concord, N.H. in view of the fact that New Hampshire has been the victim of shifting standards as well as unfair and inconsistent interpretations of the Federal Anti Lottery Statutes, the following incident is another example of discrimination and unfair tactics. The State of New Hampshire has thereby been damaged in its ability to raise maximum revenue for education by this discrimination and interference.

On August 27, 1971 a drawing was held at the Plymouth State Fair, Plymouth, N.H., at 10 a.m. There were six participants in this drawing. Mr. and Mrs. George Levesque, Somersworth, N.H., won \$50,000, and Mr. Rudolph J. Matty, Sr., Tilton, N.H. won \$10,000. The other participants won \$5,000 each.

Mr. Fred Koucher, newscaster for WMUR-TV, Manchester, N.H. (Channel 9) was at the Fair. I asked him if he intended to cover the drawing and interview the major prize winners. He replied in the negative and said that the "management policy" prohibited such coverage. I told him I was disappointed that he did not plan to cover this drawing since the winning of \$50,000 and \$10,000 in N.H. certainly was news to the people of this State.

Radio and television stations are permitted to interview prize winners by FCC declaratory ruling of February 26, 1970. This ruling resulted from questions posed by the New York State Broadcasters Association, Inc. A copy of this ruling is attached. You will observe that on page 5, paragraph 11, the following is stated:

"11. *Item 6*—'Interviews with persons holding winning lottery tickets, relating, among other matters of general interest, to the number of tickets they purchased, their expectation of winning a prize, their reactions upon learning that they held winning tickets, and what they did or intended to do with the prize money.'

"Such interviews are permissible as part of the licensee's good faith judgment as to information serving the interests of its area. Of course, they would be improper if, instead of being such good faith efforts it becomes clear by their repetition that they are shams intended as promotional features."

WMUR-TV has a virtual monopoly in the State of New Hampshire as regards television news coverage. New Hampshire citizens are interested in Sweepstakes results as well as in the amount of revenue that this program produces for the State school districts. WMUR-TV has a responsibility to the citizens of this State to cover legitimate news. Newspapers throughout N.H. give wide coverage to not only the weekly drawings but also the super drawings which involve major prize winners. It has been a consistent practice of WMUR-TV to eliminate the N.H. Sweepstakes from its news programs. In fact, about two years ago the fol-

lowing memo issued by Ed Williams appeared on the bulletin board at Channel 9 with a caption "N.H. Sweepstakes."

"There is to be no mention whatsoever on the air about the New Hampshire Sweepstakes... its programs, promotions or winners etc. \* \* \*"

Many radio stations in N.H. give extensive coverage to the Sweepstakes program as well as interviews with me, both taped and live. They also interview major prize winners on occasion. Stations that have been most cooperative in this regard in Manchester are WGIR and WFEA.

On Sunday night, August 29, 1971, CBS gave rather extensive coverage to the "Millionaire Club" that had been formed in New Jersey. This is a club of persons who have won \$1,000,000 in the New Jersey lottery. The program included interviews with persons who had won this prize. In the past the Merv Griffin Show has also interviewed New York winners of \$100,000.

The foregoing is brought to your attention as another example of the discriminatory handling of news by an important segment of the media. It is also brought to the attention of the Public Utilities Commission since this television station functions in N.H. as a service to the citizens of this State. We feel this station should be requested to show cause why it has consistently refused to publicize the news about this State program designed to raise revenue, with particular reference to the failure to give coverage to the super drawing on August 27 which certainly was news in N.H. by any standard.

We do not know the best means to obtain relief from the "management policy" of WMUR-TV, and we ask your assistance—if such is possible—from your agency.

AUGUST 31, 1971.

SAM PHILLIPS,  
General Manager, WMUR-TV,  
Manchester, N.H.

DEAR MR. PHILLIPS: Forwarded herewith is a copy of a self-explanatory memo which I have today forwarded to Attorney General Warren B. Rudman and the Chairman of the Public Utilities Commission, Alexander J. Kalinski, as regards enunciated policy of your station in refusing to publicize legitimate news about the N.H. Sweepstakes.

We can understand your desire to follow the regulations promulgated by the FCC. However, the declaratory ruling of FCC adopted on February 26, 1970—a copy of which is in your possession—makes certain specific exceptions for broadcasting information and news about State legalized programs. It is clear that interviews with major prize winners are permissible.

For your information New York and New Jersey television stations not only cover drawings but also interview major prize winners. In fact, on Sunday night, August 29, 1971, CBS gave a rather extensive coverage to the "Millionaire Club" that had been formed in New Jersey. This is a Club of persons who have won \$1,000,000 in the New Jersey lottery. The program included interviews with persons who had won this prize. The Merv Griffin Show has, in the past, interviewed New York winners of \$100,000. The question naturally arises as to why the only television station in N.H. refuses to give the same type of coverage for the benefit of N.H. citizens.

We would appreciate any comments you may wish to give about your general policy and the refusal of your newscaster Fred Kocher to give news coverage at our super drawing at the Plymouth State Fair on August 27th.

Very truly yours,

EDWARD J. POWERS,  
Executive Director.

SEPTEMBER 1, 1971.

DEAN BURCH,  
Chairman, Federal Communication Commission,  
Washington, D.C.

DEAR MR. BURCH: Enclosed are copies of letters dated August 31, 1971 directed to Attorney General Warren B. Rudman and Mr. Sam Phillips, General Manager, WMUR-TV, 1819 Elm Street, Manchester, N.H., with regard to the failure of this TV station to provide legitimate news coverage to a super drawing held by this Commission.

On August 27, 1971 a super drawing was held at Plymouth State Fair, at which a resident of Somersworth, N.H. won \$50,000 and a resident of Tilton, N.H. won \$10,000. There were four winners of \$5,000 each. Governor Walter Peterson presented checks to these winners immediately after the drawing. Mr. Fred Kocher was at the Plymouth State Fair and he was asked whether he intended to cover the super drawing and interview the major prize winners. Mr. Kocher said that "management policy" prohibited any such coverage.

This is the only commercial TV station we have in New Hampshire and accordingly it functions as a virtual monopoly in this field. It has a responsibility for covering legitimate news, and by any standard winners of \$50,000 and \$10,000 who live in N.H. are news. The newspapers, of course, give major prize winners extensive coverage.

We can understand the desire of WMUR-TV to follow regulations promulgated by your agency; however, your supplemental declaratory ruling adopted February 26, 1970 allows the broadcast of bona fide news stories as well as interviews with prize winners "as part of the licensee's good faith judgment as to information serving the interests of its area."

The discrimination against our program was again highlighted Sunday evening, August 29, 1971, when CBS on its 11:30 p.m. news gave extensive coverage of the new Millionaire Club formed in New Jersey—including interviews with these members. Members of the club are persons who have won \$1,000,000 in the New Jersey lottery.

The standards set by your Commission over the years for the broadcasting of lottery information have been shifting, inconsistent, and sometimes vague. As a result some stations have decided to broadcast no information about our program rather than possibly jeopardize their license. WMUR-TV is in this category. On the other hand, it is our belief that we are at least entitled to the same type of coverage that is given by the broadcast media in New York and New Jersey, particularly when we have only one television station in our State. The news media in New Hampshire are certainly in the best position to make a judgment as to what is news to the citizens of the State. In refusing to broadcast information about this super drawing WMUR-TV has failed to carry out its responsibilities in "good faith news coverage" to the citizens of N.H.

Very truly yours,

EDWARD J. POWERS,  
*Executive Director.*

SEPTEMBER 2, 1971.

Mr. SAM PHILLIPS,  
WMUR-TV,  
Manchester, N.H.

DEAR MR. PHILLIPS: In view of your statement that FCC regulations prohibit you from publicizing a lottery on the air, I am forwarding herewith the FCC declaratory ruling of February 26, 1970. This ruling made a clear distinction between "promotion" and "news," and relaxed the standards which previously existed.

You will observe in this ruling there are a number of exceptions to the general prohibition about promotion of lotteries and permits broadcast of the following:

1. News reports are not barred which are broadcast in normal good faith coverage reasonably related to the audience's right and desire to be informed of the day-to-day happenings within the community. (Page 2)

2. Bona fide news stories or interviews are not barred even if the broadcast "has the incidental effect of promoting a lottery." (Page 3)

3. News reports of recent events about or relating to the lottery. "The term 'news reports' is intended to include accounts suitable for inclusion as news in a newspaper, of events of current interest concerning the lottery or its operations, or that have some connection with the lottery." (Page 4)

4. Interviews with persons holding winning lottery tickets are permissible as part of the licensee's good faith judgment as to information serving the interests of its area. (Page 5)

5. "Documentary programs on the lottery, including such material as (a) statements by and questioning of public officials, prominent citizens and religious leaders who favor or oppose the lottery, (b) descriptions of the way the lottery is operated and the profits are used; and (c) reporting the results of opinion polls on the lottery." (Page 6)

6. Editorial comment on the lottery.

7. Panel discussions on various aspects of the lottery, including those in which proponents and opponents, government officials who administer the lottery, and others may participate, and in which questions and comments may be received from a studio audience. (Page 6)

You are further requested to advise Attorney General Warren Rudman whether you intend to follow the regulations of FCC as regards news coverage of Sweepstakes activities or whether you intend to follow the same "blackout" policy of the past.

Very truly yours,

EDWARD J. POWERS,  
*Executive Director.*

WMUR-TV,  
Manchester, N.H., September 15, 1971.

Mr. EDWARD J. POWERS,  
*Executive Director, Sweepstakes Commission,  
State of New Hampshire, Concord, N.H.*

DEAR MR. POWERS: I have your letters of August 31 and September 2, 1971, in which you raise questions concerning coverage by Television Station WMUR of the New Hampshire Sweepstakes. In both letters you refer to a Declaratory Ruling adopted by the Federal Communications Commission on February 26, 1970, which outlines categories of news and information which may be broadcast by radio and television stations without contravening the federal criminal statute which prohibits the broadcasting of lottery information, 18 U.S.C. Sec. 1304. In your letter of September 2, you list seven categories of programming pertaining to lotteries which in your judgment the Declaratory Ruling of the Federal Communications Commission authorized broadcasting stations to present.

You request that we advise you as to whether we consider that Declaratory ruling to give Television Station WMUR the same latitude in programming as taken by television and radio stations in New York and New Jersey and to advise Attorney General Rudman whether we intend to "follow the regulations of the F.C.C. as regards news coverage of Sweepstakes activities."

Television Station WMUR intends to comply with all applicable laws and the rules and policies of the Federal Communications Commission. This, however, does not necessarily mean that Television Station WMUR will present any particular programming concerning the New Hampshire Sweepstakes.

There are three general principles affecting the kinds and amounts of information broadcast by Station WMUR or any other radio or television station relating to the New Hampshire Sweepstakes or any other lottery:

1. Programming which would directly promote a lottery, such as the New Hampshire Sweepstakes, is prohibited.

2. As you correctly note in paragraphs 1 and 2 of your letter of September 2, 1971, the Federal Communications Commission in its Declaratory Ruling stated that news reports are not barred by the federal lottery law where they are broadcast "in normal good faith coverage reasonably related to the audience's right and desire to be informed" and a "bona fide news story or interview" is not barred even though it may have the "incidental effect" of promoting a lottery. These, however, do not constitute unlimited grants of authority; to the contrary, they are highly restrictive in what they permit a station to present. The critical words are normal good faith and bona fide. They mean that the news and interviews which are permitted are those which the station would present as subjects of interest or value to its audience in the normal course without regard to the fact that they touch upon or concern a lottery. The broadcast of news or interviews concerning lotteries to provide publicity or promotion to the lottery is clearly prohibited.

3. In its Declaratory Ruling, the Federal Communications Commission did not purport to suggest that radio and television stations should broadcast news or any other programming concerning lotteries. Under the Communications Act and the long-standing interpretations thereof by both the Commission and the courts, the decisions as to what should be broadcast belong save only for minor exceptions none of which are applicable here, to the licensee of the station, based on his good faith judgment as to what will serve the needs and interests of the station's audience. This is the test, it should be noted, incorporated in the words normal good faith and bona fide, used by the Commission in its Declaratory Ruling with regard to programming which would incidentally

promote a lottery (paragraph 2, above); these words refer to state of mind and, specifically, to the state of mind of the licensee in making his judgment as to whether news or other programming which might have such an incidental effect is or is not programming such as he would present in the normal course.

A licensee's judgment as to what should be presented at any particular time in the field of news, interviews and information is an extremely complex matter involving such things as limitations in time, facilities and audience interest and attention, and, more than anything else, judgment acquired over a long period of experience.

Paragraphs numbered 1 and 2 of your letter concerned the basic principles enunciated by the Federal Communications Commission and are covered by the foregoing. Paragraphs 3 through 7 of your letter concern the specific categories of programming discussed by the Commission under those general principles in its Declaratory Ruling.

Paragraph 3 of your list of permissible categories of broadcasts pertaining to lotteries pertains to "news reports of recent events about or relating to the lottery" and states that this covers news accounts suitable for inclusion as news in a newspaper. Paragraph 13 is substantially a direct quotation from the first paragraph of the first specific category of broadcasts discussed by the Commission (Item 1, para. 6, of the Declaratory Ruling). That paragraph, however, was introductory only and consisted of a quotation of the *proposal* on the matter of news reports made by the parties who had requested the Declaratory Ruling. The Commission's opinion is contained in the second paragraph of Item 1 of the Declaratory Ruling and in that paragraph the Commission made clear that it did not agree that news reports concerning lotteries in newspapers would necessarily be legal for broadcast. The Commission made clear that the practices of newspapers in presenting news on lotteries was not the criterion for their legally being broadcast.

The Commission ruled under Item 1 (para. 6) that the following were examples of news items concerning lotteries which could be broadcast:

Relationship of the lottery to education in the state.

Human interest stories on winners.

Story of a legislator's proposal to exempt lottery winnings from state taxes.

News of policy changes in the running of the lottery.

The Commission ruled that the following news items concerning lotteries could not legally be broadcast:

Where lottery tickets may be purchased.

Where winning tickets will be drawn.

Long lists of winners and/or prizes.

In the previous paragraph of its Declaratory Ruling (para. 5), concerned with general principles, the Commission expressly ruled that the following could not be legally broadcast:

Where, how and when to purchase tickets.

Lists of winners.

Where, how and when winning tickets will be drawn.

Live broadcasts of the actual drawing of winning tickets.<sup>1</sup>

Concerning paragraphs 4 through 7 of your letter, we are generally in agreement with the categories of permissible broadcasts listed. However, with respect to paragraph 4, interviews with persons holding winning lottery tickets, it should be noted that the Commission stated that such interviews would be improper if "it becomes clear by their repetition that they are shams intended as promotional features". Similarly, with respect to your paragraph 6, pertaining to editorial comment, the Commission added that editorials "could not be used as a sham to avoid the prohibition on direct promotion of the lottery". Similarly, under Item 3 (para. 8) of its Declaratory Ruling (not covered in your letter) the Commission, while stating that information on the distribution of the proceeds from lotteries is permissible, added that such information would not be permissible if presented as a sham to promote the lottery.

Thus, the Commission made clear that even though some types of broadcasts concerning lotteries are permissible because they only incidentally promote the

<sup>1</sup> Under Item 5 (para. 10) of its Declaratory Ruling, the Commission elaborated on this prohibition to apply to live broadcasts or simultaneous accounts of public events relating to the lottery, such as broadcasts of the drawing of winning lottery tickets.

lottery, these categories cannot be used as shams, such as by undue repetition, to directly promote the lottery. As stated under its general principles (paras. 2 and 3, above) news, interviews and information must be presented as a part of normal good faith coverage and be bona fide, that is, be presented in the usual course in the judgment of the station management without regard to the fact that a lottery is involved.

Turning to the application of these principles to Station WMUR, it is as follows:

1. We will not, of course, present programming concerning the New Hampshire Sweepstakes which has been expressly banned by the Federal Communications Commission as directly promoting the lottery. This includes where, how and when Sweepstake tickets may be purchased; where, how and when winning tickets will be drawn; lists of winners and/or prizes, and live or simultaneous coverage of Sweepstakes.

2. To the foregoing should be added that Station WMUR will not broadcast winning Sweepstake numbers. In rulings in June and July 1971, the Federal Communications Commission held that winning lottery numbers cannot legally be broadcast in any form or way, thereby terminating this practice which had been followed by broadcasting stations in New Jersey under that station's lottery until that time.

3. Station WMUR will present from time to time when they appear to merit broadcast, news and information concerning the general conduct of the New Hampshire Sweepstakes and its effects such as, for example, use of funds generated by the Sweepstakes, policy changes in the operation of the Sweepstakes, legislative proposals concerning the Sweepstakes and noteworthy statements concerning the merits and/or operation of the Sweepstakes. These may be in the form of news (either live or reported), interviews, documentaries, panel discussions or editorials, or a combination of these.

4. Station WMUR may present occasional interviews with Sweepstakes winners.

There will be no regular schedule of programming concerning the Sweepstakes on Station WMUR. Programming presented under paragraph 3, above, will occur from time to time when in the normal judgment of this station news or issues have arisen of significance concerning the Sweepstakes or a documentary, panel or other informative type of program would be appropriate.

With respect to interviews with Sweepstakes winners, these are normally not concerned with news or information of any lasting importance; they are, rather, "human interest stories". While we carry human interest stories on WMUR regularly, it is of their essence that they present something novel or, at least, something which the viewer has not seen recently. Accordingly, our normal judgment in carrying such stories on Sweepstakes winners would be to do so only at rather extended interviews, perhaps twice a year.

So far as we are aware, the foregoing policies would be essentially in accord with the practices of New York and New Jersey broadcasting stations with regard to the state lotteries in those states.

We understand that it a matter of concern to the Sweepstakes Commission that as much publicity and promotion as possible should be given to the New Hampshire Sweepstakes. Your letters and the enclosed memoranda make clear your desire for promotion of the Sweepstakes and your view that wider broadcast coverage would have a promotional effect beneficial to the lottery and its objectives. However, you will understand that under existing federal law this type of broadcast coverage—for promotion of the Sweepstakes—is exactly the type of coverage that we are prohibited from giving by federal criminal law.

We are anxious to cooperate with all governmental agencies, including the New Hampshire Sweepstakes Commission as fully as possible. In the event that you have any questions concerning the foregoing or we may be of assistance in any way, please feel free to communicate with me.

Very truly yours,

UNITED TELEVISION COMPANY,  
OF NEW HAMPSHIRE, INC.  
SAMUEL E. PHILLIPS,  
*Vice President and General Manager.*

SEPTEMBER 20, 1971.

Mr. SAMUEL E. PHILLIPS,  
*Vice President and General Manager, WMUR-TV,*  
*Manchester, N.H.*

DEAR MR. PHILLIPS: Your letter of September 15, 1971, setting forth new policy for WMUR-TV, is certainly a significant change from the blanket prohibition that has appeared on your bulletin board and directed to your employees reading:

"There is to be no mention whatsoever on the air about the New Hampshire Sweepstakes . . . its programs, promotions or winners, etc. . . ."

However, there are a number of inaccuracies in your letter which require clarification.

In the first place, you studiously avoid mentioning the incident which created the present controversy. I do not particularly blame you for this because if I were in your position I would not want to discuss it either. I think it is important that we keep the main issue in focus and in this manner we can arrive at a more intelligent perspective of the total problem. Let us briefly reconstruct the scene.

On August 27, 1971 a Super Drawing was held at the Plymouth State Fair. Your reporter, Fred Kocher, was at the Fair looking for news; at least I think he was looking for news. I informed him that Governor Walter Peterson would be presenting checks to the major winners and that there would be a prize winner of \$50,000 as well as \$10,000. He replied that "management policy" prohibited his covering this Sweepstakes activity or interviewing the prize winners. It is significant that he did not say that there was more important news that day at the Plymouth State Fair to be broadcast. As it turned out, Mr. and Mrs. George Levesque (Somersworth, N.H.) won \$50,000, and Mr. Rudolph Matty, Sr. (Filton N.H.) won \$10,000. I may be prejudiced but I think this was the most exciting activity that occurred at the Plymouth State Fair that day, and I also feel that N.H. citizens were not only interested but had a right to know about this drama and excitement. When the Governor presents \$50,000 to N.H. people, I think that's a bona fide news story. Am I wrong?

When I made issue of the failure of your reporter to cover this activity as a legitimate news story, you are quoted in the MANCHESTER UNION LEADER as saying, "Powers is well aware of the FCC regulations—he knows that I am prohibited from publicizing a lottery on the air." It would now appear that the reply that Mr. Kocher gave me at the Plymouth State Fair, and your answer to my initial charges, are not consistent with the admissions you are now making in your letter of September 15. However, so there is no doubt in anyone's mind about your position regarding the major prize winners at the Plymouth State Fair, with Mr. Kocher present, it is requested that you advise (1) whether this activity was news, or (2) whether FCC regulations prohibited any coverage.

I must say that you have a good sense of humor. You mentioned a couple of times in your letter that the FCC regulations state that permissible interviews with prize winners and news about the Sweepstakes would be improper if "it becomes clear by their repetition that they are sham intended as promotional features." You certainly will never be bothered with "repetition" in view of the past policy that you have religiously followed as far as the N.H. Sweepstakes is concerned.

You state that your policies are essentially in accord with the practices of New York and New Jersey broadcasting stations with regard to State lotteries. I wish to challenge this claim on your part. I have personally observed interviews with major winners in both the New York and New Jersey lotteries. In the eight years that the N.H. Sweepstakes has been in operation, I can recall no instances when your station ever interviewed our prize winners, and we have had N.H. citizens winning prizes up to and including \$100,000. The Directors of the New York and New Jersey lottery programs advise me that frequent news broadcasts on radio and television are afforded their activities, including occasional coverage of actual drawings.

Your policies are not even in harmony with such radio stations in Manchester as WGIR and WFEA. They have regularly covered news about the N.H. Sweepstakes, including taped interviews with me. In fact, at the super drawing held in Manchester on September 10, 1971 Donn Tibbetts of WGIR was present and interviewed Mr. and Mrs. Wilbur Segal (Mattapan, Mass.) immediately after

they won \$50,000. Your station has not cooperated in this manner and as an important segment of the news media in this State, being the only commercial TV station in N.H., we think your refusal to do so has not been either justified or fair.

Finally, I wish to take exception to the claim made in the penultimate paragraph on page 6 of your letter that my position makes clear a desire for promotion of the N.H. Sweepstakes which is prohibited under existing Federal law. I have had many discussions with you, Ed Williams and Fred Kocher in the past about what the FCC permits and prohibits. I have never asked for any coverage, whether it be lists of prize winners or broadcasting of our weekly Sweeps number, that is prohibited. I have only requested that permissible, legitimate and bona fide news stories be covered and that N.H. citizens be afforded the same treatment given citizens of New York and New Jersey as regards their legalized lottery programs. The central issue still remains—did your reporter, Fred Kocher, properly cover the news at the Plymouth State Fair?

You have not cooperated with the N.H. Sweepstakes Commission, as you claim, and you have not attempted to follow the directives of FCC, including the admissions you now make in your letter of September 15. You have consistently asserted what FCC prohibits, and you have never, up to this time, tried to broadcast what FCC regulations permit. The statement that you have had on your bulletin board describes your policy over the years better than anything that I can say. It tells the whole story.

Very truly yours,

EDWARD J. POWERS,  
*Executive Director.*

WMUR-TV,  
Manchester, N.H., October 4, 1971.

Mr. EDWARD J. POWERS,  
*Executive Director,*  
*Sweepstakes Commission, Concord, N.H.*

DEAR MR. POWERS: I have your further letter of September 20, 1971, concerning the matter of the prohibitions of federal law on the broadcast of lottery information and the carriage of permissible programming pertaining to the New Hampshire lottery by Station WMUR.

The answers to the questions which you have raised are as follows:

1. The prohibition on broadcasts concerning the New Hampshire Sweepstakes was posted on the bulletin board at Station WMUR by a former employee of the station. It has not been posted for on the order of 1½ years at this time. There is no blanket prohibition at this station on broadcasts concerning the lottery; in reviewing our logs, I find that we have made the following broadcasts concerning the lottery in 1971:

Jan. 6. News story on the request by the Attorney General of New Hampshire for a ruling on the applicability of the federal anti-lottery law to the New Hampshire Sweepstakes—referred to Organized Crime Section of the U.S. Department of Justice.

Jan. 26. News story. Louis Wyman proposes a national lottery—proceeds to fight crime and for H.E.W. programs.

June 7. News story. New Hampshire Sweepstakes Commission reports: total winners—4,404, total prizes—\$8,200,000, and prizes to New Hampshire residents—\$1,400,000, since commencement in 1964.

Sept. 8. News story. Live coverage of the news conference by Attorney General Rudman announcing informal ruling from Richard D. Kleindienst, Deputy U.S. Attorney General, on mailability of lists of lottery winners, and possible applicability to broadcasts of same.

Sept. 8. Editorial statement by Station WMUR on applicability of federal statute prohibiting broadcast of information concerning lotteries.

Sept. 10. News report. Telephone survey by Station WMUR on position of 29 New Hampshire broadcasting stations on the broadcast of lottery reports.

Sept. 23. News report. New Jersey Senator proposes repeal of federal anti-lottery statutes insofar as they apply to state lotteries.

2. You asked if Station WMUR properly covered news at the Plymouth State Fair. The answer is that it did. Station WMUR presented an unusually long news report lasting about two minutes. It consisted of live film taken by this station covering the midway, rides, the Governor's visit (including film of the Governor), the Queen of the Fair and winners in two categories of the 4-H livestock judging

contests. Of course, there are numerous activities at the Fair which we did not cover and would not expect to cover. The drawing of lottery numbers and presentations to winners are no more than one of these.

3. When our news reporter, Fred Kocher, advised you at the Fair that management policy prohibited "covering this Sweepstakes activity or interviewing the prize winners" he meant exactly that. That is to say, he was referring to that particular activity, the drawing of numbers and activities incident thereto. He was not referring to any overall black-out of mention of the New Hampshire Sweepstakes, which is not our policy. The reason for not covering drawings is that it would be impossible to state at this time that broadcast coverage of drawings would be permissible under federal law.

4. In the light of your interest in these particular activities and in an effort to cooperate for the future, we have requested an advisory opinion from the Federal Communications Commission on the extent to which and under what circumstances, if any, we may broadcast coverage of lottery drawings and related activities. The considerations set forth in that letter will make clear to you why it would be impossible at this time to state that such broadcasts may be legally made. You and Attorney General Rudman, of course, are free to file your views on behalf of the State of New Hampshire with the Federal Communications Commission on this matter and in the light of the fact that the result will have state-wide effect (including on the state's own educational television stations) I would urge you to do so.

5. Contrary to your letter, Station WMUR has not made any major change or admissions with regard to its policy on coverage of matters concerning the New Hampshire Sweepstakes. We do intend to interview Sweepstakes winners (but *not*, however, at the time of the drawing, pending a ruling that we may legally do so), once or twice a year. Carriage of one or two "human interest stories" of this kind in the future, however, hardly ranks as a major change and certainly not as an admission with regard to our programming in the past. The bulk of my letter to you, to the contrary, was devoted to expaining the prohibitions of federal law on broadcasts of lottery information and the fact that those laws prohibit the broadcast of at least 95% of what might otherwise be broadcast concerning the New Hampshire Sweepstakes.

Very truly yours,

SAMUEL E. PHILLIPS,  
*Vice President.*

COHN AND MARKS,  
*Washington, D.C., October 1, 1971.*

Mr. BEN F. WAPLE,  
*Secretary, Federal Communications Commission,  
Washington, D.C.*

DEAR MR. WAPLE: This letter is submitted on behalf of United Television Company of New Hampshire, Inc., licensee of Television Station WMUR, Manchester, New Hampshire. Its purpose is to seek an advisory opinion on a question which has arisen in connection with the New Hampshire Sweepstakes, the public lottery operated by the State of New Hampshire. The question is the extent to which coverage of lottery drawings and/or contemporaneous awards of prizes or interviews with winners may be broadcast.

To narrow the inquiry, the question does not concern coverage of routine weekly lottery drawings. However, from time to time major drawings are held with awards of \$10,000 to as much as \$100,000. The question is under what circumstances could coverage of such drawings and/or concurrent awards of prizes or interviews with only the top two or three winners be broadcast, assuming that in the licensee's judgment it appeared appropriate in other respects to do so.

In the Commission's Supplemental Declaratory Ruling in the matter of Broadcasting of Information Concerning Lotteries, 21 FCC 2d 846 (Feb. 1970), the Commission stated as follows (para. 10, p. 849):

"Live broadcasts of the drawing of winning lottery tickets would constitute the direct promotion of a lottery and are therefore prohibited."

The questions which arise under this ruling are (1) the extent to which the coverage of activities contemporaneous with and directly related to the drawing such as the awarding of checks to the winners and interviews with winners are subject to the prohibition and (2) the extent of the prohibition included within the words "live broadcasts", that is, at what point in time would the delayed broadcast of lottery drawings no longer be considered "live".

Further questions are raised by the flat prohibitions which exist on the broadcast of lists of winning lottery numbers, lottery winners and prizes, and whether these prohibitions are contravened where only a few, top winners are covered or where the broadcast coverage is delayed to some later time or date.

In the light of the foregoing, the Commission's opinion is requested upon the following specific questions:

1. Do the aforesaid prohibitions prohibit live broadcast coverage of the award of prizes to winners immediately following a drawing or interviews with winners shortly thereafter, assuming that the winners and the amount of the prizes are identified in either broadcast.

2. The prohibition on live broadcasts clearly prevents simultaneous broadcasts of lottery drawings. To what extent, if any, would delays in broadcast such as the following avoid that prohibition and, assuming that numerous winners would be drawn but only a few (two or three) top winners were covered, the prohibitions on the broadcast of lists of winners and prizes:

(a) One hour?

(b) Several hours such as, for example, where coverage of a drawing held in the morning or early afternoon would be broadcast in an early evening or late evening news program?

(c) The following day?

(d) Coverage of the lottery drawing is not broadcast until such time as it may be reasonably assumed that the bulk of all participants therein are already aware of the results (or at least that they would have already been notified if they had been winners)?

3. Would it change the results under the foregoing if the television coverage were by film only without sound or, if with sound, that the winning numbers and names of the winners were deleted for broadcast? Would it make a difference if, notwithstanding the non-broadcast of winning numbers or identification of the winners, the winners were shown and identifiable in the film (with the result that other persons viewing the telecast would know that they were not winners of that particular top prize, although they could still be winners among the bulk of the prizes which would not be covered in the broadcast)?

4. Would it make a difference under the foregoing if the amount of the prize drawn was or was not specified?

It is understood, of course, that such broadcasts would in any event only be made on occasions when in the good faith judgment of the licensee it was appropriate and would not be repetition or otherwise result in direct promotion of the lottery. The issue, rather, is the extent of the parameters under which the Commission would regard such broadcasts as prohibited in all respects.

Your conclusion and advice on the foregoing is respectfully requested.

Very truly yours,

ROY F. PERKINS, JR.

FEDERAL COMMUNICATIONS COMMISSION,  
Washington, D.C., December 15, 1971.

Mr. EDWARD J. POWERS,  
*Executive Director; Sweepstakes Commission, State of New Hampshire*  
Concord, N.H.

DEAR MR. POWERS: This is in response to your letter of September 1, 1971, regarding television news coverage of a drawing held on August 27 by the Sweepstakes Commission of the State of New Hampshire at the Plymouth State Fair. You state that Mr. Fred Kocher of Station WMUR-TV declined to cover the drawing or to interview the major prize winners on the ground that management policy prohibited such coverage.

You express the belief that this Commission's standards over the years for broadcasting lottery information have been "shifting, inconsistent and sometimes vague," with the result that some stations have decided to broadcast no information about your program, and that in refusing to cover the super-drawing of August 27 WMUR-TV failed to carry out its responsibilities in good faith news coverage to the citizens of New Hampshire.

The Commission's rulings in lottery cases have been based upon the language of Section 1304, Title 18 U.S.C. and the decisions of the courts in interpreting the statute. Although Section 1304 prohibits the broadcast of "any advertisement of or information concerning any lottery," the Commission has not sought to prohibit any mention of lotteries in news broadcasts, because of First Amend-

ment considerations. In the Commission's Supplementary Declaratory Ruling of February 26, 1970, to which you refer, it sought to apply to various types of broadcasts the mandate of the United States Court of Appeals for the Second Circuit. The Commission, in its interpretation of the Court's decision, declared in the Supplementary Ruling that, "Live broadcasts of the drawing of winning lottery tickets would constitute the direct promotion of a lottery and are therefore prohibited." (Item 5)

In Item 6 of the same document the Commission found permissible the broadcast of "Interviews with persons holding winning lottery tickets, relating among other matters of general interest, to the number of tickets they purchased, their expectation of winning a prize, their reactions upon learning that they held winning tickets, and what they did or tend to do with the prize money." The Commission stated that "Such interviews are permissible as part of the licensee's good faith judgment as to information serving the interest of its area."

Items 5 and 6 of the Supplementary Ruling appear to be relevant to a determination by a licensee as to whether the broadcast of the kind of material cited in your letter is legally prohibited, but I wish to emphasize that the Commission primarily relies upon the licensee's own good faith judgment as to how best serve his community, and had made clear many times that it will not attempt to substitute its judgment for the licensee's as to what is newsworthy or what other particular matter should be broadcast. Rather it requires licensees to attempt to ascertain the needs and interest of their communities and to serve such needs in their over-all programming. At the expiration of each license period the Commission attempts to determine whether the licensee had substantially fulfilled this obligation.

You may also be interested in a later Declaratory Ruling by the Commission on the broadcast of lottery information, given this year in response to a request by a New Jersey broadcaster. I am enclosing a copy of it.

On October 1, 1971, we received an inquiry from the law firm of Cohn and Marks requesting, on behalf of United Television Company of New Hampshire, Inc., licensee of Station WMUR-TV, an advisory opinion as to the extent to which coverage of lottery drawings and/or contemporaneous awards of prizes or interviews with winners may be broadcast. We did not deem it necessary to issue a formal ruling in this instance. However, our reply to the licensee's letter of inquiry is enclosed for your information.

I should again emphasize that while there is clearly certain material pertaining to lotteries that may properly be broadcast by a licensee, the Commission does not require that such material be broadcast. Rather, as noted above, the decision whether to broadcast any particular material is for the licensee's determination, in the exercise of his good faith judgment, as to what will best serve the needs and interests of his community.

I hope that the above and the enclosures will help to explain the Commission's interpretation of the statute and of the decisions of the courts on the subject.

Sincerely,

DEAN BURCH,  
*Chairman.*

EXHIBIT 8

DECEMBER 4, 1973.

Hon. DEAN BURCH,  
*Chairman, FCC Commission,*  
*Washington, D.C.*

DEAR MR. BURCH: We had not planned to respond to your letter of October 4, 1973, your No. 3400, but after watching David Susskind interview millionaire lottery winners on the evening of November 17, we felt we should at least record our dissatisfaction with the manner with which your policies are unfairly administered from State to State. Mr. Susskind developed human interest stories as to how the quality of their lives had changed as a result of their winning the prizes, their thoughts about the drawings and their general philosophy about life. He concluded the one hour program by telling the viewers that they likewise could be a millionaire by purchasing tickets in their lottery states.

You missed the target entirely in your letter of October 4 when you state that, "the Commission does not require that such material be broadcast". The radio and TV stations in New Hampshire want to cooperate with our program, the reason they decline to do so is because of your regulations and their fear of losing their license. When we bring to their attention such programs as the Susskind show or some other network telecast of lottery information, they indicate that the networks can afford to take the risks. We have drawings all over the State; \$100,000 winners are presented with checks at least once per month. We believe this is a bonafide news story and the stations are entitled to interview these prize winners about their reactions and plans for the money. However, without exception, the radio stations in Manchester, Keene, Nashua, Claremont, Concord, Laconia and Portsmouth have declined invitations to broadcast such information on the basis of your alleged regulations. In other words, your regulations have struck fear in the hearts of the small stations, but obviously the networks go on their merry way broadcasting public interest stories about lottery programs to the public.

The sad part of all of this is that you have not spelled out in understandable terms the permissible areas that may be broadcast for the New Hampshire stations. You may not have intended this to be the end result but this is how it is working out in practice.

All of this brings back memories of 1964-65 when we televised the big Sweepstakes race at Rockingham Park. Chris Schenkel was told he could not even mention that it was a Sweepstakes race or that there were several persons present who were winners of \$100,000. Section 1304 has not changed since those years but obviously your interpretation has. In fact, in the Fall of 1963 the Radio Broadcaster Association of New Hampshire wrote to your Commission asking for guidance about news stories. You indicated that care and caution must be exercised and gave the following example as a standard for news: "If a winner were denied his prize because of his race." With this as a standard, we have had a virtual blackout ever since.

When you see the lack of uniformity among the states in the interpretations of your policies, it would seem that you must conclude in all fairness that there is something wrong. Either your policies are cloaked in such legal jargon that they are misunderstood, or they are being violated. If the Susskind program is now an acceptable standard for news and public interest, why don't you advise the radio and TV stations in New Hampshire that this is a permissible area and that they can interview our major prize winners without fear of a hearing or loss of license? In view of the disparity that continues to exist, we do not agree with you that your rulings have been reasonable and sufficiently precise to provide licensees with adequate guidance in making judgments as to the kinds of lottery information that may be broadcast. It may be that you need closer liaison with your licensees and more effective communication at the grass roots level.

Very truly yours,

EDWARD J. POWERS,  
*Executive Director.*

EXHIBIT 9

DEPARTMENT OF JUSTICE,  
Washington, D.C., September 23, 1966.

MR. EDWARD J. POWERS,  
*Executive Director, Sweepstakes Commission, State of New Hampshire, Concord, N.H.*

DEAR MR. POWERS: This is in reply to your letter of August 23, 1966, requesting an advisory opinion on Section 1953 of Chapter 95, United States Code, and its relationship with Sections 1301 and 1302 of Chapter 61.

While we sincerely appreciate the interest you have shown in this matter, nonetheless, the Department of Justice is not authorized to give specific legal advice to persons not connected with the Federal Government. We are, therefore, unable to comply with your request for an advisory opinion.

Sincerely,

FRED M. VINSON, JR.,  
*Assistant Attorney General.*

## EXHIBIT 10

[From the Wall Street Journal, Mar. 27, 1967]

## UNCLE SAM'S LOTTERY A \$10 TICKET CAN WIN SALABLE OIL, GAS LEASE

LAND-OFFICE DRAWINGS CAN LEAD TO A \$1 MILLION PAYOFF; IS U.S. VIOLATING ITS OWN MAIL LAWS?

By Burt Shcorr, *Staff Reporter of The Wall Street Journal*

Washington—Want to pyramid a \$130 investment to \$2,000? Or wring a \$25,000 return from only \$430? Or perhaps risk \$850 to get as much as \$1 million?

Then buy a \$10 "ticket" in Uncle Sam's oil and gas lease lottery.

If you've never heard of it, you probably have plenty of company. Nonetheless, the Interior Department's Bureau of Land Management is running a game of chance that, according to at least one Government lawyer, appears to defy Washington's own anti-lottery laws.

Since 1960 Government land offices have been conducting monthly drawings for oil and gas leases on Federal real estate, mainly scattered through Western states. Tens of thousands of players have been trying their luck. Only a minority have won leases on land that actually contains salable oil and gas. But for dozens who have won, including a Florida postal clerk, a Nevada housewife and a retired Texas contractor, the risk has been rewarding indeed.

"Simultaneous filing of offers to lease," as the Bureau stuffily prefers to call the lottery procedure, was devised to do away with the hurly-burly that formerly marked competition at land-office counters for leases to replace others that have expired or been canceled. Would-be lessees now have a week before each drawing to submit blue application cards for a particular parcel. Each card must be accompanied by a \$10 filing fee and the initial year's lease payment of 50 cents an acre; the lease payment is returned if the card isn't drawn to win a lease.

## THE PAYOFF

For those who happen to land a valuable lease, the payoff comes when brokers or oil companies purchase it.

Alver C. Duncan, a Jacksonville, Fla., postal clerk, in December got \$2,000 from a broker acting for a Los Angeles oil company for an 80-acre Eddy County, N.M., lease. Mr. Duncan had won the lease in the Federal lottery in 1964. After deducting his filing and lease payment outlays, he figures he netted \$1,870, plus a 3% royalty "override" on any oil or gas produced from the tract (a sweetener customary in such transactions.) Mr. Duncan still has four unsold leases after making more than 150 drawing entries during the past four years.

Not everybody is that lucky. Most oil and gas leasing experts agree that about 90% of the leases acquired through the Federal drawings prove unsalable, and only about 3% can be sold for a worthwhile profit. A Florida veterinarian who spends more than \$150 a month on lottery filing fees and is paying rent of \$10,000 a year on 20,000 acres of still-unsold leases says that "goat pasture land is about all I've won."

Still, the chances of winning a salable lease in any one drawing may range typically from 1 in 200 to 1 in 2,500. Single ticket purchasers in the New Hampshire state sweepstakes, by contrast, face odds of around 16,000 to 1 against winning a major prize, with the exact amount—ranging from about \$3,500 to \$50,000—determined by a horse race.

"The oil and gas lease drawings offer the most fantastic odds in the world," exclaimed Alexander S. Bowers, president of Steward Capital Corp., a New York firm that selects and enters customers' filings in the Government lottery for a \$15 service charge per application.

## SOME CLOUDS GATHER

Some clouds now are gathering over the lottery, though.

So far, entrants apparently have been able to deduct their fee payments and other costs in calculating their personal income taxes. One Wall Street executive whose income places him in the 70% tax bracket currently is selling a lease in Utah for \$6,000; that will leave him only \$1,000 behind in cash terms even though he has poured some \$14,000 into the lottery and related expenses. But

the Internal Revenue Service now is taking a hard look at deductions by applicants who aren't in the business of developing Federal leases themselves.

The Bureau of Land Management is pushing for reforms by Interior Secretary Udall to deal with tactics some applicants or their representatives are believed to employ to stake the outcome of drawings in their favor. Proposed changes, which could make the lottery less enticing to the average citizen, include higher lease charges on parcels obviously more valuable than most.

More drastic alterations advocated by some major oil companies could be argued on Congress in the report of Congress' public land law review commission, due next year. Even total abolition of the lottery might be proposed.

The issue may come to a head as a result of New York state's plan for a sweepstakes. Gov. Rockefeller proposes offering \$300,000 in prizes on every 500,000 two-dollar tickets sold, and approval by the New York legislature seems close.

If this plan goes through, some New York Congressmen are certain to join with colleagues from New Hampshire, where the sweepstakes has been operating since 1964, to force an embarrassing question on the Johnson Administration: Why does the Government diligently enforce against others the postal laws that bar lottery material from the mails, yet freely permit mail use for its own oil and gas lease drawing?

The mail-use restriction on lotteries dates back to 1890, when Congress acted to thwart a corrupt lottery chartered by Louisiana. Lawmakers then condemned lotteries as "swindling and demoralizing agencies . . . skin games of the most corrupting order."

A Post Office Department attorney whose job includes defining what is and what isn't a lottery for mail-use purposes, has no doubt that the oil and gas drawings are precisely the sort of thing Congress had in mind. "Under any other auspices, the oil and gas lease drawing would have to be termed a lottery," he confides. "We say it's a lottery if it involves a scheme where consideration is furnished for a prize that is dependent on chance. All three elements are present in the Interior Department procedure."

Meanwhile, the drawing applications keep pouring into the land offices—as many as 30,000 in some months, officials reckon. There currently are some 300,000 "wildcat" leases on Federal lands with unproven oil and gas potential. Approximately 1,000 of these terminate in an average month; new leases on these tracts become the lottery prizes.

Because of recent oil and gas finds in the Delaware and San Juan basins of New Mexico, the U.S. land office in Santa Fe is attracting the most players these days—some 11,000 a month by the most recent tally.

#### ACTION IN SILVER SPRING

But the fastest-growing lottery undoubtedly is the one conducted in Silver Spring, Md., just outside Washington, where there is a land office covering 30 states from the East Coast to just west of the Mississippi. From a monthly volume of only some 200 cards six years ago, its drawing entries have swollen to 2,000 a month, estimates Doris A. Koivula, manager of the Silver Spring office.

The other day, a lone visitor who braved a chilly drizzle to witness the Silver Spring lottery found Erich F. Smith, a Federal land law examiner, vigorously shaking stubs in a blue hatbox. To make his selection, Mr. Smith merely reached beneath the battered top (avoiding any downward peeks) and then called off the winning stub number to a secretary seated across the table.

Soon, however, nearly all U.S. land offices conducting lotteries, including Silver Spring, will be equipped with blower-operated ticket drums made by "Bingo King" Co. Inc. of Englewood, Colo., whose other customers include Las Vegas casinos. Cost of the Government models: \$180 to \$230 each. In these devices, a hand crank turns a drum containing the tickets and two blowers stir up the tickets within the drum to insure they get thoroughly mixed; a door in the drum opens to permit the drawing of winning tickets.

#### SOME BIG PROFITS

However they're done, the lease drawings can be profitable for the winners. Mrs. Peter Hummel, wife of a Reno, Nev., geologist, was the winner in a field of 2,698 applications for the lease on Parcel 44 in the Santa Fe land office's January drawing. Guided by her husband, Mrs. Hummel already has turned down a \$25,000 bid for the 840-acre lease. The Hummels have paid Uncle Sam

\$430 on Parcel 44 so far. Mr. Hummel intends to organize a drilling partnership with several friends to test the tract. If the venture makes good, gas production could yield him and his wife a \$200,000 return, he estimates.

The experience of a retired El Paso, Texas, contractor suggests that Mr. Hummel's expectations may not be unreasonable. Some 18 months ago the contractor, competing against 1,322 rival applicants, won a 1,680-acre Federal lease in southwestern New Mexico. His total investment was \$850. An oil company quickly bought him out for around \$100,000, and allowed him to retain overrides ranging from 6 $\frac{1}{4}$ % to 20%.

The parcel proved to be an extension of a proven field and now has 24 producing wells. The contractor calculates his total potential income over the normal producing life of the wells at close to \$1 million.

## EXHIBIT 11

NOVEMBER 12, 1968.

ROSEL H. HYDE,  
Chairman, Federal Communications Commission,  
Washington, D.C.

DEAR MR. HYDE: Your directive of 9/27/68 concerning the broadcasting of advertising and information about state-sponsored lotteries has been brought to my attention. I was very much interested in your claim that the law makes no distinction as regards state regulated lotteries and that it indicates clear congressional intent to cover all lotteries whatever their source "because of their harmful effects upon the public."

The New Hampshire Sweepstakes has been functioning since March, 1964. At that time the people of the State voted over 3 to 1 in favor of the sale of tickets in cities and towns throughout the State. In November, 1966, the vote of the people was over 5 to 1, and in November 1968, it was over 6 to 1 in favor of the continued sale of tickets.

We are now in our sixth year and we have yet to observe any harmful effects upon the public. In fact, the contrary is true. Just recently I had the pleasant task of delivering a check for \$100,000 to Mrs. Catherine Glennon, who is a secretary in an elementary school in South Boston. Mrs. Glennon is the mother of two sons, one having just returned safely from service in Vietnam, and the other has been a paralytic for all of his life. Mrs. Glennon is a wonderful person and the expressions of joy and happiness on her part as well as on the part of the school children and her associates were most heartwarming. Governor John W. King has presented checks to most of our major prize winners and they likewise have had an experience of exhilaration which was unique for all of them. They used their winnings for hospital bills, mortgages on their homes, the education of their children, charity, and the starting of a new business. Persons who bought tickets and lost only purchased on the average of from one to three tickets so they were not hurt and had the anticipation of possibly being a winner. The Sweepstakes program has earned over \$9,000,000 for the state school districts in the past five years. There have been over 13,000 winners from 47 states and 11 foreign countries who have shared over \$6,500,000 in prizes.

Since this Commission is responsible for the conducting of this program in the public's interest, we would like to be informed by you of the specifics on which you base your claim as to the harmful effects of our program. The people of New Hampshire are entitled to an explanation from you. We think it significant that pari-mutuel racing is broadcast and televised throughout the nation, including the running of the races and the quoting of odds and pay-offs. You also permit all sorts of sweepstakes sponsored by private business firms, including such advertising as Post Time At The Races. In your reply we would also like to be advised as to how a state-sponsored sweepstakes such as ours has harmful effects upon the public whereas the broadcasting and televising of pari-mutuel racing and private sweepstakes and give-aways apparently do not.

Very truly yours,

EDWARD J. POWERS,  
Executive Director.

## EXHIBIT 12

FEDERAL COMMUNICATIONS COMMISSION,  
Washington, D.C., December 5, 1968.

MR. EDWARD J. POWERS,  
Executive Director, Sweepstakes Commission,  
State of New Hampshire, Concord, N.H.

DEAR MR. POWERS: This is with reference to your letter of November 12, 1968 concerning the Commission's recent declaratory ruling "that the prohibitions of [18 U.S.C. 1304] and our rules apply to State-sponsored lotteries." On the chance that you have not been furnished the complete text of the ruling, a copy of it is enclosed herewith.

Your views that the New Hampshire Sweepstakes has served important and beneficial purposes is understandable and appreciated, and the Commission's ruling should in no sense be interpreted as an attack on it or any other State-sponsored lottery. However, the Commission is bound to honor the clear Congressional intent that lotteries of whatever sponsorship or description be denied the use of federally licensed radio stations for advertising and promotional purposes. This is not a new position by the Commission and is fully consistent with views expressed by the Commission in a letter of October 24, 1963 concerning "the broadcasters role in relation to the New Hampshire Sweepstakes." A copy of that letter is enclosed for your information and convenience.

In the final paragraph of your letter you imply that there is inconsistency in the Commission's approaches to State-sponsored lotteries on the one hand and "pari-mutuel racing and private sweepstakes and give-aways" on the other. It is believed, however, that other enclosed materials will persuade you that such is not the case. Thus, the enclosed Report and Order in Docket No. 15040, issued in 1964, reaffirmed the Commission's purpose "to suppress the use of interstate communication facilities in aid of illegal gambling", including "illegal gambling on horse racing." Additionally, the enclosed Notices of Apparent Liability are ample evidence that the Commission takes appropriate enforcement action where its licensees advertise "private sweepstakes and give-aways" possessing the various elements of a lottery.

It is hoped that all of the enclosed materials will be helpful to you and clarify for you the Commission's positions in these troublesome areas of Federal regulation.

Sincerely yours,

ROSEL H. HYDE,  
Chairman.

## EXHIBIT 13

NOVEMBER 12, 1968.

HON. LOUIS C. WYMAN,  
U.S. House of Representatives,  
Washington, D.C.

DEAR LOU: I am forwarding herewith a directive issued by FCC on 9/27/68 regarding the broadcasting of advertising and information about state-sponsored lotteries along with a copy of a letter dated November 12, 1968 which I have directed to the Chairman of the FCC concerning the claim of the "harmful effects upon the public" of lotteries.

I realize that the final paragraph in the directive provides some measure of judgment in the broadcasting of news items. Of course, it is my view that since we are handling public funds and in view of the expression of approval on the part of our voters, that all of the people of New Hampshire are entitled to be kept informed of the full details of the program. News releases issued by this office are sent to the radio-TV media, but only WGIR has given us any cooperation.

The thought has occurred to me that you might use this directive as a basis for challenging the ridiculous status of things. As I have indicated to you in the past there is utter confusion and lack of uniformity in applying the FCC directives. In New York, stations have televised the drawings and given full information about the program where it was deemed desirable to do so. We like

wise have received attention from Boston stations where they felt the public was more than casually interested. It all seems to depend on how the lawyers from each station wish to interpret the FCC directive.

As you will observe from my letter to FCC, I think we should challenge them to specify the "Harmful effects upon the public." It was one thing to make this claim prior to the functioning of state-sponsored lotteries, but now that we have been in business for over five years. I think we can use our experience and the reaction of the public to defend our position. We may be a voice crying in the wilderness, but I think the more we challenge the archaic thinking directed toward us at the federal level the better our chances are of putting us on the same plane with pari-mutuel racing and other forms of legalized gambling.

I rest all of this on your judgment because you are closer to the pulse of the atmosphere in Congress.

My sincerest congratulations on your most impressive reelection. I know it must have been very satisfying to you and Ginny. You have my very best wishes for continued success.

Sincerely,

EDWARD J. POWERS,  
*Executive Director.*

EXHIBIT 14

NOVEMBER 27, 1968.

HON. RAMSEY CLARK,  
*Attorney General,*  
*Washington, D.C.*

DEAR GENERAL CLARK: For the past several months I have been purchasing copies of the New York Daily News in New Hampshire which contain complete lists of prize winners of the New York Lottery. Last week I was in Bermuda and obtained issues of this newspaper which listed the winners from the most recent drawings. On the other hand, the Manchester Union-Leader does not send out of state any of its editions containing lists of winners in the New Hampshire Sweepstakes because of its understanding that to do so might come within the purview of the federal anti-lottery statutes, Title 18 U.S.C. 1301-1302.

I am sure you are aware of the policy being followed by the New York Daily News. If this assumption is accurate, it would seem that our program is being discriminated against and that the Manchester Union-Leader is entitled to send its editions to out-of-state subscribers.

There has been untold confusion in the interpretation of these statutes for many years dating back to 1934 when the then Postmaster-General James Farley issued the statement or ruling that henceforth the Post Office would adopt a "liberal policy" in interpreting the mail statute (s. 1301) as regards the publishing of winners in the Irish Sweepstakes. This let down the bars and thereafter newspapers freely listed the Irish Sweepstakes winners, particularly the New York Daily News and the Hearst papers. To my knowledge your department has never proceeded against any newspapers for printing news about the Irish Sweepstakes where the editions were mailed or sent across state lines. This is rather significant when we consider that the statutes in question have been on the books for over 75 years.

I think the interpretation of these statutes by the New York Daily News is sound. The First Amendment to our Constitution provides that there shall be no law enacted restricting the freedom of the press. Lottery or sweepstakes winners are published as news stories because of the public interest and it seems unrealistic to suggest that this judgment on the part of newspapers could be viewed as a violation of anything, particularly since they are daily publishing the results of pari-mutuel racing. To deny the newspapers the use of the mails or interstate commerce would be tantamount to strangulation if the same type of prohibition were to exist in other fields of public interest.

I would appreciate your comments as to why the New York Daily News can do what the Manchester Union-Leader feels it cannot do.

Very truly yours,

EDWARD J. POWERS, *Executive Director.*

## EXHIBIT 15

DEPARTMENT OF JUSTICE,  
Washington, D.C., December 20, 1968.

Mr. EDWARD J. POWERS,  
*Executive Director, Sweepstakes Commission,  
State of New Hampshire, Concord, N.H.*

DEAR MR. POWERS: The Attorney General has asked me to respond to your letter of November 27, 1968 regarding the publication of the prize winners of state lotteries and sweepstakes.

The Department of Justice cannot render advice as to whether a particular activity referred to us in this manner involves criminal activity. However, in general, the position of the Department is that if a story has general news value it does not come within the prohibitions of 18 U.S.C. §§ 1301-02.

We wish to thank you for writing and trust that this response sufficiently clarifies the Department's views in this matter.

Sincerely,

FRED M. VINSON, JR.,  
*Assistant Attorney General.*

## EXHIBIT 16

SWEEPSTAKES COMMISSION,  
STATE OF NEW HAMPSHIRE,  
Concord, N.H., January 2, 1969.

We recently sent a letter to the Department of Justice pointing out that editions of the New York Daily News were regularly being sold in New Hampshire which contained complete lists of winners in the New York Lottery. While it has been our view from the beginning that the press is entitled to do this as news stories, we felt that our program was being discriminated against inasmuch as some New Hampshire newspapers either deleted the lists from their out-of-state editions or declined to publish the lists due to their interpretation of the federal anti-lottery statutes (S. 1301-1302).

Also, when the New Hampshire Sweepstakes program began in March 1964, Boston newspapers were contacted by the U.S. Attorney and cautioned about sending their editions carrying a list of our prize winners into other states, irrespective of the means of transportation.

Attached is a copy of a reply received from Fred M. Vinson, Jr. Assistant Attorney General, Department of Justice, dated December 20, 1968. You will observe that in this reply he states, ". . . in general, the position of the Department is that if a story has general news value it does not come within the prohibitions of 18 U.S.C. ss. 1301-02."

Bearing in mind the basis of our letter to the Department of Justice, I feel Mr. Vinson's statement of general policy is most significant inasmuch as lists of prize winners are published by newspapers because of their general interest as news stories. Copies of the New York Daily News were again available in New Hampshire in December which contained complete lists of New York Lottery winners.

We thought you might be interested in Mr. Vinson's reply and we do hope it will help clarify any questions you might have had with regard to news stories about our program.

Very truly yours,

EDWARD J. POWERS,  
*Executive Director.*

## EXHIBIT 17

BOSTON HERALD-TRAVELER CORP.,  
Boston, Mass., January 29, 1969.

Mr. EDWARD J. POWERS,  
*Executive Director, Sweepstakes Commission, State of New Hampshire, Concord, N.H.*

DEAR ED: I hope you will forgive the delay in answering your letter but it was necessary that I do some homework before taking any position. I interpret

your letter as suggesting that a newspaper in interstate commerce could carry a list of the prize winners in the New Hampshire Sweepstakes Program without violating the Federal Anti-Lottery Statutes. Your view would, indeed, appear consistent with the statement (attached to your letter) from Fred M. Vinson, Jr., Assistant Attorney General, Department of Justice, dated December 20, 1968, "... in general, the position of the Department is that if a story has general news value it does not come within the prohibitions of 18 U.S.C. ss. 1301-02."

Unfortunately, I do not feel we can publish such lists on the basis of Mr. Vinson's statement.

As you know, all metropolitan newspapers here considered the lists of prize winners in the New Hampshire Sweepstakes to be of general news value and it simply never occurred to us that publication of the lists of a lawful activity in a neighboring state in which our newspaper is circulated—and, indeed, an activity in which many thousands of Massachusetts residents lawfully participate—could be construed as violating either the spirit or the letter of Federal Statutes concerned with unlawful gambling activities. However, as you note in your letter, all Boston newspapers were contacted by the U.S. Attorney in 1964 and cautioned that distribution in interstate commerce of papers containing lists of prize winners would, in his view, be violative of the Federal Statutes.

Mr. Vinson's statement does not purport to be anything more than a statement of the general position of the Department's policy as of December 20, 1968. While this would certainly appear to indicate a change of policy since 1964, it is for that reason, in my opinion, of little significance: the change in policy which occurred between March of 1964 and December 20 of 1968 might, for all I know, have changed again as of December 21, 1968 and, in any event, is clearly subject to change, especially under a later administration of the Federal Government. Our legal research, on the other hand, provides no basis for reliance on the proposition that any general news value of a story affords immunity from the Federal Anti-Lottery Statutes. Further, we have been able to find no cases which even raise the question as to whether Sections 1301 and 1302 of Title 18 violate the constitutional guarantee of freedom of the press.

I will not burden you with the citations and references which, in the light of our legal research, suggest very substantial reservations with respect to our right to publish prize lists of this sort—I am sure you are very familiar with all of them.

Sincerely,

HAROLD E. CLANCY.

EXHIBIT 18

MARCH 28, 1969.

Hon. LOUIS C. WYMAN,  
*House of Representatives,*  
*Washington, D.C.*

DEAR LOU: For your information I have before me the March 20, 1969 edition of Chicago's American that has on page 16 a complete list of names and numbers of Irish Sweepstakes winners from their recent drawings. Presumably these editions had no special handling and went through the mails and across state lines.

Also, on the evening of March 26 over Channel 7 WNAC Boston, on the 11 o'clock news, pictures were shown of a woman in Boston who won \$125,000 and they also had a close-up of her Irish Sweepstakes ticket.

While we have no objection to their giving this type of attention to the Irish Sweepstakes, it is irritating to be the victim of a double standard. The press, radio and television, as a result of the Department of Justice attitude, want to literally interpret the federal laws when publicity of our program is concerned. For example, attorneys for WNUR-TV, WKBR and WFEA have instructed that our program is not even to be mentioned.

Best regards.

Sincerely,

EDWARD J. POWERS,  
*Executive Director.*

EXHIBIT 19

MAY 15, 1969.

HON. LOUIS C. WYMAN,  
House of Representatives,  
Washington, D.C.

DEAR LOU: Attached hereto is an Associated Press story about the wives of Senate leaders collecting their Kentucky Derby winnings by mail. The story states that a Post Office Department spokesman said that mail collections of this nature are a violation of the federal lottery law, but that such collections are common.

It has been a well known fact that persons have been mailing their pari-mutuel tickets to tracks throughout the nation for payment over many years. The Post Office spokesman allegedly said that action is taken only in those cases where there is a complaint or repeated violations.

This is another illustration of how ridiculous the entire situation has become and it points up the fact that the federal lottery laws could not be fairly and impartially enforced against legalized programs. I thought this might provide you with some ammunition in your conversations with representatives of the Justice or Post Office Department. Best regards.

Sincerely,

EDWARD J. POWERS,  
Executive Director.

NIXON'S PARTY CAN COLLECT IF . . . POST OFFICE SAYS

Washington (AP)—It appears that the wives of Senate leaders can collect their Kentucky Derby winnings by mail without trouble—providing no one complains and they don't do it too often.

Mrs. Mike Mansfield and Mrs. Everett Dirksen, wives respectively of the Democratic and Republican leaders, were in President Nixon's party at the Louisville race Saturday and each had a \$10 win ticket on Majestic Prince, the big colt that won.

The presidential group left so soon after the race that they were unable to collect the \$24 to which each is entitled. White House aides told sympathetic reporters that the tickets could be collected by mail.

When a question was raised about the legality of such a transaction, a Post Office Department spokesman said Saturday night that mail collections of this nature are, indeed, a violation of the federal lottery law.

But some devoted horse players noted that most, if not all, race track programs instruct customers in how to collect winning tickets by mail. And such collections are common.

Back to the spokesman. He acknowledged Sunday that the law is aimed chiefly at illegal lotteries, and inspectors are inclined to ignore the widespread practice of collecting legally purchased race track tickets by mail.

Specifically, he said that action is taken only after a complaint is lodged by a third party. Even in such cases, the offender usually is just warned, he added. Only repeated violations and continued complaints are likely to result in prosecution, he said.

EXHIBIT 20

OCTOBER 1, 1969.

CHAIRMAN,  
Federal Communications Commission,  
Washington, D.C.

DEAR SIR: Reference is made to previous correspondence with your Commission and your declaratory ruling released on September 27, 1968 as regards the broadcasting of information concerning lotteries.

On the evening of September 29, 1969, the prize winners of \$250,000 and \$100,000 in the New York lottery appeared on the Merv Griffin show, a nationally televised CBS program. They were interviewed about their reaction and other aspects of the New York lottery. It would appear that your declaratory ruling prohibits this type of advertising and promotion of a lottery. In fact, as a result of your ruling, radio and TV stations in New Hampshire declined to even broadcast our news releases. As you know, it has been the view of this Commission

that the public is entitled to all of the news about their state legalized lottery programs, but your interpretation of the federal statute involved has effectively discouraged our own media from broadcasting about our program.

We would like to know whether the appearance of these New York prize winners on the Merv Griffin show comes within the prohibitions promulgated by you. If this publicizing of the New York lottery was proper, we would like to be in a position to so advise New Hampshire broadcasting stations so that they can be guided accordingly.

Very truly yours,

EDWARD J. POWERS,  
*Executive Director.*

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EXHIBIT 21

FEDERAL COMMUNICATIONS COMMISSION,  
*Washington, D.C., October 31, 1969.*

Mr. EDWARD J. POWERS,  
*Executive Director, Sweepstakes Commission, State of New Hampshire, Concord, N.H.*

DEAR Mr. POWERS: This is with reference to your letter of October 1, 1969, concerning the appearance of New York State Lottery winners on the Merv Griffin show of September 29, 1969.

The Commission has no knowledge of the particular program in question; however, the Commission does not construe the lottery statute as barring bona fide news stories or interviews. On the other hand, the statute does, in our view, bar advertisements or announcements which directly promote a lottery, notwithstanding that the broadcast also contains news, such as the amount a lottery realizes for education.

It is hoped that the above information will be helpful to you.

Sincerely yours,

ROSEL H. HYDE,  
*Chairman.*

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EXHIBIT 22

NOVEMBER 12, 1969.

Mr. WILL WILSON,  
*Assistant Attorney General, Department of Justice, Washington, D.C.*

DEAR Mr. WILSON: Mr. William Loeb of the Manchester Union Leader has been kind enough to furnish me with a copy of your letter of November 3, 1969.

The Manchester Union Leader continues to extract from its mail and out-of-state editions lists of our prize winners because it is not assured of your interpretation of the anti-lottery statutes as regards this type of news coverage. You will recall that I advised you months ago that the New York Daily News was transmitting copies of its editions into this state containing lists of New York lottery winners. On November 7, 1969, I observed that this practice continues. It would appear, therefore, that you feel that the publishing of prize winners in a state legalized lottery does not come within the provisions of the anti-lottery statutes and that you consider this to be in the category of "legitimate news stories."

In your letter of November 3, 1969, you referred to the ruling of the Court of Appeals for the Second Circuit in the case involving the New York State Broadcasters Association, Inc. and Metromedia, Inc. However, in that case in referring to "news broadcasts", the Court stated as follows:

"In any event, broadcasters in all fairness should be informed of the scope of the prohibition as specifically as possible. The Commission apparently agrees since it has indicated doubts in another context about imposing liability on a licensee in the absence of prior Commission or judicial decisions. See 32 Fed. Reg. 10303, 10304 (1967). Because of this, we hope that the Commission will take the opportunity to rule specifically on all or most of petitioners' requests—including whether sample newspaper reports or stories submitted to it by petitioners would be permitted on radio and television—with whatever qualifications are appropriate in the light of this opinion."

In view of the request of the Court for the Federal Communications Commission to provide specific answers to the questions raised by the petitioners, it would appear that we likewise are entitled to a specific answer as to whether lists of prize winners come within the scope of "legitimate news stories". While it seems clear that this is true, particularly when considering the continued interstate transportation of such articles in the New York Daily News, the Manchester Union Leader is certainly entitled to a more definitive statement.

The enforcement policy of the federal government in this entire field has been and continues to be most confusing. On the one hand the Federal Trade Commission complains about private sweepstakes because they do not publicize a list of their winners and the amount of money won, and on the other hand, there are these federal restrictions on our desire to give full information about all aspects of the N.H. Sweepstakes program. We receive many complaints from people outside our state who complain they never see a list of our winners. You indicate that you do not give advisory opinions as to any proposed activity. However, Boston newspapers were contacted in March, 1964 by the then U.S. Attorney Arthur Garrity and cautioned about including lists of our prize winners in their mail and out-of-state editions. This certainly was far more than an advisory opinion and seems to be inconsistent with the present policy of your department.

Congressman Louis Wyman of New Hampshire has a bill filed in Congress (H.R. 723) that would amend the provisions of chapter 61 and sections 1084 and 1953 to exempt state operated sweepstakes from the provisions of these statutes. The problem of any fair and impartial enforcement of the statutes against state legalized programs will continue to become more complex and confusing. Considering all factors and the possible entrance of New Jersey into this field, it would appear to be in the interest of justice and logic for H.R. 723 to have the support of your department. We contend that the role of government should be to ensure that citizens are receiving what they are paying for and not to impose moral sanctions on them, particularly, when they obviously see nothing immoral or illegal in such activity or participation. The vote in New Hampshire, New York and New Jersey seems to fully substantiate this point. In an alleged free society what is the public being protected against?

A review of this entire matter will be appreciated.

Very truly yours,

EDWARD J. POWERS,  
*Executive Director.*

EXHIBIT 23

NOVEMBER 25, 1969.

HON. LOUIS C. WYMAN,  
*House of Representatives,*  
*Washington, D.C.*

DEAR LOU: I was delighted to hear from Bob that you feel you may be able to arrange a meeting for us with Assistant Attorney General Will Wilson and possibly Attorney General John Mitchell.

You have in your possession copies of correspondence I have had in the past with the Department of Justice on the pertinent issues. Your attention is particularly directed to my letter of November 12, 1969 to Assistant Attorney General Wilson.

The principal points of discussion would seem to be as follows:

1. We would like a definitive statement from the Department of Justice that they consider prize lists as legitimate "news stories". The Manchester Union Leader continues to delete these lists from their out-of-state editions. This is not only considerable expense but also deprives many of our out-of-state buyers from this information. We receive many complaints from persons stating that they do not see a list of our winners. As recent as November 7, 1969 I observed a copy of the New York Daily News in Concord, New Hampshire at a newsstand containing the complete list of New York lottery winners. This has been called to the attention of the Department of Justice in the past and since no effort apparently has been made to stop this activity, we can only infer that they consider it in the category of news.

2. The Department of Justice claims it does not give advisory opinions. On the other hand, in March 1964 the then U.S. Attorney in Boston, Arthur Gar-

rity, contacted the Boston newspapers and cautioned them about sending their editions across state lines that contained lists of our prize winners. This was in spite of the fact that such editions had carried lists of Irish Sweepstakes winners for many years. This certainly was far more than an advisory opinion. In fact, I have in my possession a letter dated July 27, 1965 from Attorney Joseph A. Millimet which sets forth the conversation he had with Assistant Attorney General Henry Peterson concerning this general subject matter. Mr. Millimet states as follows:

"Peterson says they have, in fact, consistently taken the position as to the Irish Sweepstakes, as well as the New Hampshire Sweepstakes that it is not permissible to ship newspapers in Interstate Commerce which contain the names of the prize winners. He says that they have not had any cases in which they have prosecuted the paper, but that they have had good luck in securing the cooperation of the papers whenever they have warned them about the statute. This is the official policy of the Department and they intend to continue it."

It is to be observed that there has been no prosecution of any newspaper for alleged violations of sections 1301-1302 since these statutes were enacted prior to the turn of the century. It seems patently clear that the department does not wish to proceed against a newspaper probably because the two statutes might be declared unconstitutional for arbitrary interference with freedom of the press. On the one hand, they "warn" newspapers, but when we ask for a definitive statement, they hide behind a policy that obviously is only used when it is to their advantage.

3. The New York State Broadcasting Association, Inc. and Metromedia, Inc. have brought suit against the U.S.A. and Federal Communications Commission charging that section 1304 is an unconstitutional interference with freedom of speech and press. The federal Circuit Court of Appeals in New York City has ruled this statute is constitutional but instructed FCC to be more specific in setting forth standards as to what constitutes news and "information concerning any lottery". The case is now under appeal to the U.S. Supreme Court, and the State of New Hampshire and is filing an amicus curiae brief. We do not know whether the Supreme Court will grant certiorari.

4. There has been much confusion and inconsistency in the enforcement of sections 1301, 1302, 1304 and 1953 and it seems impossible for the Department of Justice to adopt any uniform, fair or impartial standards in the application of these statutes against legalized lottery programs. For example, if the department contends that it is a violation of federal law to transport lottery receipts across state lines, how can it enforce section 1953 against the millions of law abiding citizens who do this very thing in buying New York and New Hampshire lottery tickets and who are of the belief that such an activity is neither illegal nor immoral. Also, some radio and TV stations carry "news" about the New York and New Hampshire lottery whereas others have a complete blackout as regards both programs. The entire situation will become more murky when New Jersey enters this business as a means of raising revenue. You will recall that on November 4, 1969, New Jersey voters approved a lottery by a favorable vote of about 4 to 1.

5. I think the Department of Justice has to eventually face up to this situation and admit that we must have the same exemptions and privileges provided pari-mutuel racing. Their present policy only leads to contempt for the law when the vast majority of people do not agree with their position. We feel that the department should support a hearing on your bill (HR 723) that would amend the provisions of chapter 61 and sections 1084 and 1953 to exempt state operated sweepstakes from the provisions of the statutes. The support of the department would undoubtedly have a salutary effect on your chances of obtaining a hearing on your bill.

6. It is pertinent that a ruling released by FCC on June 19, 1964 as regards the broadcasting of horse racing information reads as follows:

"Horse racing and pari-mutuel betting at race tracks are, of course, permitted in many states. Indeed, the revenues derived from such legal pari-mutuel betting are of considerable significance to many of the states. These factors underscore the established role of horse racing, a role which the Commission recognizes and one which we do not wish to disturb."

Since FCC placed emphasis on the legality of pari-mutuel betting and the fact that it produces revenue for states engaging in it, it would appear logical that the same factor should apply to legalized lottery programs operated and controlled by sovereign states.

7. The federal government continues to operate its own lottery in connection with the awarding of oil and gas leases on public lands. I just received this week a circular about their November drawing allegedly distributed by the Bureau of Land Management. A copy of this notice is enclosed. Persons must pay an "entry fee" to participate in the drawing and this entry fee is not returned. You may recall that considerable publicity was given to this matter a couple of years ago but apparently it had no effect on the policy of the U.S. Government in this regard.

8. The Federal Trade Commission complains about private sweepstakes because they do not publish a list of their winners and the amount of prizes won. On the other hand, we want to give full disclosure to our list of winners and the amount of money distributed to instill public faith and confidence and we are restricted in these efforts. The position of the federal government seems to be inconsistent.

These are some of the matters, Lou, that we could discuss with officials at the Department of Justice and the foregoing may suggest other items to you.

Thanks for your cooperation.

Sincerely,

EDWARD J. POWERS,  
*Executive Director.*

EXHIBIT 24

DECEMBER 2, 1969.

EDITOR,  
*Wall Street Journal,*  
*New York City, N.Y.*

DEAR SIR: Your attention is directed to your article of March 27, 1967 regarding the federal lottery in connection with the sale of oil and gas leases. At that time you quoted a Post Office Department attorney as indicating that this lottery would be prohibited under the federal statutes if operated under any other auspices.

We received a letter this week from Mr. Maurice Lurault, 6907 Donald Avenue, Tampa, Florida, with which he forwarded the enclosed circular advising of the November drawing to be held in awarding oil and gas leases on public land. While the circular does not indicate the source, Mr. Lurault expressed the opinion that it was issued by the Bureau of Land Management for the Department of Interior.

I thought you might like to know that the policy of the U.S. Government apparently has not changed since you exposed this practice.

Very truly yours,

EDWARD J. POWERS,  
*Executive Director.*

Nov. DRAWING

*U.S. Government Public Drawing to Award Oil & Gas Leases on Public Lands*

Some of these lands have had a potential of over \$500,000 in oil income for the winner. A great many parcels have a potential oil income value of from \$100,000 to \$250,000 and when sold to an oil company, under an advance oil production agreement, this income can be received as capital gain cash.

POSTING DATE—NOV. 17TH

This is the date the list of parcels will be Posted on the bulletin boards of the local offices of the Bureau of Land Management. From there on we have a period of only five (5) days in which we must evaluate the hundreds of parcels and file your applications. We must air mail your filings by Friday to make sure they arrive at the different Land Offices before 10:00 A.M. the following Monday.

In order for us to meet this deadline, it will be necessary that we receive your signed blue Entry Cards by the above Posting Date.

MAIL BY—NOV. 14TH

*Don't Risk Missing a Filing*

Make sure your name will be in the "hopper" for the drawing. Every month we receive many entry cards that reach us too late. We urge you to sign your Blue Entry Cards right now and mail them today while this is fresh on your mind. Good luck in the drawing.

EXHIBIT 25

[From the Portsmouth Herald (N.H.), January 6, 1971]

"Always fight for progress and reform, never tolerate injustice or corruption, fight demagogues of all parties, never belong to any party . . . always remain devoted to the public welfare, never be satisfied with merely printing news, always be drastically independent, never be afraid to attack wrong, whether by predatory plutocracy or predatory poverty."—Joseph Pulitzer

EDITORIAL OPINION.—LET'S GET IT STRAIGHTENED OUT

Undoubtedly Atty. Gen. Rudman's decision to ask for prosecution of the New York Daily News for violating the anti-lottery laws was taken only after long consultations in the offices of the governor and Sweepstakes Commission.

Rudman's request was double-barreled to the extent that he urged that if prosecution can't be had, then he wanted a ruling from U.S. Atty. Gen. John Mitchell (Martha's husband) on lottery news.

We're—naturally—opposed to prosecuting good newspapers for anything, but, we, too, would like to see the thing clarified.

As it stands today, and we know the local postal authorities are doing what they believe is their job, The Herald can publish only a brief story on winners in the N.H. Sweeps. We can't let others know, by publication of numbers, that they are winners.

Yet the New York Daily News comes into New Hampshire with a complete listing of all winning numbers in the New York Sweeps. A paper in Boston used to lease a special wire from Dublin so it could publish all the Irish Sweeps numbers, and it came into New Hampshire with them.

Nothing about the present situation makes sense, and it's high time that it was clarified. Let's either ban everything, or let the individual papers in the states where lotteries are legal print all the information they wish.

The present way of doing business is a mess.

EXHIBIT 26

[From the Portsmouth Herald (N.H.), June 21, 1972]

"Always fight for progress and reform, never tolerate injustice or corruption, fight demagogues of all parties, never belong to any party . . . always remain devoted to the public welfare, never be satisfied with merely printing news, always be drastically independent, never be afraid to attack wrong, whether by predatory plutocracy or predatory poverty."—Joseph Pulitzer

EDITORIAL OPINION.—CONGRESSMAN HARRINGTON'S BILL ON LOTTERIES SHOULD BE EXPEDITED

This could be construed as a case of special pleading, and perhaps it is, but we can't help applauding Massachusetts Congressman Michael Harrington.

Harrington has written to all members of the House Judiciary Committee to try to speed passage through the House of a measure to repeal the present federal laws against sending lottery information through the mail.

The laws, always unevenly applied, are nonsense in the first place. As Harrington said, the present laws are simply "absurd."

Harrington is worth quoting in full as follows:

"The Massachusetts (you may read New Hampshire here) lottery is now a functioning part of state government. Yet existing federal law treats lotteries as some sort of unspeakable crime, and prevents information about them from being carried in any medium which crosses state lines.

"Consequently, to serve their readers in Massachusetts (again read New Hampshire, or Connecticut, or New York), newspapers in the state have to go through an expensive and wasteful process of replating their paper, since they cannot send lottery information through the mail themselves," Harrington said.

Let's end the federal hypocrisy speedily, as Harrington suggests.

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EXHIBIT 27

[From the Exeter News-Letter]

GUEST EDITORIAL.—ANTI-LOTTERY FARCE

This newspaper certainly applauds the efforts of the Sweepstakes Commission's executive director Edward Powers and Congressman Louis Wyman to amend the anti-lottery laws as they relate to the communications industry.

In a letter to Rep. Emanuel Celler, chairman of the House judiciary committee, Powers notes that legalized lotteries now exist in six sovereign states where "the public has overwhelmingly voted in favor of this concept of raising revenue . . . Millions of people are buying tickets each week and it is absurd that there is a communications gap in providing the public full information about their own legalized programs."

Powers calls upon the Congress "to correct this maze of inconsistency, hypocrisy and confusion that permeates the entire problem. There is wide coverage of horse and dog racing with pari-mutuel results on TV every night," (and in the metropolitan newspapers daily).

Many years ago this newspaper was warned by postal authorities not to publish notices of whist or bridge parties even though they were held to support a charity. These were games of chance, we were told, and were a violation of the postal anti-lottery regulations. Publication of such lottery news could make The News-Letter inadmissible to the mails.

There was no reply from P.O. headquarters when we asked how come the dailies use the mails when they publish pari-mutuel results.

Our then Congressman Chester Morrow agreed to prepare a bill which would end this farcical attempt to elevate the public morals by curtailing freedom of the press, but the effort got bogged down in bureaucratic red tape.

Perhaps Messrs. Wyman and Powers can cut the tape and get results. We sure hope so.

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EXHIBIT 28

THE CONNECTICUT VALLEY REPORTER,

*Lebanon, N.H., March 13, 1974.*

MR. WILLIAM DEACHMAN,  
U.S. Attorney, Federal Building,  
Concord, N.H.

DEAR MR. DEACHMAN: Many thanks for the time you spent with me yesterday afternoon discussing the regulations governing the use of the U.S. Mails in the promotion of lotteries. I do hope I didn't disrupt your busy schedule.

In thinking over various points on the way home I wondered if my approach to the subject might cause a false impression in the mind of someone not familiar with the situation.

My gripe is with the U.S. Postal Service not with the New Hampshire Sweepstakes Commission. We, the Reporter, would like the same mailing privileges afforded the Boston Globe and other big newspapers in Massachusetts, Connecticut, New York and New Jersey, who freely run advertising on state sweepstakes, list winning numbers and other pertinent information.

The New Hampshire Sweepstakes is a state sanctioned program and we feel the public has a right to know about its activities. If we are not allowed to pub-

lish information regarding the New Hampshire Sweepstakes we are being denied our rights under the First Amendment. Where do these freedoms begin and end?

All we are asking is the opportunity to help promote a New Hampshire state sponsored revenue producing program, and publish information on its activities.

The law quoted by Postal Inspector Smith, 18 U.S.C. Section 1302 was passed originally in the 1800's with subsequent revisions through the early 1900's.

In October 1961 Congress enacted the Interstate Transportation of Wagering Paraphernalia Statute Section 1953 of Title 18. This is the most recent statute that deals with illegal gambling and lotteries. In that statute specific exception is made for the carriage of newspapers in Interstate Commerce. Why did Congress feel it necessary in 1961 to make this exception for newspapers? Shouldn't this statute take precedence over statutes like Section 1302 Title 18 passed prior to 1900?

Thanking you once again for your kind attention.

Sincerely,

JAMES A. HIGGIN.

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#### EXHIBIT 29

MEMORANDUM WHICH WAS POSTED ON THE BULLETIN BOARD AT WMUR-TV  
(CHANNEL 9), MANCHESTER, N.H., READING AS FOLLOWS:

"There is to be no mention what-so-ever on the air about the New Hampshire Sweepstakes . . . its progress, promotions or winners, etc.

"An FCC regulation prohibits this and although we are very sympathetic to the cause of the Sweepstakes Commission, our hands are tied and our license in jeopardy should we violate this ruling.

"Please read and initial."

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#### EXHIBIT 30

[From the Manchester Union Leader, Apr. 15, 1974]

#### PROGRESS DESPITE ADVERSITY

The outstanding record of success of the New Hampshire Sweepstakes program is misleading in one respect. Although—payments to prize winners and other benefits aside—the program has produced nearly \$18,000,000 in revenue for the state's school districts in its first decade of operation, the success story is somewhat diminished by the thought of what might have been achieved if the program had not been harassed and undercut since its inception.

And that is why the present and past Sweepstakes Commissioners and Executive Director Edward J. Powers have never been tempted to rest on their well-earned laurels. As Mr. Powers recently testified in the nation's capital before the Commission on the Review of the National Policy Toward Gambling:

"Because we have been denied the principal channels of communication, this concept of raising revenue has not as yet been truly tested in the market place. . . . The full revenue potential has, obviously, not been realized. We have a consumer product that must be merchandized and promoted to maintain public enthusiasm and interest as do all other consumer products."

Mr. Powers, who has exceeded our greatest expectations as a Sweepstakes director since his selection by former Governor John King in 1963, went on to recite a veritable litany of legitimate grievances against the federal government's unfair and discriminatory anti-lottery laws, which literally cry out for redress.

In early 1964 the U.S. attorney in Boston warned Boston newspapers not to carry the New Hampshire Sweepstakes list of prize winners in their mail or out-of-state editions, despite the fact that newspapers for years had run lists of Irish Sweepstakes winners under an opinion given in 1934 by Postmaster General James Farley.

Postal inspectors have frequently threatened newspaper editors with prosecution and possible loss of mail privileges, resulting in the replating of mail and out-of-state editions to delete names of prize winners.

When Portsmouth merchants attempted to give away Sweeps tickets to their customers in the summer of 1965, they were told by postal officials that this information could not be included in their advertisement since this would con-

stitute promotion of a lottery—even though there was nothing for the customers to buy and all they had to do was to register for a drawing. Merchants elsewhere in the nation had done virtually the same thing in promotional efforts to advertise and give away Irish Sweepstakes tickets with the approval of the Post Office.

Although the basic purpose of the statute was directed at illegal forms of gambling, the IRS nevertheless ruled in 1965 that New Hampshire must pay the federal 10 per cent tax on lotteries and purchase tax stamps for all persons selling Sweeps tickets, resulting in a silly situation where state employes selling Sweeps tickets had to exhibit tax stamps, whereas employes of the race track selling pari-mutuel tickets did not. (In July 1965, Congress voted to exempt a state Sweepstakes associated with a horse race.)

Because of outmoded statutes, sovereign states feel they must annoy and confuse the public by doing their drawings in part against post positions of races previously run. This is done in connection with the weekly lottery number or the final phase of drawings where major prizes are awarded.

The celebrated Fabrizio court case of 1964, although it resulted in the acquittal four years later of the Elmira, New York man, has left Anthony Fabrizio an angry citizen. The newspaper employe, whose "crime" was that he traveled to Keene to purchase 75 tickets for himself and friends, remains the only citizen ever to be singled out for prosecution under the Interstate Transportation of Wagering Paraphernalia statute as far as activities of the states' legalized lotteries are concerned.

New Hampshire has been victimized by incredible discrimination in connection with radio and TV broadcasts, the most ludicrous illustration being the 1964 and 1965 national televised presentations of the Sweeps—but with the announcer prohibited from mentioning the word "Sweepstakes," or interviewing the major prize winners who were present at Rockingham Park.

The FCC then modified its position when other states entered the lottery business. Even the Friday morning Sweeps drawings at different locations throughout the state are boycotted by local radio and TV on the advice of legal counsel.

While sandbagging the New Hampshire Sweeps, the discriminating feds have allowed the Department of Interior to operate a lottery of its own in awarding oil and gas leases.

Weighing these negative considerations against the positive fact of the Sweepstakes program's scandal-free record of integrity, it would seem to be a modest request that Mr. Powers presented to the review commission—i.e., that it recommend that Congress take prompt and favorable action on pending legislation which would amend federal anti-lottery laws to allow states free access to interstate channels of communication, including the use of the mails, radio and television.

Mr. POWERS. I will read portions of the statement and try to summarize as much as I can.

I do want to thank you for this opportunity to express our views to your committee. This is a singular occasion for the New Hampshire sweepstakes because we have been trying to obtain a congressional hearing for 10 years. In fact, our own Congressman, Louis C. Wyman, introduced the first bill in 1964 to amend the archaic Federal anti-lottery laws. Our Congressman James C. Cleveland is the present sponsor of H.R. 13130. We are very pleased that our goal now have a chance to be realized. There is at least a glimmer of light at the end of the tunnel.

I speak to you today principally as executive director of the New Hampshire Sweepstakes Commission, but also as president of the National Association of State Lotteries, and I would like to discuss that organization with you briefly later in this statement. Both of these agencies have a common interest in the objectives being sought.

The heart of the problem relates to the inconsistent efforts of the Federal Government to enforce, in our present jet age, laws that were enacted in the stagecoach era. We are certain you will agree that laws

must have the respect and support of the people if they are to be effectively enforced. We are all too familiar with the price society has paid in the past to learn this lesson.

It is my purpose to illustrate the absurdity of the Federal position in modern-day society and to urge your committee to report favorably on the bills that would modify the present Federal antilottery laws, as regards their application to sovereign States.

I have noticed that there has been support from directors of State lotteries for H.R. 6668. We do not feel that this goes far enough. We feel that it does not really solve the problem that has faced State lotteries in the past and the problems that will arise in the future.

There are a couple of points that I would like to mention in connection with statements made previously. No. 1, travel in our society is a constitutional right. People move across State lines to attend racetracks and to participate in legalized forms of gambling. Federal officials from Washington, D.C. travel to Laurel and Bowie racetracks to engage in that legalized operation in that State.

We believe that communication in our free society, through the mails, radio, and television, is just as much as basic right for people in a free society as travel across State lines. We do not feel that there should be restrictions of any type on sovereign States operating a program such as we have in eight States now and five States to come. Newspapers carry parimutuel race results in all of their editions, mail, or across State lines. It makes no difference. There is no restriction whatsoever.

People who do not have racetracks in their States likewise read these newspapers, and many of them are participating in illegal forms of gambling as far as bookies are concerned, and also numbers writers. So therefore, we do not feel that there should be any restriction as regards the publishing of information about legalized State lottery programs.

For example, Mr. Chairman, newspapers in the State of New Hampshire will not take an ad from the New Hampshire Sweepstakes Commission of less than one-quarter page, because it costs too much for them to replat a lesser amount of space in an ad. In other words, the administrative cost to the New Hampshire Sweepstakes Commission and the resulting decrease in net revenue to the State school districts is increased because of this type of restriction on the type of ad that we can place, because these newspapers for the most part take those ads out of their mail editions.

And one other point I wish to make here that was not covered, I do not think, adequately by Mr. Lynch. There is also another statute, 1301, which talks about the interstate transportation of materials and lists of prize winners. So this also affects newspapers who truck newspapers across State lines. We are always reading, in New Hampshire, of course, ads that are in the Boston Globe that are sold in New Hampshire. So that I think that we should make sure that if we are going to amend these statutes that we ensure that newspapers are not going to be required to take advertising or lists of prize winners or other information out of either their mail editions or out of their editions that go across State lines. And we will cover this point, because I think it is very important, as it has affected the New Hampshire sweepstakes from the beginning.

We strongly believe that the Federal and State Governments should be working closely together to ensure that State legalized lotteries are operated in the public interest. This can be accomplished only through full disclosure by the media of all activities and by joint cooperation as regards security, prize distribution and financial accountability. It is self-defeating for the Federal Government to restrict and impede this decision of the sovereign States to raise supplemental revenue while at the same time it engages in revenue-sharing and expects cooperative Federal-State efforts to combat illegal gambling activities inspired by organized crime.

It makes little sense for the Federal laws to exempt parimutuel racing and to deprive the use of the mails, radios, and television to State lottery programs. The absurdity is manifested by the nightly broadcast of daily double results at dog and horse tracks while the public is denied the right to be informed of the weekly lottery number.

Mr. Chairman, you ask a question about the broadcasting of our weekly lottery number. FCC to this date prohibits radio and television stations from broadcasting the weekly lottery number, and we have appealed the decision of the Federal Circuit Court of Appeals in Philadelphia to the U.S. Supreme Court in an effort to continue their present prohibitions. So that again, this type of communication is deprived, the citizens of the State as well as other States, and again increases the administrative costs of State programs.

There are many instances of the unfairness with which the Federal anti-lottery laws have been administered. We have good reason to believe that the Federal Government took an unusually harsh position against the New Hampshire sweepstakes program to ensure its failure and to discourage other States from adopting this concept of raising revenue. New Hampshire was not treated as a sovereign State, but as an orphan and stepchild in the Federal system.

States that have entered the lottery business in the last few years have not run the same gauntlet. Of course, we realize that the pioneer must always chart the paths and bear the burdens of the unexplored, and the main reason the program has survived is that the people wanted it and have supported it.

Lest you feel that I am overdramatizing the early days of this singular endeavor, I would like to share with you just a few of the experiences we have had. This is the point I am getting to as regards the mail and the out-of-States editions of newspapers.

In the early part of 1964 the U.S. attorney in Boston warned Boston newspapers not to carry our list of prize winners—not paid ads, a news story of their prize winners—in their mail or out-of-state editions that were trucked into New Hampshire or other States. He alerted them to the broad restrictions contained in sections 1301 and 1302 of title 18, which were enacted prior to the turn of the century. His admonition was given in spite of the fact that newspapers for years had run lists of Irish sweepstakes winners with little or no interference as a result of a favorable opinion given by Postmaster General James Farley in 1934.

The April 2, 1934 edition of Time magazine gave an interesting account of the fight between the New York newspapers, including the New York Daily News, and the U.S. Post Office regarding the listing

of Irish sweepstakes winners. And it goes on to say that henceforth, according to the Postmaster General James Farley, a liberal policy would be taken by the Post Office Department in interpreting the statute about lottery information.

This let down the bars. Even the New York Sun forgot its hidebound caution long enough to print the list of U.S. ticketholders in the Irish Hospital sweepstakes. You and I know the rest, and for years thereafter we all read with interest the stories about the Irish sweepstakes winners in newspapers throughout this land.

In fact, a newspaper in Boston had a wire service hooked right into its own newspaper to get the immediate results of the Irish sweepstakes winners direct from Ireland.

When we asked the U.S. Post Office officials to explain this inconsistency in their policy, they replied that they could not find Mr. Farley's statement, but in any event, it was merely an opinion and not a ruling. The fact that Mr. Farley's opinion had changed the interpretation of the mail statute for 30 years apparently made no difference.

As a result of the U.S. attorney's warning, Boston and New Hampshire newspapers replated their mail and out-of-state editions to delete the list of our prize winners, in spite of the fact that they are protected under the freedom of the press amendment in our Constitution.

In the early years, many newspapers declined to accept ads or permit lists of prize winners as a news story, even in their local editions. As the years went by, some newspapers began printing lists of winners as news stories in all of their editions. Although most of them today remove ads from their mailed editions, we notice ads in Boston newspapers distributed in New Hampshire.

Postal inspectors have contacted newspaper editors on frequent occasions to threaten prosecution and possible loss of mail privileges where lists of prize winners on lottery ads have appeared, in mail editions. These visits continue to this day. It is unfortunate this valuable investigative time of experienced postal inspectors has been used for this purpose rather than in combating serious criminal violations.

Mr. DONOHUE. Would you pardon me, Mr. Powers?

Mr. POWERS. Yes.

Mr. DONOHUE. That signal indicates that a quorum call is taking place over on the floor of the House. So we must respond to that. So if you will briefly conclude your statement, we will make the entire statement a part of the record, which will be read by all of our members.

Mr. POWERS. We have furnished about 29 exhibits to the committee which give examples of what we consider discrimination.

Mr. DONOHUE. They will be made a part of the record.

Mr. POWERS. Right. I would also like to state that we do have now a National Association of State Lotteries. It has been working together and exchanging information regarding every phase of our operation: marketing, security, promotion, new price schedules, and everything. And it has worked out very well for the benefit of all, and it is in the spirit of friendly competition. So I do feel that these States now are working closely together to accomplish our objectives to insure that there is a basic public trust, the public continues to have faith and confidence in us. And I do think that in making recommendations possibly for some sort of Federal regulatory agency as regards

the passage of these amendments, that it be kept in mind that the States themselves are doing a fine job in working together to accomplish their common goals.

Mr. DONOHUE. Thank you.

Mr. POWERS. Thank you.

Mr. DONOHUE. We will now call on Mr. George Mahoney and Mr. Stanley Fine.

Do you wish to have your statement made a part of the record in view of the quorum call that is going on on the floor?

Mr. FINE. We would ask the committee's permission to file a detailed written statement later this week. We just have a few off-the-cuff remarks.

Mr. DONOHUE. It is a little late. But we will receive your detailed statement and have it made a part of the record.

Mr. MANN. He only wants 1 minute.

Mr. FINE. We each would like about 1 minute.

Mr. DONOHUE. All right.

[The prepared statements of Mr. George P. Mahoney and Mr. Stanley Fine follow:]

MARYLAND STATE LOTTERY AGENCY,  
Baltimore, Md., May 2, 1974.

HON. HAROLD D. DONOHUE,  
*Chairman, Subcommittee on Claims and Governmental Relations, Committee on the Judiciary, Rayburn House Office Building, Washington, D.C.*

DEAR CHAIRMAN DONOHUE: Thank you for the opportunity to testify before your Subcommittee last week on H.R. 6668 and similar bills. At the hearing you were kind enough to allow the Maryland State Lottery Agency to submit a written statement to be made part of the record for that hearing. I am enclosing herewith a copy of the statement of the Maryland State Lottery Agency concerning these bills to be included in the record.

I appreciate the opportunity to appear before your Committee.

Sincerely,

STANLEY S. FINE,  
*Director.*

#### STATEMENT OF THE MARYLAND STATE LOTTERY AGENCY

The origin of the current Maryland Lottery is very recent. The Maryland Lottery Law and a Constitutional amendment were passed during the 1972 Session of the Maryland Legislature. The Constitutional amendment was approved by Maryland voters in November, 1972, and the State Lottery Law went into effect on January 1, 1973. This law established the Maryland State Lottery Agency, which began selling lottery tickets on May 15, 1973. We are nearing our first year anniversary. It is anticipated that at the end of 1 year of selling lottery tickets, we will have netted for the State of Maryland over \$16,000,000 with a like amount being allocated to prize winners in the Maryland Lottery. Lottery sales agents will have realized almost \$2,000,000 in sales commission or selling tickets. We are proud of these achievements. However, we feel we can improve our earnings and achieve our objectives if legislation to remove federal restrictions on State Lotteries is given favorable treatment by this Committee.

Such proposed federal legislation would exempt state conducted lotteries from the provisions of 18 USC, sections 1301, 1302, 1303 and 1304. These provisions presently prohibit transportation, mailing and broadcasting of advertising, information and material concerning lotteries. The Maryland State Lottery Agency has found these provisions to be very restrictive upon the lottery's objectives to maximize revenue for the state, to serve the public and to combat organized crime.

We believe that present federal law does not recognize the right of a state to conduct its lawful business without undue federal regulation or interference. The main objective of a state lottery would be as a source of revenue. In effect,

it is a government sponsored business and not just another bureaucracy. Sound business techniques and the profit motive are as important to our state lotteries as they are to private enterprise. State lotteries should have the same advertising and broadcasting opportunities as any other business. We believe that since the lottery is a public business, it should be allowed to operate as efficiently and productively as possible without undue federal restrictions.

We believe that the operating and policy determinations of state lotteries are inhibited by the above mentioned provisions of federal law. For example, 18 USC, section 1304 prohibits the use of the airwaves for broadcasting of information that directly promotes a lottery. The State of Michigan uses the Canadian airwaves for advertising its lottery and averages about 60% per capita sales per week. The other 7 lottery states average something less than Michigan because they are not allowed to use the American airwaves. We believe that such access to radio and T.V. is a factor to increased lottery earnings. Furthermore, under these provisions the winning number each week cannot be given to the public over radio and T.V. In effect, the states lotteries objective to serve its public cannot even be met.

We further feel it is difficult to reconcile certain federal practices in other forms of legalized gambling to state sponsored lotteries. Racing, both on and off-track, does not have the restrictions of the mail, interstate transportation, advertising and broadcasting that state lotteries have. Most on-track racing today is operated by private enterprise and licensed by the State. Yet lotteries, owned and operated by the State, have these restrictions. It would also appear that the wide dissemination of racing results and point spreads on sporting events in this country aids the illegal numbers game and illegal sports betting. But State controlled lotteries, raising sorely needed revenues for the State, are hampered. In essence, other forms of gambling, both legal and illegal, enjoy little if any federal restriction.

Furthermore, State lotteries are presently considering the implementation of a legalized numbers game. Given the proper tools, which include the lifting of these federal restrictions, State lotteries could achieve another objective. That objective would be to compete against and curb the illegal numbers game.

In summary, we respectfully request favorable consideration of the proposed legislation to remove federal restrictions on State lotteries.

GEORGE P. MAHONEY,  
*Chairman.*  
STANLEY S. FINE,  
*Director.*

**TESTIMONY OF GEORGE P. MAHONEY, CHAIRMAN, MARYLAND  
STATE LOTTERY COMMISSION, ACCOMPANIED BY STANLEY S.  
FINE, DIRECTOR, MARYLAND LOTTERY**

Mr. FINE. I would like to respond to the statement made earlier by Mr. Lynch about an insert to the Washington Post and the Washington Star-News, the eight-page insert, and whether or not it is a violation of Federal law.

I would like to point out to this committee that the State of Maryland did purchase advertising in these two newspapers in the form of an insert. The insert itself was printed in the State of Maryland and was inserted in the Washington newspapers when they came into the State of Maryland, that is, when they were delivered to the Prince Georges and Montgomery County papers. These inserts never left the State of Maryland and I do not believe you have any kind of violation of interstate transportation or use of the mails. They were physically inserted in Maryland.

One last comment I would make. Ms. Jordan talked about the fact that if we had these provisions of Federal law, whether or not we might increase our revenue, since New Jersey was going so well.

I might add that the State of Michigan uses Canadian TV to advertise its lottery. The State of Michigan has one of the most successful lotteries in this country, and I am saying a factor could be that it does have access to television in the form of Canadian TV, and I think that that is a point in our favor.

I would like to introduce Mr. Mahoney, who is the chairman of our lottery commission. He is former chairman of the Maryland Racing Commission. Also, former vice-president to the National Association of Racing Commissioners. He would like to make one short statement.

Thank you.

Mr. MAHONEY. Mr. Chairman, Members of the Congress here, it is a pleasure to appear before you. With your patience, and we know you have the rolloccall, so we are going to end it real rapidly.

It amazes me each day. After the experience of racing here, in the very near future we will have the Kentucky Derby, part of the triple crown, and the Preakness will be held in Maryland, and then the Belmont Stakes, and all over the world, mind you—not only the United States—they will be learning about these races. And here we are with our little game known as a lottery in the State, and the State's needs for the funds are so great, I'm surprised racing should be allowed to go on advertising over television, radio and they give them a lot of free time and space. And here we are curbed from any of this activity in the way of advertising.

We really feel that this is not fair to the lotteries throughout the State, and through this method, we feel that there is something very important about lotteries that you should keep in mind.

I believe that if the Federal people would take more interest in the very fact that if we go in the lottery business—and we are in it—and the police departments in Maryland, the police departments of New York, and Washington, D.C., and all of the States that I have contacted have said in no uncertain terms that if you could do the lottery the way they do it, their daily number game, then this would put these people out of business, and as a result, do away with crime and corruption and also with the sale of drugs.

So I say if racing can do it, why not lottery?

Thank you very much.

Mr. SHATTUCK. Mr. Chairman, there are a number of statements to be inserted in the record. One is in the form of the letter of Jaime Benitez, Resident Commissioner of Puerto Rico; also a letter received earlier by the committee from Stanford Smith, president of the American Newspaper Publishers Association. Statements have been received from Representative Fred B. Rooney, Representative William S. Broomfield, Representative Hamilton Fish, Jr., and a number of other persons have indicated a desire to file statements to be made part of the record.

[The material referred to follows:]

CONGRESS OF THE UNITED STATES,  
HOUSE OF REPRESENTATIVES,  
Washington, D.C., April 24, 1974.

HON. HAROLD D. DONOHUE,  
*Chairman, Subcommittee on Claims and Governmental Relations, Committee on the Judiciary, U.S. House of Representatives, Washington, D.C.*

DEAR CHAIRMAN DONOHUE: I am writing in support of House bill number H.R. 6668, under consideration by your Subcommittee, entitled: "To amend

title 18 of the United States Code to permit the transportation, mailing, and broadcasting of advertising, information, and materials concerning lotteries authorized by law and conducted by a State, and for other purposes."

I will be grateful if you would include my support as part of the record, on the hearings presently being conducted.

With warm regards,  
Cordially,

JAIIME BENITEZ.

AMERICAN NEWSPAPER PUBLISHERS ASSOCIATION,  
Reston, Va., April 17, 1973.

HON. PETER W. RODINO JR.,  
Chairman, House Judiciary Committee,  
Washington, D.C.

DEAR CHAIRMAN RODINO: The purpose of this letter is to reassert our offer of support for the enactment of legislation introduced by you and several other Congressmen to amend Title 18 of the U.S. Code to exempt state organized and conducted lotteries from the federal lottery laws.

We were extremely pleased with the efforts made by you and several other Committee members in attaining Judiciary Committee approval of such a bill during the last session of Congress. We are also extremely pleased that you have introduced an identical bill this year.

When we wrote you on Feb. 29, 1972 offering our support and urging an intensified effort for enactment, we stated that the need for passage of this legislation becomes greater every day. While it is a year later, the situation is the same today.

The archaic sections of Title 18, enacted in 1890, have only served to force state governments to use less effective means of making their programs known. This in turn makes the lottery operation more expensive to the taxpayers and in the long run less efficient.

Above all, these present laws set up a legal smokescreen of censorship in that they stop newspapers and other media from giving full coverage to all aspects of state-conducted lotteries even though the funds involved are public in nature.

When we wrote to you last year, only four states—Connecticut, New York, New Hampshire and your home state of New Jersey—were conducting lotteries. Since that time, four more states have adopted the lottery idea—Massachusetts, Maryland, Michigan and Pennsylvania—and a fifth, Ohio, will decide by referendum in early May whether to do so.

We sincerely believe the amendments approved by the Committee last year, and now incorporated in Bill 6668, are equitable and do not in any way compromise the purpose of the bill. In fact, we feel the amendments have strengthened it.

To assist you in your efforts to attain passage, we have on several occasions communicated with all our members about the need for this legislation. In addition we have directed a series of communications to our members in states which now operate lotteries. The news media and the members of Congress from those states are in the best position to explain the need for the legislation to the public and to other members of Congress.

If there is anything else you feel we could do to assist you in this endeavor, please contact us.

With high esteem,  
Sincerely yours,

STANFORD SMITH,  
President.

[Whereupon, at 12:20 p.m., the subcommittee adjourned, subject to the call of the Chair.]

## ADDITIONAL MATERIALS

### STATEMENTS SUBMITTED TO THE SUBCOMMITTEE IN SUPPORT OF THE BILLS

STATEMENT OF HON. WILLIAM S. COHEN, A REPRESENTATIVE IN CONGRESS  
FROM THE STATE OF MAINE

Mr. Chairman, I would like to express my appreciation to you and the other members of your Subcommittee for your consideration of H.R. 6668 and related legislation to ease the arbitrary Federal restrictions now hampering the operation of state lotteries. As you know, H.R. 6668, was introduced by the distinguished Chairman of the House Judiciary Committee, Mr. Rodino, and I am very pleased to be one of its cosponsors.

Maine has recently joined the growing ranks of states having lotteries. A public referendum was held in Maine last fall to approve the proposed state lottery, and the State Lottery Commission is now working hard to have the lottery underway by midsummer.

Maine's interest in a state lottery can be based on a number of factors. Maine is in large part a rural state with a limited economic base and numerous small communities. Its state services therefore must be extensive, but must depend at the same time on a limited tax base. Maine has watched its neighbor state, New Hampshire pioneer in the operation of a state lottery and through it provide millions of dollars for the New Hampshire educational system. The careful management of the New Hampshire state lottery has reassured us that abuses of the game can be avoided. The benefits that the game and its revenues would provide our citizens have encouraged us to follow in the trail blazed by New Hampshire.

While realizing the possibilities of a state lottery, however, we have also become aware of the pitfalls, frustrations and limitations involved in it. Many of these, unfortunately, stem in large part from outdated and essentially meaningless Federal laws. That is why I am so pleased that your Subcommittee is now considering legislation to correct these problems. If we are able to act promptly in this area, Maine may be able to avoid in large part the frustrations which have plagued other states in the past several years.

H.R. 6668 would exempt lotteries authorized by State law and operated under state supervision from the restrictions contained in Sections 1301, 1302, 1303, and 1304 of the United States criminal code. These sections prohibit the use of interstate and foreign commerce, the mails, or the broadcasting medium, for the transmission of any advertisement, information, or materials relating to any lottery, gift enterprise or similar scheme. Violations of these sections are punishable by fine and imprisonment.

As I stated in my letter to you on March 11, 1974, and as have been reemphasized by others who have testified on this subject, these statutes have resulted in very arbitrary and detrimental restrictions upon state lotteries. The inability of lotteries to use the mails for transmitting information, tickets, or even the winning names and numbers in the game has not only lead to administrative headaches but also substantially increased administrative costs due to the necessity of using such thing as special messenger services.

The mail restrictions will also place a special burden on Maine newspapers. Under present law, newspapers cannot carry any information or news about the state lottery system in editions which go through the mails. Because of its rural nature, Maine has numerous small weekly newspapers on which rural residents depend for local and state news. These papers simply do not have the financial resources which allow the bigger papers to "split editions" that is, to publish a separate edition, with lottery news or information deleted, for subscribers receiving the paper in the mail. Thus, the preponderance of news-

papers in Maine will be unable to carry lottery information to subscribers, and the citizens of Maine, who approved the lottery in a referendum and will benefit from the revenues it will provide, will be significantly hampered in gaining the information they need to participate in the game. This unfortunate situation is duplicated by the prohibition against broadcasting lottery information over the radio and television. The citizens of Maine are denied the use of this major means of communications within the state for an activity which they have authorized their State to conduct for their enjoyment and benefit.

An argument has been made in years past that the Federal government should not be placed in a position of encouraging gambling by granting special exceptions to lotteries to enable them to continue. This argument fails, however, on several counts.

First, for all the high moral tone of the argument, the Federal government for years has been granting special exceptions to pari-mutuel horse racing, in which private as well as public interests are involved and which has overall been far more susceptible to abuse than state-run lotteries. The states' residents understandably find it confusing and contradictory for the newspapers, radio and tv to be able to announce nightly the winning horses in each race (as well as the stakes) when they are not able legally to announce even the weekly winning lottery number.

Secondly, while gambling, like many other private activities, may be carried to the level of abuse, such excesses are hardly encouraged by the state-controlled lottery systems. The lottery ticket is most often bought on an individual basis with the change left over from other purchases. While some people may buy a number of tickets, those who are truly heavy gamblers will be far more likely to choose a game with higher stakes. The state lotteries are designed basically for the average citizen who enjoys taking a small chance on occasion and knowing that even if he doesn't win, his money will be used to his advantage.

Finally, removal of the restrictions on state lotteries is not being requested in order to enable the lotteries to continue. Even with the present prohibitions the support and approval given the games by state residents have enabled millions of dollars of lottery revenues to be used by the states for important purposes. There is no doubt, however, that the present arbitrary Federal restrictions have added substantially to the costs of running the game, and have hindered the full participation of all the state residents who would enjoy playing. This must necessarily reduce the revenues available from the lotteries for needed state programs.

In summary, I would like to reiterate my support for H.R. 6668, and the removal of the major Federal regulations hampering the operation of state lotteries. When the citizens of a sovereign State have expressed their support and approval for such a game and authorized their State officials to administer it so as to protect it from abuse and enhance the enjoyment and benefits it provides, it is hardly proper in my opinion for the Federal government to seek to limit the lottery's operations by denying it the normal modes of communication. H.R. 6668 would correct this unfortunate and unnecessary situation, and I would strongly urge the Subcommittee to give the measure prompt and favorable consideration.

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STATEMENT BY WILLIAM D. FORD, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. Chairman and members of the Committee, I thank you for the opportunity to provide you with testimony in support of H.R. 1485, a bill I have cosponsored to amend the Federal law which now prohibits the mailing of newspapers carrying lottery advertisements or information and which prohibits the broadcasting of lottery ads or information which is deemed to be "non-newsworthy".

The legislation I have cosponsored would amend this law to permit the mailing of newspapers which contain advertisements or information concerning a lottery conducted by a state acting under the authority of state law and would permit the broadcasting of such information by a radio or television station located within the state. As you are well aware, this legislation is identical to H.R. 2374 which was favorably reported by this Committee during the 92nd Congress but failed to reach the House floor for a vote. I would also like you to know that this legislation is strongly supported by the Michigan Press Association.

Mr. Chairman, this legislation is of particular concern to my own state of Michigan which conducts one of the most successful state run lotteries in the country. It is also very important to several other states which have state lottery laws, including, Mr. Chairman, the state of New Jersey, as well as Connecticut, Delaware, Illinois, Maine, Maryland, Montana, Massachusetts, New Hampshire, New York, Ohio, Pennsylvania, Rhode Island and the Virgin Islands.

The current federal law prohibits every one of these states from conducting and promoting the legal lotteries which have been voted into law by representatives of the citizens of the states in that the law restrains both the use of mails and the media from providing citizens within the state with information pertaining to their lottery system. In a report issued recently by the Michigan Bureau of State Lottery, the Bureau said that "the Michigan lottery discovered two major hindrances in promoting its newly created game when operations began in 1972. Those two problems, commonly faced by all state run lotteries, are:

1. a Federal Communications ban against advertising or promotion of lotteries on radio and television; and
2. a federal postal regulation prohibiting the distribution of lottery advertising or promotional materials through the mails.

Mr. Chairman, this legislation is necessary to bring the present antiquated laws up to date with modern times. The present laws were obviously written during a period in our history when lotteries were illegal in most of the states. That is no longer the case. Today, fourteen states have authorized legal state run lotteries.

The law is a particular hindrance to my own state of Michigan, because Michigan has what is considered to be by many the finest and most successful lottery in the country. More winners win more money in the Michigan lottery, each week than in any other legal game. An average week's sales of 5 million or more tickets produces an average of 20,000 winners of the \$25 prize. In less than a year more than one million winning tickets are sold—the equivalent of one for every nine people in the state. During its first operating year (from November 1972 through November 1973) the Michigan lottery raised over \$137.5 million in gross revenues, of which 45 per cent (or over \$60 million) went into the general fund. Obviously, the Michigan lottery functions as an excellent revenue raising measure which saves the residents of the state of Michigan millions of dollars every year in taxes. It is simply absurd to limit the State's ability to promote this legal way of raising revenues by an antiquated federal law.

Mr. Chairman, the legislation that I have cosponsored which is now before you is based on three basic principles. First, I believe that Congress should recognize the right of the state to conduct its own lawful business—including a state run lottery—without undue interference from the federal government. Secondly, the bill acknowledges that the right of a state to conduct a lottery should not infringe on the right of any other states which do not conduct lotteries (it does this by limiting its provisions only to newspapers, radio and television stations within the state which is conducting the lottery). Finally, Mr. Chairman, I believe that the adoption of this legislation would strike from the books a law which I feel infringes upon the constitutional guarantee of the freedom of the press.

Mr. Chairman and members of the Committee, I thank you for the opportunity to submit this statement to you today and I urge the prompt adoption of this legislation.

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STATEMENT OF GOVERNOR THOMAS J. MESKILL, GOVERNOR OF THE STATE OF CONNECTICUT

I am gratified to have the opportunity to express my views to your subcommittee on legislation, which is designed to eliminate federal restrictions on the use of radio, television and the mails by state run lotteries. I fully support and urge adoption of such legislation.

During my 1970 campaign for Governor of Connecticut, I urged the implementation of a state lottery. Legislation establishing a commission to implement a lottery became effective on July 1, 1971. From the date of the first ticket sales in February, 1972 to April 25, 1974 the Connecticut lottery has raised approximately 36 million dollars for the general fund of Connecticut. It is my

opinion that the removal of communication restrictions will enable the financial success of the lottery to greatly expand.

Sections 1301 through 1304 of Title 18, Chapter 61 of the United States Code were enacted to curtail illegal gambling and to that extent they should remain. In the past ten years, however, fourteen states and the Virgin Islands have enacted lottery legislation in their quest to seek new methods to pay for ever increasing state expenditures. In these states, the lottery, a legal state-run enterprise, should not be treated as a sinister stepchild of the illegal activities the Code seeks to curtail. During the week of March 28, 1974, in the eight states presently operating a lottery, an aggregate of approximately 23,951,363 tickets were sold. A lottery as a legitimate function of state government has the support of the people.

In 1973 the Connecticut lottery commissioned Glendenning Associates of Westport, Connecticut to conduct a survey of what Connecticut residents thought of their lottery. The results gained from 1478 interviews reached the conclusion that Connecticut's citizens were misinformed about the lottery—the necessity of using printed materials was not getting the message across. This survey showed that 75% estimated the value of weekly prizes to be one third of their actual value. This survey showed that 72% estimated their chance of winning a prize was 1 to 10,000 or less whereas in actuality the chances are approximately 1 in 250. This survey showed that 92% underestimated the number of weekly prizes. Since the inception of the Connecticut lottery unclaimed prizes totalling \$1,136,300 have lapsed and there is presently \$1,115,700 waiting for further unclaimed ticket winners. This fact is directly attributable to the inability of the lottery to educate the people with the limited tools available. The many calls and letters received by the Commission on Special Revenue, the Connecticut agency which administers the lottery, clearly indicates a great amount of confusion over the lottery program.

The people of Connecticut have a right to know what their government is doing. The broadcast and newspaper media should have the ability to so inform the public. The day to day activities of a governmental agency are important to all residents of Connecticut and as such should be disseminated without undue federal interference.

The lottery, a governmental function, is a legal business. What business can operate with the handcuffs placed on the lottery by the aforementioned federal restrictions. A product cannot be sold without exposure. To get exposure, the product needs to be not only read about but heard of and seen.

Television is a major source of mass exposure. The Arbitron TV survey of February and March of 1974 disclosed that there were 634,600 households and 620,000 television sets in the five major counties of Connecticut—almost a TV set per household. Sixty-four percent of the nation's adults hear their news from television—the media where it is reported that the credibility rating is 2-1 over newspapers. *What People Think of Television and Other Mass Media 1959-1972* Burns W. Roper, publisher. Television is a most important method of communication. A total marketing package would also include radio, newspapers, magazines, and the mails.

The State of Michigan has a legalized lottery. The effect of television is dramatically observed in that state because of its proximity to Canada. Michigan has a per capita lottery sales figure of 89% of the adult population compared to 60% in Connecticut. This differential has been directly attributed to television exposure. If Connecticut had an 89% per capita sales figure, the present ticket sales of approximately 1,200,000 per week would rise to approximately 1,800,000 per week with a yearly increase of approximately \$6,000,000 to the general fund of Connecticut. As stated in the 1973 annual report of the State of Michigan's Lottery: "Michigan is more fortunate than its Eastern competitors . . . Canadian radio and television CKLW in Windsor have been utilized for advertising regularly. The stations reach a majority of the lottery's market, including the Detroit area . . . In this electronic age, with more and more emphasis on television advertising, many lottery officials feel that the true potential of the product cannot be tested until television advertising is allowed."

The Federal Communications Commission has established guidelines for infrequent permissible broadcasts involving lottery information when the information is determined to be "news" and not "promotion". *In the matter of Jersey Cape Broadcasting Corporation, F.C.C. Declaratory Ruling, July 14, 1971.* Most of Connecticut's broadcasters have been fearful of even mentioning the word

lottery on the air for fear of FCC reprisals. The problems of defining permissiveness in term of "news" and "promotion" is well illustrated by the question "Can the winning lottery number be broadcast? Is it news?" The Third Circuit Court of Appeals has held such a broadcast to be permissible news protected by the first amendment. *New Jersey Lottery Commission vs. United States of America*, U.S. Ct. of Ap., Third Circuit, NO 72-1878, 1973 (on appeal to the U.S. Supreme Court). The Second Circuit Court of Appeals, where Connecticut is situated, has held it to be a prohibited item. *The New York State Broadcaster Association vs. United States of America*, 414 F 2d. 990 (1969). Shouldn't citizens of lottery states be able to know they are holding winning tickets—they are able to discover who wins a horse race and what price the horse paid on their local TV or radio news program, but not the winning lottery number.

The restrictions contained in the Code do not make sense in light of the advent of state-run lotteries. The Connecticut lottery came into existence for three basic reasons: (1) The people wanted it; (2) The necessity of raising additional revenue for state government; (3) the objective of curtailing the illegal numbers game. If the success of the lottery is commensurate with exposure, and the federal government is imposing its will on a legal activity desired by the citizens of an ever expanding number of states besides Connecticut, is reducing the amount of revenue which might be generated, and is hindering the objective of reducing illegal numbers activity.

I feel very strongly that the United States Code should be amended so as not to frustrate the ability of a sovereign state to conduct its lawful business. Present provisions in Title 18 of the United States Code are an impediment to the rights of a sovereign state and should be amended to provide:

1. Exemption from all federal prohibitions on the use of mails and FCC licensed radio and television stations with respect to the operation of state lotteries and the reporting of information about state lotteries;

2. exemption from federal prohibition against promoting or advertising via the mails within a state and with respect to newspaper and magazines between states to retailers and subscribers;

3. exemption from federal prohibitions against promoting or advertising state-run lotteries on FCC state licensed radio and television stations located within a state, or in a state adjacent to a state promoting or advertising a state lottery if:

a. the state in which the radio or television station is physically located also has a state-run lottery,

b. the state, or portion thereof, is within the broadcast area assigned to the station by the FCC.

I strongly urge your subcommittee to act with due dispatch to remedy what I feel is an unjust situation. I believe the language of H.R. 6668 with the above proposed changes achieves that goal.

Respectfully submitted,

THOMAS J. MESKILL,  
Governor, State of Connecticut.

STATEMENT OF HON. HAMILTON FISH, JR., A REPRESENTATIVE IN CONGRESS  
FROM THE STATE OF NEW YORK

Mr. Chairman, you are considering here today legislation which would amend existing Federal law so as to remove certain restrictions on the operations of State-conducted lotteries as well as those operated by private, charitable, non-profit organizations.

My purpose is to urge your favorable consideration of my bill (H.R. 14320) to amend title 18 of the United States Code so as to permit the broadcasting of advertising, lists of prizes or information concerning a lottery conducted by a State agency, a non-profit organization, or by a radio or television station within that State. It would also permit the mailing of newspapers, published in the State, containing advertisements, lists of prizes, or information concerning a State-supported lottery or one conducted for charitable purposes. Additional amendments would permit the transportation or mailing of tickets and other information concerning these lotteries within the States where they are operated.

Mr. Chairman, in 1963, the State of New Hampshire commenced the first State-operated lottery of modern times. Since that time, it has been joined by

my own State of New York as well as New Jersey, Massachusetts, Maryland, Maine, Illinois, Michigan, Connecticut, Rhode Island, Pennsylvania, and Ohio in embracing the lottery mechanism as a means of raising revenue for public purposes. Under the New York law, the proceeds from the State-run lottery are devoted exclusively to improving the quality of education in our State.

However, at present, States are hampered in their efforts to promote these lotteries by existing provisions and prohibitions in the Federal law. The result is that many winners never learn that they have in fact won. Another result is a lessening of the potential revenues for a public good such as improved educational facilities. Similarly, charities and other nonprofit groups are restrained from realizing the full potential of their fund raising efforts for needy causes.

The importance of lotteries to many nonprofit organizations cannot be over-emphasized. The bill I support here today would ensure that religious and civic organizations will not be forced to curtail their worthwhile activities because of lack of participation in the lotteries they sponsor. It seems to me that the fund raising efforts we are discussing today, both at a state and non-profit organization level should be free to operate, within the borders of their own State, without being unduly restricted by Federal law. I am hopeful that the Subcommittee on Claims will see the merits of such legislation in a favorable light and take action on it in this session.

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STATEMENT OF HON. WILLIAM S. BROOMFIELD, A REPRESENTATIVE IN CONGRESS  
FROM THE STATE OF MICHIGAN

Mr. Chairman, I would like to thank the Subcommittee for holding these hearings on proposals to amend Title 18 of the United States Code to permit the mailing and broadcasting of information and advertising concerning state-operated lotteries. I am pleased to be a sponsor of this legislation and welcome the opportunity to express my strong support for such action.

With sixteen states either operating or setting up lotteries, the need for this legislation is greater than ever. The present law prohibiting dissemination of advertising material or information concerning these lotteries has been a millstone around the necks of states operating lotteries, as well as a source of confusion for newspapers and radio and television stations.

Interpretation of this law has ranged from those authorities who claim that sending a newspaper through the mail with the winning lottery number printed in it is a violation, to those who have adopted a "look the other way" attitude in enforcing the law. The first approach to this law seems much too strict, and the second is nothing short of hypocrisy. Enacting the legislation we are considering today would eliminate the confusion and hypocrisy once and for all.

More importantly, this legislation would give states a fair chance to increase the amount of revenue generated by legitimate state-run lotteries. Although my own state of Michigan has the most successful lottery program of any state, officials are certain it has not reached its full potential, and will not be able to do so until the shackles of this outdated law are lifted.

These Federal restrictions are most regrettable, considering the lottery provides an excellent way for the state to raise badly needed revenue without increasing taxes. Michigan alone raised over \$61 million in its first year of operation. This money is a bonus for the state treasury, and can be used to help fund schools, highways, and other improvements throughout the state. Easing the strict Federal regulations prohibiting advertising through the mails and on the airwaves is certain to help generate even more funds for the state treasury.

Mr. Chairman, it is not right for the Federal government to interfere with the lawful operation of state-run lotteries. If a state chooses to raise funds by this method, it should be free to dispense information concerning the operation of a lottery.

It is interesting to note that our founding fathers made use of lotteries to fund various projects. The roof under which the first regular Congress of the United States held its sessions was secured with the funds from a lottery. Benjamin Franklin and Thomas Jefferson sponsored lotteries, and even that venerable institution, Harvard College, held a lottery to help support itself. So the concept of lotteries as a way to raise revenue is neither new nor inherently evil.

It was not until widespread fraud and corruption on the part of the Louisiana Lottery Company was discovered in the 1890's that Congress took action to curtail lotteries. The Louisiana Company was not closely regulated by the state and various abuses became common practice. Thus, Congress took steps to guard against future corruption in such operations.

Few people would find fault with the intent of the original law enacted at that time. But it should be pointed out that the state lotteries which now exist are tightly regulated arms of the state governments, and have established an excellent record of honesty and integrity. They are being penalized by a law that was originally enacted to deal with lottery abuses over eighty years ago.

State-run lotteries, Mr. Chairman, are here to stay, despite these Federal hindrances. The public is simply much more receptive to the idea of the "voluntary tax" the lottery provides than they are to increased state taxes. Those people who object to paying the state for a chance to play the lottery do not have to participate. Those who are willing to take the chance are helping the state increase its revenue.

Mr. Chairman, it seems to me the sections of the law we are considering amending are serving no useful purpose. They are merely holding the states back from achieving greater success in their lottery operations. It is time we updated this antiquated law and gave the states a fair chance to increase revenue through the legal operation of a state lottery. I urge the Subcommittee to do just that by acting favorably and quickly on the legislation being considered today.

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STATEMENT OF HON. FRED B. ROONEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA

Mr. Chairman, as a Member of Congress from a state that has a lottery, I submit these comments in favor of H.R. 6668, Chairman Rodino's bill, and H.R. 7388, a bill that I introduced on May 1, 1973.

As you are well aware, Mr. Chairman, the federal laws presently regulating state operated lotteries were passed in 1890 during the 51st Congress. At the time of the passage of these prohibitions on lotteries, state operations such as those in existence today were never envisioned. However, just because such state operated lotteries were not envisioned by our predecessors, does not mean that the prohibitions are carved into stone and cannot be erased.

Such ancient restrictions prohibit states from advertising lottery information on radio and TV; they create a chilling effect on newspapers which refuse to publish lottery information out of fear of violating the United States Postal laws; and they deny states the use of the mails as a means of distributing information about their business venture. Therefore, the states are denied desperately needed revenue for socially necessary projects.

According to an article in the February 22, 1974 *Wall Street Journal*, approximately 45% to 50% of the gross take of such lotteries goes toward the operation of schools and hospitals in the states conducting the lottery. As states become more dependent on the federal government for funds to continue many of their fine social programs, we as Members of Congress, owe it to our constituents to permit them to raise added revenue in ways that do not harm individual or financial budgets.

My bill would enable a state, or any newspaper, publication or individual, to use the postal system to distribute the state lottery information, materials, or advertisements.

Second, it would exempt television and radio stations from the FCC's restrictions which presently forbid the broadcasting of lottery information and advertisements. This point is extremely critical and if this change is not made immediately, then there will be some states in which radio and television stations would be permitted to communicate lottery information while other states would remain under the present prohibition. The above situation has already occurred when the 3rd Circuit, U.S. Court of Appeals, sitting in Philadelphia, unanimously rejected the FCC regulations which prohibit the broadcasting of winning numbers. The Appeals Court held that the broadcasting of winning lottery numbers was news, and as such could be the subject of the broadcast.

It is by far time to bring the lottery laws into line with modern economic and media communications reality.

In addition to the above changes that I have proposed, H.R. 7388 also makes certain changes in the Internal Revenue laws. I fully realize that revision of such laws is not within the jurisdiction of this Committee, but I would suggest that this Committee and the Ways and Means Committee, which is holding hearings on lotteries and their relation to the taxing laws, coordinate their efforts so that the future changes will be fair and thorough.

Briefly, my bill would amend the Internal Revenue Code to do the following:  
Exempt state lotteries from the federal 10 percent excise tax on all wagers.

Exempt state lotteries using vending machines for the sale of lottery tickets from the special federal tax on coin-operated gaming machines.

Simply, the thrust of my bill would be to relieve the states of the burden of federal laws designed for an altogether different purpose—to stop illegal gambling. It is obvious that the existing law has too broad an effect and should therefore be narrowed so that it only reaches what our predecessors wanted to eliminate.

I thank you for permitting me to submit these comments.

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CONGRESS OF THE UNITED STATES,  
HOUSE OF REPRESENTATIVES,  
Washington, D.C., April 24, 1974.

HON. PETER W. RODINO, Jr.,  
*Chairman, Committee on the Judiciary, U.S. House of Representatives,*  
*Washington, D.C.*

DEAR CHAIRMAN RODINO: I am writing in support of House bill H.R. 6668, which you sponsor, entitled: "To amend title 18 of the United States Code to permit the transportation, mailing, and broadcasting of advertising, information, and materials concerning lotteries authorized by law and conducted by a State, and for other purposes."

I will be grateful if you would include my support as part of the record, on the hearings presently being conducted.

With warm regards,  
Cordially,

JAIME BENITEZ.

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STATEMENT OF HON. ANGELO D. RONCALLO, A REPRESENTATIVE IN CONGRESS FROM  
THE STATE OF NEW YORK

Mr. Chairman, I appreciate this opportunity to make a brief statement in support of H.R. 12443, a bill to amend Title 18 of the United States Code by exempting lotteries from its gambling provisions. Specifically, the bill would permit the mailing of lottery information and related matter, broadcasting or televising of lottery information, and it would allow the transportation and advertising of lottery tickets in interstate commerce, but only when the lottery is legal in the state in which it is conducted.

I have made a slight change in language from versions of this legislation introduced earlier by other members. In both proposed sections 1307(b) and 3005(d) (2), I use the term "tickets or any other materials." The insertion of the word "any" should be taken to indicate that promotional matter is to be included in the exemption as well as lottery paraphernalia.

Legal lotteries run by States appear to have survived a shaky start and to be headed now for adoption in many more parts of the United States. Because they are a painless and voluntary method of generating badly needed funds, lotteries are gaining favor with many hard-pressed taxpayers and legislators.

Current Federal restrictions on lotteries prohibit the interstate transportation of tickets or promotional material and bar the use of radio or television for advertising or promotion. So far, despite the record of integrity and honesty established by the states operating lotteries, efforts initiated by Congressional Delegations to seek relief from these Federal roadblocks have remained stalled.

In order for legal state-sponsored or private lotteries to advertise in newspapers or other publications, the advertisements must be removed from editions which are delivered through the mail. Promotional material, such as posters and descriptive literature, cannot be conveyed through the post office. It is unlawful

even for states or organizations to notify winners by letter or to pay them prizes directly by mail.

The eight operating states, as a result of this blockade, must go to great lengths to transport material by truck or bus, at heavy cost in time, money and manpower. They must turn to alternate means of advertising in addition to newspapers and outside of the broadcast media—in subways and buses, etc.

I am inclined to feel that Congress is well-advised to eliminate these prohibitions. Simple justice would seem to dictate that legal lotteries should be able to enjoy the same entree to the public marketplace as any other legitimate business. It seems inevitable that this must happen. The achievements of the lotteries in spite of the Federal problems make these restrictions even more regrettable.

Ten years ago New Hampshire started the first State-run lottery of modern times, running into a variety of complications and disappointments, but it has managed to survive. Last year the lottery in New Hampshire, the only State with neither a sales tax nor a broad-based personal income tax, returned almost \$2 million to the State for education. From December of 1964 to December of 1973, the State has received around \$17.6 million.

In 1967, New York launched its version of the lottery, offering bigger and more frequent prizes. New York now averages about \$4 million a month from the lottery and its effort, as of the end of 1973, had yielded some \$243 million for schools.

In January 1971, New Jersey began its lottery and immediately surpassed both of its predecessors in sales, prizes and popularity. Since it began, until December 1973, the State has received close to \$200 million for education.

Pennsylvania, Massachusetts and Connecticut began their lotteries at about the same time in early 1972. All three States got off to a good start, being able to capitalize on the New Jersey method which had been instantly successful. After a year and a half of operation, Pennsylvania had collected over \$80 million for property tax assistance for the elderly; Massachusetts had collected over \$36 million for cities and towns; and Connecticut had collected over \$25 million for the general fund.

The Michigan lottery started in November 1972, and after six months contributed over \$14 million for the general fund. Maryland's lottery which began in May 1973 had \$3.5 million in the general fund after only 2 months.

Illinois will be beginning a lottery in July of this year and according to the Commission on the Review of the National Policy Toward Gambling some 30 States will have legal lotteries within 2 years. Some foresee the day when almost every State will operate a lottery to raise revenues without raising burdensome taxes.

For several years charitable organizations have depended on raffles and bingo as major sources of funds to carry on worthwhile work from which all society benefits. These are both lotteries, and although legal, are subject to the same restrictions as their state-run cousins.

Many churches and hospitals began their building programs with revenues raised from lotteries and bingos. Numerous fraternal organizations all over the country depend upon this source of revenue to sponsor recreational, rehabilitative, and supportive services for the elderly, disadvantaged and the handicapped.

Various groups working toward these goals reflect the best qualities of American life—unselfish people volunteering their time and effort to help others.

Bingos and lotteries are only vehicles and tools by which the self-sacrificing persons, churches, hospitals and community organizations can help others. I do not feel that it should be the policy of the Federal Government to maintain laws which will make it more difficult for them to carry out their charitable works.

Newspapers and the broadcasting industry are placed in an absurd position. Most papers are trying to serve the public by offering information on all subjects of general interest, but if they attempt to do so for lotteries, they are breaking the law. The answer to this dilemma must come at the Federal level.

Mr. Chairman, I urge that H.R. 12443 be promptly reported so that the House will be able to take badly needed action to remedy this obvious anomaly in our laws and allow the States and private charitable organizations to carry out their programs without undue Federal interference. Thank you.

## STATEMENT OF HON. EDWARD J. PATTEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Mr. Chairman, I should today like to go on record in support of legislation introduced by Chairman Rodino which I have co-sponsored. The aim and purpose of H.R. 6668 is to exempt state-conducted lotteries from sections of Title 18 of the U.S. Code.

The laws and provisions set forth in sections 1301, 1302, 1303, and 1304 were done so to deal with the interstate and foreign commerce problems of a different era of America; and, although the people and the activities of our states have most certainly changed since then, the laws have not. Gone are the days of the central meeting halls where townspeople could acquire any and all local news.

Today we rely on the media as the singlemost source of obtaining outside information. What limited knowledge we would have if we were denied the accessibility of television, radio, and the press. These forms of mass communication have done, and continue to do, a tremendous service in the field of public information.

I strongly feel that the broadcasting and printing of information concerning the official state lotteries should be permitted. As my colleague, Mr. Rooney, previously testified, even the courts are now ruling that winning lottery numbers constitute news; and, as such, are permissible for broadcasting.

People who voluntarily participate in a lottery should have the right and convenience of obtaining information through the media. Furthermore, as a state-run organization, persons soliciting lottery tickets within their state should have the option of doing so by mail. This would be a vastly different use of the postal system for lotteries than the use which originally resulted in the enactment of the law in question. To permit the mailing of tickets to persons requesting them in no way infringes upon the rights of those individuals wishing not to participate in a lottery.

Moreover, persons who have invested their money in the purchase of a lottery ticket should have some central source to determine whether or not they are eligible for prize money. As evidenced by Mr. Carella's testimony, at any given time there is an average of 10 percent in uncollected prize monies representing millions of dollars. This represents winnings which people have a right to claim but have not done so primarily because they were not aware of a winning lottery number. This should not be the case for anyone who is entitled to prize money resulting from a legitimate state enterprise.

In conclusion I should like to state that New Jersey began its lottery in January, 1971. To date, it has proven highly successful; and shows promise of being a significant source of state revenue for many years to come. Since beginning operations the gross revenue for the state of New Jersey has been \$413 million. Of this figure \$214 million has gone toward state educational needs.

As a member of the Labor-HEW Subcommittee of the Appropriations Committee, I know the needs of education across the country. To have money such as this being used to develop better educational systems in my state only increases my enthusiasm for this bill. For, if through advertising lottery information, the states can obtain additional financial support from their own citizens for programs that will better the lives of those same citizens, then we should not deter them.

I thank the committee for accepting these comments.

OHIO NEWSPAPER ASSOCIATION,  
Columbus, Ohio, May 2, 1974.

MR. HAROLD D. DONOHUE,  
Chairman, Claims and Governmental Relations Subcommittee,  
U.S. House of Representatives, Washington, D.C.

DEAR CHAIRMAN DONOHUE: With regard to proposed federal legislation involving legalized state lotteries, our association of the daily and weekly newspapers in Ohio wishes to support testimony given your subcommittee April 24 by the National Newspaper Association.

Ohio is about to initiate such a lottery, approved by a 2 to 1 vote of the people of our state. State laws have been amended to authorize a state-conducted lottery, bingo conducted for non-profit purposes, and the promotion of both. The Ohio lottery is due to begin selling tickets in July or before, and clarification of all uncertainties regarding postal laws would be a great help.

For instance, we already have had postmasters in Cincinnati and Dayton tell newspapers that they cannot send copies thru the mails containing lottery ads, or bingo ads for non-profit organizations, despite a state law authorizing such promotion. There is also the question of lottery news appearing in newspapers and business mail by the Lottery Commission itself. The entire postal area needs clarifying.

While larger newspapers could carry such advertising at added expense by deleting it from those copies sent by mail and including it in those copies delivered by other means, this would discriminate against smaller newspapers which depend largely upon the mail service for their delivery.

Our association strongly urges that action be taken to amend the postal laws to allow promotion and advertising of state-conducted lotteries and bingo and other games of chance authorized by state law.

Such action would be in line with the desires of the majority of citizens and the state legislatures where state lotteries have been approved, and it would eliminate any discrimination among newspapers as the major promotion and advertising medium in informing people about lottery operations.

With many thanks and kind regards.

Sincerely,

WILLIAM J. OERTEL,  
*Executive Director & Secretary.*

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THE HARFORD DEMOCRAT AND ABERDEEN ENTERPRISE,  
*Aberdeen, Md., May 2, 1974.*

Re: Federal Lottery Legislation

HAROLD D. DONOHUE,

*Chairman, Claims and Governmental Relations Subcommittee,  
U.S. House of Representatives, Washington, D.C.*

DEAR CONGRESSMAN DONOHUE: As newspaper publishers we are vitally interested in Federal Lottery Legislation to make it legal to cooperate with our State Administrations to publish information and advertising of matters of bingo; raffles and lotteries that have been duly authorized by our state legislature.

We are not advocates of gambling; we personally do very little ourselves, however the states have seen fit to provide such to its citizens and therefore our business of dispensing information editorially and advertising-wise becomes a middle-man-conflict because of federal laws.

It is our position that whereas the state has legalized the matter; federal laws and postal rules should allow our cooperation with state laws.

I would like our letter to be made a part of the committee's record of hearings just concluded.

Thank you for your consideration,

Sincerely,

WILLIAM R. CRONIN.

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APRIL 20, 1974.

To: Congressman Harold Donohue, Mass.; Congressman Peter Rodino, Jr., N.J.  
From: Affiliated Advertising Agencies International

At its semi-annual meeting in Estoril, Portugal, April 20, 1974, the Affiliated Advertising Agencies International passed the attached resolution.

The Affiliated Advertising Agencies International consisting of 47 independent advertising agency offices in the United States alone, passed this resolution so that advertising agencies may better serve their clients. This resolution represents one more voice in the growing support Bill H.R. 6668.

RESOLUTION CALLING UPON CONGRESS TO TAKE FAVORABLE ACTION ON BILL  
H.R. 6668

Resolved by this Assembly:

WHEREAS, the Affiliated Advertising Agencies International, composed of advertising, merchandising and marketing specialists in major cities throughout the world with headquarters in New York City recognizes that Subcommittee 2 the House Judiciary Committee is holding a hearing on Bill H.R. 6668 (introduced by Mr. Rodino) the latter part of April, and

WHEREAS, the United States government presently prohibits the use of mails and stations licensed by the Federal Communications Commission from any activity relating to the operation, dissemination of information, promotion or advertisement of state-run lotteries, and

WHEREAS, the Affiliated Advertising Agencies International is composed of agencies throughout the world and recognizes the importance of the unrestricted dissemination of information to all people;

NOW THEREFORE BE IT RESOLVED, that the Congress of the United States be urged to support H.R. 6668, which legislation recognizes the right of a state to conduct its lawful business, including a state-run lottery, without undue interference from the United States Federal Government and which provides that there shall be no infringement of freedom of the press as well as the broadcast media; and

BE IT FURTHER RESOLVED, that this internal organization cause its director to forward a copy of this resolution to Congressman Harold Donohue of Massachusetts, Chairman of the Subcommittee on Claims and Governmental Relations of the House Judiciary Committee; and Congressman Peter W. Rodino, Jr. of New Jersey.

STATEMENT OF HON. EDWARD P. BOLAND, A REPRESENTATIVE IN CONGRESS FROM  
THE STATE OF MASSACHUSETTS

Mr. Chairman: I appreciate the opportunity to offer my comments on H.R. 1991, a bill which I have introduced. This legislation would permit the interstate communication of information having to do with authorized state lotteries, either by broadcasting or through the mails.

Eight states out of fifty currently operate statewide, state controlled lotteries. Under provisions of the law as it now stands, it is illegal for any radio or television station, either within those states or not, to broadcast information or advertising concerning any aspect of the lotteries. It is also illegal to mail information, application forms or prize winnings across state borders.

Despite the explicit nature of the law, however, its enforcement is, at most, spotty. Although broadcasting stations do not announce winning lottery numbers or other information, many newspapers published in states that have lotteries are frequently shipped through the mails to other states even though they contain advertisements for lotteries, winning lottery numbers and prizes. Those newspapers that comply with the law and do not carry lottery ads lose revenue accordingly. In addition, some state lottery organizations will willingly mail lottery information to potential out-of-state subscribers.

Mr. Chairman, this situation is one which cries out for some resolution. The Department of Justice continues, as it has for some time to "study" the matter further. No adequate enforcement of the laws can therefore be expected. I believe it is the obligation of the Congress to move in the direction that will protect the right of those states which presently operate or contemplate operating legal lotteries to obtain the full benefit of those enterprises as well as the rights of those states who do not have lotteries and who do not wish to have them. I think this can be done while at the same time doing away with a particularly anomalous legal situation—by permitting newspapers and broadcasting stations to carry lottery information without regard to state boundaries and by permitting the direct interstate mailing of lottery information by the state lottery agencies.

If this approach were taken, the uncertain state of the law would be resolved. Further, the ambiguous situation in the enforcement of the law would be resolved by a much more workable and realistic statute. Yet no state's decision not to allow a lottery would be impaired. No state would somehow be forced to open a lottery. At the same time, the federal government would no longer be impeding the decisions of those states with lotteries to raise additional revenues, or restricting the possible advertising income of newspapers or broadcasting stations.

One of the principal arguments for state lotteries is that they offer an honest, publicly run operation which will put organized crime out of the business of gambling. At the same time they produce needed state revenues. I applaud both of these objectives. I feel that H.R. 1991 and other bills before this committee would advance these goals while at the same time recognizing the futility of attempting to enforce the present law. Admittedly, it might expand the possibilities that citizens from states which do not have lotteries will be encouraged to

participate in another state's lottery, but the impossibility of preventing such occurrences is apparent, given the state of our interstate transportation and communications system. It is still true, however, that only those who wish to gamble will do so. In no way either are other states or individuals coerced into doing so.

Mr. Chairman, for the above reasons, recognition of an impossible situation and of the legitimate interests of all the concerned interests—I urge the careful consideration of my bill.

Thank you.

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NEW JERSEY PRESS ASSOCIATION,  
New Brunswick, N.J., May 9, 1974.

HON. HAROLD D. DONOHUE,  
Chairman, Claims and Governmental Relations Subcommittee,  
U.S. House of Representatives,  
Washington, D.C.

DEAR CONGRESSMAN DONOHUE: I am writing to you upon the request of the officers and directors of the New Jersey Press Association to express their support of the testimony presented to the House-Claims and Governmental Relations Subcommittee by representatives of the National Newspaper Association favoring the enactment of pending legislation that would make it lawful for newspapers to accept and publish news and advertising pertaining to state operated lotteries and legalized bingo games.

The members of our Association, which include all of the daily newspapers and one hundred and twenty-five paid circulation weeklies, feel that the provisions of existing federal statutes and U.S. Postal regulations which prohibit newspapers from publishing news and advertising pertaining to the New Jersey state operated lottery, should be amended to comply with the principals and provisions of the First Amendment of the Federal Constitution. That is, to restore the inalienable right of the New Jersey newspapers to keep the public informed of the actions of government agencies, including the N.J. Lottery Commission.

The publishers of the small community daily and weekly newspapers of our state feel that the federal lottery laws and regulations are discriminatory because they cannot afford to replate pages on which lottery news and advertising would appear for the substantial portion of their total circulation that is sent to subscribers via the U.S. Postal Service or transported by truck or train to the neighboring states of New York, Pennsylvania and Delaware.

Officials of the New Jersey State Lottery Commission have stated that because income from the sale of lottery tickets is declining, due to comparatively new competition from state operated lotteries in neighboring New York and Pennsylvania, the need for newspaper advertising promotion has increased greatly.

Unless newspapers are permitted to legally publish advertising from the New Jersey Lottery Commission, this State's education system will suffer because lottery earnings are now allocated to the N.J. Department of Education.

Your consideration of the above matter will be deeply appreciated.

Most cordially,

LLOYD P. BURNS,  
General Manager.

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## STATEMENTS SUBMITTED TO THE SUBCOMMITTEE IN OPPOSITION TO THE BILLS

[The following statement was furnished for inclusion in the record by Professor Sam Rosen of the University of New Hampshire.]

### THE ECONOMICS OF STATE OPERATED LOTTERIES

(By Sam Rosen,<sup>1</sup> Professor of Economics, University of New Hampshire)

Delivered at a Hearing by the Commission on the Review of the National Policy Toward Gambling, Washington, D.C., April 3, 1974.

The recent upsurge of interest in state-operated lotteries can be traced to two developments: (1) originally, a desperate need for additional public funds;

<sup>1</sup> Assisted by Mary Rosen who performed much of the research.

(2) latterly, after the onset of Federal Revenue-sharing, a seemingly painless way to fatten state treasuries. With regard to the first, the Federal Government long ago preempted the very best source of public revenue: personal and corporate income. Local governments are virtually the sole beneficiaries of property taxes, but these have been inadequate to do the job. State governments and/or localities laid first claim to general sales taxes, again with flagging results. Into the bargain state-local income taxes were imposed, not to mention the various forms of selective sales levies. Still the lower levels of government were starved for funds, or so they claimed.

As to the second development, the enactment of revenue-sharing (despite the misgivings of such a renowned fiscal expert as Richard Musgrave of Harvard and others) proved to be less than a panacea but did moderate the urgency for new revenue sources. With taxpayers in revolt against traditional taxes, it was a logical next step to embrace legalized gambling. Few meant by this the all-out effort of Nevada where, nevertheless, in fiscal 1971 gambling proceeds raised just short of 25% of the total state revenues. Nor was the state share of wagers on horse-racing and dog-racing, by now almost ubiquitous, what was meant. Rather, something like New Hampshire's lottery or New York's government-sponsored bookmaking became the latest fad. That it is a will-o'-wisp in relation to revenue sources will be the burden of these remarks.

Before dipping deeply into the lottery, an attempt should be made to assess the extent of the revenue effort of some obviously wealthy states. Revenue effort is defined as "... the relation between potential yield of various revenue sources at national average rates and revenue amounts actually received by state and local governments . . . expressed on a percentage basis." The following figures show state-local effort in terms of all taxes and charges as a percentage of the U.S. average, set at 100 for 1966-67:

Pennsylvania 99; New Jersey 94; Connecticut 93; Ohio 87; Illinois 85.

Other relatively well-off states, of course, exceed the U.S. average: California, Delaware, Michigan, New York, Washington, to mention some. Also, a number of poor states are above the U.S. average. The point is, however, that before lotteries are tried, it would seem reasonable to expect maximum traditional revenue effort on the part of all states.

New Hampshire, for example, which is about the median state in per capita personal income, is the only state currently without a general sales tax or state income tax. Its state-local effort was 84% compared with neighboring, poorer Vermont's 116%. It has always relied on the so-called "sin taxes"—those on liquor, cigarettes and horseracing—for most of its general revenues. These have been found wanting and have led to one expedient after another: head taxes at \$5 per adult head (more recently supplanted by a \$10 resident tax) (room and meal taxes ("bed and belly" in the argot of the State legislature), and, most recently a flat tax on business profits as part of a package repealing such absurdities as taxes on inventories and on poultry.

The expedient introduced in 1963 was the lottery. This after a hiatus in the United States of almost seventy years when the notorious Louisiana Lottery, a chartered private operation, was made inoperative by state and then Federal legislation. Historically, lotteries were significant in early American economic and social development. They thrived during a time of currency shortages and a sharply expanding, mobile population, mainly to finance social overhead costs and various reform programs. With the passage of time, however, institutional changes occurred which enhanced the possibility of phasing out such an irregular and unreliable means of revenue. These included the development of an organized bond market, strengthening the monetary base and financial institutions, and the introduction of broad-based taxes.<sup>2</sup>

Economic theory, moreover, has never offered support for the lottery. From Adam Smith through Stanley Jevons to Alfred Marshall and all the way to Milton Friedman, the emphasis has been on the loss of utility through gambling as well as on its irrationality. Nor is there a single known public finance specialist who, despite the seeming lack of new or novel revenue sources, has opted for the lottery. Instead its advocates have been politicians sensitive to the universal distaste for taxes or special interest groups desirous of achieving a particular end and looking for the least disaffected way of raising the money.

<sup>2</sup> Advisory Commission on Intergovernmental Relations, *Measuring the Fiscal Capacity and Effort of State and Local Areas* (Washington, D.C., 1971), 15.

<sup>3</sup> Sam Rosen and Desmond Norton, "The Lottery As A Source of Public Revenue," *Taxes*, September, 1966, 617-619.

Usually the come-on is the huge untapped reservoir of funds flowing into illegal gambling, or the reputed success of the Irish Sweepstakes and similar foreign ventures. Thus, in 1957 a bill was introduced in Congress to initiate a Federal lottery with the promise that it would net \$10 billion per year. Such wildly exaggerated figures are never substantiated, any more than the equally unproven estimates of air pollution costs, for example. Indeed, those who are conversant with the usual techniques of estimating aggregates like national income are alert to the margins of error in these quite reliable but inexact measures of economic performance. By contrast, statistics on gambling, particularly illegal gambling, are so suspect as to be worthless. Thus, the *New York Times* of December 16, 1970 reported a gross annual business of \$250 million for the numbers game in our largest city, based on testimony by police witnesses before a legislative committee. Documentation was absent.

The only meaningful estimate was one made by Robert K. Kinsey in the early 1960's.<sup>3</sup> He derived net lottery receipts of about \$1 billion if conducted by the Federal Government, founded on the following assumptions: that privately-operated legal gambling would not be eliminated; that the technique would be something like football pools which are relatively inexpensive to operate; that Federal endorsement would encourage greater participation and add \$500 million to gross revenues (that is, total wagers minus winnings). Gross revenues would add up to \$1.75 billion, including the above \$500 million and \$1.25 billion of losses diverted from other types of gambling. The operating expenses, geared to the experience of other countries were reckoned at about 40% of gross revenues or close to \$750 million. Given the fact that this estimate was prepared several years ago, that inflation has erupted and population has grown, a generous guess would be \$2 billion or \$3 billion in net lottery receipts currently. This would be equal to approximately one percent of present Federal tax receipts, a revenue potential too unimpressive to be seriously considered. Indeed customs duties, seldom championed in terms of their numerical volume, were a better source of funds in fiscal 1973 at \$3.2 billion than projected lottery receipts.

If one examines the well-established European lotteries, net receipts are quite limited. This is true of Italy, Denmark, France, Ireland, England, and Norway.<sup>4</sup> It is also true of New Hampshire. The following table shows results from the inception of that state's "sweepstakes" (as it is known locally) to the present day.

THE NEW HAMPSHIRE LOTTERY, 1964-73

[In millions of dollars]

Year	Gross receipts	Net receipts	Grant per resident pupil
1964	5,730	2,768	24.15
1965	3,901	2,487	21.00
1966	3,863	1,841	14.82
1967	2,567	1,055	8.28
1968	2,045	.890	6.75
1969	2,001	.868	6.30
1970	2,004	.837	5.79
1971	4,277	1,865	12.03
1972	7,699	2,702	17.00
1973	6,846	2,953	

The figures for 1964 were based on only six months of operation because of legislative delays. Relatively good but far from predicted proceeds stemmed from the novelty of the lottery at that time and the lack of nearby competition. The figures for 1965 were buttressed by more than a half million dollars of federal excise taxes collected in 1964 but refunded to New Hampshire on the repeal of an excise law by Congress. As the table shows, receipts dwindled regularly until 1971, apparently stabilizing at about \$2 million gross with the continued decline in net receipts reflecting higher administrative costs. The upturn in 1971 was the result of sharply reducing the price of tickets, offering more frequent prizes,

<sup>3</sup> Robert K. Kinsey, "The Role of Lotteries in Public Finance," *National Tax Journal*, March, 1963, 15.

<sup>4</sup> According to the *New York Times* of March 24, 1974, the Soviet Union also conducts a number of lotteries, one of them at less than 40 cents a ticket and not without its problems.

and generally emulating the methods of new converts to the lottery: New York and New Jersey.

The New Hampshire lottery was legislated to return the net proceeds to the local school districts on the basis of a flat grant per resident pupil. This too steadily diminished until 1971 in a situation of the lowest state aid to public education in the country. Before the necessary legislation was adopted, advocates publicly claimed a net yield of \$4 million annually, or \$34 for each school child. The actual figures are a mockery of such anticipations. It should be observed that the original purpose of the lottery was to offset sharply rising local property tax rates. This purpose has not been met. Moreover, the lottery is of a piece with the extraordinary dependence of New Hampshire on neighboring, populous Massachusetts to which it sells liquor from conveniently located state-owned stores, low-priced cigarettes, and pari-mutuel tickets from Rockingham Park (linked by superhighway to Boston). This dependence was dictated by the fact that if every man, woman and child in New Hampshire annually spent \$3, the original price of a sweepstakes ticket, the gross revenue collected would hardly pay for the prizes. In the first year of operation, eighty percent of the tickets were bought by residents of Massachusetts, New York and Connecticut in spite of the need to travel to New Hampshire for that purpose.<sup>5</sup> This dependence is unconsciously expressed in the state motto: Live Free or Die!

The most damning indictment of the lottery in New Hampshire is that it has forestalled the inevitable passage by the state legislature of a broad-based tax, without which vital state needs go begging. In each legislative biennium since 1964 a new fiscal crisis emerged, at least until revenue-sharing began.

New York was the next state to adopt a lottery, the original purpose being to cover a budget deficit which threatened in fiscal 1967-68. Here too net revenues were at first earmarked for education. Total sales for the initial year of operation were estimated at \$360 million—the height of hyperbole when it is recognized that this would have meant 20 one dollar tickets per New York state resident over a twelve-month period. Actual sales (June, 1967-May, 1968) were \$62.4 million. New York's gross lottery receipts to date are as follows:

	<i>Million</i>
1968 -----	\$62
1969 -----	48
1970 -----	58
1971 -----	38
1972 -----	103
1973 -----	117

Quite obviously the dour experience of New Hampshire was being repeated until active competition from New Jersey forced New York in 1972 to emulate its sister state's promotional methods and introduction of weekly tickets. The New York record is summarized below for the period May, 1967-May, 1972:<sup>6</sup>

Gross receipts-----	\$321, 433, 824
Prizes -----	111, 570, 273
Administrative costs-----	51, 045, 117
Net receipts-----	158, 818, 444

Prizes and administrative costs absorbed 35% and 16% of the gross receipts, respectively, leaving 49% for the earmarked purposes that established this lottery.<sup>7</sup> Even though lottery sales rose to a peak level in 1973, in early 1974 Governor Wilson was concerned about a future decline, a view echoed by the State Controller.<sup>8</sup>

Apart from New Hampshire and New York, the other six states operating lotteries last year began too recently (see the succeeding table) to speak of meaningful trends in receipts. Moreover, emulation has burgeoned to the point where every New England state except Vermont will soon promote a lottery, leading to the suggestion of a New England regional lottery by Massachusetts officials. James E. Ritchie, Executive Director of the Commission on the Review of the National Policy Toward Gambling, believes there may be a domino effect,

<sup>5</sup> The Council of State Governments, *Gambling: A Source of State Revenue* (Lexington, Kentucky, 1973), 11.

<sup>6</sup> *New York Times*, June 2, 1972.

<sup>7</sup> As the prizes were increased to 45% of gross receipts in fiscal 1972, net receipts declines to 45%. See The Council of State Governments, *op. cit.*, 16.

<sup>8</sup> *New York Times*, January 6, 1974, and *Portsmouth (N.H.) Herald*, February 8, 1974.

with neighboring states feeling compelled to adopt a lottery in self-defense. This would seem to be verified on the East Coast where Delaware has also indicated interest. Other states currently moving in the direction of lottery approval are Illinois, Iowa, Ohio, Montana and Washington. One should note too the establishment of the National Association of State Lotteries in 1972.

The table below shows gross sales for the eight states operating lotteries in 1973. In terms of per capita figures Michigan leads with \$15.35 followed by New Jersey with \$14.58. Michigan's relative success is due to its use of a Canadian television outlet for advertising (U.S. federal law prohibits domestic television or radio advertising of lotteries) and to its system of payroll deductions for ticket purchases.<sup>9</sup> Michigan's sales rate (the number of tickets sold per 10 residents) is 60% compared with 50% for New Jersey, 49% for Massachusetts and 20% for New York.<sup>10</sup> The New Jersey case reinforces the conclusion that after initial success, receipts trend downward. More than any other state, New Jersey introduced a host of gimmicks, low-priced tickets, and constant promotional material. Into the bargain it capitalizes on neighboring New York's poorly operated lottery and its off-track betting diversion. Nevertheless, New Jersey is now experiencing lagging sales and the need for more effort to peddle tickets.<sup>11</sup> As one observer noted: "The fickle public needs constant promotion and a host of gimmicks to keep its wagering fever from flagging."<sup>12</sup>

STATE-OPERATED LOTTERIES IN 1973

State	Year of inception	Allocation of net proceeds	Gross sales (millions)	Population (1970 census)	Gross sales per capita
Connecticut	1972	General fund	\$34.297	3,032,217	\$11.31
Maryland	Mid-1973	do	25.044	3,922,399	6.13
Massachusetts	Mid-1972	Cities and towns	75.939	5,689,170	13.35
Michigan	1972	General fund	134.717	8,875,083	15.35
New Hampshire	1964	Education	6.627	737,681	8.98
New Jersey	1971	Education and general fund	104.530	7,168,164	14.58
New York	Mid-1967	Education and capital equipment	116.765	18,241,266	6.40
Pennsylvania	1972	Elderly property tax relief	132.936	11,793,909	11.27

<sup>1</sup> 6 months only.

Sources: Council of State Governments, op. cit., 17-18; NLW Newsletter (Florida); Bureau of the Census.

In brief, potential lottery receipts seem to be exaggerated when a state first endorses this means of raising revenue, are apparently impossible to forecast, depend on competition or the lack of it from neighboring states, and require continuous marketing changes to retain interest. The extremes to which states will go once they are addicted are illustrated by New Hampshire which doubled its top prize to \$100,000, added vacation trips for losers and increased frequency of drawings; and by New Jersey which is working on an instant winner—at the time of purchase one determines whether he has won or lost (increasing the danger of corrupt sales agents buying all the winning tickets).<sup>13</sup>

Perhaps the last rein on all-out promotion, circumvented by foreign-border states, is the current Federal ban on radio or television advertising. That this is endangered can be seen by the drum-fire campaign waged against it by every state lottery agency and by the case now before the Supreme Court brought by the F.C.C. in opposition to a U.S. Court of Appeals decision in Pennsylvania upholding media advertising of lotteries.

Not only does the lottery fail to elicit sizeable amounts of revenue compared to virtually any tax or support from economic theory; it is clearly regressive, costly to operate, complex to administer (its presumed appeal to criminals has led New Hampshire to hire an ex-FBI agent to run it for a salary far beyond that of state employees responsible for taxes raising significantly greater amounts of revenue), and dysfunctional as a counter-cyclical fiscal instrument.

The matter of regressivity is borne out in the New Hampshire case where a survey indicated that lower income groups bought a disproportionate share of

<sup>9</sup> *Wall Street Journal*, February 22, 1974 and *New York Times*, November 12, 1972.

<sup>10</sup> *Wall Street Journal*, op. cit.

<sup>11</sup> See Governor Cahill's statement in *New York Times*, March 22, 1973; also *New York Times*, July 25, 1973.

<sup>12</sup> *Wall Street Journal*, op. cit.

<sup>13</sup> *Ibid.*

the tickets.<sup>14</sup> Another survey in New Jersey suggested the possibility of non-regressivity. The basis for this tentative conclusion was that over 70% of lottery sales in that state were to those earning \$7,500 or more annually and that 72% of the buyers had at least a high school education.<sup>15</sup> Now if a regressive tax is defined as one which increases in percentage terms as income declines, the evidence offered is hardly convincing. Median 1972 family income was estimated to be \$11,116 with the lowest two-fifths of all families earning \$9,299 or less.<sup>16</sup> One would have to know how many earned how much more than \$7,500, (which is merely \$144 per week, hardly a munificent sum today). Only if it could be shown that low income people shunned the lottery could a case be made for non-regressivity. The fact is that a 50 cent bet by a poor person is a greater percentage of his income than a 50 cent bet by a rich person. And that makes the lottery regressive, unless the rich buy many more tickets than the poor. What high school education (which is much more universal than it used to be) has to do with the issue is beyond comprehension.

Another recent study concluded that the Pennsylvania lottery was a proportional revenue measure.<sup>17</sup> A proportional tax rate is defined as one in which the rate is the same regardless of income. Once again the evidence is suspect. First, a random sampling was undertaken of individuals in New Jersey and Pennsylvania shopping centers to determine who bought tickets. The study reported that the buyers were mainly middle or upper income people. While the sampling of individuals may have been random, there is no corroboration that the shopping centers were also randomly selected. For all that one can tell, they may have been exclusively in middle-upper income areas. The same study used an alternative method, namely assuming that the mean amount of lottery tickets purchased in an area was a function of that area's income level. Sixty seven Pennsylvania counties were included, using the distribution of winning tickets as a model of the distribution of all tickets sold. Now to assume that as one's income level increases, more lottery tickets are bought flies in the face of known facts about a comparable activity: the numbers game. Moreover, the persistent appeal of the lottery, increasingly emphasized by bigger and bigger prizes, is get-rich-quick. Such an appeal is obviously not to the already affluent or near-affluent. Lastly, more information is needed than was provided to determine whether the distribution of winning tickets can serve as a surrogate for all tickets. Only if it can be shown that lottery sales take, say, one percent of the income of all classes who participate could the case for proportionality be made.

That the cost of collecting net revenues from a lottery is quite high has previously been alluded to, especially when compared to most kinds of taxes. Total costs may be defined as the prices and administrative expense, or the difference between gross and net receipts. For New Hampshire net receipts have ranged from a high of 64% of the gross take to a low of 35% (see the previous table on the New Hampshire lottery), but averaging in the mid-forties. New York's record is also a net yield of less than half. For the first nine months of operation, Massachusetts netted 39% and Connecticut 46%. Another way of looking at the matter is that for each 50 cent ticket in New Jersey, 24 cents are paid in prizes, 2.5 cents represent selling costs, and 4.5 cents go for other costs. The net of 19 cents means a yield of 38%, or New Jersey spends seven cents to collect nineteen cents.<sup>18</sup> Compared to any tax, this is ludicrously excessive. Estimates are that it costs one and a half to two cents to collect a regular tax dollar against 37¢ in the New Jersey case to collect a net lottery dollar.

In brief, whether or not one includes the prizes as part of costs, the lottery is an expensive way of generating a dollar's worth of public revenue. Nor do the results justify even that in terms of lottery proceeds as a percentage of total state revenues. They range from less than one percent to less than three percent.<sup>19</sup>

There are those who argue that the lottery should be viewed as a government-sold service rather than an alternative to taxes. This is the point made by Fred-

<sup>14</sup> See Rosen and Norton, *op. cit.*, 324 and Council of State Governments, *op. cit.*, 32.

<sup>15</sup> Council of State Governments, *op. cit.*, 17.

<sup>16</sup> *Economic Report of the President*, February, 1974, 140 and 274.

<sup>17</sup> Jerome F. Heavey, "The Incidence of State Lotteries: Some Empirical Evidence," *Taxes*, September, 1973, 547 ff.

<sup>18</sup> Ronald D. Watson, "Lotteries: Can the Public and State Both Win?" *Federal Reserve Bank of Philadelphia Business Review*, July, 1973, 11.

<sup>19</sup> *Ibid.*, 5; see also Portsmouth (N.H.) *Herald*, February 8, 1974 and *Consumer Reports*, February, 1974.

erick Stocker who feels that the early failures in New Hampshire and New York were due to the lack of recognition by those states of the lottery as a consumer service, needing vigorous promotion to make it competitive with other goods and services.<sup>20</sup> Indeed Edward J. Powers, the New Hampshire lottery director, remarked, recently: "The lottery is a product the same as any other. It has to be merchandised, promoted and improved. It's like razor blades or detergents—you always have to come out with something new."<sup>21</sup> In fact, the lottery is far from a typical good or service. It is a pure transfer payment in which the winners produce nothing in exchange for the prizes—in this regard resembling welfare payments or any gambling gain—and the government lops a substantial portion off the top for expenses and net proceeds. Gambling gains and losses are not recorded in the national income totals for precisely that reason. They are not payments for helping to produce current goods and services. To the extent that gambling is legalized, the value of the current service of allowing bettors to risk their funds provided by the private casino or government is included in the national income tally, but not the gains or losses. The net amount available to government is treated the same as any tax.<sup>22</sup>

Direct sale of goods and services by governments is sharply limited in the U.S. in accordance with the prevailing system of private, profit-making enterprise. Thus, one mentions T.V.A., municipally-operated transportation services, some government retail merchandising of alcoholic beverages (New Hampshire, for instance) an insignificant miscellany of other things, and then quickly exhausts the list. In these cases the good or service is sold for a price at least approximating its market value, and the buyer acquires a tangible good or the benefits of the specific service. Gambling, however, whether legal or illegal, whether privately or governmentally operated, yields no such benefits. To treat it as an economic service, therefore, is patently absurd.

Furthermore, even as a bet the lottery is a laggard, as the following indicates:<sup>23</sup>

[In cents]

Type of gambling	Payback on \$1	Retained by house
Roulette (Monte Carlo).....	97.3	2.7
Roulette (Las Vegas).....	94.7	5.3
Sports betting.....	95.5	4.5
Slot machines.....	75-95.0	5-25.0
Horses.....	82.0	18.0
Numbers.....	60-70.0	30-40.0
New York and New Jersey lottery.....	40.0	60.0
Other 6-State lotteries average.....	45.0	55.0

The column showing the percentage retained by the house (or government) includes all non-prize costs and is not to be interpreted as "net" or "profit."

Suppose one concedes that the lottery raises little revenue compared with other sources, that it is costly to administer, that it is regressive and that it is a poor bet. All that is left for justification is to use it in the hope of eliminating illegal gambling. As Ronald D. Watson commented: "It is interesting to speculate about whether states, which are willing to use lotteries to compete with organized crime for the profits from gambling, might also be willing to extend both the logic and the competition to other activities which are sometimes considered morally objectionable."<sup>24</sup> In any event, the volume of illegal gaming seems to be rising apace with the government-endorsed variety.<sup>25</sup>

Apart from exorbitant costs, administration is haunted by the fear of a criminal takeover. Therefore, extraordinary and expensive controls are required: limited sales outlets, the use of civil servants, strict accounting methods, micro-

<sup>20</sup> Frederick D. Stocker, "State Sponsored Gambling as a Source of Public Revenue," *National Tax Journal*, vol. 25, 1972. See also Watson, *op. cit.*, 4, and *Portsmouth Herald*, *op. cit.*

<sup>21</sup> *Wall Street Journal*, *op. cit.*

<sup>22</sup> See the author's *National Income and Other Social Accounts* (Holt, Rinehart and Winston, 1972), 69-72.

<sup>23</sup> *Consumer Reports*, *op. cit.*, 177 ff.

<sup>24</sup> Watson, *op. cit.*, 5n.

<sup>25</sup> *Portsmouth Herald*, February 8, 1974 and *State Government*, vol. 45, Winter, 1972, 19-25.

film records, and data-processing equipment. In New York, the original intent was to sell tickets in banks, government offices, hotels and motels. A national law, however, prohibited sales by any federally chartered or insured bank, thus eliminating many sales outlets. To meet this problem, the state law was amended to allow sales by any business except in bars, liquor stores, and religious, charitable or scientific organizations.

What about counter-cyclical possibilities? Modern fiscal thinking holds that an efficient tax should, among other things, raise more than a proportionate amount of revenue in good times and less in bad times, in this manner tending to offset the swings of the business cycle. The federal progressive income tax is the best example of such a built-in stabilizer. By contrast the lottery could be expected to be more appealing during recessions because of a greater relative desire to gamble when unemployment is rising and income is declining.

In the table presented previously on State-Operated Lotteries in 1973, it can be seen that of the eight states, all but three earmark net proceeds completely or in part. It can be argued that earmarking of public revenues is always fiscally unsound because it removes spending alternatives. For example, the complete dedication of the Federal gasoline tax to highways is not only part of the reason for the so-called energy shortage, but has prevented expansion of more economic public transportation methods. Usually earmarked revenues originate in a crisis but prove intractable long after the crisis has ended. Far better, therefore, to put all revenues in the general fund and allow the appropriate legislative body to allocate them.

In part, the lotteries were adopted on the claim that they would alleviate critical fiscal needs: aid to education, property tax relief, grants to cities and towns. New Hampshire, for example, mandated net receipts exclusively for public school education which is financed almost completely by the local property tax. At once, therefore, this lottery was designed to increase state aid to education and to reduce or at least hold the line on property taxes. In its early days of operation, however, a number of New Hampshire school districts simply substituted their share of net lottery funds for a proportionate amount of property taxes. Public education needs remained as great as ever, and property taxes ultimately continued to rise.

Among other things, earmarking disguises small revenues. Attention is focused on the noble purpose to be served instead of how effectively that end is being met. Also, budget planning is warped when recourse is to a most uncertain source of funds. In a word, if a state is going to adopt a lottery it should not earmark the net proceeds.

So far experience does not support the presumed revenue potential in government-condoned lotteries. Whatever the solution to the pressing needs of state and local governments—and major reforms of existing broad-based taxes would seem to offer the best hope for extrication from the fiscal morass—the lottery is a loser.

STATE OF WASHINGTON,  
*Olympia, Wash., May 24, 1974.*

SUBCOMMITTEE ON CLAIMS AND GOVERNMENTAL RELATIONS,  
*Committee on Judiciary, U.S. House of Representatives,*  
*Washington, D.C.*

GENTLEMEN: I am honored to have this opportunity to submit my written statement to the Subcommittee on Claims and Governmental Relations on the subject of H.R. 6668 and companion measures relating to state operated lotteries.

In November, 1972, the people of the State of Washington removed a long-standing constitutional ban on lotteries by amending the State Constitution to authorize lotteries, upon a sixty percent vote of the legislature, or upon an initiative or referendum approved by sixty percent of the voters. The term "lotteries" as used in the State Constitution has been construed by the Washington State Supreme Court to include all forms of games involving distribution of money or property, chance, and valuable consideration paid or agreed to be paid for the chance. See *Sherwood & Roberts-Yakima, Inc. v. Leach*, 67 Wn. 2d 630, 409 P. 2d 160 (1965). The prohibition thus extended to games such as bingo, raffles and other socially accepted and harmless types of games. It is for this reason that I have maintained the position that the mandate of the people of our state expressed in November of 1972 did not call for establishment of a state lottery or wide open forms of gambling heretofore prohibited, but demonstrated

instead the will of the people that the broad constitutional ban on "lotteries" be relaxed as to traditionally social types of games and pastimes.

During a recent session of the Washington State Legislature, Second Reengrossed Senate Bill 2004 was enacted and would have provided for the creation of a state lottery regulated by the Washington State Gambling Commission. On February 19, 1974, I vetoed the bill in its entirety. My reasons for vetoing the bill were as follows:

1. Creation of a state lottery, in my judgment, far exceeded the boundaries of activity contemplated and approved by the people in amending the constitutional ban on "lotteries" in November, 1972.

2. For the first time in the history of this state, state government would be engaging itself in a gambling activity as a principle participant. Supporters claim that a state lottery would raise revenues for the state without resort to additional taxation. Experience in other states has shown, however, that a state lottery is an unreliable source of revenue and that a good portion of the revenue raised must be put back into administrative and operational costs.

3. In a day when our citizens increasingly express their disapproval of unrestrained growth in government at all levels, creation of a wholly new bureaucracy to administer a state lottery is an improper response by state government.

4. Experience in other states has also shown that a state lottery is a regressive form of taxation because its appeal is greatest to those in lower income groups and others who can least afford it. Proponents claim that the money spent on a state lottery would be spent in any event on other forms of gambling activity. This does not justify, however, the state in going into the gambling business.

5. Because of its high administrative and operational costs, a state lottery has a far lower pay-back rate than any other comparable form of gambling. It is commonly known that sophisticated gamblers do not spend their money on state lotteries because of the low pay-back rate. Correspondingly, the conclusion is inevitable that a state lottery is commonly financed in great part by the unsophisticated, whether rich or poor.

6. Creation of a state lottery would result in the state, by its actions, fostering a climate of gambling that may at some point in time lead to professional gambling and the various forms of criminal activity associated therewith.

7. In a time when the integrity of government has become a major concern of our society, I believe that an effort by the state to finance itself to any extent by engaging in a gambling activity is an acknowledgment by the state and its citizens that income may be secured not by work or other rendition of services but by an evasion thereof, and that there is nothing wrong with the exploitation of those who are least able to pay. I further believe that the people of Washington State reject the notion that any way for the state or for the individual to secure money is quite satisfactory.

I am fully aware of the increasing popularity of state lotteries and the growing number of states which have passed or are presently considering the enactment of legislation creating state lotteries. I believe the same reasons for which I vetoed the bill which would have created a state lottery in Washington State are valid on the national level and I would strongly urge the Congress to refrain from enacting any measures which would change federal statutes and regulations which may presently inhibit the further proliferation of state lotteries.

Sincerely,

DANIEL J. EVANS,  
Governor.

## APPENDIXES

### APPENDIX 1

FEDERAL COMMUNICATIONS COMMISSION,  
Washington, D.C., May 13, 1974.

HON. PETER W. RODINO, Jr.,  
Chairman, Committee on the Judiciary,  
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for the Commission's views on H.R. 6668 and companion bills concerning lotteries which are presently under consideration by the Subcommittee on Claims and Governmental Relations of the Committee on the Judiciary. The majority of these bills, including H.R. 6668, generally would amend title 18 of the United States Code to permit the transportation, mailing and broadcasting of advertising, information, and materials concerning lotteries authorized by law and conducted by a State.

Existing law, 18 U.S.C. Section 1304, prohibits "... the broadcasting of, any advertisement of or information concerning any lottery, gift enterprise, or similar scheme, offering prizes dependent in whole or in part upon lot or chance, or any list of prizes drawn or awarded by means of any such lottery, gift enterprise, or scheme, whether said list contains any part or all of such prizes ..."

Violations of existing law are punishable by a fine of not more than \$1,000, or imprisonment of not more than one year, or both. While criminal prosecution under this statute is solely within the jurisdiction of the Department of Justice, the Commission is authorized under the provisions of Sections 312(a)(6) and 503(b)(1)(E) of the Communications Act (47 USC 312(a)(6), 503(b)(1)(E)) to revoke a broadcast license or to impose a monetary forfeiture upon a licensee for violation of 18 U.S.C. Section 1304 regardless of whether criminal prosecution has been initiated.

H.R. 6668 would amend title 18 of the United States Code by adding a new section 1307 providing, *inter alia*:

(a) The provisions of sections 1301, 1302, 1303, and 1304 shall not apply to an advertisement, list of prizes, or information concerning a lottery conducted by a State acting under the authority of State law—

\* \* \* \* \*

(2) broadcast by a radio or television station located in a State conducting such a lottery.<sup>1</sup>

Certain of the companion bills under consideration by the Subcommittee which similarly exempt state conducted lotteries contain somewhat different language in their proposed section 1307 (a) (2) ;

\* \* \* \* \*

(2) broadcast by a radio or television station located in that State.<sup>2</sup>

The Commission has no particular expertise with respect to the policy considerations underlying the Federal anti-lottery statutes or the Federal-state relationships which are involved. Therefore, the Commission takes no position on the merits of H.R. 6668 or the companion bills as they relate to exempting the broadcasting of material concerning state authorized and conducted lotteries. We do note that in its statement before the Subcommittee on April 24, 1974, the Department of Justice generally favored enactment of H.R. 6668 as promoting the policy decisions of those states which have determined to conduct lotteries, while protecting the public policy of still other states which have rejected lotteries, and we would defer to this judgment. In this regard, the Commission has recognized on several occasions that an anomalous situation is created where a

<sup>1</sup> The same language is proposed by H.R. 7718 (page 1, lines 7-8, page 2, lines 1-2, 5-6) and H.R. 7276 (page 1, lines 7-10, page 2, lines 3-4).

<sup>2</sup> This language is contained in H.R. 1485 (page 1, lines 7-8, page 2, lines 1-2, 5-6), H.R. 1991 (page 1, lines 7-8, page 2, lines 1-2, 5-6), H.R. 3503 (page 1, lines 7-10, page 2, lines 3-4), H.R. 3806 (page 1, lines 8-9, page 2, lines 1-2, 5-6), H.R. 5875 (page 1, lines 7-8, page 2, lines 1-2, 5-6), H.R. 6454 (page 1, lines 7-10, page 2, lines 3-4), and H.R. 6536 (page 1, lines 7-8, page 2, lines 1-2, 5-6).

state has enacted lottery legislation and is operating an entirely legal state lottery, while 18 U.S.C. section 1304 nevertheless substantially restricts the use of the broadcast media to inform the state's citizens of such lottery. The applicable Commission regulations (sections 73.122(AM), 73.292(FM) and 73.656(TV)) are of necessity based on the existing statute, which does not distinguish between lotteries that are legal or illegal under state law or between lotteries that are operated by private parties and state-conducted lotteries. Thus, until the present Federal law pertaining to the broadcast of lottery-related material is amended or in some manner qualified by authoritative judicial opinion<sup>3</sup> the Commission views the proper discharge of its responsibilities as leaving it no alternative but to apply the language of the statute.

It is our understanding that H.R. 6668, in proposing an exemption from 18 U.S.C. section 1304 for advertisements, lists of prizes, or information concerning a lottery, would permit any radio or television station to broadcast material concerning any state authorized and conducted lottery if the station is located in any state which authorizes and conducts such a lottery.<sup>4</sup> Thus, for example, stations in New York State would be allowed to broadcast material concerning the New Jersey State lottery and the Pennsylvania State lottery, as well as information concerning the lottery authorized and conducted by the State of New York. As noted in the foregoing example, New York, Pennsylvania, and New Jersey all conduct state authorized lotteries. However, since the television stations licensed to locations within the State of New Jersey are fewer in number and have proportionately fewer viewers than those licensed to the New York City and Philadelphia areas, which together cover most of New Jersey as well, New Jersey would be at a disadvantage in promoting its lottery if an exemption were limited to allowing a station to broadcast only such information as concerned the lottery which was authorized and conducted by the State in which it was located.<sup>5</sup> A revision of existing law as contemplated by H.R. 6668 would therefore assist in promoting the New Jersey (and other) state conducted lotteries. On the other hand, since broadcast signals, as a technological matter, cannot be confined to political boundaries, such an exemption would also result

<sup>3</sup> In *New Jersey State Lottery Commission v. United States*, — F. 2d — (3rd Cir., decided January 2, 1974), the U.S. Court of Appeals for the Third Circuit reversed a Commission ruling that the broadcast of a winning number in a state conducted lottery in the form of a news report constituted direct promotion of a lottery and was thus prohibited by 18 U.S.C. section 1304. The court held that news broadcasts were exempt from the prohibition of that statute which, according to the court's interpretation of the First Amendment, should be construed to apply only "to the promotion of lotteries for which the licensee receives compensation" and perhaps also to "some uncompensated promotional announcements outside the context of broadcast journalism [which] might be found by the FCC to be promotional and not news. . . ."

The Commission and the Department of Justice have petitioned the United States Supreme Court for a writ of certiorari to review this judgment based on its conflict with *New York State Broadcasters Association, Inc. v. United States*, 414 F. 2d 990 (2d Cir. 1968), cert. den. 396 U.S. 1061 (1970), which emphasized that the test of the statute's applicability should be whether the broadcast directly promotes or facilitates the lottery, rather than whether the station is compensated for the broadcast. The petition is also founded on the belief of the FCC and the Justice Department that the Third Circuit's decision in effect erroneously declares a portion of the statute unconstitutional as violative of the First Amendment.

<sup>4</sup> Should this interpretation of H.R. 6668 be correct, the Commission would recommend clarifying the pertinent language of proposed section 1307(a)(2) to read as follows:  
(2) broadcast by a radio or television station licensed to a location in any State conducting such a lottery.

<sup>5</sup> The 1973-74 edition of *Television Factbook* provides the following daily circulation figures for 1971-72 with respect to the number of different television households reached by commercial television stations licensed to New York City, Philadelphia, and communities in Northern and Southern New Jersey:

New York City stations:	
WCBS-TV	3,016,400
WCBS-TV	3,654,900
WNBC-TV	3,521,200
WNEW-TV	2,701,700
WOR-TV	1,528,100
WPIX-TV	1,877,800
Philadelphia stations:	
KYW-TV	1,340,700
WCAU-TV	1,404,400
WPHL-TV	451,900
WPVI-TV	1,539,100
WTAJ-TV	368,300
Northern New Jersey stations:	
WNJU-TV (Linden)	42,100
WXTV-TV (Patterson)	35,900
Southern New Jersey stations:	
WKBS-TV (Burlington)	454,700
WCMC-TV (Wildwood)	900

in a wider dissemination of information concerning state conducted lotteries into states which do not conduct lotteries. Whether it is desirable to create an exemption as broad as that in H.R. 6668, rather than the narrower exemption provided by some of the companion bills (e.g., H.R. 1485), or the broader exemption of other bills (e.g., H.R. 6971, H.R. 12235), is a question on which we express no opinion.

Should H.R. 6668 or similar legislation be enacted, the Commission recommends amending language to clarify the meaning of the phrase "broadcast by a radio or television station located in a State conducting such a lottery" as that phrase is employed on page 2, lines 5-6 of H.R. 6668 (emphasis added). Under FCC rules and regulations, a station's transmitter or studio may be located in a place different from the location specified in its license and, in border areas, a station's transmitter or studio may even be located in an adjacent State. For example, WNJU-TV is licensed to Linden, New Jersey, but its transmitter is located in New York City. In order to avoid conflicting interpretations where a particular station might be considered to be "located" in either of two adjacent States, one conducting a lottery and the other not, the Commission recommends that the above-quoted language of H.R. 6668 be amended to provide as follows:

(2) broadcast by a radio or television station licensed to a location in a State conducting such lottery.<sup>6</sup>

Under the Commission's rules and regulations, all broadcast stations are licensed to serve a particular city, town, political subdivision or community which is specified in the station license. Under the proposed revision, a station would be considered to be located in the place specified in its license regardless of the physical location of its transmitter or studio.

Although in most instances there is but one location specified in a particular station's license, there are a limited number of station licenses which specify more than one city, town, political subdivision or community. There are presently 52 stations which are licensed to serve two different locations, and of these only five involve locations in two different States.<sup>7</sup> At the present time, none of the States involved in these latter five cases of dual-licensed stations conduct lotteries authorized by state law.<sup>8</sup> Should the revision suggested by the Commission be incorporated in any enactment of H.R. 6668 or similar legislation and one or more of these States establish a state conducted lottery, the Commission would consider the dual-licensed station involved to be licensed to each of the locations specified in the license and thus within the terms of the exemption.

The Commission trusts that the foregoing is responsive to your request and will be pleased to provide any further information which may be desired concerning the subject legislative proposals.

This letter was adopted by the Commission on May 13, 1974.

By direction of the commission.

RICHARD E. WILEY,  
*Chairman.*

<sup>6</sup>The Commission notes that the statement submitted to the Subcommittee by the National Association of Broadcasters recommends the same revision.

<sup>7</sup>Dual licenses involving two different States are presently held by the following stations:

WPNX(AM)—Phoenix City, Alabama; Columbus, Georgia.

KRLC(AM)—Lewiston, Idaho; Clarkston, Washington.

KBMW(AM)—Breckenridge, Minnesota; Wahpeton, North Dakota.

WOPI(AM)—Bristol, Virginia; Bristol, Tennessee.

KTAL(FM)—Texarkana, Texas; Shreveport, Louisiana.

The Commission is not disposed to grant further dual licenses absent exceptional justifying circumstances.

<sup>8</sup>It is the Commission's information that the States of Connecticut, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, and Pennsylvania presently conduct lotteries authorized under their state law. By referendum held November 6, 1973, Maine approved establishment of a state lottery and Rhode Island repealed a ban on state lotteries contained in the state constitution.

UNITED STATES POSTAL SERVICE,  
LAW DEPARTMENT,  
Washington, D.C., November 21, 1973.

HON. PETER W. RODINO, Jr.,  
Chairman, Committee on the Judiciary,  
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This responds to your request for a report on H.R. 6668, a bill that would amend titles 18 and 39 of the United States Code to permit the transportation, mailing, and broadcasting of advertising, information, and materials concerning lotteries authorized by law and conducted by a State.

As a policy matter, the merits of this proposal turn upon political judgments in the area of federal-state relations upon which the Postal Service expresses no view.

We would like, however, to comment upon one possible problem with the exceptions contemplated by proposed new section 1307 of title 18 to sections 1301-1304 of that title, the criminal lottery statutes. It is conceivable that mail, legally addressed under the new section, might be deemed to have been unlawfully mailed if forwarded by the Postal Service to addressees who have moved to other states. Although we would not consider this to be a likely interpretation of the statute, the committee may wish to include something clarifying this matter in any report it brings out on the bill.

As regards the suggested amendment to 39 U.S.C. § 3005, we anticipate no additional difficulties in administering that provision if amended as proposed.

Sincerely,

ROGER P. CRAIG,  
Deputy General Counsel.

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UNITED STATES POSTAL SERVICE,  
LAW DEPARTMENT,  
Washington, D.C., April 24, 1974.

HON. PETER W. RODINO, Jr.,  
Chairman, Committee on the Judiciary,  
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This responds to your request for the further views of the Postal Service on H.R. 6668, a bill that would amend titles 18 and 39 of the United States Code to permit the transportation, mailing, and broadcasting of advertising, information, and materials concerning lotteries conducted by a State acting under the authority of State law.

As we construe it, H.R. 6668 would exempt from the operation of the civil and criminal lottery statutes matter concerning a State-conducted lottery which is introduced into the mailstream bearing an in-State address. If this legislation is enacted, the Postal Service would expect to apply to mail exempted from the lottery statutes all its ordinary procedures for mail processing and delivery, including the procedures for forwarding mail to a postal customer who has changed his address. We construe the bill to exempt from criminal and civil penalties the person who sends, and the postal employee who handles or delivers, exempted matter bearing an in-State address which is forwarded to an address without the State.

We recommend that the legislative history of this measure reflect Committee approval of the Postal Service interpretation of the proposed legislation.

We also note that the bill appears to require technical amendment to resolve the inconsistent use of "addresses" in proposed 18 U.S.C. § 1307(b) and "addressees" in proposed 39 U.S.C. § 3005(d).

Sincerely,

LOUIS A. COX,  
General Counsel.

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THE DEPARTMENT OF THE TREASURY,  
Washington, D.C., April 29, 1974.

HON. WILBUR D. MILLS,  
Chairman, Committee on Ways and Means,  
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: By a letter of April 11, 1974, you requested Treasury Department testimony at the April 24-25 hearings of the Subcommittee on

Claims and Government Relations concerning H.R. 6668 and companion bills. These bills would exempt State lotteries from certain Federal prohibitions, and one bill (H.R. 6971) would also broaden the existing exemption from wagering tax.

Through discussions with the Staff of the Committee it was agreed that in lieu of testimony we would file with the Committee a written report of the views of the Treasury Department.

The Treasury Department defers to the views of other agencies more directly concerned regarding the nontax provisions of H.R. 6668 and the companion bills. The position of the Treasury Department on Section 3 of H.R. 6971 is set forth in our report to the Ways and Means Committee on H.R. 11294, a copy of which is attached.

Sincerely yours,

(S) Frederic W. Hickman.  
FREDERIC W. HICKMAN.

Attachment.

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Treasury Department on H.R. 11294, "A BILL To exempt State lotteries from certain Federal prohibitions and for other purposes."

Section 4401 of the Internal Revenue Code of 1954 imposes a 10 percent tax on the amount of wagers made, to be paid by anyone engaged in the business of accepting wagers, including any person conducting a lottery. A related occupational tax of \$50 per year is imposed by section 4411 on each person who is liable for tax under section 4401 or who is engaged in receiving wagers for or on behalf of any person so liable.

In 1963, New Hampshire became the first State in recent history to establish a State lottery. The lottery was similar in operation to the Irish Sweepstakes. That is, the lottery's ultimate winners were determined by the results of a designated horse race actually run following a preliminary selection of the prospective winners by lot. The lottery, when established, was subject to the Federal taxes on wagering.

In order to exempt New Hampshire's lottery from these taxes, Congress, in 1965, added as section 4402(3) of the Code an exemption for State-conducted sweepstakes, wagering pool or lotteries. The exemption was drafted narrowly to encompass the New Hampshire-type of lottery. It contains two basic requirements: (1) the sweepstakes, wagering pool or lottery must be conducted by an agency of a State acting under authority of State law; and (2) the ultimate winners must be determined by the results of a horse race.

Since the appearance of the New Hampshire lottery seven other States have established and are operating lotteries. Several more States have either authorized, or are investigating the feasibility of, lottery operations. However, the lotteries which have been established since 1965, including a revised version of the New Hampshire lottery, differ substantially in the manner in which they operate from the form of lottery which was made exempt by Congress in 1965. Although most States use a format which gives the appearance that the ultimate winners are determined on the basis of a horse race, in point of fact in every case, ultimate winners are determined by lot. Consequently, the lotteries, as conducted, do not satisfy the second prerequisite for exemption under section 4402(3).

In order to exclude all State lottery operations from wagering taxes, H.R. 11294 would amend section 4402(3) to remove the requirement that ultimate winners of State lotteries must be determined on the basis of the results of a horse race. It also would amend section 4462(b) of the Code to exclude from the definition of coin-operated gaming devices (and thus from tax imposed by section 4461 on coin-operated gaming devices) a vending machine which dispenses tickets on a sweepstakes, wagering pool, or lottery which is conducted by an agency of a State acting under authority of State law.

The amendment to section 4402(3) is to apply with respect to wagers placed after March 10, 1964, and the amendment to section 4462(b) is to apply with respect to periods presumably ending after such date. March 10, 1964, is the date on which the 1965 amendment to section 4402 became effective.

The Treasury Department favors the exemption of State lotteries from the imposition of wagering taxes. Such an exemption is consistent with the Administration's program of revenue sharing which is intended to provide the States with greater revenues. However, we also are concerned that in view of the popularity of this form of gambling many individuals who are winners of lotteries are not reporting their winnings. Consequently, we believe it would be appropriate and desirable in conjunction with enactment of H.R. 11294, to enact legislation which would facilitate the collection of taxes from the rapidly growing number of winners.

Section 6041 of the Internal Revenue Code requires information reporting on lottery winnings of \$600 or more. Although an Internal Revenue Service study based upon a sampling of these information documents has indicated a relatively high rate of compliance in the reporting of lottery winnings (85 percent of the winners reported their gains on timely-filed income tax returns), the residual noncompliance is sufficient to warrant concern. Moreover, we have reason to believe that compliance is much lower for winners of less than \$600 with respect to whom information returns are not required under present law.

Apart from the compliance problem, there is the payment problem that arises because many winners are unsophisticated in tax matters and thus fail to provide for timely payment of Federal income tax on their winnings. In many cases winners spend their lottery proceeds before the tax return filing date and consequently find that they are unable to pay the tax on their winnings when their taxes are due. The Service reports that withholding at the source would alleviate payment problems for such taxpayers and would also reduce the incidence of delinquent account activity in its Collection Division.

We have prepared a draft amendment to section 3402 of the Code which would require States conducting lotteries to withhold tax from amounts paid to individuals as prizes in connection with such lotteries. A copy of the draft is attached for your committee's consideration.

For purposes of withholding and related administrative provisions, the proposal treats payments of State lottery winnings as if they were payments of wages by an employer to an employee. However, withholding is applied at a flat rate of 20 percent on gross payments and is subject to a *de minimis* floor of \$100. The normal withholding exemptions are inapplicable to withholding under the proposal. In lieu of a Form W-4 a winner is required to furnish to the payer a statement showing the name, address, and taxpayer identification number of each person entitled to share in the payment. The proposal applies to payments made after December 31, 1974. However, that date can be changed to some period following the date of enactment.

Compliance with these provisions will depend in large measure upon the cooperation of the States rather than upon sanctions for failure to comply. The States will have to file Forms W-2 with respect to payments and amounts withheld. However, the States are presently providing the Service with information returns, and we do not believe that this additional requirement will place an undue burden upon their lottery operations.

H.R. 11294 applies retroactively to March 10, 1964. As a general rule the Treasury Department opposes the granting of retroactive relief since it normally results in inequitable application of the tax laws among taxpayers who are similarly situated. However, in the instant case, there is no taxpayer who will be disadvantaged by this change. Furthermore, Congress in 1965 retroactively provided relief to New Hampshire from wagering taxes. The relief granted to all States by H.R. 11294 is retroactive to that date.

The Office of Management and Budget has advised the Treasury Department that there is no objection from the standpoint of the Administration's program to the presentation of this report.

Sincerely yours,

FREDERIC W. HICKMAN,  
Assistant Secretary.

## APPENDIX 2

93<sup>d</sup> CONGRESS  
1<sup>ST</sup> SESSION**H. R. 6668**

## IN THE HOUSE OF REPRESENTATIVES

APRIL 5, 1973

Mr. RODINO (for himself, Mr. WIDNALL, Mr. DOMINICK V. DANIELS, Mr. FRELINGHUYSEN, Mr. HELSTOSKI, Mr. HOWARD, Mr. MINISH, Mr. ROE, Mr. SANDMAN, Mr. THOMPSON of New Jersey, Mr. HUNT, Mr. RINALDO, Mr. MARAZITI, and Mr. PATTEN) introduced the following bill; which was referred to the Committee on the Judiciary

**A BILL**

To amend title 18 of the United States Code to permit the transportation, mailing, and broadcasting of advertising, information, and materials concerning lotteries authorized by law and conducted by a State, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*  
3       That chapter 61 of title 18 of the United States Code (re-  
4       lating to lotteries) is amended by adding at the end thereof  
5       the following new section:

6       **“§ 1307. State-conducted lotteries**

7       “(a) The provisions of sections 1301, 1302, 1303, and  
8       1304 shall not apply to an advertisement, list of prizes, or

1 information concerning a lottery conducted by a State  
2 acting under the authority of State law—

3 “(1) contained in a newspaper published in that  
4 State, or

5 “(2) broadcast by a radio or television station lo-  
6 cated in a State conducting such a lottery.

7 “(b) The provisions of sections 1301, 1302, and 1303  
8 shall not apply to the transportation or mailing to addresses  
9 within a State of tickets and other material concerning a  
10 lottery conducted by that State acting under authority of  
11 State law.

12 “(c) For the purposes of this section ‘State’ means a  
13 State of the United States, the District of Columbia, the  
14 Commonwealth of Puerto Rico, or any territory or posses-  
15 sion of the United States.

16 “(d) For the purposes of this section ‘lottery’ means  
17 the pooling of proceeds derived from the sale of tickets or  
18 chances and allotting those proceeds or parts thereof by  
19 chance to one or more chance takers or ticket purchasers.  
20 ‘Lottery’ does not include the placing or accepting of bets  
21 or wagers on sporting events or contests.”

22 SEC. 2. The sectional analysis for chapter 61 is amended  
23 by adding the following item:

“1307. State-conducted lotteries.”

1       SEC. 3. Section 1953 (b) of title 18 of the United  
2 States Code is amended by changing the period to a comma  
3 and adding: "or (4) equipment, tickets, or materials used  
4 or designed for use within a State in a lottery conducted by  
5 that State acting under authority of State law."

6       SEC. 4. Section 3005 of title 39 of the United States Code  
7 is amended by adding at the end thereof the following sub-  
8 section:

9       "(d) Nothing in this section shall prohibit the mailing  
10 of (1) a newspaper of general circulation published in a  
11 State containing advertisements, lists of prizes, or information  
12 concerning a lottery conducted by that State acting under  
13 authority of State law, or (2) tickets or other materials con-  
14 cerning such a lottery within that State to addressees within  
15 that State. For the purposes of this subsection, 'State' means  
16 a State of the United States, the District of Columbia, the  
17 Commonwealth of Puerto Rico, and any territory or pos-  
18 session of the United States."

93<sup>d</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 1021

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 3, 1973

Mr. ROE introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To amend title 18 of the United States Code to permit the mailing of lottery tickets and related matter, the broadcasting or televising of lottery information, and the transportation and advertising of lottery tickets in interstate commerce, but only where the lottery is conducted by a State agency.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*  
3       That (a) chapter 1 of title 18 of the United States Code  
4       (relating to general provisions) is amended by adding at  
5       the end thereof the following new section:

6       “§ 16. **State-conducted lotteries**

7       “The provisions of chapter 61 and of sections 1084 and  
8       1953 of this title shall not apply with respect to any lottery

1 conducted by any agency of a State or of the District of  
2 Columbia acting under authority of law.”

3 (b) The table of contents of chapter 1 of title 18 of  
4 the United States Code is amended by adding at the end  
5 thereof the following new item:

“16. State-conducted lotteries.”

93<sup>d</sup> CONGRESS  
1<sup>st</sup> SESSION

# H. R. 1485

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 9, 1973

Mr. BROOMFIELD (for himself, Mr. BROWN of Michigan, Mr. CEDERBERG, Mr. DIGGS, Mr. DINGELL, Mr. WILLIAM D. FORD, Mr. HARVEY, Mr. NEDZI, and Mr. RIEGLE) introduced the following bill; which was referred to the Committee on the Judiciary

---

## A BILL

To amend title 18 of the United States Code to permit the transportation, mailing, and broadcasting of advertising, information, and materials concerning lotteries authorized by law and conducted by a State, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       That chapter 61, of title 18 of the United States Code (re-  
4       lating to lotteries) is amended by adding at the end thereof  
5       the following new section:

6       “§ 1307. **State-conducted lotteries**

7       “(a) The provisions of sections 1301, 1302, 1303, and  
8       1304 shall not apply to an advertisement, list of prizes, or in-

1 formation concerning a lottery conducted by a State acting  
2 under the authority of State law—

3 “(1) contained in a newspaper published in that  
4 State, or

5 “(2) broadcast by a radio or television station lo-  
6 cated in that State.

7 “(b) The provisions of sections 1301, 1302, and 1303  
8 shall not apply to the transportation or mailing to addressees  
9 within a State of tickets and other material concerning a  
10 lottery conducted by that State acting under authority of  
11 State law.

12 “(c) For the purposes of this section ‘State’ means a  
13 State of the United States, the District of Columbia, the  
14 Commonwealth of Puerto Rico, or any territory or possession  
15 of the United States.

16 “(d) For the purposes of this section ‘lottery’ means the  
17 pooling of proceeds derived from the sale of tickets or chances  
18 and allotting those proceeds or parts thereof by chance to one  
19 or more chance takers or ticket purchasers. ‘Lottery’ does not  
20 include the placing or accepting of bets or wagers on sporting  
21 events or contests.”

22 SEC. 2. The sectional analysis for chapter 61 is amended  
23 by adding the following item:

“1307. State-conducted lotteries.”.

1       SEC. 3. Section 1953 (b) of title 18 of the United States  
2 Code is amended by changing the period to a comma and  
3 adding: "or (4) equipment, tickets, or materials used or  
4 designed for use within a State in a lottery conducted by that  
5 State acting under authority of State law."

6       SEC. 4. Section 3005 of title 39 of the United States  
7 Code is amended by adding at the end thereof the following  
8 subsection:

9       "(d) Nothing in this section shall prohibit the mailing of  
10 (1) a newspaper of general circulation published in a State  
11 containing advertisements, lists of prizes, or information con-  
12 cerning a lottery conducted by that State acting under author-  
13 ity of State law, or (2) tickets or other materials concerning  
14 such a lottery within that State to addressees within that  
15 State. For the purposes of this subsection, 'State' means a  
16 State of the United States, the District of Columbia, the  
17 Commonwealth of Puerto Rico, and any territory or posses-  
18 sion of the United States."

93<sup>D</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 1573

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 9, 1973

Mr. HOWARD introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To amend title 18 of the United States Code to permit the mailing of lottery tickets and related matter, the broadcasting or televising of lottery information, and the transportation and advertising of lottery tickets in interstate commerce, but only where the lottery is conducted by a State agency.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       That (a) chapter 1 of title 18 of the United States Code  
4       (relating to general provisions) is amended by adding at  
5       the end thereof the following new section:

6       “§ 16. **State-conducted lotteries**

7       “The provisions of chapter 61 and of sections 1084 and  
8       1953 of this title shall not apply with respect to any lottery

## 2

1 conducted by any agency of a State or of the District of  
2 Columbia acting under authority of law.”

3 (b) The table of contents of chapter 1 of title 18 of  
4 the United States Code is amended by adding at the end  
5 thereof the following new item:

“16. State-conducted lotteries.”

93<sup>d</sup> CONGRESS  
1<sup>st</sup> SESSION

# H. R. 1991

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 15, 1973

Mr. BOLAND introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To amend title 18 of the United States Code to permit the transportation, mailing, and broadcasting of advertising, information, and materials concerning lotteries authorized by law and conducted by a State, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       That chapter 61, of title 18 of the United States Code (re-  
4       lating to lotteries) is amended by adding at the end thereof  
5       the following new section:

6       “§ 1307. State-conducted lotteries

7       “(a) The provisions of sections 1301, 1302, 1303, and  
8       1304 shall not apply to an advertisement, list of prizes, or

1 information concerning a lottery conducted by a State acting  
2 under the authority of State law—

3 “(1) contained in a newspaper published in that  
4 State, or

5 “(2) broadcast by a radio or television station lo-  
6 cated in that State.

7 “(b) The provisions of sections 1301, 1302, and 1303  
8 shall not apply to the transportation or mailing to addressees  
9 within a State of tickets and other material concerning a  
10 lottery conducted by that State acting under authority of  
11 State law.

12 “(c) For the purposes of this section ‘State’ means a  
13 State of the United States, the District of Columbia, the  
14 Commonwealth of Puerto Rico, or any territory or possession  
15 of the United States.

16 “(d) For the purposes of this section ‘lottery’ means the  
17 pooling of proceeds derived from the sale of tickets or chances  
18 and allotting those proceeds or parts thereof by chance to one  
19 or more chance takers or ticket purchasers. ‘Lottery’ does not  
20 include the placing or accepting of bets or wagers on sporting  
21 events or contests.”

22 SEC. 2. The sectional analysis for chapter 61 is amended  
23 by adding the following item:

“1307. State-conducted lotteries.”

1       SEC. 3. Section 1953 (b) of title 18 of the United States  
2 Code is amended by changing the period to a comma and  
3 adding: "or (4) equipment, tickets, or materials used or  
4 designed for use within a State in a lottery conducted by that  
5 State acting under authority of State law."

6       SEC. 4. Section 3005 of title 39 of the United States  
7 Code is amended by adding at the end thereof the following  
8 subsection:

9       “(d) Nothing in this section shall prohibit the mailing of  
10 (1) a newspaper of general circulation published in a State  
11 containing advertisements, lists of prizes, or information con-  
12 cerning a lottery conducted by that State acting under author-  
13 ity of State law, or (2) tickets or other materials concerning  
14 such a lottery within that State to addressees within that  
15 State. For the purposes of this subsection, ‘State’ means a  
16 State of the United States, the District of Columbia, the  
17 Commonwealth of Puerto Rico, and any territory or posses-  
18 sion of the United States.”

93<sup>D</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 2731

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 23, 1973

Mr. RUPPE introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To amend title 18 of the United States Code to permit the mailing of lottery tickets and related matter, the broadcasting or televising of lottery information, and the transportation and advertising of lottery tickets in interstate commerce, but only where the lottery is conducted by a State agency.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       That (a) chapter 1 of title 18 of the United States Code  
4       (relating to general provisions) is amended by adding at  
5       the end thereof the following new section:

6       **“§ 16. State-conducted lotteries**

7       “The provisions of chapter 61 and of sections 1084 and  
8       1953 of this title shall not apply with respect to any lottery

1 conducted by any agency of a State or of the District of  
2 Columbia acting under authority of law.”

3 (b) The table of contents of chapter 1 of title 18 of  
4 the United States Code is amended by adding at the end  
5 thereof the following new item:

“16. State-conducted lotteries.”.

93<sup>d</sup> CONGRESS  
1<sup>st</sup> SESSION

# H. R. 3412

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 31, 1973

Mrs. GRASSO introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To amend title 18 of the United States Code to permit the mailing of lottery tickets and related matter, the broadcasting or televising of lottery information, and the transportation and advertising of lottery tickets in interstate commerce, but only where the lottery is conducted by a State agency.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       That (a) chapter 1 of title 18 of the United States Code  
4       (relating to general provisions) is amended by adding at  
5       the end thereof the following new section:

6       “§ 16. **State-conducted lotteries**

7       “The provisions of chapter 61 and of sections 1084 and  
8       1953 of this title shall not apply with respect to any lottery

1 conducted by any agency of a State or of the District of  
2 Columbia acting under authority of law.”

3 (b) The table of contents of chapter 1 of title 18 of  
4 the United States Code is amended by adding at the end  
5 thereof the following new item:

“16. State-conducted lotteries.”

93<sup>d</sup> CONGRESS  
1<sup>st</sup> SESSION

# H. R. 3503

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 31, 1973

Mr. SANDMAN introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To amend title 18 of the United States Code to permit the transportation, mailing, and broadcasting of advertising, information, and materials concerning lotteries authorized by law and conducted by a State, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*  
3       That chapter 61, of title 18 of the United States Code (re-  
4       lating to lotteries) is amended by adding at the end thereof  
5       the following new section:

6       “§ 1307. **State-conducted lotteries**

7       “(a) The provisions of sections 1301, 1302, 1303, and  
8       1304 shall not apply to an advertisement, list of prizes, or in-  
9       formation concerning a lottery conducted by a State acting  
10      under the authority of State law—

1           “(1) contained in a newspaper published in that  
2           State, or

3           “(2) broadcast by a radio or television station lo-  
4           cated in that State.

5           “(b) The provisions of sections 1301, 1302, and 1303  
6           shall not apply to the transportation or mailing to addressees  
7           within a State of tickets and other material concerning a  
8           lottery conducted by that State acting under authority of  
9           State law.

10          “(c) For the purposes of this section ‘State’ means a  
11          State of the United States, the District of Columbia, the  
12          Commonwealth of Puerto Rico, or any territory or possession  
13          of the United States.

14          “(d) For the purposes of this section ‘lottery’ means the  
15          pooling of proceeds derived from the sale of tickets or chances  
16          and allotting those proceeds or parts thereof by chance to one  
17          or more chance takers or ticket purchasers. ‘Lottery’ does not  
18          include the placing or accepting of bets or wagers on sporting  
19          events or contests.”

20          SEC. 2. The sectional analysis for chapter 61 is amended  
21          by adding the following item:

          “1307. State-conducted lotteries.”

22          SEC. 3. Section 1953 (b) of title 18 of the United States  
23          Code is amended by changing the period to a comma and  
24          adding: “or (4) equipment, tickets, or materials used or

1 designed for use within a State in a lottery conducted by that  
2 State acting under authority of State law.”

3       SEC. 4. Section 3005 of title 39 of the United States  
4 Code is amended by adding at the end thereof the following  
5 subsection:

6       “(d) Nothing in this section shall prohibit the mailing of  
7 (1) a newspaper of general circulation published in a State  
8 containing advertisements, lists of prizes, or information con-  
9 cerning a lottery conducted by that State acting under author-  
10 ity of State law, or (2) tickets or other materials concerning  
11 such a lottery within that State to addressees within that  
12 State. For the purposes of this subsection, ‘State’ means a  
13 State of the United States, the District of Columbia, the  
14 Commonwealth of Puerto Rico, and any territory or posses-  
15 sion of the United States.”

93<sup>d</sup> CONGRESS  
1<sup>st</sup> SESSION

# H. R. 3806

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 6, 1973

Mr. EILBERG introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To amend title 18 of the United States Code to permit the transportation, mailing, and broadcasting of advertising, information, and materials concerning lotteries authorized by law and conducted by a State, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 That this Act shall be cited as the "State Lottery Exemp-  
4 tion Act of 1973" and that chapter 61, of title 18 of the  
5 United States oCde (relating to lotteries) is amended by  
6 adding at the end thereof the following new section:

7 **"§ 1307. State-conducted lotteries**

8 " (a) The provisions of sections 1301, 1302, 1303, and  
9 1304 shall not apply to an advertisement, list of prizes, or in-

1 formation concerning a lottery conducted by a State acting  
2 under the authority of State law—

3 “(1) contained in a newspaper published in that  
4 State, or

5 “(2) broadcast by a radio or television station lo-  
6 cated in that State.

7 “(b) The provisions of sections 1301, 1302, and 1303  
8 shall not apply to the transportation or mailing to addressees  
9 within a State of tickets and other material concerning a  
10 lottery conducted by that State acting under authority of  
11 State law.

12 “(c) For the purposes of this section ‘State’ means a  
13 State of the United States, the District of Columbia, the  
14 Commonwealth of Puerto Rico, or any territory or possession  
15 of the United States.

16 “(d) For the purposes of this section ‘lottery’ means the  
17 pooling of proceeds derived from the sale of tickets or chances  
18 and allotting those proceeds or parts thereof by chance to one  
19 or more chance takers or ticket purchasers. ‘Lottery’ does not  
20 include the placing or accepting of bets or wagers on sport-  
21 ing events or contests.”

22 SEC. 2. The sectional analysis for chapter 61 is amended  
23 by adding the following item:

“1307. State-conducted lotteries.”

24 SEC. 3. Section 1953 (b) of title 18 of the United States

1 Code is amended by changing the period to a comma and  
2 adding: "or (4) equipment, tickets, or materials used or  
3 designed for use within a State in a lottery conducted by that  
4 State acting under authority of State law."

5 SEC. 4. Section 3005 of title 39 of the United States  
6 Code is amended by adding at the end thereof the following  
7 subsection:

8 "(d) Nothing in this section shall prohibit the mailing  
9 of (1) a newspaper of general circulation published in a  
10 State containing advertisements, lists of prizes, or informa-  
11 tion concerning a lottery conducted by that State acting  
12 under authority of State law, or (2) tickets or other mate-  
13 rials concerning such a lottery within that State to addressees  
14 within that State. For the purposes of this subsection, 'State'  
15 means a State of the United States, the District of Columbia,  
16 the Commonwealth of Puerto Rico, and any territory or  
17 possession of the United States."

93<sup>D</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 4140

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 7, 1973

Mr. WYMAN introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

Establishing a National Lottery Commission, providing for national drawings and a sharing of proceeds with participating States.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 That chapter 95 of title 18 of the United States Code (relat-  
4 ing to racketeering) is amended by adding at the end thereof  
5 the following new section:

6 "**§ 1955. Engaging in numbers games**

7 " (a) Whoever in the United States conducts, assists in  
8 conducting, places a wager in or receives a wager placed in,  
9 or otherwise engages in any numbers, policy, bolita, or simi-

1 lar game shall be fined not more than \$5,000 or imprisoned  
2 for not more than one year, or both.

3 “(b) This section and section 1953 shall not apply to  
4 any national lottery conducted by the National Lottery  
5 Commission.”

6 SEC. 2. (a) There is hereby established a National Lot-  
7 tery Commission (hereinafter in this Act referred to as the  
8 “Commission”) to be composed of three members to be ap-  
9 pointed by the President, by and with the advice and consent  
10 of the Senate. For administrative purposes, the Commission  
11 shall be treated as part of the Alcohol, Tobacco, and Firearms  
12 Division of the Internal Revenue Service.

13 (b) Each member of the Commission shall receive com-  
14 pensation at the annual rate of \$40,000.

15 (c) The term of office of members shall be five years. A  
16 member shall be eligible for reappointment once but not a  
17 second time.

18 (d) Any vacancy in the Commission shall be filled in  
19 the same manner as the original appointments to the Commis-  
20 sion. Vacancies in the Commission, so long as there are two  
21 members in office, shall not impair the powers of the Com-  
22 mission to execute its functions under this Act, and two of the  
23 members in office shall constitute a quorum.

24 (e) Members of the Commission shall have had prior  
25 experience and training in law enforcement and demon-

1 stated exemplary records in positions of public trust and  
2 responsibility either State or Federal.

3 (f) Not more than two members of the Commission  
4 in office at any time shall be members of the same political  
5 party.

6 (g) The Commission shall prescribe such rules and  
7 regulations, and employ such personnel, as may be neces-  
8 sary in the exercise of its functions under this Act.

9 SEC. 3. The National Lottery Commission shall con-  
10 duct a national lottery at least once each month. It shall  
11 conduct a national lottery more frequently if it deems  
12 fit, and daily, in its discretion, when and as electronic  
13 equipment and technology renders daily drawings feasible.  
14 It being the intention and authorization of this Act that the  
15 Commission shall provide to persons the opportunity to wager  
16 a number upon more favorable terms and in a more reliable  
17 manner than is presently available to them through the  
18 underworld.

19 SEC. 4. (a) The Bureau of Engraving and Printing in  
20 the Department of the Treasury shall print numbers on  
21 stamps in sheets of one hundred. The Bureau shall use  
22 the latest means to prevent the ability to counterfeit such  
23 stamps.

24 (b) The Commission shall distribute these sheets to  
25 the post offices located throughout the United States either

1 in participating States or in exclusively Federal areas.  
2 While such post offices shall be the primary outlets for  
3 each distribution of stamps, the Commission may from  
4 time to time provide for additional outlets for such dis-  
5 tributions.

6 (c) The price of each numbered stamp shall be  
7 established by the Commission but shall not be less than  
8 25 cents.

9 (d) Stamps may be sold, for cash only, by the post  
10 offices (or other outlets) to any adult applying therefor,  
11 either singly or in quantity and may be resold by original  
12 and subsequent purchasers. Stamps purchased in any mul-  
13 tiple of one hundred shall be sold by post offices at a discount  
14 of 10 per centum. No official identification or other form of  
15 accreditation may be required of any person purchasing  
16 or reselling such stamps.

17 (e) The stamps shall be bearer stamps and shall be  
18 honored for prize money by presentation by the bearer  
19 thereof.

20 (f) The Commission shall reimburse the Post Office  
21 Department for such additional administrative expenses as  
22 it may incur by reason of the enactment of this Act.

23 SEC. 5. (a) In the case of any lottery the pay-out for  
24 the winning numbers shall not be less than 40 per centum

1 of the net proceeds of that lottery less the amounts payable  
2 under section 6. Such pay-out shall be distributed as follows:

3 (1) one winning number shall receive one-half of  
4 one percent of the net proceeds; and

5 (2) other winning numbers shall share equally in  
6  $39\frac{1}{2}$  per centum of the net proceeds.

7 (b) Illustrative example: If the net proceeds (that is,  
8 the gross receipts less administrative expenses authorized by  
9 this Act) of any drawing (whether monthly or more fre-  
10 quently) are \$100,000,000, the pay-out to individual win-  
11 ners will be \$40,000,000 distributed as follows:

12 (1) one individual winner will receive \$500,000,  
13 and

14 (2) Seven thousand nine hundred individual win-  
15 ners will receive \$5,000 each.

16 (c) Any amount received by an individual by reason of  
17 holding a winning number in a national lottery conducted  
18 under this Act shall be exempt from all taxation, Federal,  
19 State, or local.

20 (d) Any individual holding a winning number may  
21 establish his entitlement by presenting the winning number  
22 to any post office at which stamps for such lottery were  
23 available for sale. Upon presentation, the postmaster or other  
24 person in charge of such outlet shall certify that the individ-

1 ual has presented that number; and, after certification by the  
2 National Lottery Commission that it is a winning number  
3 and the amount of the winnings, the number shall be trans-  
4 mitted to the Commission for issuance of its draft in payment  
5 therefor.

6 (e) Prize money remaining unclaimed thirty days fol-  
7 lowing the drawing shall be held by the Commission in es-  
8 crow account for one year thereafter. Prize money unclaimed  
9 on the four hundredth day following the drawing shall  
10 escheat to the general funds of the United States Treasury.

11 SEC. 6. (a) Any of the several States may elect not to  
12 participate in such national lotteries by so certifying to the  
13 Commission on or before the ninetieth day after the date of  
14 the enactment of this Act. Any State which does not so elect  
15 and certify shall be a participating State.

16 (b) On or before the 10th day after the close of each  
17 calendar month the Commission shall distribute among the  
18 several participating States 10 per centum of the net pro-  
19 ceeds of any national lottery for which the drawing was held  
20 during such month. The share of each participating State in  
21 any such distribution shall be determined on the relation of  
22 its population to the population of all participating States.

23 (c) On or before the 10th day after the close of each  
24 lottery participating States shall each receive an additional  
25 distribution in an amount equal to 15 percentum of the

1 proceeds to any national lottery from the sale of such stamps  
2 within the borders of that State.

3 (d) For purposes of this Act, the term "State" includes  
4 the District of Columbia and any Territory or Trust Govern-  
5 ment of the United States.

6 SEC. 7. The net proceeds of national lotteries in excess  
7 of amounts needed for the pay-outs to holders of winning  
8 numbers provided by section 5 and for the distributions to  
9 participating States provided by section 6 shall be deposited  
10 in the Treasury of the United States and shall be credited  
11 as follows:

12 (1) the first \$100,000,000 so deposited in each  
13 calendar year shall be credited to the account of the  
14 Law Enforcement Assistance Administration for use by  
15 that Administration cooperatively with the several  
16 States (whether or not such States are participating  
17 States within the meaning of section 6) in fighting  
18 crime, and

19 (2) the remaining amount so deposited in each  
20 calendar year shall be credited to the account of the De-  
21 partment of Health, Education, and Welfare for use by  
22 that Department to assist in the financing of such pro-  
23 grams concerned with health, education, and welfare as  
24 may be entrusted to its administrative responsibility by  
25 the Congress from time to time.

1       SEC. 8. (a) Chapter 61 of title 18 of the United States  
2 Code (relating to lotteries) is amended by adding at the end  
3 thereof the following new sections:

4       **“§ 1307. National lotteries**

5       “Sections 1301 to 1304, inclusive, of this chapter shall  
6 not apply with respect to any national lottery conducted by  
7 the National Lottery Commission.

8       “Whoever forges or counterfeits any stamp made for  
9 purposes of a national lottery conducted by the National  
10 Lottery Commission; or

11       “Whoever alters any number on such a stamp; or

12       “Whoever robs, purloins, or steals such a stamp; or

13       “Whoever offers for sale or sells any such forged, coun-  
14 terfeited, altered, or stolen stamp, knowing it to be such; or

15       “Whoever presents any such forged, counterfeited, al-  
16 tered, or stolen stamp to any person engaged in carrying out a  
17 national lottery with intent to defraud the United States or  
18 any participant in any such lottery—

19       “Shall be fined not more than \$50,000 or imprisoned for  
20 not more than ten years, or both.

21       **“§ 1308. Sale of national lottery stamps at outlets in non-**  
22               **participating States prohibited**

23       “(a) Whoever offers for sale or sells any national lottery  
24 stamp within the borders of a State which has elected not to  
25 participate in national lotteries and has certified such elec-

1 tion within the time prescribed by law shall be fined not  
2 more than \$5,000 or imprisoned for not more than one year,  
3 or both."

4 (b) Section 4005 of title 39 of the United States Code  
5 is amended by adding at the end thereof the following new  
6 subsection:

7 " (d) This section shall not apply to any stamp made  
8 for purposes of a national lottery conducted by the National  
9 Lottery Commission or to any other matter related to such a  
10 national lottery; and nothing in this section, section 4001,  
11 or any other provision of law shall be construed to make such  
12 matter nonmailable."

13 SEC. 9. (a) This Act and the amendments made thereby  
14 shall apply notwithstanding any other provision of law.

15 (b) Any law of the United States which is inconsistent  
16 with this Act or any amendment made thereby is, to the  
17 extent of such inconsistency, hereby repealed.

18 (c) This Act and the amendments made thereby pre-  
19 empt any law of any State in conflict therewith, and no law  
20 of any State shall authorize any similar drawing: *Provided,*  
21 *however,* That nothing in this Act or the amendments made  
22 thereby shall be construed to invalidate existing State laws  
23 permitting the conduct and operation of sweepstakes related  
24 to parimutuel racing.

25 (d) If any provision of this Act (including any amend-

1 ment made thereby), or the application of any such provision  
2 to any person or circumstances, is held invalid, the remaining  
3 such provisions, or the application of such remaining pro-  
4 visions to other persons or circumstances, shall not be affected  
5 thereby.

6       SEC. 10. This Act shall take effect on the day on which  
7 this Act is enacted. The first three members of the National  
8 Lottery Commission shall take office not later than sixty  
9 days after such date of enactment.

93<sup>d</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 5421

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 8, 1973

Mr. MARAZITI introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To amend title 18 of the United States Code to permit certain broadcasts and mailings of advertisements of State-operated lotteries.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*  
3       That sections 1302 and 1304 of the United States Code  
4       are amended by adding at the conclusion of each of such  
5       sections the following new paragraph:

6       “Nothing in this section shall be construed to prohibit  
7       any advertisement by a State, the Commonwealth of Puerto  
8       Rico, or the District of Columbia, of any lottery operated by  
9       such State, Commonwealth, or District.”

93<sup>d</sup> CONGRESS  
1<sup>st</sup> SESSION

# H. R. 5875

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 20, 1973

Mr. MINISH introduced the following bill; which was referred to the Committee on the Judiciary

---

## A BILL

To amend title 18 of the United States Code to permit the transportation, mailing, and broadcasting of advertising, information, and materials concerning lotteries authorized by law and conducted by a State, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       That chapter 61, of title 18 of the United States Code (re-  
4       lating to lotteries) is amended by adding at the end thereof  
5       the following new section:

6       “§ 1307. State-conducted lotteries

7       “ (a) The provisions of sections 1301, 1302, 1303, and  
8       1304 shall not apply to an advertisement, list of prizes, or in-

1 formation concerning a lottery conducted by a State acting  
2 under the authority of State law—

3 “(1) contained in a newspaper published in that  
4 State, or

5 “(2) broadcast by a radio or television station lo-  
6 cated in that State.

7 “(b) The provisions of sections 1301, 1302, and 1303  
8 shall not apply to the transportation or mailing to addressees  
9 within a State of tickets and other material concerning a  
10 lottery conducted by that State acting under authority of  
11 State law.

12 “(c) For the purposes of this section ‘State’ means a  
13 State of the United States, the District of Columbia, the  
14 Commonwealth of Puerto Rico, or any territory or possession  
15 of the United States.

16 “(d) For the purposes of this section ‘lottery’ means the  
17 pooling of proceeds derived from the sale of tickets or chances  
18 and allotting those proceeds or parts thereof by chance to one  
19 or more chance takers or ticket purchasers. ‘Lottery’ does  
20 not include the placing or accepting of bets or wagers on  
21 sporting events or contests.”

22 SEC. 2. The sectional analysis for chapter 61 is amended  
23 by adding the following item:

“1307. State-conducted lotteries.”

## 3

1       SEC. 3. Section 1953 (b) of title 18 of the United States  
2 Code is amended by changing the period to a comma and  
3 adding: "or (4) equipment, tickets, or materials used or  
4 designed for use within a State in a lottery conducted by  
5 that State acting under authority of State law."

6       SEC. 4. Section 3005 of title 39 of the United States  
7 Code is amended by adding at the end thereof the following  
8 subsection:

9       "(d) Nothing in this section shall prohibit the mailing of  
10 (1) a newspaper of general circulation published in a State  
11 containing advertisements, lists of prizes, or information con-  
12 cerning a lottery conducted by that State acting under au-  
13 thority of State law, or (2) tickets or other materials con-  
14 cerning such a lottery within that State to addressees within  
15 that State. For the purposes of this subsection, 'State' means  
16 a State of the United States, the District of Columbia, the  
17 Commonwealth of Puerto Rico, and any territory or posses-  
18 sion of the United States."

93<sup>d</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 6454

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 2, 1973

Mr. O'HARA introduced the following bill; which was referred to the Committee on the Judiciary

---

## A BILL

To amend title 18 of the United States Code to permit the transportation, mailing, and broadcasting of advertising, information, and materials concerning lotteries authorized by law and conducted by a State, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       That chapter 61, of title 18 of the United States Code (re-

4       lating to lotteries) is amended by adding at the end thereof

5       the following new section:

6       “§ 1307. **State-conducted lotteries**

7       “ (a) The provisions of sections 1301, 1302, 1303, and

8       1304 shall not apply to an advertisement, list of prizes, or in-

9       formation concerning a lottery conducted by a State acting

10      under the authority of State law—

1           “(1) contained in a newspaper published in that  
2       State, or

3           “(2) broadcast by a radio or television station lo-  
4       cated in that State.

5           “(b) The provisions of sections 1301, 1302, and 1303  
6       shall not apply to the transportation or mailing to addressees  
7       within a State of tickets and other material concerning a  
8       lottery conducted by that State acting under authority of  
9       State law.

10          “(c) For the purposes of this section ‘State’ means a  
11       State of the United States, the District of Columbia, the  
12       Commonwealth of Puerto Rico, or any territory or possession  
13       of the United States.

14          “(d) For the purposes of this section ‘lottery’ means the  
15       pooling of proceeds derived from the sale of tickets or chances  
16       and allotting those proceeds or parts thereof by chance to one  
17       or more chance takers or ticket purchasers. ‘Lottery’ does not  
18       include the placing or accepting of bets or wagers on sporting  
19       events or contests.”

20       SEC. 2. The sectional analysis for chapter 61 is amended  
21       by adding the following item:

          “1307. State-conducted lotteries.”

22       SEC. 3. Section 1953 (b) of title 18 of the United States  
23       Code is amended by changing the period to a comma and  
24       adding: “or (4) equipment, tickets, or materials used or

1 designed for use within a State in a lottery conducted by that  
2 State acting under authority of State law.”

3 SEC. 4. Section 3005 of title 39 of the United States  
4 Code is amended by adding at the end thereof the following  
5 subsection:

6 “(d) Nothing in this section shall prohibit the mailing of  
7 (1) a newspaper of general circulation published in a State  
8 containing advertisements, lists of prizes, or information con-  
9 cerning a lottery conducted by that State acting under author-  
10 ity of State law, or (2) tickets or other materials concerning  
11 such a lottery within that State to addressees within that  
12 State. For the purposes of this subsection, ‘State’ means a  
13 State of the United States, the District of Columbia, the  
14 Commonwealth of Puerto Rico, and any territory or posses-  
15 sion of the United States.”

93<sup>d</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 6536

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IN THE HOUSE OF REPRESENTATIVES

APRIL 3, 1973

Mr. VANDER JAGT introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To amend title 18 of the United States Code to permit the transportation, mailing, and broadcasting of advertising, information, and materials concerning lotteries authorized by law and conducted by a State, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*  
3 That chapter 61, of title 18 of the United States Code (re-  
4 lating to lotteries) is amended by adding at the end thereof  
5 the following new section:

6 “§ 1307. **State-conducted lotteries**

7       “(a) The provisions of sections 1301, 1302, 1303, and  
8 1304 shall not apply to an advertisement, list of prizes, or

1 information concerning a lottery conducted by a State acting  
2 under the authority of State law—

3 “(1) contained in a newspaper published in that  
4 State, or

5 “(2) broadcast by a radio or television station  
6 located in that State.

7 “(b) The provisions of sections 1301, 1302, and 1303  
8 shall not apply to the transportation or mailing to addressees  
9 within a State of tickets and other material concerning a  
10 lottery conducted by that State acting under authority of  
11 State law.

12 “(c) For the purposes of this section ‘State’ means a  
13 State of the United States, the District of Columbia, the  
14 Commonwealth of Puerto Rico, or any territory or possession  
15 of the United States.

16 “(d) For the purposes of this section ‘lottery’ means the  
17 pooling of proceeds derived from the sale of tickets or chances  
18 and allotting those proceeds or parts thereof by chance to one  
19 or more chance takers or ticket purchasers. ‘Lottery’ does not  
20 include the placing or accepting of bets or wagers on sporting  
21 events or contests.”

22 SEC. 2. The sectional analysis for chapter 61 is amended  
23 by adding the following item:

“1307. State-conducted lotteries.”

1        SEC. 3. Section 1953 (b) of title 18 of the United States  
2 Code is amended by changing the period to a comma and  
3 adding: "or (4) equipment, tickets, or materials used or  
4 designed for use within a State in a lottery conducted by  
5 that State acting under authority of State law."

6        SEC. 4. Section 3005 of title 39 of the United States  
7 Code is amended by adding at the end thereof the following  
8 subsection:

9        "(d) Nothing in this section shall prohibit the mailing  
10 of (1) a newspaper of general circulation published in a  
11 State containing advertisements, lists of prizes, or informa-  
12 tion concerning a lottery conducted by that State acting  
13 under authority of State law, or (2) tickets or other materials  
14 concerning such a lottery within that State to addressees  
15 within that State. For the purposes of this subsection, 'State'  
16 means a State of the United States, the District of Columbia,  
17 the Commonwealth of Puerto Rico, and any territory or  
18 possession of the United States."

93D CONGRESS  
1ST SESSION

# H. R. 6971

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 12, 1973

Mr. YATRON introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

Exempting State lotteries from certain Federal prohibitions.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*  
3       That this Act shall be cited as the "State Lottery Exemption  
4       Act of 1973".

5       SEC. 2. (a) Chapter 1 of title 18, United States Code  
6       (relating to general provisions), is amended by adding at  
7       the end thereof the following new section:

8       "§ 16. **State-conducted lotteries, sweepstakes, and wager-**  
9       **ing pools**

10       "(a) The provisions of chapter 61 and of sections 1084  
11       and 1953 of this title shall not apply with respect to any

1 lottery, sweepstakes, or wagering pool conducted by any  
2 agency of a State acting under authority of State law.

3 “(b) For purposes of this section, ‘State’ includes any  
4 of the several States of the Union, the Commonwealth of  
5 Puerto Rico, the District of Columbia, or any territory or  
6 possession of the United States.”

7 (b) The table of contents of chapter 1 of such title 18  
8 is amended by adding at the end thereof the following new  
9 item:

“16. State-conducted lotteries, sweepstakes, and wagering pools.”

10 SEC. 3. (a) Section 4402 of the Internal Revenue Code  
11 of 1954 (relating to exemptions from the wagering tax) is  
12 amended by striking out paragraph (3) and inserting in  
13 lieu thereof the following:

14 “(3) STATE-CONDUCTED LOTTERIES, ETC.—On any  
15 wager placed in a sweepstakes, wagering pool, or lottery  
16 which is conducted by an agency of a State acting under  
17 authority of State law, but only if such wager is placed  
18 with the State agency conducting such sweepstakes,  
19 wagering pool, or lottery, or with its authorized employ-  
20 ees or agents.”

21 (b) Section 4462(b) of such Code (relating to ex-  
22 clusions from definition of coin-operated gaming device) is  
23 amended—

1           (1) by striking out "or" at the end of paragraph  
2           (1),

3           (2) by striking out the period at the end of para-  
4           graph (2) and inserting in lieu thereof "; or", and

5           (3) by adding after paragraph (2) the following  
6           new paragraph:

7           “(3) a vending machine which (A) dispenses  
8           tickets on a sweepstakes, wagering pool, or lottery which  
9           is conducted by an agency of a State acting under au-  
10          thority of State law and (B) is maintained by the State  
11          agency conducting such sweepstakes, wagering pool, or  
12          lottery, or by its authorized employees or agents.”

13          (c) The amendment made by subsection (a) shall apply  
14          with respect to wagers placed after the date of the enact-  
15          ment of this Act. The amendments made by subsection (b)  
16          shall apply with respect to periods after such date.

17          SEC. 4. Section 3005 of title 39, United States Code, is  
18          amended by adding at the end thereof the following new  
19          subsection:

20          “(c) The provisions of subsection (a) of this section  
21          shall not apply to any lottery, gift enterprise, or scheme for  
22          the distribution of money or of real or personal property, by  
23          lottery, chance, or drawing of any kind conducted by any  
24          agency of a State acting under authority of State law. For

1 purposes of this subsection, 'State' includes any of the several  
2 States of the Union, the Commonwealth of Puerto Rico, the  
3 District of Columbia, or any territory or possession of the  
4 United States."

93<sup>D</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 7276

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 19, 1973

Mr. SARASIN introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To amend title 18 of the United States Code to permit the transportation, mailing, and broadcasting of advertising, information, and materials concerning lotteries authorized by law and conducted by a State, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*  
3       That chapter 61 of title 18 of the United States Code (relat-  
4       ing to lotteries) is amended by adding at the end thereof  
5       the following new section:

6       “§ 1307. **State-conducted lotteries**

7       “(a) The provisions of sections 1301, 1302, 1303, and  
8       1304 shall not apply to an advertisement, list of prizes, or  
9       information concerning a lottery conducted by a State acting  
10      under the authority of State law—

1           “(1) contained in a newspaper published in that  
2 State, or

3           “(2) broadcast by a radio or television station lo-  
4 cated in a State conducting such a lottery.

5           “(b) The provisions of sections 1301, 1302, and 1303  
6 shall not apply to the transportation or mailing to addresses  
7 within a State of tickets and other material concerning a  
8 lottery conducted by that State acting under authority of  
9 State law.

10          “(c) For the purpose of this section ‘State’ means a  
11 State of the United States, the District of Columbia, the  
12 Commonwealth of Puerto Rico, or any territory or possession  
13 of the United States.

14          “(d) For the purposes of this section ‘lottery’ means  
15 the pooling of proceeds derived from the sale of tickets or  
16 chances and allotting those proceeds or parts thereof by  
17 chance to one or more chance takers or ticket purchasers.  
18 ‘Lottery’ does not include the placing or accepting of bets  
19 or wagers on sporting events or contests.”

20          SEC. 2. The sectional analysis for chapter 61 is amended  
21 by adding the following item:

          “1307. State-conducted lotteries.”

22          SEC. 3. Section 1953 (b) of title 18 of the United States  
23 Code is amended by changing the period to a comma and  
24 adding: “or (4) equipment, tickets, or materials used or

1 designed for use within a State in a lottery conducted by that  
2 State acting under authority of State law.”

3 SEC. 4. Section 3005 of title 39 of the United States  
4 Code is amended by adding at the end thereof the follow-  
5 ing subsection:

6 “(d) Nothing in this section shall prohibit the mailing  
7 of (1) a newspaper of general circulation published in a  
8 State containing advertisements, list of prizes, or informa-  
9 tion concerning a lottery conducted by that State acting  
10 under authority of State law, or (2) tickets or other mate-  
11 rials concerning such a lottery within that State to addressees  
12 within that State. For the purposes of this subsection, ‘State’  
13 means a State of the United States, the District of Columbia,  
14 the Commonwealth of Puerto Rico, and any territory or  
15 possession of the United States.”

93<sup>D</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 7388

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## IN THE HOUSE OF REPRESENTATIVES

MAY 1, 1973

Mr. ROONEY of Pennsylvania (for himself and Mr. HARRINGTON) introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

Exempting State lotteries from certain Federal prohibitions.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*  
3       That this Act shall be cited as the "State Lottery Exemption  
4       Act of 1972".

5       SEC. 2. (a) Chapter 1 of title 18, United States Code  
6       (relating to general provisions), is amended by adding at  
7       the end thereof the following new section:

8       "**§ 16. State-conducted lotteries, sweepstakes, and wager-**  
9       **ing pools**

10       "(a) The provisions of chapter 61 and of sections 1084  
11       and 1953 of this title shall not apply with respect to any

1 lottery, sweepstakes, or wagering pool conducted by any  
2 agency of a State acting under authority of State law.

3 “(b) For purposes of this section, ‘State’ includes any  
4 of the several States of the Union, the Commonwealth of  
5 Puerto Rico, the District of Columbia, or any territory or  
6 possession of the United States.”

7 (b) The table of contents of chapter 1 of such title 18  
8 is amended by adding at the end thereof the following new  
9 item:

“16. State-conducted lotteries, sweepstakes, and wagering pools.”

10 SEC. 3. (a) Section 4402 of the Internal Revenue Code  
11 of 1954 (relating to exemptions from the wagering tax) is  
12 amended by striking out paragraph (3) and inserting in  
13 lieu thereof the following:

14 “(3) STATE-CONDUCTED LOTTERIES, ETC.—On any  
15 wager placed in a sweepstakes, wagering pool, or lottery  
16 which is conducted by an agency of a State acting under  
17 authority of State law, but only if such wager is placed  
18 with the State agency conducting such sweepstakes,  
19 wagering pool, or lottery, or with its authorized employ-  
20 ees or agents.”

21 (b) Section 4462 (b) of such Code (relating to ex-  
22 clusions from definition of coin-operated gaming device) is  
23 amended—

1           (1) by striking out "or" at the end of paragraph  
2           (1),

3           (2) by striking out the period at the end of para-  
4           graph (2) and inserting in lieu thereof "; or", and

5           (3) by adding after paragraph (2) the following  
6           new paragraph:

7           "(3) a vending machine which (A) dispenses  
8           tickets on a sweepstakes, wagering pool, or lottery which  
9           is conducted by an agency of a State acting under au-  
10          thority of State law and (B) is maintained by the State  
11          agency conducting such sweepstakes, wagering pool, or  
12          lottery, or by its authorized employees or agents."

13          (c) The amendment made by subsection (a) shall apply  
14          with respect to wagers placed after the date of the enact-  
15          ment of this Act. The amendments made by subsection (b)  
16          shall apply with respect to periods after such date.

17          SEC. 4. Section 3005 of title 39, United States Code, is  
18          amended by adding at the end thereof the following new  
19          subsection:

20          "(c) The provisions of subsection (a) of this section  
21          shall not apply to any lottery, gift enterprise, or scheme for  
22          the distribution of money or of real or personal property, by  
23          lottery, chance, or drawing of any kind conducted by any  
24          agency of a State acting under authority of State law. For

## 4

- 1 purposes of this subsection, 'State' includes any of the several
- 2 States of the Union, the Commonwealth of Puerto Rico, the
- 3 District of Columbia, or any territory or possession of the
- 4 United States."

93<sup>d</sup> CONGRESS  
1<sup>st</sup> SESSION

# H. R. 7718

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## IN THE HOUSE OF REPRESENTATIVES

MAY 10, 1973

Mr. MCKINNEY introduced the following bill; which was referred to the Committee on the Judiciary

---

## A BILL

To amend title 18 of the United States Code to permit the transportation, mailing, and broadcasting of advertising, information, and materials concerning lotteries authorized by law and conducted by a State, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       That chapter 61 of title 18 of the United States Code (re-  
4       lating to lotteries) is amended by adding at the end thereof  
5       the following new section:

6       “§ 1307. **State-conducted lotteries**

7       “(a) The provisions of sections 1301, 1302, 1303, and  
8       1304 shall not apply to an advertisement, list of prizes, or

1 information concerning a lottery conducted by a State  
2 acting under the authority of State law—

3 “(1) contained in a newspaper published in that  
4 State, or

5 “(2) broadcast by a radio or television station lo-  
6 cated in a State conducting such a lottery.

7 “(b) The provisions of sections 1301, 1302, and 1303  
8 shall not apply to the transportation or mailing to addresses  
9 within a State of tickets and other material concerning a  
10 lottery conducted by that State acting under authority of  
11 State law.

12 “(c) For the purposes of this section ‘State’ means a  
13 State of the United States, the District of Columbia, the  
14 Commonwealth of Puerto Rico, or any territory or posses-  
15 sion of the United States.

16 “(d) For the purposes of this section ‘lottery’ means  
17 the pooling of proceeds derived from the sale of tickets or  
18 chances and allotting those proceeds or parts thereof by  
19 chance to one or more chance takers or ticket purchasers.  
20 ‘Lottery’ does not include the placing or accepting of bets  
21 or wagers on sporting events or contests.”

22 SEC. 2. The sectional analysis for chapter 61 is amended  
23 by adding the following item:

“1307. State-conducted lotteries.”

1       SEC. 3. Section 1953 (b) of title 18 of the United  
2 States Code is amended by changing the period to a comma  
3 and adding: "or (4) equipment, tickets, or materials used  
4 or designed for use within a State in a lottery conducted by  
5 that State acting under authority of State law."

6       SEC. 4. Section 3005 of title 39 of the United States Code  
7 is amended by adding at the end thereof the following sub-  
8 section:

9       "(d) Nothing in this section shall prohibit the mailing  
10 of (1) a newspaper of general circulation published in a  
11 State containing advertisements, lists of prizes, or information  
12 concerning a lottery conducted by that State acting under  
13 authority of State law, or (2) tickets or other materials con-  
14 cerning such a lottery within that State to addressees within  
15 that State. For the purposes of this subsection, 'State' means  
16 a State of the United States, the District of Columbia, the  
17 Commonwealth of Puerto Rico, and any territory or pos-  
18 session of the United States."

93<sup>d</sup> CONGRESS  
2<sup>d</sup> SESSION**H. R. 12235**

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**IN THE HOUSE OF REPRESENTATIVES**

JANUARY 23, 1974

Mr. FINDLEY introduced the following bill; which was referred to the Committee on the Judiciary

---

**A BILL**

To amend title 18 of the United States Code to permit the mailing, broadcasting, or televising of lottery information and the transportation, mailing, and advertising of lottery tickets in interstate commerce but only concerning lotteries which are lawful.

- 1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*  
3       That chapter 61 of title 18 of the United States Code (relat-  
4       ing to lotteries) is amended by adding at the end thereof  
5       the following new section:  
6       “§ 1307. **Lotteries which are lawful in the State in which**  
7                **they are conducted**  
8       “ (a) The provisions of sections 1301, 1302, 1303, and

1 1304 shall not apply to an advertisement, list of prizes, or  
2 information concerning a lottery which is lawful in the State  
3 in which it is conducted and which is (1) contained in any  
4 newspaper of general circulation, or (2) broadcast by a  
5 radio or television station in any State.

6 “(b) The provisions of sections 1301, 1302, and 1303  
7 shall not apply to the transportation or mailing of tickets  
8 and other materials concerning a lottery which is lawful in  
9 the State in which it is conducted.

10 “(c) For the purposes of this section ‘State’ means a  
11 State of the United States, the District of Columbia, the  
12 Commonwealth of Puerto Rico, or any territory or possession  
13 of the United States.

14 “(d) For the purposes of this section ‘lottery’ means  
15 the pooling of proceeds derived from the sale of tickets or  
16 chances and allotting those proceeds or parts thereof by  
17 chance to one or more chance takers or ticket purchasers.  
18 ‘Lottery’ does not include the placing or accepting of bets  
19 or wagers on sporting events or contests.”

20 SEC. 2. The sectional analysis for chapter 61 is amended  
21 by adding the following item:

“1307. Lotteries which are lawful in the State in which they are conducted.”

22 SEC. 3. Section 1953 (b) of title 18 of the United States  
23 Code is amended by changing the period to a comma and  
24 adding “or (4) equipment, tickets, or material used or

1 designed for use in a lottery which is legal in the State in  
2 which it is conducted.”.

3 SEC. 4. Section 3005 of title 39 of the United States  
4 Code is amended by adding at the end thereof the following  
5 subsection:

6 “(d) Nothing in this section shall prohibit the mailing  
7 of (1) a newspaper of general circulation containing adver-  
8 tisements, lists of prizes, or information concerning a lottery  
9 which is legal in the State in which it is conducted, or (2)  
10 tickets or other materials concerning such a lottery. For the  
11 purposes of this subsection, ‘State’ means a State of the  
12 United States, the District of Columbia, the Commonwealth  
13 of Puerto Rico, and any territory or possession of the United  
14 States.”.

93<sup>D</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 12443

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 30, 1974

Mr. RONCALLO of New York introduced the following bill; which was referred to the Committee on the Judiciary

---

## A BILL

To amend title 18 of the United States Code to permit the mailing, broadcasting, or televising of lottery information and the transportation, mailing, and advertising of lottery tickets or any other materials concerning lotteries in interstate commerce, but only with respect to lotteries which are lawful in the State in which conducted.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       That chapter 61 of title 18 of the United States Code (relat-  
4       ing to lotteries) is amended by adding at the end thereof  
5       the following new section:

6       “§ 1307. Lotteries which are lawful in the State in which  
7               they are conducted

8       “(a) The provisions of sections 1301, 1302, 1303, and

1 1304 shall not apply to an advertisement, list of prizes, or  
2 information concerning a lottery which is lawful in the State  
3 in which it is conducted and which is (1) contained in any  
4 newspaper of general circulation, or (2) broadcast by a  
5 radio or television station in any State.

6 “(b) The provisions of sections 1301, 1302, and 1303  
7 shall not apply to the transportation or mailing of tickets  
8 or any other materials concerning a lottery which is lawful  
9 in the State in which it is conducted.

10 “(c) For the purposes of this section ‘State’ means a  
11 State of the United States, the District of Columbia, the  
12 Commonwealth of Puerto Rico, or any territory or possession  
13 of the United States.

14 “(d) For the purposes of this section ‘lottery’ means  
15 the pooling of proceeds derived from the sale of tickets or  
16 chances and allotting those proceeds or parts thereof by  
17 chance to one or more chance takers or ticket purchasers.  
18 ‘Lottery’ does not include the placing or accepting of bets  
19 or wagers on sporting events or contests.”.

20 SEC. 2. The sectional analysis for chapter 61 is amended  
21 by adding the following item:

“1307. Lotteries which are lawful in the State in which they are conducted.”.

22 SEC. 3. Section 1953 (b) of title 18 of the United States  
23 Code is amended by changing the period to a comma and  
24 adding “or (4) equipment, tickets, or material used or

## 3

1 designed for use in a lottery which is legal in the State in  
2 which it is conducted.”.

3 SEC. 4. Section 3005 of title 39 of the United States  
4 Code is amended by adding at the end thereof the following  
5 subsection:

6 “(d) Nothing in this section shall prohibit the mailing  
7 of (1) a newspaper of general circulation containing adver-  
8 tisements, lists of prizes, or information concerning a lottery  
9 which is legal in the State in which it is conducted, or (2)  
10 tickets or any other materials concerning such a lottery. For  
11 the purposes of this subsection, ‘State’ means a State of the  
12 United States, the District of Columbia, the Commonwealth  
13 of Puerto Rico, and any territory or possession of the United  
14 States.”.

93<sup>d</sup> CONGRESS  
2<sup>d</sup> SESSION

# H. R. 13130

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 28, 1974

Mr. CLEVELAND introduced the following bill; which was referred to the Committee on the Judiciary

---

## A BILL

To amend title 18 of the United States Code to permit the transportation, mailing, and broadcasting of advertising, information, and materials concerning lotteries authorized by law and conducted by a State, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 That chapter 61 of title 18 of the United States Code (relat-  
4 ing to lotteries) is amended by adding at the end thereof  
5 the following new section:

6 "§ 1307. **State-conducted lotteries**

7 "(a) The provisions of sections 1301, 1302, 1303, and  
8 1304 shall not apply to an advertisement, list of prizes, or  
9 information concerning a lottery conducted by a State acting  
10 under the authority of State law—

1           “(1) contained in a newspaper published in that  
2     State, or

3           “(2) broadcast by a radio or television station lo-  
4     cated in a State conducting such a lottery.

5           “(b) The provisions of sections 1301, 1302, and 1303  
6     shall not apply to the transportation or mailing to addresses  
7     within a State of tickets and other material concerning a  
8     lottery conducted by that State acting under authority of  
9     State law.

10          “(c) For the purpose of this section ‘State’ means a  
11     State of the United States, the District of Columbia, the  
12     Commonwealth of Puerto Rico, or any territory or possession  
13     of the United States.

14          “(d) For the purposes of this section ‘lottery’ means  
15     the pooling of proceeds derived from the sale of tickets or  
16     chances and allotting those proceeds or parts thereof by  
17     chance to one or more chance takers or ticket purchasers.  
18     ‘Lottery’ does not include the placing or accepting of bets  
19     or wagers on sporting events or contests.”

20          SEC. 2. The sectional analysis for chapter 61 is amended  
21     by adding the following item:

“§ 1307. State-conducted lotteries.”

22          SEC. 3. Section 1953 (b) of title 18 of the United States  
23     Code is amended by changing the period to a comma and  
24     adding: “or (4) equipment, tickets, or materials used or

1 designed for use within a State in a lottery conducted by that  
2 State acting under authority of State law.”

3 SEC. 4. Section 3005 of title 39 of the United States  
4 Code is amended by adding at the end thereof the follow-  
5 ing subsection:

6 “(d) Nothing in this section shall prohibit the mailing  
7 of (1) a newspaper of general circulation published in a  
8 State containing advertisements, list of prizes, or informa-  
9 tion concerning a lottery conducted by that State acting  
10 under authority of State law, or (2) tickets or other mate-  
11 rials concerning such a lottery within that State to addressees  
12 within that State. For the purposes of this subsection, ‘State’  
13 means a State of the United States, the District of Columbia,  
14 the Commonwealth of Puerto Rico, and any territory or  
15 possession of the United States.”.

93<sup>D</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 13250

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 5, 1974

Mr. HOGAN introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To amend titles 18 and 39 of the United States Code, to exempt State-conducted lotteries from certain prohibitions of Federal law.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       That (a) section 1084 of title 18, United States Code, is  
4       amended by adding at the end thereof the following new  
5       subsection:

6       “(e) Nothing in this section shall be construed to pre-  
7       vent the transmission of any information with respect to  
8       lotteries, gift enterprises, or similar schemes conducted by  
9       any agency of a State under authority of law from any State  
10      in which such lotteries, gift enterprises, or similar schemes

1 are conducted into any State which has enacted a law  
2 specifically permitting the placing of bets or wagers on such  
3 a lottery, gift enterprise, or similar scheme.”

4 (b) (1) Chapter 61 of title 18, United States Code, is  
5 amended by adding at the end thereof the following new  
6 section:

7 **“§ 1307. State-conducted lotteries, gift enterprises, or sim-**  
8 **ilar schemes**

9 “(a) Sections 1301, 1302, 1303, and, 1304 of this  
10 chapter shall not apply with respect to any lottery, gift  
11 enterprise, or similar scheme conducted by any agency of a  
12 State under authority of law.

13 “(b) For the purposes of this section, the term ‘State’  
14 means the several States, the District of Columbia, the Com-  
15 monwealth of Puerto Rico, the Trust Territory of the Pacific  
16 Islands, or any other territory or possession of the United  
17 States.”

18 (2) The analysis of chapter 61 of title 18, United States  
19 Code, is amended by adding at the end thereof the  
20 following:

“1307. State-conducted lotteries, gift enterprises, or similar schemes.”

21 (c) Section 1953 (b) of title 18, United States Code, is  
22 amended by inserting immediately after “publication” the  
23 following: “, or (4) the transportation of any materials  
24 or information with respect to lotteries, gift enterprises, or

1 similar schemes conducted by any agency of a State under  
2 authority of law from any State in which such lotteries, gift  
3 enterprises, or similar schemes are conducted into any State  
4 which has enacted a law specifically permitting the placing  
5 of bets or wagers on such a lottery, gift enterprise, or similar  
6 scheme”.

7       SEC. 2. Section 3005 of title 39, United States Code, is  
8 amended by redesignating subsection (c) as subsection (d)  
9 and by inserting immediately after subsection (b) the fol-  
10 lowing new subsection :

11       “(c) This section does not apply to any lottery, gift  
12 enterprise, or scheme for the distribution of money or of real  
13 property or personal property, by lottery, chance, or drawing  
14 of any kind conducted by any agency of a State acting under  
15 authority of law. For the purposes of this subsection, the  
16 term ‘State’ means the several States, the District of Colum-  
17 bia, the Commonwealth of Puerto Rico, the Trust Territory  
18 of the Pacific Islands, or any other territory or possession of  
19 the United States.”

93<sup>d</sup> CONGRESS  
2<sup>d</sup> SESSION

# H. R. 13388

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 12, 1974

Mr. COHEN introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To amend title 18 of the United States Code to permit the transportation, mailing, and broadcasting of advertising, information, and materials concerning lotteries authorized by law and conducted by a State, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*  
3       That chapter 61 of title 18 of the United States Code (re-  
4       lating to lotteries) is amended by adding at the end thereof  
5       the following new section:

6       “§ 1307. **State-conducted lotteries**

7       “(a) The provisions of sections 1301, 1302, 1303, and  
8       1304 shall not apply to an advertisement, list of prizes, or

1 information concerning a lottery conducted by a State  
2 acting under the authority of State law—

3 “(1) contained in a newspaper published in that  
4 State, or

5 “(2) broadcast by a radio or television station lo-  
6 cated in a State conducting such a lottery.

7 “(b) The provisions of sections 1301, 1302, and 1303  
8 shall not apply to the transportation or mailing to addresses  
9 within a State of tickets and other material concerning a  
10 lottery conducted by that State acting under authority of  
11 State law.

12 “(c) For the purposes of this section ‘State’ means a  
13 State of the United States, the District of Columbia, the  
14 Commonwealth of Puerto Rico, or any territory or posses-  
15 sion of the United States.

16 “(d) For the purposes of this section ‘lottery’ means  
17 the pooling of proceeds derived from the sale of tickets or  
18 chances and allotting those proceeds or parts thereof by  
19 chance to one or more chance takers or ticket purchasers.  
20 ‘Lottery’ does not include the placing or accepting of bets  
21 or wagers on sporting events or contests.”

22 SEC. 2. The sectional analysis for chapter 61 is amended  
23 by adding the following item:

“1307. State-conducted lotteries.”

1        SEC. 3. Section 1953 (b) of title 18 of the United  
2 States Code is amended by changing the period to a comma  
3 and adding: "or (4) equipment, tickets, or materials used  
4 or designed for use within a State in a lottery conducted by  
5 that State acting under authority of State law."

6        SEC. 4. Section 3005 of title 39 of the United States Code  
7 is amended by adding at the end thereof the following sub-  
8 section:

9        "(d) Nothing in this section shall prohibit the mailing  
10 of (1) a newspaper of general circulation published in a  
11 State containing advertisements, lists of prizes, or information  
12 concerning a lottery conducted by that State acting under  
13 authority of State law, or (2) tickets or other materials con-  
14 cerning such a lottery within that State to addressees within  
15 that State. For the purposes of this subsection, 'State' means  
16 a State of the United States, the District of Columbia, the  
17 Commonwealth of Puerto Rico, and any territory or pos-  
18 session of the United States."

93<sup>D</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 14320

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IN THE HOUSE OF REPRESENTATIVES

APRIL 23, 1974

Mr. FISH introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To amend title 18 of the United States Code to permit the transportation, mailing, and broadcasting of advertising, information, and materials concerning lotteries authorized by law and conducted by a State or by nonprofit organizations in accordance with State law, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*  
3       That chapter 61 of title 18 of the United States Code (re-

4       lating to lotteries) is amended by adding at the end thereof  
5       the following new section:

6       “§ 1307. **Lotteries of States and nonprofit organizations**

7       “ (a) The provisions of sections 1301, 1302, 1303, and  
8       1304 shall not apply to an advertisement, list of prizes, or  
9       information concerning a lottery conducted by an agency of

1 any State, or by any nonprofit organization, acting under  
2 the authority of State law—

3 “(1) contained in a newspaper published in that  
4 State, or

5 “(2) broadcast by a radio or television station  
6 located in that State.

7 “(b) The provisions of sections 1301, 1302, and 1303  
8 shall not apply to the transportation or mailing to addresses  
9 within a State of tickets and other material concerning a  
10 lottery conducted by that State or by any nonprofit or-  
11 ganization acting under the authority of State law.

12 “(c) For the purposes of this section ‘State’ means a  
13 State of the United States, the District of Columbia, the  
14 Commonwealth of Puerto Rico, or any territory or posses-  
15 sion of the United States.

16 “(d) For the purposes of this section ‘nonprofit or-  
17 ganization’ means a religious, educational, scientific, phil-  
18 anthropic, agricultural, labor, veterans, or fraternal organiza-  
19 tion or association not organized for profit and none of the  
20 net income of which inures to the benefit of any private  
21 stockholder or other individual.

22 “(e) For the purposes of this section ‘lottery’ means  
23 the pooling of proceeds derived from the sale of tickets or  
24 chances and allotting those proceeds or parts thereof by  
25 chance to one or more chance takers or ticket purchasers.

1 'Lottery' does not include the placing or accepting of bets  
2 or wagers on sporting events or contests."

3 SEC. 2. The sectional analysis for chapter 61 is amended  
4 by adding the following item:

"1307. Lotteries of States and nonprofit organizations."

5 SEC. 3. Section 1953 (b) of title 18 of the United  
6 States Code is amended by changing the period to a comma  
7 and adding "or (4) equipment, tickets, or materials used  
8 or designed for use within a State in a lottery conducted by  
9 that State or by any nonprofit organization acting under the  
10 authority of State law."

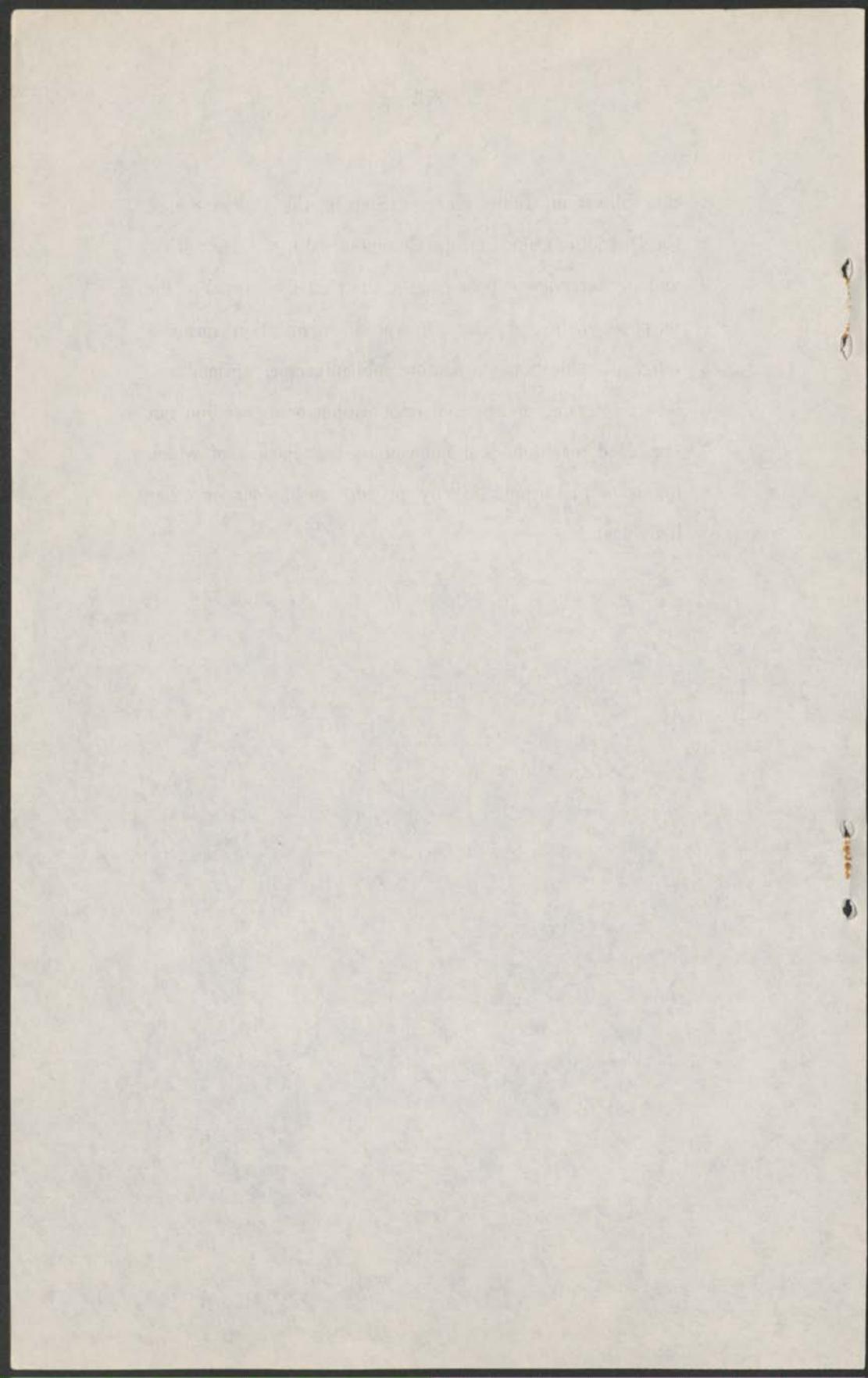
11 SEC. 4. Section 3005 of title 39 of the United States  
12 Code is amended by adding at the end thereof the following  
13 subsection:

14 "(d) Nothing in this section shall prohibit the mailing  
15 of (1) a newspaper of general circulation published in a  
16 State containing advertisements, lists of prizes, or information  
17 concerning a lottery conducted by that State or, by any  
18 nonprofit organization, acting under the authority of State  
19 law, or (2) tickets, lists of prizes, or other information or  
20 materials in connection with a lottery, gift enterprise, or  
21 other scheme for the distribution of money or other real or  
22 personal property by lottery, chance, or drawing of any  
23 kind, conducted by an agency of that State, or by any  
24 nonprofit organization, under the authority of the law of such  
25 State, to addresses within that State. For the purposes of

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1 this subsection, 'State' means a State of the United States,  
2 the District of Columbia, the Commonwealth of Puerto Rico,  
3 and any territory or possession of the United States. For the  
4 purposes of this subsection, 'nonprofit organization' means a  
5 religious, educational, scientific, philanthropic, agricultural,  
6 labor, veterans, or fraternal organization or association not  
7 organized for profit and none of the net income of which  
8 inures to the benefit of any private stockholder or other  
9 individual."

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