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U.S. Court of Appeals for the Seventh Circuit Issues Opinion Regarding the Legality of the NCAA Ticket Distribution Lottery

On July 16, 2010 the United States Court of Appeals for the Seventh Circuit reversed a District Court opinion and reinstated what could potentially be a class action with class members numbering hundreds of thousands. The basis of the claim is that the NCAA's ticket-distribution system, utilized since at least 1994, is an illegal lottery pursuant to Indiana law.

The ticket-distribution system used by the NCAA as a means of distributing Division I men's and women's basketball and hockey championship tickets is reportedly as follows: each individual desiring tickets submits a single application with up to ten entries, and each entry requires a six-dollar "non-refundable handling fee" and a check for the total face value of all tickets applied for. The application and payment entitles the applicant to a chance to win, at the most, one set of two tickets. Winners are randomly selected from the total of all entries. Therefore, for the best chance to win, an applicant would pay six-dollars for each entry for a total of sixty-dollars and the face value of ten tickets, likely amounting to several thousand dollars. The sixty-dollar amount would become the property of the NCAA regardless of whether the applicant was awarded two tickets or not, and the payment of the face value would be refunded in its entirety if the applicant did not win, or refunded in an amount less the face value of two tickets if the applicant did win.

Indiana law defines a lottery as "a scheme for the distribution of prizes by lot or chance." Similar to many state's laws, the cases interpreting this definition identify the elements of a lottery as: (1) prize, (2) chance, and (3) consideration.

According to the Seventh Circuit opinion, the crux of the NCAA defense is that the distribution process does not involve the award of a prize, but rather an opportunity to purchase tickets at full price. The upfront investment, therefore, is simply an investment of equal value to that which may be awarded if the applicant is selected. The Court concluded that, as pled by the plaintiffs and for purposes of withstanding a motion to dismiss, the nonrefundable service fee was sufficient evidence of consideration and the allegation that the actual value of the tickets was far greater than the face value paid was sufficient to show that a prize was awarded. The Court further concluded that the presence of the element of chance was clear where recipients of tickets are chosen at random from a larger number of applicants. The Court held, therefore, that "…Plaintiffs have alleged all elements of a lottery: they paid a per-ticket or per-entry fee (consideration) to enter a random drawing (chance) in hopes of obtaining scarce, valuable tickets (a prize)."

The operation of an illegal lottery in Indiana, and in many states, is a violation of both civil and criminal law, and the Seventh Circuit analysis is potentially applicable in any circumstance where a fee is being charged for the chance to be awarded something of value. While the claims addressed by the Seventh Circuit are civil in nature, it is possible that a state could take criminal action for similar conduct.

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