

BROADCASTING and the FEDERAL LOTTERY LAWS

(Fifth Edition)



NATIONAL ASSOCIATION OF BROADCASTERS • 1771 N STREET, N. W., WASHINGTON, D. C. 20036

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(Fifth Edition)

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Prepared for the Members of the
National Association of Broadcasters
by its
Legal Department

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IMPORTANT

On December 5, 1973, as this booklet was going to press, the Federal Communications Commission released a very significant ruling concerning the element of consideration in lotteries. The ruling involved a station promotion called the "XL-95 Golf Classic." A person entered by visiting a participating merchant's place of business and obtaining an "XL-95" scorecard. Thereafter, the participant played 18 holes of golf at any course, had his scorecard signed by the pro at the course, and mailed his scorecard to the station. Although participants had to pay a greens fee or country club membership fee in order to play golf, they furnished no consideration to the station promoting the contest. Winners were determined solely on the basis of a random drawing from the scorecards submitted to the station. Scores were immaterial to the participant's eligibility for winning.

The Commission ruled that the elements of prize and chance were present, but that the element of consideration was lacking. Its conclusion was based "upon the absence of any indication that consideration substantial enough to support a finding that there was a lottery flowed directly, or indirectly, from the participants to the promoter." Additionally, the Commission explicitly reversed any previous contrary rulings. *Greater Indianapolis Broadcasting Company, Inc.*, FCC 73-1260 (released December 5, 1973).

While we can only speculate as to the eventual effects of this ruling, it is apparent that the Commission will find the element of consideration present in a contest or promotion only where consideration flows directly or indirectly from the participant to the promoter. Thus, some contests and promotions which have been considered lotteries in the past no longer will be considered lotteries. For example, an automobile dealer, as part of his display at a county fair, conducts a drawing. The winner will receive a new car from the dealer. To enter a person must visit the dealer's display at the fair and fill out an entry blank. Everyone must purchase an admission ticket to enter the fair, but the automobile dealer will receive none of the revenues from the sale of admission tickets. This contest will not be considered a lottery because the element of consideration is not present. Although participants must pay to enter the fair, the consideration does not flow directly or indirectly to the promoter of the contest (the automobile dealer). Under previous rulings, this contest would have been considered a lottery because the price of the admission ticket would have amounted to consideration.

Section III.A.3. of this booklet (Consideration) and several of the examples in Section V (Sample Lottery Matter) should be read in the light of this ruling. Furthermore, pending further clarification, broadcasters should seek advice of counsel in applying this ruling to contests and promotions which they intend to broadcast or advertise.

Broadcasting and The Federal Lottery Laws

I

INTRODUCTION

A working knowledge of the federal laws making illegal the broadcast of lotteries or information related thereto is essential for all broadcasters. It is imperative that they be acquainted with the law and be sufficiently able to recognize most of the infinite variety of "give-away" promotion plans which may be classified as lotteries. Learning what the law says is rather simple; however, applying it is considerably more difficult. The factors which result in a given format being categorized as a lottery are often obscure, and a seemingly innocuous "give-away" scheme must be carefully analyzed to reasonably assure that it is not a lottery.

The Fifth Edition of *Broadcasting and The Federal Lottery Laws* has been prepared to assist broadcasters in determining whether or not a proposed contest or promotion is a lottery. The Fifth Edition updates the Fourth Edition, revised in 1962. Although the basic lottery laws have not changed, this new edition reflects FCC rulings since the prior edition, including those on broadcast of information

about state operated lotteries. This booklet is in no way a substitute for the advice of a private attorney in specific cases in which a broadcaster is in doubt.

Many states have their own lottery laws. Since this booklet relates strictly to federal lottery laws, you must consult a local attorney about applicable state laws. But, even if a state law is less strict than the federal law, you, as a broadcaster, are still bound by the stricter federal law.

In passing, we do call your attention to the fact that an unresolved legal question does exist as to what, if any, power the states have over the regulation of the broadcast of lottery information. Doubts as to state power are based on the theory that the Congress, by enacting regulatory legislation, has pre-empted the field and vested exclusive jurisdiction in the federal government. The question, however, has not been authoritatively decided on the federal level. Thus, until a legally authoritative federal ruling is made, state lottery laws should not be ignored.

II

FEDERAL LOTTERY LAWS

A. Broadcasting Lotteries Is Criminal Offense

The United States Code (18 U.S.C. 1304) prohibits the broadcast of lotteries and lottery information. Broadcasters may not present lottery programs as such nor may they advertise or promote any lottery. Recent court decisions and FCC rulings permit broadcast of certain types of information concerning state-conducted lotteries, but these exceptions are very limited. Persons who violate the ban on lotteries are subject to prosecution by the U.S. Department of Justice and are liable to punishment by a fine up to \$1,000 and/or up to one year imprisonment. The language of the statute, although it appears to be limited to any "radio station," has been interpreted as

clearly covering telecasting and provides as follows:

"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

no more than \$1,000 or imprisoned not more than one year, or both.

"Each day's broadcasting shall constitute a separate offense."

However, Congress has created one exception for certain fishing contests, as follows:

"The provisions of this chapter shall not apply with respect to any fishing contest not conducted for profit wherein prizes are awarded for the specie, size, weight or quality of fish caught by contestants in any bona fide fishing or recreational event." (18 U.S.C. § 1305).

This exception applies only where "the fishing contest is a self-liquidating type of undertaking, whose receipts are fully consumed in defraying the actual costs of operation and are not intended or used for any other collateral purpose such as establishment of a fund for civic, philanthropic, or charitable objects, no matter how benevolent or worthy." Any fishing contest conducted for the *profit or personal gain* of any individual or organization is *not* exempt from federal laws prohibiting broadcast of lottery information. (House Report No. 2536, June 12, 1950).

B. FCC Rules and Regulations Supplement Criminal Code

Supplementing the ban on lottery broadcasts found in the Criminal Code are Rules and Regulations of the FCC. These rules give slightly more detail as to what constitutes a lottery and provide both directly and inferentially for additional penalties beyond a fine and imprisonment.

Although Commission rules provide for denial of license renewal applications and outright revocation of licenses where lottery violations are found, the usual penalty is a forfeiture. The Commission has not hesitated to impose substantial forfeitures on licensees who broadcast lotteries or lottery information since they feel that licensees have been made sufficiently aware of the lottery statute and rules by previous Commission rulings. In recent lottery cases, forfeitures have ranged from \$500 to \$5,000. The maximum forfeiture which may be imposed by the Commission is \$1,000 for each day during which a violation of the lottery statute occurs. (47 U.S.C. 503 (b) (1) (E)). Finally, any violation of the lottery statute will adversely affect the standing of the licensee in any comparative proceeding before the Commission.

The FCC rules banning lottery broadcasts are the same in substance for AM, FM, and TV. (§§ 73.122, 73.292, 73.656, respectively).

Lotteries.

(a) An application for construction permit, license, renewal of license, or any other authorization for the operation of a broadcast station, will not be granted where the applicant proposes to follow or continue to follow a policy or practice of broadcasting or permitting "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." (See 18 U.S.C. 1304.)

(b) The determination whether a particular program comes within the provisions of paragraph (a) of this section depends on the facts of each case. However, the Commission will in any event consider that a program comes within the provisions of paragraph (a) of this section if in connection with such program a prize consisting of money or thing of value is awarded to any person whose selection is dependent in whole or in part upon lot or chance, if as a condition of winning or competing for such prize, such winner or winners are required to furnish any money or thing of value or are required to have in their possession any product sold, manufactured, furnished or distributed by a sponsor of a program broadcast on the station in question.

C. Post Office Department and Lottery Laws

Under a federal statute not directed, as such, to the broadcasting industry, the Post Office Department may deny the use of the mails for the conduct of a lottery. Rarely, though, would a broadcaster come within the scope of this specific law. It would be directly applicable, for example, only if a station were to advertise through the mail the availability of a program which is a lottery.

The fact, however, that broadcasting, as such, is not subject to the postal lottery laws does not mean that they are without significance for radio and television stations. The public policy considerations behind barring lotteries from both the air ways and the mail are similar. Therefore, where there is an absence of court decisions and FCC rulings specifically applicable to broadcasting, station licensees should look to interpretations of the Post Office Department for guidance in lottery matters. In borderline cases, particularly,

Post Office rulings can be used as a good educated guess as to how the courts and FCC might rule on a like set of facts in a broadcast case. The anti-lottery laws are criminal statutes and as the courts have indicated, interpretation and administration of such laws must be uniform. That which is a lottery for broadcast purposes would appear likewise to be a lottery as regards the mails, and vice versa.

D. FTC Lottery Jurisdiction

The Federal Trade Commission is another channel through which action could be taken against broadcasters in lottery matters. The FTC can proceed against merchandising in interstate commerce by means of a lottery on the theory that it is an "unfair method of competition." Action would normally be in the form of a "cease and desist order." The order, though, would be directed only to the lottery sponsor unless the broadcaster were obviously hand in glove with the sponsor.

E. Applicability

Federal lottery laws apply to *all lotteries*. Neither the statute nor the Commission makes any distinction as to the source or sponsorship of the lottery. It is very important to note that *the law applies to state operated lotteries*. It applies as well to lotteries conducted by churches, fraternal groups and other worthy organizations. There are *no exceptions*, other than the explicit exception for certain fishing contests. (See p. 2)

Congress is currently considering amendments to the law which would permit broadcast advertising of state conducted lotteries. But until such legislation is enacted, broadcasters should be very careful to stay within existing FCC rulings concerning broadcast of information concerning state lotteries. Members will be promptly advised of any change in the lottery law.

F. The Broadcaster's Responsibility

Broadcasters must exercise "reasonable diligence" to insure that promotions and contests

broadcast over their facilities are not lotteries. This means that a broadcaster must take all reasonable steps to learn whether a promotion *in its actual operation* is being conducted as a lottery. For example, if a station advertises that contest entry blanks are available at a local supermarket and no purchase is necessary, the station should make periodic checks to insure that entry blanks are actually available without purchase. Broadcasters also must insure that advertising announcements are not otherwise false or misleading. Announcements should provide an accurate description of the contest and set forth the pertinent rules so that the public will not be misled. (*Public Notice*. 18 FCC 2d 54 (1969))

A licensee cannot escape liability for violations of federal lottery laws by alleging that employees misunderstood station policy or that advertising was broadcast because an advertiser somehow circumvented the station's administrative channels. Station policies prohibiting broadcast of lottery information must be effectively enforced. (*Brennan Broadcasting Co.*, 25 FCC 2d 400 (1970))

G. Summary—The Law and Its Enforcement

To summarize this section, the broadcasting of any lottery or information related thereto is a criminal offense subject to prosecution by the Justice Department under the United States Code and punishable by fine and imprisonment. Lottery programs additionally are violative of the FCC Rules and Regulations. Commission penalties range from forfeitures to revocation of license. These are the primary sources of regulation and channels of enforcement concerning the broadcasting industry and lotteries. However, Post Office Department lottery rulings offer valuable guidance in gray areas and in the absence of other legal authority may be relied on for determining whether or not a given promotion plan is a lottery. Finally, the FTC in extreme cases conceivably could also exert jurisdiction over broadcasters in lottery matters.

III

WHAT IS A LOTTERY?

From the above statement of the lottery laws and their enforcement, it can readily be seen that the laws barring lottery broadcasts from the air are comprehensive. However, the important and troublesome matter is the definition of "what is a lottery." While the definition

is rather simple, applying it to specific fact situations can be difficult. It is thus essential that all "give-away" plans be carefully analyzed in detail to assure that factors are not present which would make a particular promotion plan a lottery.

A. The Elements of A Lottery

The traditional elements of a lottery are (1) prize, (2) chance, and (3) consideration. *All three elements must be present.* If any one is lacking in a promotion plan, then it is not a lottery under federal law.

1. Prize

As a general rule, no difficulty is encountered in ascertaining whether or not the element of "prize" is present. "Prize" is the first clue to a lottery. If there is no prize, there can be no lottery. However, the elements of "chance" and "consideration" frequently are not as readily detected.

2. Chance

The element of chance is present in contests or promotions in which the prize is awarded to a person whose selection depends in whole or in part upon lot or chance. For example, chance exists in promotions and contests in which the winner is determined by drawing or wheel spinning; by being among the first fifty customers; by having the earliest postmark on an entry; by being at a given spot in a business establishment when a bell rings; or by any similar requirement. Any type of guessing contest involves chance. The Post Office Department cites the following examples of guesswork: predicting the outcome of football games, baseball games or athletic matches; predicting the number of votes a candidate will receive in his race for public office; and choosing the correct word from two or three words, when there is no genuine basis in logic, reason, grammar, or sentence structure for choosing one of the words over the others.

Chance also will be present in contests or promotions in which the amount of the prize is determined by chance, even if the winner is not determined by chance. For example, everyone who purchases a certain product at a local supermarket is entitled to select a prize from a grab bag of prizes ranging in value from a few cents to several dollars. Since everyone is a winner, the winner is not determined by lot or chance; but the amount of the prize is determined by chance. Thus, the promotion is a lottery.

Generally, if the winner of a contest is determined solely on the basis of the contestants' skill, the element of chance will not be present. Thus, sports events and the various types of races are not in themselves lotteries. Since the race itself is not a lottery, races may be broadcast and race tracks, as such, may be legally advertised. However, both the FCC and the NAB Code Authority have prescribed guidelines and policies to govern the broadcast of horse-

races and the information related thereto and the advertising of legal parimutual and off-track betting. Broadcasters should be careful to present any race related programming or advertising in accordance with these policies and guidelines.

The Post Office Department has pointed out that chance may be present in contests which actually involve an exercise of skill. For example, if a contest operator fails to adopt or announce appropriate standards for judging the entries, or if he ignores the standards on selecting the winner, then chance will be present.

3. Consideration

Of the three necessary elements for a lottery, the element of "consideration" presents the most difficult problem. Basically, consideration is the price one must pay to participate in a contest or promotion. The term consideration is not limited to the payment of money. Consideration clearly is present in any contest or promotion in which, in order to participate, a contestant must (1) "furnish any money or thing of value;" (2) "have in [his] possession any product sold, manufactured, furnished or distributed by a sponsor of a program broadcast" by a station (§§ 73.122, 73.292, 73.656) or; (3) meet any other requirement which involves a "substantial expenditure of time and effort" by the contestant.

Obviously, determining whether or not money is paid to participate presents no problem. However, it is very important to note that in a contest or promotion in which a contestant must make a purchase in order to participate, the purchase price constitutes a payment of money and, therefore, consideration. In *Horner v. U.S.*, 147 U.S. 449, the U.S. Supreme Court ruled that the fact a purchaser receives full value for money paid out in making a purchase which entitles him to participate in a contest is immaterial. The Court held that the purchase price was consideration on the theory that part of the price is allocated to the item purchased and part to the chance to participate.

The rule that possession of a particular product constitutes consideration, in our opinion, can be qualified to the extent that if the product which the participant must possess in order to participate is furnished to him at no cost by the sponsor as part of the promotion, then possession of the product will not constitute consideration. The Post Office Department has noted a general exception to this rule in contests providing for entry with evidence of purchase (e.g., submission of a box top or label). If a participant may also enter by submitting nothing more than a plain piece of paper on which he must write in his own handwriting, or plain block letters, the name of the product or

some other specified item, or if he may submit a reasonable facsimile of the box top, label, entry blank, etc., consideration may not be present. Facsimiles must be easily made on the basis of information supplied in advertisements for the contest. A complete description of the rules of entry must be included in advertisements. The Post Office Department has indicated that each case will be considered on an individual basis. Licensees should obtain the advice of competent counsel before broadcasting advertisements for any contest of this type.

Chances may be distributed with purchases if the "give-away" provides a means for obtaining "free chances" to participate without purchases; but the "free chances" must be available on a basis which is reasonably equal to that enjoyed by contestants who purchase a product to obtain chances. Otherwise, the contest or promotion will be a lottery. The FCC has emphasized that the non-purchasers must not be disadvantaged in any way. "Free chances" must be obtainable at most or all customary outlets where the product is sold, but efforts should be made to make free chances available at *all* places where the product is sold. A sufficient quantity of "free chances" must be available to insure that everyone who acts will be able to obtain them. Non-purchasing and purchasing contestants must be accorded an approximately equal opportunity in the number of chances to be obtained. Licensees must be particularly careful with this type of contest or promotion. They must not rely solely on the representations of the advertiser, but should take all reasonable steps to learn whether the contest or promotion, in its actual operation, is being conducted as a lottery. The licensee also is responsible that the advertisements set forth pertinent rules of the contest so as not to be false or misleading. Advertisements must also adequately describe the availability of free chances and the locations, times and manner in which they may be obtained. (*Public Notice*, 18 FCC 2d 52 (1969)).

Careful analysis is necessary in determining whether or not a contestant must furnish a "thing of value" or expend substantial "time and effort" in order to participate. Either would constitute consideration. In this regard, however, broadcasters can rely on several definite rulings in determining whether or not consideration is present. First, the U.S. Supreme Court has ruled that simply listening to or viewing a

program does not constitute consideration (*FCC v. ABC*, 347 U.S. 284). Second, the U.S. Court of Appeals (D.C. Circuit) has ruled that the mere act of going to a store solely for the purpose of picking up a card in order to participate in a promotion plan does not constitute consideration. (*Caples Co. v. U.S.* 243 F2d 232). The Post Office Department has even stated that if a participant is required to visit the store to obtain an entry blank and also to be present for a subsequent, scheduled drawing, consideration would not be present. However, in the latter situation, the time of the drawing would have to be pre-announced and the drawing would have to be held on time. If the drawing were delayed or held at an unannounced time, thus requiring the continuous presence of the contestant, a substantial expenditure of time and effort would occur and consideration would be present. It is also important to consider that requiring a contestant to visit a location some distance from the station's city of license may require a substantial expenditure of time and effort and, therefore, constitute consideration.

B. Summary

From the above comments, it is apparent that determining what is or is not a lottery can be difficult. However, if a particular format is carefully analyzed step by step with due thought, most lottery problems can readily be resolved. In analyzing a particular scheme, set out all the details of the plan and then determine:

1. Is there a prize? (If the answer is yes, then go to question #2.)
2. How will it be decided as to whom the prize will be awarded? Will the award be made on the basis of a participant's skill or is there "chance" involved? (If there is an element of "chance" then go to question #3.)
3. What must one do to participate? Do the requirements for participation constitute consideration?

If it is then determined that *all three elements*—prize, chance, and consideration—are present in a promotion plan, then under no circumstances should the plan be given broadcast time.

IV

LOTTERY INFORMATION AND ADVERTISING

A. The General Prohibition

The lottery statute and rules prohibit not only the broadcast of lotteries, but also the broadcast of lottery information. The law is very broad, prohibiting the broadcast of "any advertisement of or information concerning any lottery . . . or any list of prizes drawn or awarded . . . whether said list contains any part or all of such prizes . . ." (18 U.S.C. 1304)

Although a literal reading of the statute would indicate that broadcast of *any* information concerning *any* lottery is prohibited, the U.S. Court of Appeals has stated that "the statute is intended to reach only advertisements or information that directly promotes a lottery." (*New York State Broadcasters' Association v. United States*, 414 F.2d. 990, 998 (1969)). Thus, it is clear that a station may not broadcast advertising or promotional announcements for any lottery.

No matter how slight the reference to a lottery is in an advertisement, the broadcast of that advertisement is prohibited. The Post Office Department has stated that "If the matter under consideration is, in fact, an advertisement of a lottery, the omission of the scheme's details renders it none the less objectionable. For example, such passing reference to lotteries as 'Games,' 'Bank Night,' 'Big Game Wednesday Night' are prohibited." Similarly, omitting from the advertisement a reference to the fact that one must pay to enter a contest would not bring the advertisement out from under the prohibition.

Nor does it matter who sponsors the lottery. For example, a station may not advertise or promote, even in a public service announcement, a bingo game or raffle conducted by a church or fraternal organization. State operated and state authorized lotteries may not be advertised (see following section). Regardless of the legality of a contest or promotion plan under state law, if it is a lottery under federal law, broadcast of any advertisement or promotional announcement is illegal.

Other types of information which may not be broadcast about any lottery include (1) a plea to buy tickets (2) where, how, or when winning tickets will be drawn (3) a list of winners (4) when and how to purchase tickets. (414 F.2d at 998).

Generally speaking, "news" of a lottery may be broadcast. The court has pointed out that, "There is a difference between information directly promoting a lottery and information that is simply 'news' of a lottery. If a 'news' item has

the incidental effect of promoting a lottery, it is not banned, but if a lottery advertisement or announcement contains 'news' such as the amount a lottery realized for education, it would nonetheless be banned. We are aware that at times the line drawn will be thin . . ." (414 F.2d at 998). The court expected the Commission to apply its expertise to more clearly define the line.

Subsequent Commission rulings, however, have been directed only at state *operated* lotteries. They should not be considered definitive rulings concerning state authorized or other legally conducted lotteries. Nonetheless, they can provide some guidance.

To the extent that these rulings define the types of information concerning state operated lotteries which may *not* be broadcast, they clearly apply to all lotteries. It is fair to say that information which directly promotes a state operated lottery would directly promote any lottery. On the other hand, most of the Commission's rulings as to the types of information concerning state operated lotteries which may be broadcast are not applicable to lotteries in general. Moreover, to the extent those rulings would apply to lotteries in general, they can serve only as rough guides, not conclusive rulings. In lieu of any specifically applicable future Commission rulings, broadcasters should consult competent counsel when in doubt as to the legality of broadcasting any information about lotteries.

B. State Operated Lotteries *

Since several states now operate their own lotteries, broadcasters have been unsure as to what information they could broadcast about the establishment and operation of these state operated lotteries. The same strict prohibitions apply to broadcast of information concerning state operated lotteries, but the Commission has defined the exception for legitimate news items in several declaratory rulings. The Commission's guidelines are very specific and strict, and broadcasters should be very careful to abide by them.

The Commission has ruled that the following information concerning state operated lotteries may not be broadcast (*Supplemental Declaratory Ruling*, 21 FCC 2d 846 (1970)):

- (1) Any advertisement of the usual promotional type.
- (2) Where lottery tickets may be purchased.

*Congress is presently considering an amendment of the lottery law which will permit advertising of state operated lotteries. Members will be promptly advised of any such changes in the law.

- (3) Where, when, and how the winning ticket will be drawn.
- (4) The amount of the prize or prizes.
- (5) Winning lottery numbers.
- (6) Lists of winners or prizes.
- (7) Any live broadcast of a drawing or awarding of any prize.
- (8) Any information coupled with a plea to buy lottery tickets or any material directly promoting a lottery.

This is not an exclusive list of the types of information which may not be broadcast. Any information which would advertise or directly promote a lottery may not be broadcast.

In the same ruling, the Commission stated that the following types of information may be broadcast, *provided* that it is not with the *intent or result* of advertising or directly promoting a lottery:

- (1) Editorials concerning the policy issues involved in the enactment into law of a bill establishing a state sponsored lottery when not used as a sham to avoid the prohibition of direct promotion of a lottery.
- (2) News reports concerning the following:
 - (a) The relationship of a lottery to education.
 - (b) A legislator's proposals concerning lotteries.
 - (c) How lottery proceeds will be used, unless used as a sham to promote a lottery.
 - (d) Speeches by public officials, such as a statement before a Congressional Committee describing the operation of a state sponsored lottery and stating that banks were rendering a public service in selling tickets.
 - (e) Human interest stories on winners.
 - (f) Illegal lotteries or other illegal gambling (not tending to aid or facilitate

planning or operation) including exposure and descriptions of illegal lotteries, the attitude of law enforcement officials and effects of illegal gambling on society.

- (3) Panel discussions on policy issues involved in the establishment of a state sponsored lottery with participation by proponents and opponents of the lottery and questions and comments from a studio audience.
- (4) Documentary programs including statements by public officials and citizens favoring or opposing the lottery, description of the lottery, use of the proceeds, and results of opinion polls on the lottery.
- (5) Bona fide interviews with winners, relating, among other matters of general interest, to the number of tickets they purchased, their expectations of winning a prize, their reactions upon learning that they held winning tickets, and what they did or intend to do with prize money. Note that broadcast of such interviews would be improper, if instead of being a part of a licensee's good faith judgment as to information serving the interest of his area, it becomes clear by their repetition they are shams intended as promotional features.
- (6) Editorial advertising by groups which wish to make their views known in areas where the establishment of a lottery is an issue of public importance and concern. Note that the fairness doctrine will apply.

It appears that the Commission is willing to permit full discussion of the policy issues concerning establishment of a state operated lottery and public debate about proposed lottery legislation. However, the type of information which may be broadcast once a lottery has been established or is in operation is severely restricted. Therefore, when dealing with an existing lottery, broadcasters should be especially careful about the type of information which they broadcast.

V

SAMPLE LOTTERY MATTER WITH COMMENTS AS TO LEGALITY FOR BROADCASTERS

The following pages contain a sampling of typical "give-away" plans and various lottery material about which questions frequently recur. With each specific situation presented, an opinion is expressed as to the legality, under the anti-lottery laws, of broadcasting the plan or cited material. Unless specific court or FCC citations are given,

these opinions are in no way intended as, nor are they to be construed as, legally authoritative. They merely represent "educated guesses" by the NAB Legal Department as to how the FCC or the courts would react in considering the same material. In presenting these samples, we emphasize that there is no substitute for the advice of

your attorney in specific cases. Wherever any doubts exist as to whether or not the broadcasting of given material would violate the anti-lottery laws, the advice of your attorney should be obtained.

A. Station Promotions

Example #1:

A name is chosen at random from a telephone book and the listed number called. If the person called answers, he is awarded a prize. If the phone is not answered, or the person called is not at home, a small "consolation" prize is awarded.

This is a true "give-away." All that is required to win is to answer the phone. There does not appear to be consideration in the legal sense. Additionally, in view of the *ABC* decision (discussed above) that merely listening to a program does not constitute consideration listening to a station could be made a requirement for winning and this plan would still be a true "give-away"—not a lottery.

Example #2:

Persons selected at random from telephone or city directories are called and awarded prizes if they can answer two questions correctly. Familiarity with the sponsor's product is not necessary in order to answer the questions.

At first glance, this might be considered a contest involving skill rather than chance, because of the questions involved. However, the law applied to prizes "dependent in whole or in part upon chance," and it appears here that the selection of contestants is by chance. Nevertheless, in view of the decision in the *ABC* case, it would appear that this is another true "give-away" since so little effort is required to win a prize that it may be said no consideration is present.

Although cited by the Commission in 1940, the Department of Justice refused to prosecute a case of this type. (Assistant Attorney General Letter to FCC, dated April 12, 1940.)

Example #3:

Listeners (or viewers) submit a post card to the station. If the listener's card is drawn, he is called by the station and asked a question about the program then on-the-air. If the listener answers correctly, he wins a prize.

This contest is not a lottery. Neither the submission of a post card nor the necessity of listening to a program constitute consideration.

Example #4:

A station broadcasts a number selected at random. If a listener's driver's license number, social security number, automobile registration number, etc., corresponds with the number broadcast, the listener calls the station and is awarded a prize.

A program of this type was considered by the

United States District Court for the Eastern District of Virginia in 1951, and the court there found that the program was "not a lottery within the prohibiting statutes of the United States or the rules promulgated by the Federal Communications Commission." (*Capital Broadcasting Co., WWDC v. Arlington-Fairfax Broadcasting Co., WEAM*, 8 R.R. 2026, 2028 (1951)) This decision is in line with the Supreme Court decision in the *ABC* case.

Example #5:

A card similar to the familiar "bingo" card is made available to the public. (The usual plan makes them available at the sponsor's store or by writing to the sponsor.) The card lists a number of songs to be broadcast over a particular program. The participant listens to the program, identifies the songs, and then checks them off the card. The first listener to identify songs falling in the usual "bingo" pattern telephones the station, announces the correct answer, and wins a prize. The plan becomes a lottery only if the effort required to secure a card is construed as "consideration." In view of the definition of "consideration" adopted in the *Caples* case, it seems unlikely that a court would find that the plan in the program is a lottery.

B. Advertiser Promotions

Example #6:

A representative of an advertised product calls at a home, selected at random, and offers to purchase, at several times its actual value, any of that product found in the home. If none of the product is found, a smaller prize is usually given—generally, a sample of the product. Ordinarily, a broadcasting station's participation is limited to an announcement of the plan and advice to housewives to "stock up." Sometimes more elaborate coverage is given, and the calls at various houses reported.

The key factor in this plan is that a product must be purchased. Thus, the plan falls squarely within that portion of the Commission's Rules which prohibits programs where a prize is awarded by chance to persons who, in order to win, are "required to furnish any money or thing of value or are required to have in their possession any product sold, manufactured, furnished, or distributed by a sponsor of a program broadcast on the station." The NAB Legal Department is of the opinion that this plan would constitute a lottery.

Example #7:

In addition to the requirement of Example #6 that a housewife must have in her possession at home the product involved, she must also answer the company's "question of the day." If answered correctly, the housewife receives a prize.

This promotion plan has engaged the Commis-

sion's attention in the past, and stations carrying the program had action on their license renewal applications deferred. Subsequently, the advertiser involved informed the Commission that it eliminated that portion of the plan which required the housewife to have the product in her possession. Thereafter, license renewals were granted to the stations in question. When the need to have a given product is eliminated from this plan, then there is no consideration and the promotion may be broadcast. As in Example #6 though, the requirement of possession of the advertiser's product supplies the necessary consideration which, whenever included in a plan, makes it a lottery banned from the air.

Example #8:

"Best-name," "best-letter," "best-jingle," and "best-slogan" contests. If these contests are judged impartially on their merits, rather than by chance, they do not appear to be lotteries even though the purchase of some product is required to participate. The elements of prize, consideration, and chance must coincide. In these "best" contests skill and not "chance" is involved.

In a speech made to broadcasters in 1949, the Solicitor of the Post Office Department emphasized the caution, though, that must be exercised to keep this kind of contest within the law, remarking that, "even in such a contest involving skill, if a tie is possible, such as in 'best-name' and 'best-slogan' competitions, and consideration is required from contestants, it is necessary to include a rule that a prize identical with the one tied for will be awarded to each tying contestant, in order to make such a contest acceptable. Otherwise, the possibility of two or more being tied for one or more of the prizes makes the amount of the prize indeterminate in advance, and, thus, the element of chance comes into the contest. . . ." Note also, that ties may not be broken by awarding the prize to the entry bearing the earliest postmark. Such a rule introduces the element of chance.

Illustrating another possible pitfall in "best" contests, the Solicitor described a best-slogan contest wherein 8,000 entries were received in the last two hours of the contest, and the announcement of the winner made exactly one hour after the closing time. Under such circumstances, it seems more than likely that chance supplanted skill as a means of selecting the winner.

Additionally, the Post Office Department is of the opinion that chance is involved in contests when the judges take into consideration factors not disclosed to contestants. For example, in a "best-name" contest, if the judges give extra points to persons explaining their entry, but this is not disclosed to contestants, the factor of skill is defeated and the element of chance is introduced.

Example #9:

A sponsor plans to award a prize to a person to be selected through a drawing. In order to participate, all one need do is write one's name and address on a box top or wrapper from the sponsor's product or a reasonable facsimile thereof.

Promotion plans which require box tops or wrappers from the sponsor's product in order to participate contain the element of consideration since a purchase is generally necessary in order to obtain a box top or wrapper. However, if participation requirements permit entries from persons who send in "reasonable facsimiles" of box tops or wrappers, then the element of consideration *may* be eliminated. Neither the FCC nor the courts have had occasion to rule on the "reasonable facsimile" issue, and thus there is no authoritative answer for broadcasters in this matter.

The Post Office Department, though, has ruled on facsimile questions and is of the opinion that if the sponsors of a "box top" promotion plan treat "reasonable facsimiles" the same as actual box tops, then the element of consideration is removed. However, what is acceptable as a "reasonable facsimile" is most important. If all that is required is printing in block letters the name of the product involved, then there is no consideration. However, if art work is needed, or purchase of the actual product is a practical necessity in order to make a facsimile, then the Post Office would say there is consideration in the promotion.

Example #10:

An "endless chain" marketing scheme operates as follows: The purchaser buys not only the product, but also the right to sell the product and receive commissions upon his own sales and sales made by those who have purchased from him and their subsequent vendees on down the chain.

The Post Office Department has considered various "chain letters" and "pyramid club" schemes to be lotteries. Since the "endless chain" scheme is very similar, it would also seem to be a lottery. The commissions received are considered to be the prize. The purchase price of the item is consideration. Chance is present in the scheme because the amount of the prize is determined by chance. The amount of commission received depends largely upon conditions which the purchaser is unable to control. (*See Public Clearing House v. Coyne*, 194 U.S. 497 (1904)).

Example #11:

Various clubs participate in an awards scheme. From time to time the station broadcasts how many "club points" can be earned by specific purchases from local merchants. Clubs

accumulate points when their members purchase the specified items. Additionally, during the contest period, the station broadcasts the names of club members. If the club member is listening and calls the station, his club receives more points. At the end of the contest, the club with the most points wins a prize.

FCC rulings indicate that neither part of this contest is a lottery. Chance is not present in the "purchase for points" game. No consideration is involved in the "name" game, since the necessity of listening to the station is not consideration. However, to avoid any possibility that chance determines the winner, the station should broadcast the point standings of the clubs at regular intervals during the contest period. If point standings are not announced until the end of the contest, the element of uncertainty might induce parties to make purchases. In such cases, the final winner could not be determined solely by human skills and ingenuity. (See *U.S. v. Rich* 90 F.Supp 624 (1950); *Folkways Broadcasting*, 27 FCC 2d. 619 (1971)).

Example #12:

Entry blanks for a contest are printed on the label of a certain product. Entry blanks cannot be obtained otherwise. The winning entry will be determined by a drawing and a prize will be awarded. Clearly, this is a lottery. To enter a person must purchase the product, and the purchase price is consideration.

Example #13:

A Company holds a contest in which the prize is a cash donation in the winner's name to a charity designated by the winner. Entry blanks can be obtained only through purchase of the company's product. The winner will be determined by drawing. This is one of the rare cases in which it is difficult to determine if there is a prize. However, the right to designate which charity receives the prize money is sufficiently valuable to the winner to constitute a prize. Therefore, this contest is probably a lottery.

C. Commercial Establishment Promotions

Example #14:

Each participant pays \$1.00 a week for thirty weeks into a "merchandise club." Once each week a name is drawn, and the person whose name is drawn receives a \$30 merchandise certificate immediately, without further payment. At the end of thirty weeks, all participants, whose names have not been drawn, receive a certificate worth \$30 in merchandise. The "club" is to be advertised over the radio.

It is the opinion of the NAB Legal Department that the lottery elements of prize, consideration and chance are all present in this plan. The fact that each participant receives full value

for money paid does not remove the lottery aspects and, thus, it would appear that the plan should not be advertised via broadcasting. Further, the merchandise clubs appear to represent a style of promotion long held to constitute an "unfair method of competition" by the Federal Trade Commission. (*FTC v. Keppel*, 291 U.S. 304 (1934), 78 L.Ed. 814.)

Example #15:

A movie theater has a "Bank Night" once a week. Persons who buy a ticket to see the movie that night thereby become eligible to win a prize through a drawing.

The NAB Legal Department is of the opinion that this is a lottery whether or not a person must be present in order to win. The elements of chance and prize are obvious. As for consideration, the participants are required to buy an admission ticket and, thus, they are giving valuable consideration. The fact that purchasers receive full value for their money is immaterial. The purchase price is held to be consideration on the theory that part of the price of the ticket is allocated to the chance to participate in the drawing. (*Horner v. United States*, 147 U.S. 449.)

Example #16:

A Savings and Loan Association intends to give two tickets to Hawaii to a person to be ascertained through a drawing. In order to participate, one must either open a \$200 account or add \$200 to an existing account.

It is the opinion of the NAB Legal Department that this is a lottery. All the essential elements are present. The prize is two tickets to Hawaii, the chance is a drawing, and the consideration is the requirement that a deposit must be made in order to participate. The fact that the deposited money is still the property of the participant is immaterial since the depositing of the money is giving a "loan" which is a thing of value.

Example #17:

A grocery store, or any other type business, sets alarm clocks to go off at secret times at various counters or checkout stands, and the customer being waited on or checked out when the alarm goes off gets his groceries free.

This, in the opinion of the NAB Legal Department, is a lottery. In order to participate, a commitment to make a purchase is required. This is consideration. The fact that those who do not win receive full value for their purchase price is immaterial. The theory behind this is that part of the purchase price is allocated to the cost of the promotion plan. The prize element is obvious and the "chance" is being at the right spot when the alarm goes off.

Example #18:

A retail store wishes to advertise that every tenth purchaser will have his purchase price refunded.

This is probably a lottery. The elements of prize and consideration are apparent. Winners are determined by the "chance" of being the tenth in sequence. The Solicitor of the Post Office Department has stated that there is "chance" involved when a prize is offered to the first fifty persons who enter a store and make a purchase. There is inconsequential difference between a prize to the "first fifty" or "every tenth" customer.

Example #19:

A sponsor gives away numbered tickets with each purchase or paid admission. A drawing is held, and the person whose number is drawn receives a prize. A broadcasting station is to advertise the plan.

This plan appears to be a lottery under both the federal criminal law and the Commission's Rules. As long as a purchase is required, the courts have no hesitancy in finding "consideration," even though no extra charge is made for the chance to win the prize. It is easy to see that some part of the purchase price went to furnish the prize.

Example #20:

Grocer A desires to attract new customers and wishes to advertise via broadcasting a prize to be awarded to a lucky number selected in a drawing. In order to participate, all one need do is go to the sponsor's store for an entry blank or registration chance and drop it in the hopper. However, Grocer A also gives entry blanks or registration tickets with all purchases made.

According to the FCC, this contest would not be a lottery if non-purchasing and purchasing contestants are accorded an approximately equal opportunity in the number of chances to be obtained. Furthermore, announcements promoting the contest should adequately describe the availability of such free chances and the locations, times and manner in which they may be obtained. Note that such cryptic messages as "No purchase necessary" or "Nothing to buy" do not meet this requirement. Otherwise, the contest would be a lottery. (*Public Notice*, 18 FCC 2d 52 (1969)).

Example #21:

Numbered slips are made available to the public by a store. A purchase is not required, but the store must be entered to obtain the slip. A drawing is held and the number drawn is announced over radio. If the person holding a correspondingly numbered slip is listening, a prize is awarded. Under the *Caples* decision, the requirement of entering the store would not appear to constitute

consideration and, thus, the "give-away" is not a lottery.

Example #22:

A retail dealer wishes to advertise that at the end of the year a name will be drawn from among those who have purchased merchandise from him during the year and that a prize will be awarded.

This appears to be a lottery. The elements of prize and chance are apparent. Consideration also is present since an article must have been purchased in order to win. Hence, the NAB Legal Department feels that a court would have little difficulty in finding that this constitutes a lottery. The Commission has held that the advertising of similar plans is illegal. (*In re WRBL*, 2 FCC 687 (1936), *Metropolitan Broadcasting Corp.*, *WMBQ*, 5 FCC 501 (1938))

Example #23:

Cards are distributed free by local merchants (no obligation to purchase). A person fills in his name and phone number and mails the card to a broadcasting station. A drawing is made, and the station announcer calls the person whose name is drawn and asks a question on the air. If it is answered correctly, a prize of merchandise is awarded.

This program should be acceptable under the *ABC* and *Caples* cases, discussed above, on the ground that there is no consideration involved in the filling in of a card and answering the telephone.

Example #24:

Radio-TV "auctions." A local merchant gives each customer "auction dollars" in a face amount equal to the value of goods purchased. The "auction dollars" are then used to bid for prizes offered by the merchant, the highest amount of "auction dollars" bid taking the various prizes. The auction may be conducted over radio-TV and bids taken by phone, or the auction may merely be advertised by radio or TV. A variation of this format is for the bidding to be in terms of box tops, wrappers, etc.

The auction format, to date, has not been formally ruled on by the Federal Communications Commission, the courts, or the Post Office Department.

Prize and consideration (here, the requirement that merchandise be purchased) are certainly present. There is doubt as to the presence of chance — the third element necessary to make the lottery. Ordinarily, merchandise awarded to the highest bidder is not considered to be awarded by chance. However, whether or not chance is present will depend on the specific rules governing the auction. For example, if in the case of ties for high bids, the rules call for a drawing among the high bidders, chance would be present. On

the other hand, if all of the high bidders are allowed to receive a duplicate of the prize bid upon, chance would not be present.

Example #25:

A money draft is hidden somewhere in the area. Maps are provided by sponsoring stores, and clues are broadcast over the air.

It would appear that under the *Caples* decision no consideration is present if the contestant only is required to pick up a map at a sponsoring store. While prize is obviously present, if a successful search actually requires a good measure of skill, the element of chance would seem to be eliminated and the format would, therefore, not be a lottery.

Example #26:

In order to participate in a promotion, individuals are required to go to a car dealer's showroom and register any car's registration number. This is used as the entry coupon for a prize. The number is chosen by "wheel," etc. While the elements of chance and prize are present, it would appear that under the *Caples* case the requirement of going to a showroom is not sufficient to make the plan a lottery. However, if they are required to buy a car before they can participate, then there is consideration and the plan would be a lottery.

Example #27:

Purchase of an automobile valued at \$500 or more entitles customers of a local automobile dealer to "fish" for a prize worth from \$1 to \$100. All the elements of a lottery are present. The purchase price of the auto is consideration. Chance is present because the amount of the prize was determined by chance. And, of course, prizes are awarded. (*Folkways Broadcasting Company, Inc.* 30 FCC 2d 80 (1971)). This type of promotion has many variations. For example, purchasers might "spin the wheel" and receive the indicated discount on the purchase price of the merchandise which they have purchased. Under the above ruling, this would be a lottery since the prizes vary in amount and are not within the control of the parties. If, however, every purchaser received the same prize, the promotion would not be a lottery, since chance would not be present.

Example #28:

A local store holds a weekly drawing from the names of parties who have cashed wage or payroll checks there during the preceding week. A prize is awarded to the winner. No fee is charged for cashing the check. In the opinion of the NAB Legal Department this is not a lottery since consideration is not present. A person may cash his check and leave.

Example #29:

A local store conducts a drawing from among

the names of those persons who show a credit balance at the end of each month. The winner is awarded a prize. This is a lottery. Maintaining a credit balance is consideration because a purchase is required.

Exhibit #30:

To enter a grocery store contest, persons must sign a cash register receipt and deposit it in the bin for a subsequent drawing. Advertising spots for the contest indicate that entrants must sign their cash register receipt, and that "no purchase is necessary." This constitutes a lottery because it is improbable that a prospective entrant would realize that a cash register receipt could be obtained without necessity of purchase. Licensees must insure that advertisements are free of misleading direction or participation requirements which would cause the contest to operate as a lottery in fact. Cryptic messages like "no purchase necessary" and "nothing to buy" are not adequate. (*Public Notice*, 18 FCC 2d 52 (1969)).

Example #31:

Free entry blanks for a contest are available at local merchants. A drawing is held and the prize is awarded during a local baseball game for which admission is charged. Entrants must be present to win. This is a lottery. The admission charge for the ball game is consideration.

Example #32:

A shoe store wishes to advertise a promotion whereby numerous balloons containing various discount amounts will be hung about the store. Persons visiting the store will be entitled to break a balloon and receive the amount of the enclosed discount on a subsequent purchase.

This is not a lottery because, while prize and chance are present, no consideration is involved. The mere fact that a prize is received in the form of a discount does not commit the person to exercise that discount through a purchase. Of course, if the person is not allowed to break the balloon until after he has made a purchase, the promotion is obviously a lottery.

Example #33:

A local real estate developer wishes to promote his new development in a mountain area 40 miles from the city by holding a drawing and awarding one of the lots to the winner. Participants would be required to visit the development to fill out an entry form.

This contest would be a lottery. Although no purchase would be required, it is apparent that travelling 40 miles to the site of the development would amount to a substantial expenditure of time and effort on the part of the contestant. Therefore, consideration would be present.

Example #34:

A local supermarket holds a contest which anyone may enter by going to the store and filling out an entry blank. No purchase is required. The store announces in the contest rules and in all spots advertising the contest that a drawing will be held on the following Friday at 3 P.M. Participants must be present at the drawing in order to win.

This contest is not a lottery. Visiting the store once to enter and then again to be present at a drawing is not considered a substantial expenditure of time and effort and, therefore, is not consideration. However, it is essential that the time of the drawing be pre-announced and it be held on time. If, in the above example, the drawing were not held until 4 P.M., thus requiring participants to remain in the store for a considerable length of time, the contest would probably be a lottery. While there is no rule of thumb here, it is the opinion of the Legal Department that consideration would be present if the drawing were delayed more than a few minutes. Similarly, if the time of the drawing were not announced, thus requiring participants to make frequent and/or lengthy visits to the store, the contest would be a lottery. Licensees should remember that they bear the ultimate responsibility and should take necessary steps to see that contests are not operated as lotteries.

D. Guessing Contests

Example #35:

A prize is to be awarded the person guessing most closely the number of beans in a quart jar, the number of votes to be cast in an election, the amount of taxes to be collected in a given year, the scores of sporting events, etc. The contest is to be advertised over the air.

Whether contests of this type amount to lotteries will depend upon whether or not consideration is required to participate. If some product must be bought, an admission purchased, etc., the courts will probably find consideration to be present.

It has been contended that such contests involve skill rather than chance, and, hence, should not be considered lotteries. A number of court decisions have held that, although knowledge of the subject matter, or a skill in mathematics, might enable one to make a close approximation of the answer, the exact number is impossible of accurate determination and must depend upon guesswork—another word for chance. (See cases collected in *United States v. Rich*, 90 F. Supp. 624, 629 (1950)).

Example #36:

A gasoline station offers a free tankful of gas to any customer who can guess within 1/10 of a

gallon how much gas it will take to fill up his tank.

In the opinion of the NAB Legal Department, this plan is a lottery. The prize is a free tank of gas. A guess is necessary in order to win; this is the chance. Guessing the amount of gas is no different than guessing the number of beans in a jar which, as noted in Example #35, is still chance even though a mathematician could perhaps, upon analysis, calculate the right amount of gas needed. This does not change the guess into an exercise of skill. The existence of chance must be considered from the standpoint of whether the average man must rely on chance to win. The "consideration" in this plan is the commitment to make a purchase. The fact that full value is received for the purchase price by losers is immaterial.

E. Advertising Lotteries, Per Se

Example #37:

A local service club wishes to advertise its weekly "bingo" games over the air. All proceeds go to charity.

The game of bingo and its many variations are held to be lotteries within the meaning of federal law, if one is required to pay in order to participate, even though in some communities the games may be acceptable under local law. The fact that proceeds go to charity is immaterial. Thus, such bingo may not be advertised.

Example #38:

A veterans organization wants to advertise that its club facilities are open to the public. Included in the advertising would be the words "Big Game Every Wednesday" or simply "Bingo." There is no doubt that the "Big Game" or "Bingo" referred to is a lottery, but no other details would be given in the advertisement.

According to the Post Office, the anti-lottery law for the mails, which is identical in this regard to the broadcast law, prohibits carrying such an advertisement. Regardless of how few details are given, the statute is unequivocal in banning all lottery advertising or information related thereto. The ban extends to any advertisement using any word or symbol which represents or calls attention to a lottery.

F. Broadcasting of Information Concerning State Operated Lotteries

Example #39:

A station wishes to broadcast the following news report: "The winning lottery ticket was drawn at the Cherry Hill Shopping Mall by Miss America, surrounded by the Governor and other state and local officials. The top prize winner was John Doe."

This broadcast would be illegal. Such reports

which include only the name of the winner are not considered newsworthy because only those persons holding tickets in the lottery would be interested in the announcement of the name alone. (*Jersey Cape Broadcasting Corp.* 36 FCC 2d 93 (1972)).

Example #40:

A broadcaster wishes to broadcast a wire service report of the winning number and the name of the winner of the lottery. The proposed broadcast would last only a few seconds.

This broadcast would be illegal. The fact that the wire services treat the information as newsworthy does not make it news for the purposes of the lottery statute. Nor does brevity alone permit the broadcast of lottery information. (*Jersey Cape Broadcasting Corp.* 36 FCC 2d 93 (1972)).

Example #41:

An individual who resides in the station's serv-

ice area has won \$50,000 in a lottery. The station wishes to interview the winner, asking him about how he will spend the money, how it has affected his life, etc. The station will air the interview during its regular newscast on a day following the drawing.

This broadcast would be legal. Interviews with winners are permitted, except where by their repetition it is clear they are shams to promote the lottery.

Example #42:

In the above situation, the station broadcasts a brief excerpt from the interview at brief intervals throughout the day during the time lottery tickets are being sold for the next lottery.

This broadcast is illegal. Although interviews with winners are permitted, they may not be used as promotional devices. Clearly, seeing and/or hearing a "happy winner" of a previous lottery would encourage the public to participate in the upcoming lottery.

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