

THE NEW CALIFORNIA RULES ON RAFFLES

by PDG Dudley Lang

Some years ago, I called the office of Los Angeles District Attorney and also the Los Angeles Police Department to determine whether a planned club fund raiser (a reverse-drawing raffle) would be allowable in spite of California Penal Code provisions by which arranging or drawing a lottery, or selling lottery tickets, constitute misdemeanors punishable by a \$1,000 fine or six months in jail, or both. The official responses were only partially reassuring.

The bad news was that the definition of “lottery” includes a raffle or drawing of any sort in which there are (a) a prize, cash or non-cash, (b) an element of chance, and (c) a required payment to purchase a chance. That covered it; our fund raiser would be illegal. We discussed whether we could avoid having a required payment, and instead receive voluntary donations with the understanding that anyone could acquire a chance without paying anything. I was told that, at one time, the LAPD went along with the “voluntary donation fiction,” but no longer.

The good news I was told, was that the LAPD would not enforce the law--unless there existed one of the “Three Cs”: (1) COMMERCIAL benefit, (2) CONSPICUOUS publicity or advertising, or (3) a citizen’s COMPLAINT. Unless a disgruntled neighbor appeared on the scene, a service club should be able to avoid the “Three Cs,” so the risk appeared to be acceptable. In fact, I am not aware of any prosecution of a charity or service organization for an illegal raffle. (Bingo games came under fire until they were specifically permitted by statute under strict conditions.) We now have a new set of rules that authorize raffles, but once again the response is only partially reassuring.

Proposition 17

In March 2000, the California voters passed Proposition 17 amending the State Constitution and granting to the legislature the authority to enact a law permitting nonprofit organizations (including service clubs) to conduct raffles under certain conditions: *first*, the raffle must be used to fund charitable works (no problem); *second*, any person receiving compensation for operating the raffle must be an employee of the nonprofit organization conducting the raffle (no problem because we’re all unpaid volunteers); but *third*, at least 90% of the raffle proceeds must be used to support California charities (a potential problem because the amount of a cash prize is thereby limited).

New Penal Code section 320.5

Following up on Proposition 17, the California legislature enacted new Penal Code section 320.5, effective July 1, 2001, which broadly defines a raffle and permits a nonprofit organization to conduct a raffle and to sell raffle tickets if all of the following are true:

- Each ticket must have a detachable coupon or stub, marked with a matching identifier (no problem);
- Winners of prizes must be determined by a draw among the tickets (no problem);
- The drawing must be conducted in California and supervised by an adult (again no problem); but
- At least 90% of the gross receipts must go to charity (as noted, a potential problem).

The new statute also includes the other requirements of Proposition 17 (such as limiting compensation to employees of the nonprofit organization) and forbids the use of gaming devices or the sale of raffle tickets at a racetrack, gambling establishment, satellite wagering facility or on the internet. The California Attorney General is authorized to enforce the new rules; the organization conducting raffles must register and file annual reports with the AG; and the AG is directed to conduct a study to determine whether the new rules generate an increase in fraud and consumer complaints.

Is the new statute an improvement?

With the possible exception of the requirement that 90% of the raffle proceeds must go to charity, the new statute appears to be an improvement: most of the requirements under the statute accord with longstanding practice in conducting raffles, and service clubs would be freed from the uncertainty under the old rules. The registration and annual reporting requirements will not be too onerous. The statute, the AG regulations, responses to frequently-asked questions are all available at the Attorney General's website: <http://caag.state.ca.us/charities>. The registration and reporting forms are available at <http://caag.state.ca.us/charities/forms/raffle>.

The 90% requirement can be complied with by using donated gifts as prizes and limiting cash prizes to 10% of the total proceeds; and you can have both cash prizes and donated gifts. However, the venerable 50/50 raffle does not comply with the new statute; nor does the big-ticket prize such as an automobile purchased at a discount with raffle proceeds.

Can one opt out of the new rules?

If an organization conducts a raffle that does not comply with the new statute, as the 50/50 raffle does not, the raffle will be tested by the old rules as refined by intervening case law and by the statute itself:

- The raffle must involve a “general and indiscriminate distributing of tickets”;
- The tickets must be offered on the same terms and conditions as the tickets for which a donation is given; and
- The raffle must not require any of the participants to pay for a chance to win.

While it would be possible to conduct a raffle by “indiscriminately” distributing tickets without requiring anyone to pay for the chance to win, it would reward freeloaders and it would make the job of raising funds very difficult. Moreover, the new statute makes clearer than before what is meant by a payment, and merely printing the word “donation” on the ticket will not suffice. The AG's will not recognize the “voluntary donation fiction.” We are now under a new regime; enforcement rests with the AG, not just the local constabulary. The AG does not intend to rely upon the “Three Cs”; so opting out is not a good choice.

What's the answer?

The best course will be to comply with the new statute – the 90% requirement, registration, annual reporting and all of it. The AG, now in charge of enforcement, has expressed an intention not to look the other way. Our entire organization has an interest in making sure that no Lions Club is found to have violated the new rules.