

HB

275

Alaska State Legislature


SESSION ADDRESS:
State Capitol
Juneau, Alaska 99801-1182
Phone (907) 465-2693
Toll Free 800-463-2693
Fax 907-465-3835


INTERIM ADDRESS:
35477 Suite 101-B Spur Hwy
Soldotna, Alaska 99669
Phone 907-260-5236
Fax 907-260-3044

Representative Ken Lancaster
District 8

March 15, 2002

MEMORANDUM

To: Representative  John Coghill, Chairman
House State Affairs Committee

From: Representative  Ken Lancaster

Subject: House Bill 275 – “An Act relating to the use of broadcasting to promote charitable gaming activities.”

I would like to request a hearing on the above-mentioned legislation. Enclosed you will find a copy of the bill, the sponsor statement and the back-up information. If you need anything further, please let me know.

Thank you.

Alaska State Legislature

SESSION ADDRESS:
State Capitol
Juneau, Alaska 99801-1182
Phone (907) 465-2693
Toll Free 800-463-2693
Fax 907-465-3835



INTERIM ADDRESS:
35477 Suite 101-B Spur Hwy
Soldotna, Alaska 99669
Phone 907-260-5236
Fax 907-260-3044

Representative Ken Lancaster District 8

Sponsor Statement for

House Bill 275

“An Act relating to the use of broadcasting to promote charitable gaming activities.”

House Bill 275 will allow broadcasting organizations to promote a raffle or lottery, as well as a fish derby or classic. Currently there is no law allowing radio or TV when it comes to advertising and promotion of any state licensed non-profit lottery or game of chance. Newspapers, magazines and other print media are exempt from prohibition.

The United States Congress enacted the “Charity Games Advertising Clarification Act of 1988.” That act removed the absolute federal bar to the use of broadcasting to promote or conduct gambling or lotteries. In its place, an exception was created for lotteries conducted by states and lotteries, gift enterprises, or similar schemes which are authorized under state law (or at least not prohibited by state law) not-for-profit organizations or a governmental organization.

Other States have enacted laws to allow broadcasting organizations to promote not-for-profit organization activities. Currently the State of Alaska does not allow broadcasting organizations to promote a raffle, lottery, fish derby or classic. This bill will allow broadcasters of radio and TV to promote charitable gaming activities. Examples of advertising would be: Girl Scout/Boy Scout fundraising event, Lions Kenai River Duck Race, a Little League Bingo Game, A Baseball Fund Raising Event, a Chamber Pull-Tab Shop, just to mention a few.

E-Mail: Representative_Ken_Lancaster@legis.state.ak.us

Cooper Landing • Bear Creek • Funny River • Hope • Moose Pass • Ridgeway • Seward • Soldotna • Sterling
Listening to you – Getting things done.



(907) 283-5811

Hometown Radio



(907) 283-9430

January 26, 2001

Representative Ken Lancaster
Alaska State Legislature
Mail Stop: 3100
Juneau, AK 99801-1182
Re: Lottery Advertising Prohibition

JAN 30 2001

Dear Ken;

Hope you are getting settled and into the groove as a legislator, and that rainy Juneau weather is not too depressing. Thanks for being on the air on Fridays.

Ken, we need your help. As you might know that state for some reason chooses to discriminate against radio and TV when it comes to advertising and promotion of any state licensed non-profit lottery or game of chance. Newspapers, magazines and other print media are exempt from the prohibition.

I can think of no reason at all for this discriminatory regulation.

In other words, when the chamber came in to promote their Goose Arrival lottery, the FCC now allows us to promote it on our radio stations. When we put it on the air, the state immediately threatened the chamber with loss of their state lottery permit so they are forced to cancel all radio promotion and use only the print media. That is the main reason they were forced to give up on the promotion, which would have been a great fundraiser for the chamber.

Its the same way with a Lions Kenai River Duck Float Lottery, a Little League Bingo game, a Chamber Pull-Tab shop or a Girl Scout Bicycle Giveaway ticket sales promotion. If they attempt to promote the state-licensed lottery on the air, radio or TV, the state threatens them with loss of their lottery permit if the promotion isn't pulled from the air immediately.

In radio, now, the FCC even allows us to promote lotteries for a commercial business, which are not eligible for licenses from the state. For instance, and sign up for a color TV set with every purchase. The state of course will make the business pull the promotion immediately if they hear about it.

Would you please consider looking into the situation and sponsoring legislation, if necessary, that would allow promotion of state licensed non-profit lotteries on radio and TV. This is also a concern of every broadcaster in the state as well as the Alaska Broadcasters Association.

In Juneau, a person who has been in management of Radio/TV stations and understands the problem is Dennis Eagan. Call him if you need more information or help with lobbying other legislators.


Please let me know how you feel about this.

Thanks;


John Davis
KSRM, Inc.



Alaska Juneau
Communications, Inc.

TO: Helen Donohue
FROM:  Dennis Egart, Alaska Broadcasters Association
SUBJECT: Proposed Charitable Gaming Legislation
DATE: May 4, 2001

*Proposed changes
approved by
representative*

After a meeting of the Board of the Alaska Broadcasters Association this morning we offer two suggestions for amendments to Representative Lancaster's proposed Legislation regarding charitable gaming.

1. To change the underlined changes to: or (2) to allow compliance with the Charity Games Advertising Act of 1988.
2. To change the underlined changes to: or (2) radio or television broadcasting to promote a raffle or lottery as defined within the Charitable Games Advertising Clarification Act of 1988.

With either change we believe there is superfluous language that pertains to broadcasting by 2,500 megahertz, microwave video and audio programming, slow-scan television programming, and programming via satellite, cable, teletype, or facsimile transmission and distribution methods. We think the term radio or television broadcasting covers this.

Thank you for letting us offer changes to this proposed legislation and applaud Representative Lancaster, you and the rest of your staff for agreeing to introduce this.

5/16/01

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

COPY

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

April 17, 2001

SUBJECT: Broadcast Advertising of Charitable Gaming
(Work Order No. 22-LS0919/A)

TO: Representative Ken Lancaster

FROM: Gerald P. Luckhaupt
Legislative Counsel

AS 05.15.640 restricts the use of broadcasting to promote or conduct charitable gaming activities. The enclosed draft would allow broadcasting to promote a raffle or lottery, as well as a fish derby or classic. AS 05.15.640, as originally enacted as ch. 33, SLA 1990, was apparently prompted by the United States Congress enacting the "Charity Games Advertising Clarification Act of 1988." That act removed the absolute federal bar to the use of broadcasting to promote or conduct gambling or lotteries. In its place, an exception was created for lotteries conducted by states and lotteries, gift enterprises, or similar schemes which are authorized under state law (or at least not prohibited by state law) and which are conducted by a not-for-profit organization¹ or a governmental organization. This exception provided that the prohibitions of 18 U.S.C. §§ 1301 - 1304 (copy attached), did not apply to advertisements, lists of prizes, or other information concerning lotteries² conducted by states or by not-for-profit organizations or governmental organizations under the authority of (or not otherwise prohibited by) state law.³ 18 U.S.C. § 1307.

¹ A "not-for-profit organization" is defined under the federal law as "any organization that would qualify as tax exempt under section 501 of the Internal Revenue Code of 1986. 18 U.S.C. § 1307(d). This is an interesting dilemma for Alaska, for while we require that charitable organizations be "not for pecuniary profit" in order to conduct charitable gaming, those organizations are not required to be eligible to qualify as tax exempt under § 501 of the Internal Revenue Code of 1986. If the organizations do not qualify under § 501 then they may not avail themselves of the exception provided by 18 U.S.C. § 1307.

² And certain other gift enterprises and similar schemes conducted under the authority of state law.

³ An additional exception was provided for promotional activities "conducted by a commercial organization and which is clearly occasional and ancillary to the primary

Representative Ken Lancaster
February 20, 2001
Page 2

In the bill draft, I also removed the word "sweepstakes" as there are no longer any sweepstakes authorized under the charitable gaming laws.

If you have further questions, please contact me at your convenience.

GPL:jhb
01-041.jhb

business of that organization." This language would allow a business like McDonalds to advertise the contests that they occasionally conduct.

*US Code as of: 01/23/00***Sec. 1301. Importing or transporting lottery tickets**

Whoever brings into the United States for the purpose of disposing of the same, or knowingly deposits with any express company or other common carrier for carriage, or carries in interstate or foreign commerce any paper, certificate, or instrument purporting to be or to represent a ticket, chance, share, or interest in or dependent upon the event of a lottery, gift enterprise, or similar scheme, offering prizes dependent in whole or in part upon lot or chance, or any advertisement of, or list of the prizes drawn or awarded by means of, any such lottery, gift, enterprise, or similar scheme; or, being engaged in the business of procuring for a person in 1 State such a ticket, chance, share, or interest in a lottery, gift, enterprise or similar scheme conducted by another State (unless that business is permitted under an agreement between the States in question or appropriate authorities of those States), knowingly transmits in interstate or foreign commerce information to be used for the purpose of procuring such a ticket, chance, share, or interest; or knowingly takes or receives any such paper, certificate, instrument, advertisement, or list so brought, deposited, or transported, shall be fined under this title or imprisoned not more than two years, or both.

Sec. 1302. Mailing lottery tickets or related matter

Whoever knowingly deposits in the mail, or sends or delivers by mail:

Any letter, package, postal card, or circular concerning any lottery, gift enterprise, or similar scheme offering prizes dependent in whole or in part upon lot or chance;

Any lottery ticket or part thereof, or paper, certificate, or instrument purporting to be or to represent a ticket, chance, share, or interest in or dependent upon the event of a lottery, gift enterprise, or similar scheme offering prizes dependent in whole or in part upon lot or chance;

Any check, draft, bill, money, postal note, or money order, for the purchase of any ticket or part thereof, or of any share or chance in any such lottery, gift enterprise, or scheme;

Any newspaper, circular, pamphlet, or publication of any kind containing any advertisement of any lottery, gift enterprise, or scheme of any kind offering prizes dependent in whole or in part upon lot or chance, or containing 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;

Any article described in section 1953 of this title -

Shall be fined under this title or imprisoned not more than two years, or both; and for any subsequent offense shall be imprisoned not more than five years.

US Code as of: 01/23/00

Sec. 1303. Postmaster or employee as lottery agent (FOOTNOTE 1)

[1] Section catchline was not amended to conform to change made in the text by Pub. L. 91-375. Whoever, being an officer or employee of the Postal Service, acts as agent for any lottery office, or under color of purchase or otherwise, vends lottery tickets, or knowingly sends by mail or delivers any letter, package, postal card, circular, or pamphlet advertising any lottery, gift enterprise, or similar scheme, offering prizes dependent in whole or in part upon lot or chance, or any ticket, certificate, or instrument representing any chance, share, or interest in or dependent upon the event of 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 awarded by means of any such scheme, shall be fined under this title or imprisoned not more than one year, or both.

*US Code as of: 01/23/00***Sec. 1304. Broadcasting lottery information**

Whoever broadcasts by means of any radio or television 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 under this title or imprisoned not more than one year, or both.

Each day's broadcasting shall constitute a separate offense.

Sec. 1305. Fishing contests

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.

US Code as of: 01/23/00

Sec. 1306. Participation by financial institutions

Whoever knowingly violates section 5136A of the Revised Statutes of the United States, section 9A of the Federal Reserve Act, or section 20 of the Federal Deposit Insurance Act shall be fined under this title or imprisoned not more than one year, or both.

Sec. 1307. Exceptions relating to certain advertisements and other information and to State-conducted lotteries

- (a) The provisions of sections 1301, 1302, 1303, and 1304 shall not apply to -
 - (1) an advertisement, list of prizes, or other information concerning a lottery conducted by a State acting under the authority of State law which is -
 - (A) contained in a publication published in that State or in a State which conducts such a lottery; or
 - (B) broadcast by a radio or television station licensed to a location in that State or a State which conducts such a lottery; or
 - (2) an advertisement, list of prizes, or other information concerning a lottery, gift enterprise, or similar scheme, other than one described in paragraph (1), that is authorized or not otherwise prohibited by the State in which it is conducted and which is -
 - (A) conducted by a not-for-profit organization or a governmental organization; or
 - (B) conducted as a promotional activity by a commercial organization and is clearly occasional and ancillary to the primary business of that organization.
- (b) The provisions of sections 1301, 1302, and 1303 shall not apply to the transportation or mailing -
 - (1) to addresses within a State of equipment, tickets, or material concerning a lottery which is conducted by that State acting under the authority of State law; or
 - (2) to an addressee within a foreign country of equipment, tickets, or material designed to be used within that foreign country in a lottery which is authorized by the law of that foreign country.
- (c) For the purposes of this section (1) "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States; and (2) "foreign country" means any empire, country, dominion, colony, or protectorate, or any subdivision thereof (other than the United States, its territories or possessions).
- (d) For the purposes of subsection (b) of this section "lottery" means the pooling of proceeds derived from the sale of tickets or chances and allotting those proceeds or parts thereof by chance to one or more chance takers or ticket purchasers. "Lottery" does not include the placing or accepting of bets or wagers on sporting events or contests. For purposes of this section, the term a "not-for-profit organization" means any organization that would qualify as tax exempt under section 501 of the Internal Revenue Code of 1986.

THE
FOLLOWING
DOCUMENT(S)
ARE
POOR
ORIGINAL
COPIES

STATE OF ALASKA

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL

TONY KNOWLES, GOVERNOR

P.O. BOX 110300
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-9800
FAX: (907) 465-2075

March 2, 2001

Barry H. Goffried
ShawPitman
2300 N. Street, NW
Washington, D.C. 20037-1128

Re: State Restrictions on Broadcast
Advertising of Gaming Activities

Dear Mr. Goffried:

I write in response to your letter of February 5, 2001, regarding state restrictions on broadcast advertising of gaming activities. In that letter you requested that I provide written assurance to the Alaska Broadcasters Association that this office will not enforce AS 05.15.640(a), the state statute which bans radio and television advertising of charitable gaming activities, because in your view the statute is an unconstitutional ban on commercial free speech.

In the absence of a court order directing me to refrain from enforcement of a state statute, I decline to provide you the written assurance you seek for two reasons. First, my office does not provide assurances about the enforcement or non-enforcement of state laws, nor does it issue attorney general opinions at the request of private entities. Rather, by law, our function is to provide legal advice and assistance to state agencies and state officials. See generally Section 3.0.1 A.3.6. *Department of Law Civil Manual* and AS 44.23.020. Second, to reach the outcome you have suggested would require me to declare a state statute invalid. This the Alaska Supreme Court in another context has admonished me not to do. *O'Callaghan v. Coghill*, 888 P2d 1302, 1303-04 (Alaska 1995).

Sincerely,



Prince M. Rosteln

ShawPittman

A Law Partnership Including Professional Corporations

BARRY H. GOTTFRIED
202.663.8184
barry.gottfried@shawpittman.com

February 5, 2001

VIA FEDERAL EXPRESS
Honorable Bruce M. Botelho
Attorney General
State of Alaska
P.O. Box 110300
Juneau, Alaska 99811-0300

Re: State Restrictions on Broadcast Advertising of Gaming Activities

Dear General Botelho:

This firm represents the Alaska Broadcasters Association (the "ABA"), a non-profit association of radio and television stations located throughout the State of Alaska, in connection with a potential challenge to the constitutionality of Alaska Stat. §05.15.640(a). That statute prohibits broadcasters from airing truthful and non-misleading advertisements of lawful "charitable gaming activity." Our review of recent caselaw in the United States Supreme Court demonstrates that the statute cannot withstand constitutional review. The purpose of this letter is, therefore, to request that, in order to avoid litigation, you provide written assurances to the ABA, for the benefit of its member stations, that the Attorney General's Office will not enforce this unconstitutional ban on commercial free speech.

As you know, Alaska Stat. §05.15.640(a) bans, but only via radio and television, the advertising of lawful charitable gaming activity or conduct. Newspapers are free to advertise the very same activity and conduct that radio and television stations may not advertise. There is no logic or legislative rationale for the inconsistent treatment of broadcast and print media. Additionally, although broadcast advertising of "charitable gaming activity" is prohibited, media advertisements of legal gambling activity or conduct that transpires outside of Alaska is not prohibited by any statute. The disparate treatment relating to broadcasters between truthful advertisements for in-state charitable gaming activity and such advertisements for out-of-state gambling activity is neither explained nor supportable.

Given this statutory pattern, we believe there can be no question that the enforcement of Alaska Stat. §05.15.640(a), to prohibit radio and television stations in Alaska from broadcasting truthful, non-misleading information promoting lawful charitable gaming activity or conduct, violates the First Amendment of the United States Constitution. This is so for essentially the same reasons that the United States Supreme Court held unconstitutional the federal law prohibiting broadcast advertisement of lawful

ShawPittman

Honorable Bruce M. Botelho
February 5, 2001
Page 2

commercial casino gambling in *Greater New Orleans Broadcasting Association, Inc. v. United States*, 570 U.S. 173 (1999) ("*Greater New Orleans*"). In that case, the Court found that the advertising ban "sacrifice[d] an intolerable amount of truthful speech about lawful conduct" and was "so pierced by exemptions and inconsistencies" that it could not be sustained. The Court said that the ban did not advance the federal government's interest in minimizing the social costs of casino gaming, or promote any other state government interest, because the various statutory exemptions precluded the statute from meaningfully reducing public demand for casino gaming. Moreover, the ban could not be sustained under the Constitution because less restrictive measures, such as a prohibition or supervision of gambling on credit or controls in admission, would serve the federal government's interests in controlling gambling more directly and effectively without violating the First Amendment rights of broadcasters.

Alaska Stat. §05.15.640(a) has similar defects to the federal statute struck down in *Greater New Orleans*, and is unconstitutional for a number of reasons. As noted above, it is lawful for newspapers to advertise legal gambling and all media can lawfully advertise legal *out-of-state* gambling. The only ban is on broadcast advertising of charitable gaming activity or conduct. Thus, Alaska's gaming statute is too "pierced by exemptions and inconsistencies" to serve the goal of thwarting any postulated gambling and social ills. Alaska Stat. §05.15.640(a), like the federal law deemed unconstitutional in *Greater New Orleans*, "sacrifices an intolerable amount of truthful speech about lawful conduct when compared to all of the policies at stake and the social ills that one could reasonably hope [a gambling] ban to eliminate." Thus, the requisite governmental interest in restricting speech is excessive, ineffective and cannot be upheld. You should be aware that *Greater New Orleans* has been persuasive in convincing courts that prohibitions in other states' laws are unconstitutional. See e.g., *Michigan Association of Broadcasters v. Michigan*, 99-90792-CZ (Circuit Court MI 1999), in which we successfully represented the Michigan Association of Broadcasters in a constitutional challenge against Michigan statutes prohibiting broadcasters from broadcasting advertisements for lawful commercial casino gaming. See also *ACLU v. Reno*, 217 F.3d 162 (3rd Cir. 2000), supporting strong constitutional protection for commercial speech.

In addition, there is another problem with the statute— it actually impedes *positive* governmental interests. Under Alaska Stat. §05.15.640(a), the ABA's member stations cannot assist deserving not-for-profit organizations in their efforts to raise money to meet their goals. In a period of declining state revenues and charitable giving, this unwarranted restriction is simply bad policy.

Lastly, Alaska Stat. §05.15.640(a) may well deny broadcasters equal protection under the Federal and State Constitutions since the act prohibits, without rational basis, the broadcast media from engaging in conduct which is allowed by the print media,

ShawPittman

Honorable Bruce M. Botelho

February 5, 2001

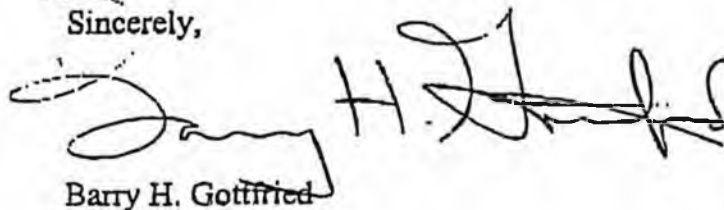
Page 3

namely the carriage of third party advertising promoting lawful "charitable gaming activity."

For all the foregoing reasons, we are hopeful you will agree that the statute in question cannot survive court scrutiny and that you will promptly provide written assurances to the ABA that neither the Attorney General's office nor any other state prosecutor in the State will enforce this statute against broadcasters advertising truthful, non-misleading information about any lawfully conducted charitable gaming activity. While we would like to settle this matter outside the formal judicial process, should your office not respond favorably within a reasonable period of time, we have been authorized to file an action in an appropriate court.

We look forward to hearing from you shortly and thank you for your consideration of this matter of importance to broadcasters and the listening public in Alaska.

Sincerely,



Barry H. Gottfried

cc: David Geesin
Linda Simmons