

# "RAFFLES" - AN UPDATE

## A MEMORANDUM

By Joseph A. Divito, Esq.  
DIVITO & HIGHAM, P.A.  
4514 Central Avenue  
St. Petersburg, FL 33711  
(813) 321-1201

I have received many inquiries on the issue of raffles that are conducted by our Parishes and Schools. The term "raffle" is governed by Fl. Stat. 849.0935, which specifically includes any "drawing by chance." The law has recently been amended by the Florida Legislature. This memo serves as an update of the law that governs raffles or drawing by chance.

### GENERAL RULE OF LAW GOVERNING RAFFLES

It is important to keep in mind that raffles are illegal, except as to charitable organizations (and the state lottery). Florida law makes it unlawful for any person in this state to:

"conduct any lottery for money, or for anything of value; ...conduct any lottery drawing for the distribution of a prize by lot or chance . . ." (emphasis added)

The law prohibits a broad range of activities that are related to any lottery or drawing by chance. A person guilty of violating these provisions is guilty of a felony in the third degree. An exception is given to a charitable organization **WITH RESTRICTIONS**.

These restrictions are detailed below; but the most important restriction is the prohibition of any payment or consideration for participating in a charity raffle. There are three elements for a raffle to be illegal even when conducted by a charity. They are:

1. Giving a prize (money or anything of value); and
2. Determining the winner by chance (i.e., a drawing); and
3. Requiring a purchase or contribution before allowing a person to participate (in the opportunity to win the prize).

If any one of the above three elements is removed, the charity may conduct the raffle. It is when these three elements appear together that the law is violated.

### DEFINITIONS

For an organization to fall within this exception, it must be exempt from Federal income tax under 501(c)(3), and have a current determination letter from the IRS. Our Parishes and Schools will fall under this exemption by virtue of the group ruling from the USCC, and the listing of this organization within "*The Official Catholic Directory*." It should be noted that the "organization" that is allowed to conduct a raffle is the organization which has been designated as the Parish or School within "*The Official Catholic Directory*." This may not apply to related Parish organizations, such as a Men's or Women's Club, a Parent School Association or a Young at Heart Club. In order for these organizations to conduct a raffle, it must clearly be established that it is the Parish or School conducting the raffle, and control must rest with the Pastor and/or School Administrator. For outside Parish organizations, such as the Knights of Columbus, or St. Vincent DePaul Society, they should be aware that their own parent organization must meet the requirements as defined under this Florida law.

A "drawing by chance" or "drawing" means an enterprise in which, from the entries submitted by the public to the organization conducting the drawing, one or more entries are selected by chance to win a prize.

### **SPECIFIC RESTRICTIONS REQUIRED OF A CHARITABLE ORGANIZATION TO CONDUCT A RAFFLE**

A charitable organization may conduct a raffle or drawing by chance, only if it meets the specific requirements as detailed under Section 849.0935. The most notable requirement is that the law prohibits the organization from requiring "an entry fee, donation, substantial consideration, payment, proof of purchase, or contribution as a condition of entering the drawing." The law does permit the organization to "suggest" a minimum donation, and may include a statement of such "suggested" minimum donation on any printed material; however, it must clearly be understood that this is a suggestion only, and not a requirement. Also, the raffle cannot be contingent upon a minimum number of voluntary contributions. In other words, the parish or school must make a financial commitment to proceed with the raffle, regardless of how much financial support is received on a voluntary basis from the entrants. Other specific restrictions are detailed below:

1. A raffle or drawing by chance is illegal in the State of Florida; except
2. A charitable, tax exempt organization may conduct drawings by chance; however, it is unlawful for the organization to:
  - Conduct any drawing in which the winner is pre-determined...or in which the selection of the winner(s) is in anyway rigged;
    - Require an entry fee, donation, substantial consideration, payment, proof of purchase or contribution of entering the drawing, or of being selected to win a prize;
    - Condition a drawing on a minimum number of tickets having been disbursed to contributors, or on a minimum amount of contributions having been received;
    - Discriminate in any manner between entrants who gave contributions to the organization and those who did not give such contributions;
    - Fail to promptly notify at the address set forth on the entry blank, any person...of the fact that such person won;
    - Fail to award all prizes offered in the manner and at the time stated;
    - Print, publish or circulate literature...which is false, deceptive or misleading;
    - Cancel a drawing; or
    - Condition the acquisition or give-a-way of any prize upon the receipt of a minimum of voluntary donations or contributions.

In addition to the above restrictions:

The law also requires that the brochures, advertisements, notices, tickets or entry blanks "shall conspicuously disclose":

- The rules governing the conduct and operation of the drawing;
- The full name of the organization and its principal place of business;
- The source of funds to be used to award cash prizes or other prizes or to purchase prizes;
- The date, hour and place where the winner will be chosen and the prizes will be awarded, unless the brochures, advertisements, notices or tickets are not offered to the public more than three (3) days prior to the drawing;
- That no purchase or contribution is necessary.

### IRS REQUIREMENTS

An organization that conducts gambling activities (and a raffle is a gambling activity) is required to report gambling winnings on Form W-2G as follows:

- If it pays out \$600.00 or more from a wagering transaction.
- If the cumulative winnings paid out as prizes exceed \$5,000.00, then the organization is also subject to regular gambling withholding, which is applied at the rate of 28% to the amount of the winnings less the amount wagered.

The following illustrations are given to assist in satisfying the above withholding requirements:

**Q:** What IRS requirements must be satisfied if a school has a raffle with a first place raffle prize of \$250.00, a second place raffle prize of a new bicycle (value of \$100.00), and a third place prize of 3 movie tickets?

**A:** No IRS filings are required. Since the value of the wagering transaction is less than \$600, the school is not obligated to file Form W-2G, nor is it obligated to withhold any of the proceeds.

**Q:** Must a church withhold 28% of the winnings from a raffle in which the grand prize is an all expense weekend to the Bahamas (\$2,500.00 value) and the second prize is a color television (\$300.00 value)?

**A:** No, since the total of all the winnings does not exceed \$5,000.00; however, the church is obligated to issue form W-2G to each winner. This is true even for the second place winner, since the total of the winnings paid out exceeds \$600.00.

**Q:** What IRS requirements must be satisfied if a school conducts a raffle in which the cost per ticket is \$100.00 with a first place prize of a car with a fair market value of \$10,000.00 and a second place prize of \$1,500.00 in cash?

**A:** The school will be required to withhold 28% from both winners, and issue Form W-2G. Because both of these prizes have a combined value exceeding \$5,000.00, the church is required to report the total winnings on a Form W-2G to each winner and withhold 28% of \$9,900.00 (\$10,000.00 minus \$100.00) and 28% of \$1,400.00 (\$1,500.00 minus \$100.00) respectively.

### **A WORD ABOUT DOOR PRIZES**

It is important to keep in mind that this law does not prohibit a Parish or School from conducting a fund-raising event, which has a price for admission and will have significant door prizes. The door prize drawing is legal since the event is not open to the public (see the definitions above). The event can have door prize drawings which are determined by chance, where the entrants are only those getting a ticket as part of the event and they deposit the ticket in the box for the door prize drawing later that evening. However, the emphasis must be placed on the payment or contribution as being made for admission to the event, which will not be opened to the general public (i.e., no one is admitted without purchasing a ticket). The door prize winner must come from the persons attending the event (passing through the door).

### **CONCLUSION**

The law is clear that the requirement of a donation not be imposed by the organization conducting the raffle in order for a person to participate. The law now allows the organization to suggest a minimum donation, which can be included on any printed materials. However, the law makes it equally clear that the receipt of such voluntary minimum donations cannot be a condition to the raffle.