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APPROVED
JAN 2-1975

ACTION

THE WHITE HOUSE
WASHINGTON

Last Day: January 4

December 31, 1974

*Posted
1/3
To Archives
1/3*

MEMORANDUM FOR THE PRESIDENT
FROM: KEN COLE
SUBJECT: Enrolled Bill S. 544 - State Lotteries

Attached for your consideration is S. 544, sponsored by Senator Hart and Senator Griffin, which would permit the transportation, mailing and broadcasting of advertising, information and materials concerning lotteries authorized by State law and conducted by a State.

OMB recommends approval and provides additional background information in its enrolled bill report (Tab A).

Max Friedersdorf and Phil Areeda both recommend approval.

RECOMMENDATION

That you sign S. 544 (Tab B).



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

DEC 26 1974

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill S. 544 - State lotteries
Sponsors - Sen. Hart (D) Michigan and Sen. Griffin
(R) Michigan

Last Day for Action

January 4, 1975 - Saturday

Purpose

To permit the transportation, mailing and broadcasting of advertising, information and materials concerning lotteries authorized by State law and conducted by a State.

Agency Recommendations

Office of Management and Budget	Approval
Department of Justice	Approval
Department of the Treasury	No objection
U.S. Postal Service	No objection

Discussion

The Federal Government has historically followed a policy of refusing to allow any facility of interstate commerce or transportation to be used in connection with lotteries. Federal laws designed to suppress lotteries date back to 1872. This was based not only on moral grounds, but also on the evidence of massive control of lotteries by organized crime.

Currently, a number of States are operating or planning to operate lottery programs to generate revenues. Since the enactment of the first State lottery, State officials have urged the amendment of Federal laws to permit both the use of U.S. mails, and the publication and broadcasting of lottery information. The Federal prohibitions have been described as preventing the efficient and economical operation of State conducted lotteries.

S. 544 would permit the expansion of a legal State-operated lottery to the fullest extent consistent with the lottery laws of bordering States. At the same time, it would not dilute the ability of the Federal Government to move strongly against illegal lotteries with interstate activities. It provides that Federal anti-lottery laws would not apply to an advertisement, list of prizes, or information concerning a legal State-operated lottery which is (1) contained in a newspaper of general circulation published in that State, or (2) broadcast by that State or an adjacent State which conducts lotteries. Tickets and other lottery material may be mailed within that State.

Attorney General Saxbe, in his testimony before the Senate Subcommittee on Criminal Law and Procedures stated on November 20, 1974 that:

"...In attempting to accommodate those States which have opted for State lotteries, the concomitant need is to insure that the actions of the Federal Government do not frustrate the policy decisions of those other States which, for policy reasons of their own, have not enacted legislation permitting lotteries... S. 544...conforms with our recommended guidelines to the extent it permits mailing of lottery materials and information within the State conducting the lottery...

"Therefore, the Department of Justice fully supports the enactment of S. 544."

Wilfred H. Roumel

Assistant Director for
Legislative Reference

Enclosures





LAW DEPARTMENT
Washington, DC 20260

December 24, 1974

Dear Mr. Rommel:

This responds to your request for the views of the Postal Service with respect to the enrolled bill:

S. 544, "To amend title 18 of the United States Code to permit the transportation, mailing and broadcasting of advertising, information, and materials concerning lotteries authorized by law and conducted by a State, and for other purposes."

1. Purpose of Legislation.

This legislation would free State-conducted lotteries from the restrictions of present Federal laws prohibiting the mailing of lottery tickets, and prohibiting the mailing, broadcasting, televising, or interstate transportation of information and advertising regarding lotteries. Specifically, insofar as the Postal Service is concerned, the legislation would permit:

(1) interstate mailing of newspapers published in a State containing advertisements of lotteries conducted by that State; and

(2) intrastate mailing of tickets or other materials concerning a State-conducted lottery to addresses within that State.



2. Position of the Postal Service.

Although the Postal Service did not take a position on the merits of S. 544 and related bills, we did express to the Congress our concern with one narrow technical question regarding the interpretation of the language of the bill. We pointed out that mail legally addressed under the new section might be forwarded in the ordinary course of business by the Postal Service to addressees who had moved to other States. It would be impossible as a practical matter for the Postal Service to prevent this from happening. Accordingly, we informed the Congress that we construed the bill as exempting from criminal or civil penalties the person who sends, and the postal employee who handles or delivers, State-conducted lottery matter bearing an in-State address which is forwarded to an address without the State. The legislative history of S. 544 does not indicate any intention by the Congress to disagree with this interpretation of the bill by the Postal Service.

3. Timing.

We have no recommendation to make as to when the measure should be signed.

4. Cost or Savings.

No additional costs or savings are anticipated insofar as the Postal Service is concerned as the result of the enactment of this legislation. Alleged violations of the mailing restrictions of the new statute will be investigated by the Postal Service upon the presentation of complaints; but we do not interpret the legislation to place an affirmative duty on

the Postal Service to screen mail or otherwise to regulate State action to ensure compliance with statutory restrictions.

5. Recommendation of
Presidential Action.

Subject to the understandings expressed above, the Postal Service has no objection to Presidential approval of S. 544.

Sincerely,



W. Allen Sanders
Assistant General Counsel
Legislative Division

Mr. W.H. Rommel
Assistant Director
Legislative Reference
Office of Management
and Budget
Washington, D.C. 20503

Department of Justice
Washington, D.C. 20530

DEC 24 1974

Honorable Roy L. Ash
Director, Office of Management
and Budget
Washington, D.C. 20503

Dear Mr. Ash:

In compliance with your request, I have examined a facsimile of the enrolled bill S. 544, "to amend Title 18 of the United States Code to permit the transportation, mailing, and broadcasting of advertising, information, and material concerning lotteries authorized by law and conducted by a State, and for other purposes."

The Department of Justice has commented favorably on virtually identical bills on numerous occasions. This legislation will resolve the dilemma facing not only this Department, but also the many states which operate lotteries. Therefore, the Department of Justice recommends Executive approval of this bill.

Sincerely,



W. Vincent Rakestraw
Assistant Attorney General





THE GENERAL COUNSEL OF THE TREASURY
WASHINGTON, D.C. 20220

DEC 24 1974

Director, Office of Management and Budget
Executive Office of the President
Washington, D.C. 20503

Attention: Assistant Director for Legislative
Reference

Sir:

Reference is made to your request for the views of this Department on the enrolled enactment of S.544, "To amend title 18 of the United States Code to permit the transportation, mailing, and broadcasting of advertising, information, and materials concerning lotteries authorized by law and conducted by a State, and for other purposes."

The enrolled enactment, insofar as it is of interest to this Department, would amend chapter 61 of title 18 United States Code to provide that criminal penalties for importing lottery tickets not be applicable to State conducted lotteries.

The Department would have no objection to a recommendation that the enrolled enactment be approved by the President.

Sincerely yours,


General Counsel

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

DEC 26 1974

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill S. 544 - State lotteries
Sponsors - Sen. Hart (D) Michigan and Sen. Griffin
(R) Michigan

Last Day for Action

January 4, 1975 - Saturday

Purpose

To permit the transportation, mailing and broadcasting of advertising, information and materials concerning lotteries authorized by State law and conducted by a State.

Agency Recommendations

Office of Management and Budget	Approval
Department of Justice	Approval
Department of the Treasury	No objection
U.S. Postal Service	No objection

Discussion

The Federal Government has historically followed a policy of refusing to allow any facility of interstate commerce or transportation to be used in connection with lotteries. Federal laws designed to suppress lotteries date back to 1872. This was based not only on moral grounds, but also on the evidence of massive control of lotteries by organized crime.

Currently, a number of States are operating or planning to operate lottery programs to generate revenues. Since the enactment of the first State lottery, State officials have urged the amendment of Federal laws to permit both the use of U.S. mails, and the publication and broadcasting of lottery information. The Federal prohibitions have been described as preventing the efficient and economical operation of State conducted lotteries.

*T.S. -
James Handley
12-26-74
7:00 p.m.*

THE WHITE HOUSE
WASHINGTON

MEMORANDUM FOR: WARREN HENDRIKS
FROM: *Max L. Friedersdorf* MAX L. FRIEDERSDORF
SUBJECT: Action Memorandum - Log No. 869
Enrolled Bill S. 544

The Office of Legislative Affairs concurs in the attached proposal and has no additional recommendations.

Attachment

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.: 869

Date: December 27, 1974

Time: 8:00 p.m.

FOR ACTION: Geoff Shepard *oh*
Max Friedersdorf *fw*
Phil Areeda *noobj*

cc (for information): Warren Hendriks
Jerry Jones

FROM THE STAFF SECRETARY

DUE: Date: Monday, December 30

Time: 1:00 p.m.

SUBJECT:

Enrolled Bill S. 544 - State Lotteries

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

K. R. COLE, JR.
For the President

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.: 869

Date: December 27, 1974

Time: 8:00 p.m.

FOR ACTION: Geoff Shepard
Max Friedersdorf
Phil Areeda

cc (for information): Warren Hendriks
Jerry Jones

FROM THE STAFF SECRETARY

DUE: Date: Monday, December 30

Time: 1:00 p.m.

SUBJECT:

Enrolled Bill S. 544 - State Lotteries

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

Approval
JCS

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

Warren K. Hendriks
For the President

Date: December 27, 1974

Time: 8:00 p.m.

FOR ACTION: Geoff Shepard
Max Friedersdorf
Phil Areeda ✓cc (for information): Warren Hendriks
Jerry Jones

FROM THE STAFF SECRETARY

DUE: Date: Monday, December 30

Time: 1:00 p.m.

SUBJECT:

Enrolled Bill S. 544 - State Lotteries

ACTION REQUESTED:

 For Necessary Action For Your Recommendations Prepare Agenda and Brief Draft Reply For Your Comments Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

*No objection
P. Areeda*PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

Warren K. Hendriks
For the President

AMENDING TITLE 18 OF THE UNITED STATES CODE TO PERMIT THE
TRANSPORTATION, MAILING, AND BROADCASTING OF ADVERTISING,
INFORMATION, AND MATERIALS CONCERNING LOTTERIES AUTHORIZED
BY LAW AND CONDUCTED BY A STATE, AND FOR OTHER
PURPOSES

DECEMBER 4, 1974.—Committed to the Committee of the Whole House on the
State of the Union and ordered to be printed

Mr. DONOHUE, from the Committee on the Judiciary,
submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany H.R. 6668]

The Committee on the Judiciary to whom was referred the bill (H.R. 6668) to amend title 18 of the United States Code to permit the transportation, mailing, and broadcasting of advertising, information, and materials concerning lotteries authorized by law and conducted by a State and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

Page 2, lines 5 and 6: Strike "located" and insert "licensed to a location".

Page 3, line 14: Strike "addresses" and insert "addresses".

ANALYSIS OF THE COMMITTEE AMENDMENTS

The first amendment, changing "located" on lines 5 and 6 of page 2 of the bill to "licensed to a location", was suggested by the Federal Communications Commission in its report to the Committee on the bill. As is discussed further in this report, all broadcast stations are licensed to serve a particular city, town, political subdivision, or community which is specified in the license. With this amendment this particular language in the bill would accordingly conform to Commission practice.

The second amendment changes "addressees" in line 14 of page 3 to read "addresses". Amended in this fashion the same term "addresses" will be used as is found in parallel language in subsection (b) of new section 1307 as it is set out in section one of the bill. It is merely a conforming amendment.

SECTION-BY-SECTION ANALYSIS

Section 1 would add a new section 1307 concerning State conducted lotteries to chapter 61 of title 18, United States Code.

Subsection (a) of new section 1307 concerns newspapers and radio and television broadcasts and would provide that sections 1301, 1302, 1303 and 1304 shall not apply to an advertisement, list of prizes, or information concerning a lottery conducted by a State acting under the authority of State law contained in (1) a newspaper published in that State or broadcast by a radio or television licensed to a location in such a State. Section 1301 covers the importation or transportation of lottery tickets; section 1302 concerns the mailing of lottery tickets or related matter; section 1303 bars officers or employees of the Postal Service from knowingly sending or delivering material relating to a lottery or acting as the agent for any lottery; and section 1304 concerns the broadcasting of advertisements or information concerning a lottery. In order to provide ready reference to the provisions of the present law as contained in the four sections referred to, the provisions of present chapter 61 of title 18, which includes sections 1301, 1302, 1303, and 1304, have been set forth in the analysis of changes in existing law at the end of this report. In this connection it should be noted that section 4 of the bill in amending section 3005 of title 39, U.S.C. provides parallel language permitting the mailing of newspapers.

Subsection (b) of new section 1307 concerns mailing or transportation and would provide that the provisions of section 1301, 1302, and 1303 shall not apply to the transportation or mailing to addresses within a State of tickets and other material concerning a lottery conducted by that State acting under the authority of State law. It should also be noted that section 4 of the bill, which will be discussed below, provides for parallel amendments to section 3005 of title 39 of the United States Code, concerning mailing within a State conducting a lottery of tickets or other material concerning that State's lottery to addresses within the State of tickets and other material concerning a lottery conducted by that State acting under the authority of State law.

Subsection (c) of the new section defines "State" for the purposes of the section, and provides that "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.

Subsection (d) defines "lottery" as used in the section as ". . . 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 . . ." It is further provided that "Lottery" does not include the placing or accepting of bets or wagers on sporting events or contests.

Section 2 of the bill amends the analysis of Chapter 61 as set forth at the beginning of that chapter in title 18 to include the item "1307. State Conducted Lotteries."

Section 3 of the bill amends section 1953(b) of title 18 by adding a new paragraph (4). The section bars the interstate transportation of wagering paraphernalia and subsection (b) provides exceptions. New paragraph (4) added by this bill would provide the following exception:

(4) equipment, tickets or material used or designed for use within a State in a lottery conducted by that State acting under authority of State law.

Section 4 of the bill adds a new subsection (d) to section 3005 of Title 39—Postal Service, United States Code. Section 3005 now contains explicit provisions concerning the handling of mail which relates to the conduct of a lottery. As has been noted, the language of new subsection (d) contains provisions concerning mailings which are parallel to those contained in new section 1307 of title 18, subsections (a) and (b). Accordingly, new subsection (d) of section 3005 of title 39 provides that the provisions of the section will not prohibit the mailing of:

(1) a newspaper of general circulation published in a State containing advertisements, lists of prizes, or information concerning a lottery conducted by that State acting under authority of State law, or (2) tickets or other materials concerning such a lottery within that State to addresses within that State.

In a similar manner the subsection contains the same definition of "State" as is set forth in subsection (c) of new section 1307 of title 18. That is that "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."

PURPOSE

The purpose of the proposed legislation, as amended, is to amend existing provisions of law so as to permit the broadcasting of advertising, lists of prizes, or information concerning a State conducted lottery by a radio or television station licensed to a location in a State conducting a lottery under the authority of State law. The bill would similarly permit the mailing of newspapers published in the State containing advertisements, lists of prizes or information concerning a State conducted lottery. Under a separate subsection, the transportation or mailing of tickets and other materials concerning a State conducted lottery within the State to addresses within the State would be permitted. These changes would be accomplished by adding a new section 1307 to chapter 61.—Lotteries, of title 18, United States Code, and by adding a new subsection (d) to section 3005 of title 39 of the Code.

STATEMENT

In the 92nd Congress the Committee reported the bill H.R. 2374. The amendments to that bill approved by the Committee in 1972 were the result of consideration in the subcommittee and before the Full Committee. The language approved in that Congress was, with one modification, incorporated in the bill H.R. 6668 in the current Congress. The provisions of H.R. 6668 are intended to deal with specific

problems now faced by States which conduct lotteries. It should be stated that there are some thirteen States which have provided for State lotteries. The provisions of present section 1304 of title 18 have the effect of barring any radio or television station from broadcasting information concerning a State lottery or any advertisement concerning the lottery. As a result, no such information about such a lottery can be carried by local stations within the State. Similarly, present section 1302 bars the mailing of any newspaper containing a list of prizes awarded or drawn in connection with a State lottery or containing an advertisement concerning the lottery. Subsection (a) of new section 1307 as added by the bill deals with these subjects by providing that the restrictions could not apply to an advertisement, list of prizes or information concerning a State lottery contained in a newspaper published in that State or broadcast by a radio or television station licensed to a location in a State conducting a lottery under the authority of State law. Also, the bill makes a similar amendment as to newspapers to section 3005 of title 39, which now bars as nonmailable, mail relating to a lottery. Under the bill, a newspaper of general circulation published in a State conducting a lottery would be mailable without restriction when it contained advertisements, or contained lists of prizes or information concerning that lottery. The exceptions provided in the bill also refer to section 1301 of title 18, referring to transportation of advertisements or lists of prizes of a lottery, and section 1303 of title 18, referring to handling of lottery matter by Postal Service employees. The reference to these two sections in defining the exceptions are necessary because their provisions would apply to newspapers containing information about its State lottery, or lists of prizes or advertisements concerning that lottery. The bill would therefore permit the interstate mailing or transportation of such newspapers.

Present Sections 1301, 1302, and 1303 of title 18, as well as section 3005 of title 39, now bar any State conducting a lottery authorized by its laws from mailing any material concerning its lottery or any tickets. The bill in subsection (b) of new section 1307 and new subsection (d) of section 3005 would permit the mailing of tickets and other material relating to a State lottery within the State conducting the lottery to addresses within that State.

The transportation of tickets and materials relating to a State lottery are now subject to the prohibitions contained in sections 1301 of title 18 and in section 1953 of that title. The bill, as amended, provides in subsection (b) of new section 1307 and by the amendment of 1953(b) in section 3 that the transportation of equipment, tickets, or materials used or designed for use within a State conducting such a lottery under the authority of its State law to addresses within that State would be permitted.

In a report to the committee on the bill in the 92nd Congress, the United States Postal Service took no position on the bill, but noted the relevance of section 3005 of title 39 to the subject matter of the bill. As has been noted, H.R. 6668 provides for parallel amendments to that section.

At a hearing conducted on the bill H.R. 2374 and companion bills on October 13, 1971, the witness representing the Department of Justice stated that the Department would have no objection to an amended

bill and outlined the basic principles for that amendment. A committee amendment was drafted to the 92nd Congress bill on the basis of those principles. The ultimate form of that language was the result of further discussion and refinement in subcommittee and before the full committee.

The bill H.R. 2374 was favorably reported to the House with that amendment on August 2, 1972. However, action on that bill was not completed in that Congress. The bill in the current Congress, H.R. 6668, was introduced with substantially the same language as was approved by the Committee in the 92nd Congress. The bill H.R. 6668 is intended to deal with the impact of certain provisions of federal law on the conduct of State conducted lotteries in those instances where the law of that particular State authorizes such a lottery. It was asserted in testimony at the hearing on April 24, 1974 on this and similar bills that without the amendments proposed in this bill, the policy determinations of some States in authorizing a lottery are inhibited by provisions of Federal law even though the lottery functions only within that State. Thus in considering this legislation the committee was faced with the task of making a reasonable balance between Federal and State interests in this area. Of course, this includes the consideration and protection of the policies and the interests of the States which do not provide for such lotteries.

At the hearing on April 24, 1974, the witness representing the Department of Justice noted that H.R. 6668 proposes to amend Title 18 of the United States Code to permit the transportation, mailing, and broadcasting of advertising, information, and materials concerning lotteries authorized by law and conducted by a state. The witness noted that the text of this bill is substantially identical to H.R. 2374, as amended, as reported by this Committee during the 92nd Congress, and that Assistant Attorney General Henry E. Petersen, then Deputy Assistant Attorney General, testified before Subcommittee No. 2 of this Committee on October 13, 1971, and presented views of the Justice Department on H.R. 2374 and related bills. At that time, Mr. Petersen stated that the Department would not object to the enactment of H.R. 2374, if amended as he had suggested. The suggestions were embodied in the following language:

(1) The bill should amend sections 1084, 1953, and chapter 61 of title 18.

(2) It should permit the mailing of lottery tickets and related matter, the broadcasting or televising of lottery information, and the transportation and advertising of lottery tickets using facilities of interstate commerce when:

- (a) the lottery activity is wholly within one state; or
- (b) the lottery activity is between two or more states each of which conducts a lottery specifically authorized by state law permitting the placing of bets on other state lotteries; and
- (c) the lottery in every instance is conducted by an agency of a state, or of the District of Columbia acting under authority of law.

In explaining the Department's recommendations, the witness stated that the Department would not favor any change in the law which would have the effect of opening up the channels of commerce to

individuals who would seize upon the existence of a State authorized lottery to "commercialize the process". It was explained that this meant that the Department didn't want it to be possible for criminals to engage in interstate traffic in lottery tickets. On April 24, 1974 the Justice Department statement quoted from testimony to Max Goldman, President of System Operations, Inc., before the Commission on the Review of the National Policy Toward Gambling, that pointed out that today most state-operated lotteries are conducted by means of a central computer with information key-punched into its memory banks concerning every aspect of the lottery operation. This method prevents ticket alterations and duplications, improper claims, and thefts. It was further asserted that these procedures operate to hinder organized criminal groups from infiltrating or stealing from these state lotteries. As to the transport of tickets in the mails in 1971 the Justice Department witness stated:

Secondly, I think there ought to be some limitation too on the ability to transport lottery tickets through the mails, as opposed to advertising either on radio or television and in the newspapers, because it opens itself up to the same type of abuse. And I think we want to preserve our position in that regard to be able to prosecute those who are commercializing for private gain a State-operated lottery."

It should be noted that the language of H.R. 6668 limits the scope of the exceptions provided for state lotteries, and does not implement some of the suggestions to the extent recommended by the Department. Specifically, the bill does not propose any change in section 1084 of title 18, and does not have a provision based on item 2(b) above concerning lottery activity between two or more states when each conducts a lottery. At the hearing on April 24, 1974, the Justice Department witness stated that when H.R. 2374 was reported with an amendment on August 2, 1972, the amendment was responsive to Mr. Petersen's recommendations made in his testimony on October 13, 1971, with the exception that the mailing and transportation of lottery materials were restricted to intrastate facilities within those states legally operating lotteries. The witness further stated that the Department supported the enactment of that amended bill. As to the present bill, he said:

The reintroduction of amended H.R. 2374 as H.R. 6668 elicits the same support from the Justice Department. We recognize that a number of states are reconsidering their formerly hostile attitudes and policies toward lotteries. Some state legislatures have already approved the operation of lotteries by state agencies. However, we also appreciate that just as many states do not desire either to operate lotteries within their boundaries or to permit betting by mail on lotteries legally conducted in sister states.

This support for the bill was repeated in a letter from the Attorney General on September 6, 1974 which is set out following this report. The committee desires to emphasize that the bill would not dilute the ability of the Federal Government to move strongly against illegal lotteries with interstate ramifications. Also, it should be emphasized that this bill applies only to state-conducted lotteries and not to any

other gambling activities even though conducted by the state. In this connection it can be noted that the language of the committee amendment is drafted so as to retain the present restrictions of titles 18 and 39 on all lotteries except for the exceptions provided in the amendment concerning lotteries conducted by a State acting under the authority of State law.

As has already been discussed in connection with the explanation of the committee amendments, the substitution of the words "licensed to a location" for the word "located" in subsection (a) of new section 1307 was recommended in the report of the Federal Communications Commission on the bill. This is a change recommended by that Commission to clarify the meaning of the provision. Under FCC rules and regulations, a station's transmitter or studio may be located in a place different from the location specified in its license and, in border areas, a station's transmitter or studio may even be located in an adjacent State. For example, WNJU-TV is licensed to Linden, New Jersey, but its transmitter is located in New York City. In order to avoid conflicting interpretations where a particular station might be considered to be "located" in either of two adjacent States, one conducting a lottery and the other not, the Commission recommended that the language of H.R. 6668 be amended to provide as follows:

(2) broadcast by a radio or television station licensed to a location in a State conducting such a lottery.

Under the Commission's rules and regulations, all broadcast stations are licensed to serve a particular city, town, political subdivision or community which is specified in the station license. Under the above language, a station would be considered to be located in the place specified in its license regardless of the physical location of its transmitter or studio.

The report of the Federal Communications Commission, which is set out in full following this report, was very helpful to the committee in clarifying the aspects of the bill bearing upon radio and television broadcasting. The bill H.R. 6668 in providing an exemption from 18 USC § 1304 for advertisements, lists of prizes or information concerning a state-conducted lottery would permit any radio or television station located in any state which authorizes or conducts such a lottery to broadcast that subject matter concerning any state authorized and conducted lottery. This is detailed in the Commission report as follows:

It is our understanding that H.R. 6668, in proposing an exemption from 18 U.S.C. section 1304 for advertisements, lists of prizes, or information concerning a lottery, would permit any radio or television station to broadcast material concerning *any* state authorized and conducted lottery if the station is located in *any* state which authorizes and conducts such a lottery. Thus, for example, stations in New York State would be allowed to broadcast material concerning the New Jersey State lottery and the Pennsylvania State lottery, as well as information concerning the lottery authorized and conducted by the State of New York. As noted in the foregoing example, New York, Pennsylvania, and New Jersey all

conduct state authorized lotteries. However, since the television stations licensed to locations within the State of New Jersey are fewer in number and have proportionately fewer viewers than those licensed to the New York City and Philadelphia areas, which together cover most of New Jersey as well, New Jersey would be at a disadvantage in promoting its lottery if an exemption were limited to allowing a station to broadcast only such information as concerned the lottery which was authorized and conducted by the State in which it was located. A revision of existing law as contemplated by H.R. 6668 would therefore assist in promoting the New Jersey (and other) state conducted lotteries. * * *

When the subcommittee took favorable action on the bill 6668 and reported it to the full committee it recommended a series of amendments which would have extended the exceptions in the bill to lotteries “* * * authorized and licensed in accordance with State law.” These amendments were rejected by the full committee, and are the amendments referred to in the statement of additional views appended to this report. The Justice Department opposed this series of amendments and, as has been noted, they were not accepted by the full committee and were not reported to the House. The reasons for the opposition of the Justice Department are detailed in a letter to the Chairman of this Committee dated November 26, 1974 which is set out at the end of this report.

COMMITTEE VOTE

On Wednesday, November 27, 1974, the full committee on the Judiciary approved the bill, H.R. 6668, with the amendments recommended in this report by voice vote.

COST

The amendments to titles 18 and 39 of the United States Code provides for in the bill concern law enforcement activity under title 18 and the regulation of the mails under title 39. It is not possible to predict what impact or change these provisions will have in terms of cost to the Government.

CONCLUSION

The committee has concluded that the facts presented to the committee in connection with this legislation provide the basis for the approval of the amended bill. It is recommended that the amended bill be considered favorably.

CHANGES IN EXISTING LAW

In compliance with paragraph 2 of clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

UNITED STATES CODE

TITLE 18.—CRIMES AND CRIMINAL PROCEDURE

Chapter 61.—LOTTERIES

- Sec.
 1301. Importing or transporting lottery tickets.
 1302. Mailing lottery tickets or related matter.
 1303. Postmaster or employee as lottery agent.
 1304. Broadcasting lottery information.
 1305. Fishing contests.
 1306. Participation by financial institutions.
 1307. *State Conducted Lotteries.*

§ 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 knowingly takes or receives any such paper, certificate, instrument, advertisement, or list so brought, deposited, or transported, shall be fined not more than \$1,000 or imprisoned not more than two years, or both.

§ 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 not more than \$1,000 or imprisoned not more than two years, or both; and for any subsequent offense shall be imprisoned not more than five years.

§ 1303. Postmaster or employee as lottery agent.

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 not more than \$100 or imprisoned not more than one year, or both.

§ 1304. Broadcasting lottery information.

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 not more than \$1,000 or imprisoned not more than one year, or both.

Each day's broadcasting shall constitute a separate offense.

§ 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 recreation event.

§ 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, section 20 of the Federal Deposit Insurance Act, or section 410 of the National Housing Act shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

§ 1307. State Conducted Lotteries.

"(a) The provisions of §§ 1301, 1302, 1303, and 1304 shall not apply to an advertisement, list of prizes, or information concerning a lottery conducted by a State acting under the authority of State law

"(1) contained in a newspaper published in that State, or

"(2) broadcast by a radio or television station licensed to a location in a State conducting such a lottery.

"(b) The provisions of §§ 1301, 1302, and 1303 shall not apply to the transportation or mailing to addresses within a State of tickets and other material concerning a lottery conducted by that State acting under authority of State law.

"(c) For the purposes of this section '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.

"(d) For the purposes 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."

* * * * *

UNITED STATES CODE

TITLE 18.—CRIMES AND CRIMINAL PROCEDURE

* * * * *

Chapter 95.—RACKETEERING

* * * * *

§ 1953. Interstate transportation of wagering paraphernalia.

(a) Whoever, except a common carrier in the usual course of its business, knowingly carries or sends in interstate or foreign commerce any record, paraphernalia, ticket, certificate, bills, slip, token, paper, writing, or other device used, or to be used, or adapted, devised, or designed for use in (a) bookmaking; or (b) wagering pools with respect to a sporting event; or (c) in a numbers, policy, bolita, or similar game shall be fined not more than \$10,000 or imprisoned for not more than five years or both.

(b) This section shall not apply to (1) parimutuel betting equipment, parimutuel tickets where legally acquired, or parimutuel materials used or designed for use at racetracks or other sporting events in connection with which betting is legal under applicable State law, or (2) the transportation of butting materials to be used in the placing of bets or wagers on a sporting event into a State in which such betting is legal under the statutes of that State, or (3) the carriage or transportation in interstate or foreign commerce of any newspaper or similar publication[.], or (4) equipment, tickets or materials used or designed for use within a State in a lottery conducted by that State acting under authority of State law.

(c) Nothing contained in this section shall create immunity from criminal prosecution under any laws of any State, Commonwealth of Puerto Rico, territory, possession, or the District of Columbia.

UNITED STATES CODE

TITLE 39.—POSTAL SERVICE

* * * * *

Chapter 30.—NONMAILABLE MATTER

* * * * *

§ 3005. False representations; lotteries.

(a) Upon evidence satisfactory to the Postal Service that any person is engaged in conducting a scheme or device for obtaining money or property through the mail by means of false representatives, or is engaged in conducting a lottery, gift enterprise, or scheme for the distribution of money or of real or personal property, by lottery, chance, or drawing of any kind, the Postal Service may issue an order which—

(1) directs the postmaster of the post office at which mail arrives, addressed to such a person or to his representative, to return such mail to the sender appropriately marked as in violation of this section, if the person, or his representative, is first notified and given reasonable opportunity to be present at the receiving post office to survey the mail before the postmaster returns the mail to the sender; and

(2) forbids the payment by a postmaster to the person or his representative of any money order or postal note drawn to the order of either and provides for the return to the remitter of the sum named in the money order or postal note.

(b) The public advertisement by a person engaged in activities covered by subsection (a) of this section, that remittances may be made by mail to a person named in the advertisement, is prima facie evidence that the latter is the agent or representative of the advertiser for the receipt of remittances on behalf of the advertiser. The Postal Service may ascertain the existence of the agency in any other legal way satisfactory to it.

(c) As used in this section and section 3006 of this title, the term "representative" includes an agent or representative acting as an individual or as a firm, bank, corporation, or association of any kind.

(d) *Nothing in this section shall prohibit the mailing of (1) a newspaper of general circulation published in a State containing advertisements, lists of prizes, or information concerning a lottery conducted by that State acting under authority of State law, or (2) tickets or other materials concerning such a lottery within that State to addresses within that State. For the purposes of this subsection, "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.*

OFFICE OF THE ATTORNEY GENERAL,
Washington, D.C., September 6, 1974.

HON. PETER W. RODINO, JR.,
Chairman, Committee on the Judiciary, House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: The Department of Justice has conducted an active review of the application of federal law to the activities of state-operated lotteries, and that review concludes that there are a number of apparent violations of federal law with respect to the manner in which state lotteries are now being conducted. Officials of the Department over the past several months have been in consultation with state officials on this subject. I felt the situation so urgent and important that I have invited the Governors of the affected states to meet with me on September 6.

Federal statutes with respect to lotteries were enacted nearly a century ago when states generally prohibited all lotteries. Today there are 13 state-operated lotteries authorized by state law, and a number of other states are considering implementing lotteries.

The apparent conflict of state law and federal law in this area presents a unique problem and unusual stresses on the demands of comity between the federal government and sovereign states.

On April 24, 1974, the Department of Justice testified before the House Judiciary Subcommittee on Claims and Government Relations

on H.R. 6668, a bill to amend Title 18 of the United States Code to permit the transportation, mailing, and broadcasting of advertising, information, and materials concerning lotteries authorized by law and conducted by and within the state. We supported enactment of such legislation and pointed out the necessity for some legislative accommodation if state-operated lotteries were to be continued in the contemplated manner. A similar bill, S. 544, is pending before the Senate Judiciary Subcommittee on Criminal Laws and Procedures.

The Department urges Congress to take immediate action on H.R. 6668, S. 544, or similar legislation, in order to obviate any action which the Department may otherwise find necessary against lottery operations authorized by the citizens of their states.

The Department recommends legislation which would exempt State-operated lotteries from the provisions of federal criminal law that may now be applicable to them under Title 18, while at the same time preserving and protecting the rights of those citizens who reside in states which continue to outlaw the operations of lotteries.

Sincerely,

WM. B. SAXBE,
Attorney General.

U.S. POSTAL SERVICE,
LAW DEPARTMENT,
Washington, D.C., April 24, 1974.

HON. PETER W. RODINO, JR.,
Chairman, Committee on the Judiciary,
House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: This responds to your request for the further views of the Postal Service on H.R. 6668, a bill that would amend titles 18 and 39 of the United States Code to permit the transportation, mailing, and broadcasting of advertising, information, and materials concerning lotteries conducted by a State acting under the authority of State law.

As we construe it, H.R. 6668 would exempt from the operation of the civil and criminal lottery statutes matter concerning a State-conducted lottery which is introduced into the mailstream bearing an in-State address. If this legislation is enacted, the Postal Service would expect to apply to mail exempted from the lottery statutes all its ordinary procedures for mail processing and delivery, including the procedures for forwarding mail to a postal customer who has changed his address. We construe the bill to exempt from criminal and civil penalties the person who sends, and the postal employee who handles or delivers, exempted matter bearing an in-State address which is forwarded to an address without the State.

We recommend that the legislative history of this measure reflect Committee approval of the Postal Service interpretation of the proposed legislation.

We also note that the bill appears to require technical amendment to resolve the inconsistent use of "addresses" in proposed 18 U.S.C. § 1307(b) and "addressees" in proposed 39 U.S.C. § 3005(d).

Sincerely,

LOUIS A. COX, *General Counsel.*

COMMISSION ON THE REVIEW OF THE
NATIONAL POLICY TOWARD GAMBLING,
Washington, D.C., September 13, 1974.

HON. PETER W. RODINO,
Chairman, House Committee on Judiciary.

DEAR MR. CHAIRMAN: On September 6, 1974, the Department of Justice notified those states which operate lotteries that the Department was presently considering civil injunctive proceedings pursuant to Title 18 U.S.C. 1964 for "patterns of racketeering" involving violations of criminal statutes such as Title 18 U.S.C. 1301, 1302, 1304, 1306, 1952 and 1953. The Department further advised the group of their prior support of HR 6668 and their preferred support of S. 3524 if amended in accordance with their suggestions.

This will advise you that the Commission created pursuant to the Organized Crime Control Act of 1970, with a responsibility to make its recommendations to the President and Congress on the existing practices relating to the prohibition and taxation of gambling activities, will continue to hold hearings regarding state lotteries and the Federal policies relating to their operation. We are enclosing for your information a summary of testimony previously offered at a hearing and tentative findings prepared by the Commission staff and presented to the Commission.

Our future hearings will concern themselves with the positions of the various states regarding the applicability of existing laws to their state lottery, the rights of the states to raise revenue in this manner without interference by the Federal Government and, in general, an in-depth determination of policy matters arising from proposed changes in the Federal practices from legislation introduced to your Committee. These hearings will begin in mid-October and hopefully can be concluded by early February, 1975.

In the past we have benefited from the information supplied by your Committee. I hope that this benefit has been reciprocal by our supplying to you all information which we have gathered.

It is our hope that the Commission might decide to make an interim recommendation to the President and Congress on the subject of state operated lotteries. Furthermore, we hope that this recommendation would be timely considering the proposed legislative change to the existing policy. In any event, we shall attempt at our earliest opportunity to report back to you regarding the date of any such proposed recommendation.

Sincerely,

CHARLES H. MORIN, *Chairman.*

SUMMARY OF LOTTERY FINDINGS

Lotteries were a popular source of public revenue throughout much of our early history, but public confidence in them was so shaken by a wave of corruption in the nineteenth century that they were prohibited outright by every state in the union. In addition, the Federal Government enacted statutes which denied lotteries the use of the facilities of interstate commerce. Government-operated lotteries returned to the American scene in 1963, when New Hampshire inaugurated a Sweepstakes for the benefit of the State Treasury. The birth of the modern state lottery came about in New Jersey in 1970, when that state intro-

duced a computerized, weekly, 50¢ game. There now exists a blanket of 13 lottery states stretching from Maine to Illinois in the West and Maryland in the South, with only Vermont still in abstention. A number of other states are giving lotteries serious consideration.

One of the primary reasons for the current popularity of lotteries as a source of state revenues has been the absence of scandal attending their operation. In each of the lotteries, all tickets are fully accounted for at all times by a central computer, and a dual auditing system accounts for the flow of revenues at each step of the operation. The general model for the operating structure of a state lottery consists of an appointed commission with advisory responsibilities, and an executive director with a free hand in running the day-to-day operation. Tickets are distributed on consignment to authorized banks and sales agents, who are licensed by the state after careful scrutiny. The tickets are sent through the banks to the sales agents, and unsold tickets and revenues are returned to the state, less a 5 or 6 percent commission for the agents and 1/2 or 1 percent commission for the banks, which also benefit from the use of the funds. Prize payments generally equal 45 percent of gross revenue receipts. The remainder is returned as net revenue to the state after operating expenses are subtracted. These expenses vary from about 10 to 15 percent of gross revenues after deducting expenses and prizes. In absolute terms this represents a large sum of money—\$60 million annually in New York, New Jersey and Pennsylvania—but this amounts to only a small percentage of overall state revenues, ranging from less than 1 percent to over 3 percent of total tax revenue.

The question of the social impact of lotteries has been often raised. The preliminary data to date indicate that state lotteries have a broad appeal, that all income groups seem to participate to almost the same degree, and that the average expenditure of families which bet on lotteries is less than \$10 annually. State lotteries do not appear to have been successful in reducing the wagering on illegal numbers games. Testimony was given before the Commission that lotteries are a regressive form of taxation, and that they are an inefficient means of raising revenue when compared to a broad-based tax. In addition, lottery receipts tend to drift downward in time after the initial excitement and novelty wears off. This has resulted in constant promotional efforts by the state lotteries in order to maintain sales levels. The advertising budget of state lotteries accounts for approximately one third of the total operating expenses. The main theme of those lottery directors who testified before the Commission was that the lottery is a popular, profitable state enterprise, supported by millions of citizens and raising much-needed revenues for the public good. The operational structures of the lotteries have been designed to insure security and honesty at the expense of some revenues. They stressed that the lottery is basically a business, operated as a public corporation by the state as a legitimate means of raising revenue, and that like any consumer product, the lottery must be marketed and promoted to maintain public interest. They urged the revision of those Federal statutes which they believe to be preventing the state lotteries from realizing their true revenue potential.

In summary, lotteries appear to be a relatively benign form of gambling from a social standpoint, and no evidence of corruption in

their operation has been reported. However, they are capable of raising only modest revenues for State Governments, and must be constantly promoted in order for interest to be maintained. Finally, the inconsistency between Federal restrictions on state lotteries on the one hand and Federal efforts to promote revenue sharing on the other should be noted, although any statutory reform should take into account the interests of states which wish to prohibit lotteries within their borders.

THE DISTRICT OF COLUMBIA,
Washington, D.C., August 10, 1971.

HON. EMANUEL CELLER,
Chairman, Committee on the Judiciary, U.S. House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: The Commissioner of the District of Columbia has for report H.R. 2374, a bill "To amend title 18 of the United States Code to permit the mailing of lottery tickets and related matter, the broadcasting or televising of lottery information, and the transportation and advertising of lottery tickets in interstate commerce, but only where the lottery is conducted by a State agency", H.R. 2646, a bill "To amend chapter 1 of title 18 of the United States Code to permit the publication and dissemination of information relating to the sweepstakes conducted by any State or the District of Columbia", and H.R. 2647, a bill "To exempt receipts, tickets, and other acknowledgements of any State or the District of Columbia in connection with any sweepstakes operated by such State or the District of Columbia from the provisions of section 1953 of title 18, United States Code.

These bills would remove existing restrictions on the publication and dissemination of information and tickets in regard to a lottery to allow the mailing of tickets and related matter, broadcasting of pertinent information, and advertising of the lottery when the lottery is being conducted by a State agency, presumably as a revenue-raising measure.

Separate legislation would probably be necessary in order for the District of Columbia to implement a lottery, but these bills would remove certain legal obstacles to such a step were it deemed a practical revenue-raising measure for the city.

The Commissioner wishes to point out that the Organized Crime Control Act 1970 (Public Law 91-452, approved October 15, 1970) established, effective October 15, 1972, a Commission on the Review of the National Policy Toward Gambling. Since that Commission was established to conduct a comprehensive review of existing Federal, State, and local policies in reference to gambling, the Commissioner believes that no action should be taken with respect to H.R. 2374, H.R. 2646, or H.R. 2647 until the Commission's recommendations are available.

The Office of Management and Budget has advised that, from the standpoint of the Administration's program, there is no objection to the submission of this report to the Congress.

Sincerely yours,

GRAHAM W. WATT,
Assistant to the Commissioner.
(For Walter E. Washington, Commissioner).

SENIOR ASSISTANT POSTMASTER GENERAL
AND GENERAL COUNCIL,
Washington, D.C., October 13, 1971.

HON. EMANUEL CELLER,
Chairman, Committee on the Judiciary, U.S. House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for a report on H.R. 2374 and H.R. 2646, bills which would amend chapter 61 and sections 1084 and 1953 of title 18, United States Code, so as to exempt State-operated lotteries and sweepstakes from the criminal sanctions against the mailing of material relating to lotteries.

The Postal Service takes no position with regard to the merits of these legislative proposals. We note, however, that neither bill would change 39 U.S.C. § 3005, which provides that the Postal Service may issue an order causing all mail relevant to a lottery, which might be sent to the operator of a lottery by members of the public, to be returned to the senders, with the reason for such return marked on the mail.

Should the bills be enacted in their present form we anticipate that the Postal Service would exercise its discretion not to enforce the provisions of section 3005 against any State-operated lottery or sweepstakes. Such an exercise of discretion would appear consistent with the apparent purposes of H.R. 2374 and particularly appropriate in view of section 2 of H.R. 2646—a provision not present in H.R. 2374—which provides that any State or the District of Columbia may accept mail orders for sweepstakes tickets "notwithstanding any other provision of law."

We would recommend that the legislative history of the measures reflect the understanding of the Postal Service as to their consequences under 39 U.S.C. § 3005. Should the Committee believe, however, that an amendment to section 3005 would be desirable, to make these consequences explicit, we would be pleased to assist in the drafting of such amendment.

Sincerely,

DAVID A. NELSON,
By ROGER P. CRAIG,
Associate General Counsel for General Law.

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D.C., May 13, 1974.

HON. PETER W. RODINO, JR.,
Chairman, Committee on the Judiciary, House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for the Commission's views on H.R. 6668 and companion bills concerning lotteries which are presently under consideration by the Subcommittee on Claims and Governmental Relations of the Committee on the Judiciary. The majority of these bills, including H.R. 6668, generally would amend title 18 of the United States Code to permit the transportation, mailing and broadcasting of advertising, information, and

materials concerning lotteries authorized by law and conducted by a State.

Existing law, 18 U.S.C. Section 1304, prohibits ". . . 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 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 . . ."

Violations of existing law are punishable by a fine or not more than \$1,000, or imprisonment of not more than one year, or both. While criminal prosecution under this statute is solely within the jurisdiction of the Department of Justice, the Commission is authorized under the provisions of Sections 312(a)(6) and 503(b)(1)(E) of the Communications Act (47 USC 312(a)(6), 503(b)(1)(E)) to revoke a broadcast license or to impose a monetary forfeiture upon a licensee for violation of 18 U.S.C. Section 1304 regardless of whether criminal prosecution has been initiated.

H.R. 6668 would amend title 18 of the United States Code by adding a new section 1307 providing, *inter alia*:

(a) The provisions of sections 1301, 1302, 1303, and 1304 shall not apply to an advertisement, list of prizes, or information concerning a lottery conducted by a State acting under the authority of State law—

(2) broadcast by a radio or television station located in a State conducting such a lottery.¹

Certain of the companion bills under consideration by the Subcommittee which similarly exempt state conducted lotteries contain somewhat different language in their proposed section 1307(a)(2):

(2) broadcast by a radio or television station located in that State.²

The Commission has no particular expertise with respect to the policy considerations underlying the Federal anti-lottery statutes or the Federal-state relationships which are involved. Therefore, the Commission takes no position on the merits of H.R. 6668 or the companion bills as they relate to exempting the broadcasting of material concerning state authorized and conducted lotteries. We do note that in its statement before the Subcommittee on April 24, 1974, the Department of Justice generally favored enactment of H.R. 6668 as promoting the policy decisions of those states which have determined to conduct lotteries, while protecting the public policy of still other states which have rejected lotteries, and we would defer to this judgment. In this regard, the Commission has recognized on several occasions that an anomalous situation is created where a state has enacted lottery legislation and is operating an entirely legal state lottery, while 18 U.S.C. section 1304 nevertheless substantially restricts the use of the broadcast media to inform the state's citizens of such lottery. The applicable Commission regulations (sections 73.122(AM), 73.292(FM) and 73.656(TV)) are of necessity based on the existing statute, which

¹ The same language is proposed by H.R. 7718 (page 1, lines 7-8, page 2, lines 1-2, 5-6) and H.R. 7276 (page 1, lines 7-10, page 2, lines 3-4).

² This language is contained in H.R. 1485 (page 1, lines 7-8, page 2, lines 1-2, 5-6), H.R. 1991 (page 1, lines 7-8, page 2, lines 1-2, 5-6), H.R. 3503 (page 1, lines 7-10, page 2, lines 3-4), H.R. 3806 (page 1, lines 8-9, page 2, lines 1-2, 5-6), H.R. 5875 (page 1, lines 7-8, page 2, lines 1-2, 5-6), H.R. 6454 (page 1, lines 7-10, page 2, lines 3-4), and H.R. 6536 (page 1, lines 7-8, page 2, lines 1-2, 5-6).

does not distinguish between lotteries that are legal or illegal under state law or between lotteries that are operated by private parties and state-conducted lotteries. Thus, until the present Federal law pertaining to the broadcast of lottery-related material is amended or in some manner qualified by authoritative judicial opinion,³ the Commission views the proper discharge of its responsibilities as leaving it no alternative but to apply the language of the statute.

It is our understanding that H.R. 6668, in proposing an exemption from 18 U.S.C. section 1304 for advertisements, lists of prizes, or information concerning a lottery, would permit any radio or television station to broadcast material concerning *any* state authorized and conducted lottery if the station is located in *any* state which authorizes and conducts such a lottery.⁴ Thus, for example, stations in New York State would be allowed to broadcast material concerning the New Jersey State lottery and the Pennsylvania State lottery, as well as information concerning the lottery authorized and conducted by the State of New York. As noted in the foregoing example, New York, Pennsylvania, and New Jersey all conduct state authorized lotteries. However, since the television stations licensed to locations within the State of New Jersey are fewer in number and have proportionately fewer viewers than those licensed to the New York City and Philadelphia areas, which together cover most of New Jersey as well, New Jersey would be at a disadvantage in promoting its lottery if an exemption were limited to allowing a station to broadcast only such information as concerned the lottery which was authorized and conducted by the State in which it was located.⁵ A revision of existing law as contem-

³ In *New Jersey State Lottery Commission v. United States*, — F. 2d — (3rd Cir., decided January 2, 1974), the U.S. Court of Appeals for the Third Circuit reversed a Commission ruling that the broadcast of a winning number in a state conducted lottery in the form of a news report constituted direct promotion of a lottery and was thus prohibited by 18 U.S.C. section 1304. The court held that news broadcasts were exempt from the prohibition of that statute which, according to the court's interpretation of the First Amendment, should be construed to apply only "to the promotion of lotteries for which the licensee receives compensation" and perhaps also to "some uncompensated promotional announcements outside the context of broadcast journalism [which] might be found by the FCC to be promotional and not news."

The Commission and the Department of Justice have petitioned the United States Supreme Court for a writ of certiorari to review this judgment based on its conflict with *New York State Broadcasters Association, Inc. v. United States*, 414 F. 2d 990 (2d Cir. 1968), *cert. den.* 396 U.S. 1061 (1970), which emphasized that the test of the statute's applicability should be whether the broadcast directly promotes or facilitates the lottery, rather than whether the station is compensated for the broadcast. The petition is also founded on the belief of the FCC and the Justice Department that the Third Circuit's decision in effect erroneously declares a portion of the statute unconstitutional as violative of the First Amendment.

⁴ Should this interpretation of H.R. 6668 be correct, the Commission would recommend clarifying the pertinent language of proposed section 1307(a)(2) to read as follows: (2) broadcast by a radio or television station licensed to a location in any State conducting such a lottery.

⁵ The 1973-74 edition of *Television Factbook* provides the following daily circulation figures for 1971-72 with respect to the number of different television households reached by commercial television stations licensed to New York City, Philadelphia, and communities in Northern and Southern New Jersey:

New York City stations:		Northern New Jersey stations:	
WABC-TV	3,016,400	WNJU-TV (Linden)	42,100
WCBS-TV	3,654,900	WXTV-TV (Paterson)	35,900
WNBC-TV	3,521,200		
WNEW-TV	2,701,700		
WOR-TV	1,528,100		
WPIX-TV	1,877,800		
Philadelphia stations:		Southern New Jersey stations:	
KYW-TV	1,340,700	WKBS-TV (Burlington)	454,700
WCAU-TV	1,404,400	WCMC-TV (Wildwood)	900
WPHL-TV	451,900		
WPVI-TV	1,539,100		
WTAF-TV	368,300		

plated by H.R. 6668 would therefore assist in promoting the New Jersey (and other) state conducted lotteries. On the other hand, since broadcast signals, as a technological matter, cannot be confined to political boundaries, such an exemption would also result in a wider dissemination of information concerning state conducted lotteries into states which do not conduct lotteries. Whether it is desirable to create an exemption as broad as that in H.R. 6668, rather than the narrower exemption provided by some of the companion bills (e.g., H.R. 1485), or the broader exemption of other bills (e.g., H.R. 6971, H.R. 12235), is a question on which we express no opinion.

Should H.R. 6668 or similar legislation be enacted, the Commission recommends amending language to clarify the meaning of the phrase "broadcast by a radio or television station located in a State conducting such a lottery" as that phrase is employed on page 2, lines 5-6 of H.R. 6668 (emphasis added). Under FCC rules and regulations, a station's transmitter or studio may be located in a place different from the location specified in its license and, in border areas, a station's transmitter or studio may even be located in an adjacent State. For example, WNJU-TV is licensed to Linden, New Jersey, but its transmitter is located in New York City. In order to avoid conflicting interpretations where a particular station might be considered to be "located" in either of two adjacent States, one conducting a lottery and the other not, the Commission recommends that the above-quoted language of H.R. 6668 be amended to provide as follows:

(2) broadcast by a radio or television station licensed to a location in a State conducting such a lottery.⁶

Under the Commission's rules and regulations, all broadcast stations are licensed to serve a particular city, town, political subdivision or community which is specified in the station license. Under the proposed revision, a station would be considered to be located in the place specified in its license regardless of the physical location of its transmitter or studio.

Although in most instances there is but one location specified in a particular station's license, there are a limited number of station licenses which specify more than one city, town, political subdivision or community. There are presently 52 stations which are licensed to serve two different locations, and of these only five involve locations in two different States.⁷ At the present time, none of the States involved in these latter five cases of dual-licensed stations conduct lotteries authorized by state law.⁸ Should the revision suggested by the Commission be incorporated in any enactment of H.R. 6668 or similar

⁶ The Commission notes that the statement submitted to the Subcommittee by the National Association of Broadcasters recommends the same revision.

⁷ Dual licenses involving two different States are presently held by the following stations:

WPNX (AM)—Phoenix City, Alabama; Columbus, Georgia.
 KRLC (AM)—Lewiston, Idaho; Clarkston, Washington.
 KBMW (AM)—Breckenridge, Minnesota; Wahpeton, North Dakota.
 WOPI (AM)—Bristol, Virginia; Bristol, Tennessee.
 KTAL (FM)—Texarkana, Texas; Shreveport, Louisiana.

The Commission is not disposed to grant further dual licenses absent exceptional justifying circumstances.

⁸ It is the Commission's information that the States of Connecticut, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, and Pennsylvania presently conduct lotteries authorized under their state law. By referendum held November 6, 1973, Maine approved establishment of a state lottery and Rhode Island repealed a ban on state lotteries contained in the state constitution.

legislation and one or more of these States establish a state conducted lottery, the Commission would consider the dual-licensed station involved to be licensed to each of the locations specified in the license and thus within the terms of the exemption.

The Commission trusts that the foregoing is responsive to your request and will be pleased to provide any further information which may be desired concerning the subject legislative proposals.

This letter was adopted by the Commission on May 13, 1974.

By direction of the commission,

RICHARD E. WILEY, *Chairman.*

[The November 26, 1974 letter of the Department of Justice referred to in this report is as follows:]

DEPARTMENT OF JUSTICE,
 Washington, D.C., November 26, 1974.

HON. PETER W. RODINO, JR.,
 Chairman, Committee on the Judiciary, House of Representatives,
 Washington, D.C.

DEAR MR. CHAIRMAN: I am taking this opportunity to express the views of the Department of Justice regarding H.R. 6668, proposed legislation pertaining to state sanctioned lotteries.

As you are well aware, this bill is of particular interest to the Department because enactment of legislation in this area is necessary to alleviate existing problems and questions concerning application of Federal lottery and gambling laws to the operation of state conducted lotteries.

The Department favored enactment of this bill as originally introduced. However, the present version of H.R. 6668, as reported from the Subcommittee on Claims and Governmental Relations on October 17, contains provisions which we now must oppose. The exemption language of ". . . a lottery authorized and licensed in accordance with State law . . ." which now appears throughout the bill goes far beyond the present needs of the states and would surely open the door to the creation of lotteries for private profit. It would be unwise for Congress to endorse the basic scheme of the Louisiana lottery which originally led to the enactment of Section 1302 of Title 18. With no guarantee from the states that undesirable elements would not profit as licensees, the enactment of these provisions could lead to criminal involvement in gambling.

With this language deleted, however, the Department fully supports the enactment of H.R. 6668. We hope that this Congress will act to resolve the dilemma facing not only the Department of Justice, but also the many states which operate lotteries.

Sincerely,

W. VINCENT RAKESTRAW,
 Assistant Attorney General.

ADDITIONAL VIEWS OF REP. HAROLD V. FROEHLICH

Several sections of the United States Code—namely, Sections 1301, 1302, 1303, 1304, and 1953 of Title 18 and Section 3005 of Title 39—create very serious obstacles to the successful operation of *any* lawful lottery in the several states. H.R. 6668, as reported by the Committee, corrects this situation in part by exempting, in various ways, lotteries “conducted by a State acting under the authority of State law.”

The bill, as reported, is consistent in principle with the bill as it was originally introduced. It differs, however, from the bill that was reported, on October 17, by the Subcommittee on Claims and Governmental Relations. That bill exempted not only “a lottery conducted by a State acting under the authority of State law” but also “a lottery authorized and licensed in accordance with State law.” In other words, the bill reported by the Committee deliberately preserves all the obstacles that frustrate the successful operation of a *lawful* lottery, unless that lottery is *conducted* by a State acting under the authority of State law.

Thirteen States have authorized lotteries that are conducted by a State government. They are Connecticut, Delaware, Illinois, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, and Rhode Island. Twenty five States have authorized lotteries that are conducted by someone other than a State government. They are Arizona, Colorado, Delaware, Florida, Illinois, Iowa, Louisiana, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Montana, Nebraska, New Hampshire, New Jersey, Ohio, Oklahoma, Oregon, South Dakota, Tennessee, Virginia, Washington, and Wisconsin. At least 11 of these States have a licensing requirement. H.R. 6668, as reported, frustrates the public policy of all those States which do not vest the authority to conduct lotteries exclusively in themselves.

The Attorney General argued, in testimony before a Senate Committee, that H.R. 6668, as reported from this Committee’s Subcommittee on Claims and Governmental Relations, went “far beyond the present needs of the States. . . .” This assumes that when a State authorizes and licenses a lottery, it is nonetheless indifferent when federal law effectively impedes the operation of that lottery.

I believe that Congress should not impede the operation of those lawful lotteries that have been authorized and licensed by State law. Consequently, I cannot help but feel that H.R. 6668, as reported, is partially defective.

One final point: 18 U.S.C. 1302 provides in part that “Whoever knowingly deposits in the mail, or sends or delivers by mail: . . . Any

newspaper, circular, pamphlet, or publication of any kind containing any advertisement of any lottery . . . or containing any list of the prizes drawn or awarded by means of any such lottery . . ." shall be fined or imprisoned. Inasmuch as many newspapers are (a) dependent upon the mails for a significant part of their distribution, and (b) unable to print separate editions eliminating all "improper" references to a lawfully authorized lottery, these newspapers may be compelled to eliminate *all* advertising and information about such lawful lotteries. This raises a substantial First Amendment question which is not at all resolved by 19th Century court decisions on the subject.

HAROLD V. FROELICH.



Ninety-third Congress of the United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on Monday, the twenty-first day of January,
one thousand nine hundred and seventy-four*

An Act

To amend title 18 of the United States Code to permit the transportation, mailing, and broadcasting of advertising, information, and materials concerning lotteries authorized by law and conducted by a State, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That chapter 61 of title 18 of the United States Code (relating to lotteries) is amended by adding at the end thereof the following new section:

“§ 1307. State-conducted lotteries

“(a) The provisions of sections 1301, 1302, 1303, and 1304 shall not apply to an advertisement, list of prizes, or information concerning a lottery conducted by a State acting under the authority of State law—

“(1) contained in a newspaper published in that State, or

“(2) broadcast by a radio or television station licensed to a location in that State or an adjacent State which conducts such a lottery.

“(b) The provisions of sections 1301, 1302, and 1303 shall not apply to the transportation or mailing to addresses within a State of tickets and other material concerning a lottery conducted by that State acting under authority of State law.

“(c) For the purposes of this section ‘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.

“(d) For the purposes of this section ‘lottery’ means the pooling of proceeds derived from the sale of tickets or chances and ~~winning~~ 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.”

SEC. 2. The sectional analysis for chapter 61 is amended by adding the following item:

“1307. State-conducted lotteries.”.

SEC. 3. Section 1953(b) of title 18 of the United States Code is amended by changing the period to a comma and adding: “or (4) equipment, tickets, or materials used or designed for use within a State in a lottery conducted by that State acting under authority of State law.”

SEC. 4. Section 3005 of title 39 of the United States Code is amended by adding at the end thereof the following subsection:

S. 544-2

“(d) Nothing in this section shall prohibit the mailing of (1) a newspaper of general circulation published in a State containing advertisements, lists of prizes, or information concerning a lottery conducted by that State acting under authority of State law, or (2) tickets or other materials concerning such a lottery within that State to addresses within that State. For the purposes of this subsection, ‘State’ means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.”.

Speaker of the House of Representatives.

*Vice President of the United States and
President of the Senate.*