

NONPROFIT LEGAL UPDATE

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Enforcement of Lottery/Raffle Laws

Although often considered the equivalent to the posted speed limit on the highway (i.e., who follows those?), when it comes to fundraising, the federal government has recently issued a strong reminder regarding illegal games of chance (a/k/a “raffles”, “lotteries”).

The World Triathlon Corporation (WTC) is a for-profit corporation headquartered in Tampa, Florida that organizes, promotes and licenses, among other races, Ironman Triathlons; including the Ironman World Championship held annually in Kona, Hawaii. WTC is also affiliated with the Ironman Foundation, a nonprofit 501(c)(3) organization providing charitable support to other nonprofit organizations in the communities where Ironman events are held.

The Ironman has had a “lottery” system in some form since 1983 which allowed athletes, who otherwise had not qualified nor were eligible to participate, to pay a nonrefundable \$50 for the chance (the selection chance was doubled for an additional fee) of winning one of 100 randomly selected slots at the company’s flagship triathlon in Kona, Hawaii. Funds raised from the lottery purportedly funded the Foundation.

On May 13th, WTC entered into a Consent Forfeiture Agreement with the US Department of Justice. As a result of the settlement WTC has indicated that it would terminate the program and pursuant to the

Agreement WTC is to forfeit \$2,761,910 in lottery proceeds; the amount Ironman had made from the program in the past three years (the executed consent agreement containing the usual disclaimer that the forfeiture of the proceeds in no way “constitutes an admission of criminal, civil or other wrongdoing.”).

According to the Department of Justice, the program “fell afoul of existing lottery and gambling laws.” Specifically, under Title 18, USC, Section 1955, it is a crime to conduct an “illegal gambling business.” An “illegal gambling business” is a gambling business that:

- a. Violates the law of a State in which it conducts business;
- b. Involves five or more persons; and
- c. Remains in continuous operation for at least thirty days; or has gross revenue of \$2,000 in a single day.

Lotteries are prohibited by the Florida constitution. The constitutional prohibition is also codified in statute. Fla. Stat. 849.09.

A “lottery” is defined *generally*, and this term is purposely used because the following is almost universally recognized through out the country, as a program that contains three elements: **consideration, chance, and prize**. Furthermore, in addition to the commonality of the definition, other states deem lotteries as illegal,

like Florida, or highly regulated (including, in some instances, a requirement that the operator be in business for a number of years or that the raffle can only be conducted by a state licensed 501(c)(3)).

Despite the aforementioned disclaimer in the settlement, in the WTC example, all three elements existed (the consideration was the \$50 payment, the prize was the entry, and winners were decided by random selection: i.e., chance).

Sound familiar? Many tax-exempt organizations are turning to such creative fundraising programs to help boost the bottom line.

Even more troubling may be the fact that, according to some news sources, the tipster in the WTC case was none other than two triathletes; i.e., the people who, like an association’s members, may love what you stand for, but not what you are doing at the time.

The cautionary note is for tax-exempt organizations seeking new fundraising ventures to carefully research the legality of any program that incorporates the forgoing three elements; not only in their state of incorporation or where they are domiciled but potentially in any state where the program might be offered in order to ensure that the program is lawfully structured to avoid both the PR fallout as well as any economic setback.