

Seventh Circuit Holds that NCAA Ticket Distribution Process Could Be Illegal Lottery

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This month, the Seventh Circuit Court of Appeals ruled that the method the NCAA has used to distribute Final Four tickets since at least 1994 could constitute an unlawful lottery.

According to the complaint, each person who applied for tickets had to submit an application with up to ten entries. Each entry was a chance to win up to two tickets and required payment of a \$6 non-refundable handling fee. An applicant could win only once but was required to submit the full face value of the tickets for each entry. In order to maximize the chances for winning a pair of tickets, an applicant would have to submit \$3,060 (the face value of ten pairs of tickets plus a \$6 handling fee for each entry). A successful applicant would receive a pair of tickets and a \$2,700 refund (the total ticket price for the remaining nine entries). The \$60 in handling fees would not be refunded. An unsuccessful applicant would receive a \$3,000 refund (the price of the tickets minus the handling fees).

Under Indiana law, an unlawful lottery consists of three elements: (1) prize; (2) chance; and (3) consideration. The NCAA argued that its ticket distribution process only granted an opportunity to purchase tickets at full price, which was not a prize. The court rejected this argument, holding that the plaintiffs alleged all elements of a lottery. The plaintiffs allegedly paid a per-ticket or per-entry fee (consideration) to enter a random drawing (chance) in hopes of obtaining scarce, valuable tickets (a prize). Accordingly, the Seventh Circuit reversed the lower court's dismissal and allowed the case to go forward.

Be careful about any promotion in which people have to pay money for the chance to win something of value. Lottery laws across the country are similar in scope to the law in Indiana, so a promotion that includes prize, chance, and consideration is vulnerable to challenge in all jurisdictions. In most cases, it is essential to ensure that consumers have a way to participate without paying any money.