

OPINION NO. 85-013**Syllabus:**

A sweepstakes conducted by a military credit union located on civilian property, whereby persons who obtain loans from the credit union receive chances to win prizes, is not a scheme of chance within the meaning of R.C. 2915.01(C), in the absence of evidence indicating that participants in the sweepstakes give valuable consideration and obtain loans with the intent of receiving chances to win prizes.

To: William F. Schenck, Greene County Prosecuting Attorney, Xenia, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, April 9, 1985

I have before me your request for my opinion as to whether a military credit union, located on civilian property, may lawfully conduct a sweepstakes, whereby persons who obtain loans from the credit union receive chances to win prizes. You advise that there is a direct relationship between the size of the loan obtained and the number of chances furnished by the credit union.

R.C. 2915.02(A) states in part: "No person shall: . . .(2) Establish, promote, or operate, or knowingly engage in conduct that facilitates any scheme or game of chance conducted for profit. . . ." R.C. 2915.01(C) defines "scheme of chance" to mean "a lottery, numbers game, pool, or other scheme in which a participant gives a valuable consideration for a chance to win a prize." R.C. 2915.01(E) further defines "scheme or game of chance conducted for profit" to mean "any scheme or game of chance designed to produce income for the person who conducts or operates the scheme or game of chance. . . ." An answer to your question,

therefore, requires that I first determine whether the sweepstakes which is the subject of your request for my opinion is a "scheme of chance" pursuant to R.C. 2915.01(C), exhibiting the elements of consideration, prize and chance.

On the basis of your description of the sweepstakes, a successful loan applicant receives chances or opportunities to win prizes. The chances are then drawn at random to determine the prize winners. It is apparent that the elements of prize and chance are present in this situation. See generally Westerhaus Co., Inc. v. City of Cincinnati, 165 Ohio St. 327, 135 N.E.2d 318 (1956); Fisher v. State, 14 Ohio App. 355 (Cuyahoga County 1921).

R.C. 2915.01(C) further requires that the element of consideration be present together with the elements of prize and chance in order for a scheme of chance to arise. If a participant in the subject sweepstakes must, in order to participate, obtain a loan from the credit union, he necessarily incurs an obligation by assuming responsibility for repayment of the loan in addition to the payment of interest. Therefore, consideration flows from the participant to the credit union. Further, if the participant must satisfy the usual credit union requirements imposed upon a loan applicant as a condition of obtaining a loan, such as, that he be a credit union member who has deposited money in an account held by the credit union, and that he furnish collateral to secure his loan, additional consideration is present.

However, I note again that R.C. 2915.01(C) defines "scheme of chance" to mean "a lottery, numbers game, pool, or other scheme in which a participant gives a valuable consideration for a chance to win a prize." (Emphasis added.) This statutory provision must be strictly construed against the state. R.C. 2901.04(A).¹ Those persons who participate in the credit union sweepstakes do not, in all probability, give valuable consideration for a chance to win a prize. The participants furnish consideration in order to obtain a loan, and only incidentally receive a chance to win a prize. In strictly construing R.C. 2915.01(C), and without having additional facts before me, I cannot presume that the participants in the subject sweepstakes incur indebtedness with the intent of receiving chances to win prizes. See 1985 Op. Att'y Gen. No. 85-001. Therefore, I conclude that the sweepstakes is not a scheme of chance within the meaning of R.C. 2915.01(C). Thus, the credit union is not operating a scheme of chance conducted for profit in violation of R.C. 2915.02(A).²

Therefore, it is my opinion, and you are advised that, a sweepstakes conducted by a military credit union located on civilian property, whereby persons who obtain loans from the credit union receive chances to win prizes, is not a scheme of chance within the meaning of R.C. 2915.01(C), in the absence of evidence indicating that participants in the sweepstakes give valuable consideration and obtain loans with the intent of receiving chances to win prizes.

¹ R.C. 2901.04(A) states: "Sections of the Revised Code defining offenses or penalties shall be strictly construed against the state, and liberally construed in favor of the accused."

² Because I have concluded that the sweepstakes which you have described is not a scheme of chance, it is unnecessary for me to determine the extent to which a state may regulate the activities of a federally chartered credit union. See 12 U.S.C. §§1751-1795k. See also United States v. State of Alabama, 434 F. Supp. 64 (M.D. Ala. 1977); Ex Parte Davis, 401 So. 2d 52 (Ala. 1980); Christian v. Atlanta Army Depot Federal Credit Union, 140 Ga. App. 277, 231 S.E.2d 7 (1976).