

OPINION NO. 2004-042**Syllabus:**

1. A person under eighteen years of age may sell tickets for a raffle conducted by a public school under R.C. 2915.092(A)(1), provided the person does not sell the tickets at the site of the raffle.
2. A person under eighteen years of age may purchase tickets for a raffle conducted by a public school under R.C. 2915.092(A)(1).

To: Ken Egbert, Jr., Seneca County Prosecuting Attorney, Tiffin, Ohio
By: Jim Petro, Attorney General, November 19, 2004

You have requested an opinion whether a person under eighteen years of age may sell or purchase tickets for a raffle conducted by a public school under R.C. 2915.092. For the reasons that follow, a person under eighteen years of age may sell and purchase such tickets.

Article XV, § 6 of the Ohio Constitution states that “[e]xcept as otherwise provided in this section, lotteries, and the sale of lottery tickets, for any purpose whatever, shall forever be prohibited in this State.” This provision then proceeds to permit a state run lottery, as well as bingo by charitable organizations for charitable purposes. *See generally* R.C. 2915.07(A) (“[n]o person, except a charitable organization that has obtained a license pursuant to [R.C. 2915.08] shall conduct or advertise bingo. This division does not apply to a raffle that a charitable organization conducts or advertises”); R.C. Chapter 3770 (granting the Ohio Lottery Commission the authority to run a statewide lottery). In addition, R.C. 2915.02 prohibits gambling but “does not prohibit conduct in connection with gambling expressly permitted by law.” R.C. 2915.02(C).

R.C. 2915.092(A)(1) permits a public school to conduct a raffle to raise money for the school:

Subject to division (A)(2) of this section,¹ a charitable organization, a *public school*, a chartered nonpublic school, a community school, or a vet-

¹R.C. 2915.092(A)(2) provides:

If a charitable organization that is described in division (A)(1) of this section, but that is not also described in subsection 501(c)(3) of the Internal Revenue Code, conducts a raffle, the charitable organization shall distribute at least fifty per cent of the net profit from the raffle to a charitable purpose described in [R.C. 2915.01(Z)] or to a department or agency of the federal government, the state, or any political subdivision.

eran's organization, fraternal organization, or sporting organization that is exempt from federal income taxation under subsection 501(a) and is described in subsection 501(c)(3), 501(c)(4), 501(c)(7), 501(c)(8), 501(c)(10), or 501(c)(19) of the Internal Revenue Code *may conduct a raffle to raise money for the organization or school and does not need a license to conduct bingo in order to conduct a raffle drawing that is not for profit.* (Emphasis and footnote added.)

For purposes of R.C. Chapter 2915, a "raffle" is defined as follows:

"Raffle" means a form of bingo in which the one or more prizes are won by one or more persons who have purchased a raffle ticket. The one or more winners of the raffle are determined by drawing a ticket stub or other detachable section from a receptacle containing ticket stubs or detachable sections corresponding to all tickets sold for the raffle.

R.C. 2915.01(HH).

With respect to the first part of your inquiry, whether a person under eighteen years of age may sell tickets for a raffle conducted by a public school, R.C. 2915.11(A) states that, "[n]o person shall be a bingo game operator unless he is eighteen years of age or older." A person who violates R.C. 2915.11(A) is guilty of a third degree misdemeanor. R.C. 2915.11(C).

As used in R.C. 2915.11, "[b]ingo game operator" means:

[A]ny person, except security personnel, *who performs work or labor at the site of bingo, including, but not limited to,* collecting money from participants, handing out bingo cards or sheets or objects to cover spaces on bingo cards or sheets, selecting from a receptacle the objects that contain the combination of letters and numbers that appear on bingo cards or sheets, calling out the combinations of letters and numbers, distributing prizes, selling or redeeming instant bingo tickets or cards, supervising the operation of a punch board, *selling raffle tickets,* selecting raffle tickets from a receptacle and announcing the winning numbers in a raffle, and preparing, selling, and serving food or beverages. (Emphasis added.)

R.C. 2915.01(U). Thus, a person who sells raffle tickets at the site of the raffle is a bingo game operator for purposes of R.C. 2915.11(A).

Accordingly, pursuant to the plain language of R.C. 2915.11(A), a person may not sell raffle tickets at the site of the raffle unless the person is eighteen years of age or older. *See generally Sears v. Weimer*, 143 Ohio St. 312, 55 N.E.2d 413 (1944) (syllabus, paragraph five) (where the language of a statute is plain and unambiguous and conveys a clear and definite meaning, the "statute is to be applied, not interpreted").

R.C. 2915.11(A), however, only prohibits a person under the age of eighteen from selling raffle tickets at the site of the raffle. The statute does not prohibit a person under the age of eighteen from selling raffle tickets at a location other than the site of the raffle. *See generally* R.C. 2901.04(A) (statutes "defining offenses or penalties shall be strictly construed against the state, and liberally construed in favor of the accused"). Because neither R.C. 2915.11(A) nor any other statute prohibits a person under the age of eighteen from selling raffle tickets at a location other than the site of the raffle, it follows that a person under eighteen years of age may sell tickets for a raffle conducted by a public school under R.C.

2915.092(A)(1) at a location other than the site of the raffle.² See generally R.C. 2901.03(A) (“[n]o conduct constitutes a criminal offense against the state unless it is defined as an offense in the Revised Code”); *The Toledo Disposal Co. v. State*, 89 Ohio St. 230, 106 N.E. 6 (1914) (syllabus, paragraph two) (“[n]o criminal prosecution can be sustained in Ohio except for an act done in violation of a statute or ordinance legally passed”). Therefore, a person under eighteen years of age may sell tickets for a raffle conducted by a public school under R.C. 2915.092(A)(1), provided the person does not sell the tickets at the site of the raffle.

We will now turn to the second part of your inquiry, whether a person under eighteen years of age may purchase tickets for a raffle conducted by a public school. No statute explicitly prohibits a person under eighteen years of age from purchasing tickets for a raffle conducted by a public school under R.C. 2915.092(A)(1). Also, no statute prohibits the sale of these tickets to a person under eighteen years of age.

Moreover, it is significant that the General Assembly has in other instances expressly prohibited a person under eighteen years of age from participating in gambling that is otherwise permitted by law. See, e.g., R.C. 2915.09(C)(12) (a charitable organization that conducts a bingo game described in R.C. 2915.01(S)(1) may not permit any person the charitable organization knows, or should have known, to be under eighteen years of age to play the game);³ R.C. 2915.091(A)(7) (a charitable organization that conducts instant bingo may not “[s]ell an instant bingo ticket or card to a person under eighteen years of age”);⁴ R.C. 3770.08(C) (“[n]o person shall sell a lottery ticket to any person under eighteen years of age, and no person under eighteen years of age shall attempt to purchase a lottery ticket”).⁵ In the absence of similar statutory language prohibiting a person under eighteen years of age from purchasing tickets for a raffle conducted by a public school under R.C. 2915.092(A)(1) or prohibiting the sale of these tickets to a person under eighteen years of age, it must be concluded that the General Assembly did not intend to prohibit these activities. See generally *State ex rel. Enos v. Stone*, 92 Ohio St. 63, 110 N.E. 627 (1915) (had the General Assembly intended a particular result, it could have employed language used elsewhere that plainly and clearly compelled that result). See generally also R.C. 2901.03(A) (“[n]o conduct constitutes a criminal offense against the state unless it is defined as an

²It is assumed, for the purpose of this opinion, that no municipal ordinance prohibits a person under the age of eighteen from selling raffle tickets at a location other than the site of the raffle. See generally Ohio Const. art. XVIII, § 3 (“[m]unicipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws”).

³Under R.C. 2915.09(G), “[w]hoever violates [R.C. 2915.09(C)(12)] is guilty of a misdemeanor of the first degree, if the offender previously has been convicted of a violation of [R.C. 2915.09(C)(12)], a felony of the fourth degree.”

⁴A person who violates R.C. 2915.091(A)(7) is guilty of a first degree misdemeanor. R.C. 2915.091(D). However, if the person previously has been convicted of a violation of R.C. 2915.091(A) or a rule adopted under R.C. 2915.091(C), he is guilty of a fifth degree felony. *Id.*

⁵Whoever violates R.C. 3770.08 is guilty of a third degree misdemeanor. R.C. 3770.99(B).

offense in the Revised Code"). Accordingly, a person under eighteen years of age may purchase tickets for a raffle conducted by a public school under R.C. 2915.092(A)(1).⁶

Based on the foregoing, it is my opinion, and you are hereby advised as follows:

1. A person under eighteen years of age may sell tickets for a raffle conducted by a public school under R.C. 2915.092(A)(1), provided the person does not sell the tickets at the site of the raffle.
2. A person under eighteen years of age may purchase tickets for a raffle conducted by a public school under R.C. 2915.092(A)(1).

⁶For the purpose of this opinion, it is assumed that no municipal ordinance prohibits a person under the age of eighteen from purchasing tickets for a raffle conducted by a public school under R.C. 2915.092(A)(1). See generally Ohio Const. art. XVIII, § 3 at note two, *supra*.