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Date/Time of Request:	Monday, September 7, 2009 12:23 Central
Client Identifier:	GENEVIEVE COSTALES
Database:	AL-ST-ANN
Citation Text:	AL CONST Art. IV, s 65
Lines:	296
Documents:	1
Images:	0

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Code of Alabama [Currentness](#)

Official Compilation of the Constitution of Alabama of 1901, as Amended ([Refs & Annos](#))

[Article IV](#). Legislative Department. ([Refs & Annos](#))

➔ **Sec. 65. Lotteries and gift enterprises prohibited.**

The legislature shall have no power to authorize lotteries or gift enterprises for any purposes, and shall pass laws to prohibit the sale in this state of lottery or gift enterprise tickets, or tickets in any scheme in the nature of a lottery; and all acts, or parts of acts heretofore passed by the legislature of this state, authorizing a lottery or lotteries, and all acts amendatory thereof, or supplemental thereto, are hereby avoided.

#### LIBRARY REFERENCES

American Digest System:

[Lotteries](#) [1](#), [2](#).


Corpus Juris Secundum:


[C.J.S. Lotteries §§ 8 to 11](#).

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[1](#). Generally

Claim by owners and operators of video gaming machines that district attorneys' threat to criminally prosecute them for violating state constitutional provision prohibiting "any scheme in the nature of a lottery" amounted to discriminatory enforcement, in violation of their equal protection rights, was not ripe, even if some prosecutors were awaiting resolution of test case before prosecuting video gambling operators. [A & M Enterprises, LLC. v. Houston, 179 F.Supp.2d 1356 \(M.D.Ala.2001\)](#). [Constitutional Law](#) 978

Statute exempting bona fide coin-operated amusement machines (COMs) from criminal gambling statutes could not be construed so as to legalize games or activities in which skill did not predominate over chance in determining the outcome, as such construction would contravene the state's constitutional ban on lotteries. [Ex parte Ted's Game Enterprises, 893 So.2d 376 \(Ala.2004\)](#). [Lotteries](#) 3

State's public policy is against lotteries or any scheme in the nature of a lottery. [Opinion Of The Justices, 795 So.2d 630 \(Ala.2001\)](#).

The constitutional provision prohibiting lotteries also applies to those lotteries conducted by legitimate businesses and to those lotteries where the purchase price for the ticket entitles the holder to more than just the chance to win the prize. [Youngblood v. Bailey, 459 So.2d 855 \(Ala.1984\)](#). [Lotteries](#) 3

Legislative authorization of contests involving the first two elements of a lottery, but not the element of consideration, does not offend this section. [Opinion of the Justices, 397 So.2d 546 \(Ala.1981\)](#).

A statute authorizing certain persons to carry on a lottery violates the Constitution. [Horst v. Moses, 48 Ala. 129 \(Ala.1872\)](#), appeal dismissed [82 U.S. 387, 21 L.Ed. 176, 15 Wall. 387](#), on subsequent appeal 52 Ala.198.

## 2. Gambling

Constitutional prohibition against lotteries does not prohibit the Legislature from authorizing gambling. [Opinion Of The Justices, 795 So.2d 630 \(Ala.2001\)](#).

The Constitution does not restrict the Legislature in its authority to authorize gambling. It merely says that the Legislature shall not authorize a lottery. [Opinion of the Justices, 287 Ala. 334, 251 So.2d 751 \(Ala.1971\)](#).


## 3. Lottery


To be a criminal lottery, there must be a consideration, and when small amounts are hazarded to gain large ones, determined by chance, where choice, or skill exerts no effect, it is prohibited. [Chavannah v. State, 49 Ala. 396 \(1873\)](#); [Buckalew v. State, 62 Ala. 334 \(1878\)](#); [Yellow-Stone Kit v. State, 88 Ala.196, 7 So. 338 \(1890\)](#); [Reeves v. State, 105 Ala. 120, 17 So. 104 \(1895\)](#); [Loiseau v. State, 114 Ala. 34, 22 So. 138 \(1897\)](#); [State v. Shugart, 138 Ala. 86, 35 So. 28 \(1903\)](#); [State v. Crayton, 344 So.2d 771 \(Ala.Civ.App.\)](#), cert. denied, [344 So.2d 775 \(Ala.1977\)](#); [Opinion of Justices, 397 So.2d 546 \(Ala.1981\)](#); [Youngblood v. Bailey, 459 So.2d 855 \(Ala.1984\)](#); [Pepsi Cola Bottling Co. v. Coca-Cola Bottling Co., 534 So.2d 295 \(Ala.1988\)](#).

"In order to constitute a lottery, it is necessary, first, to have a prize offered. In the next place, it is necessary that the person who wins that prize shall be determined by chance. The next thing that is necessary to constitute a lottery is that there should be a consideration paid." [Grimes v. State, 28 Ala.App. 4, 178 So. 69](#), cert. denied, [235 Ala.192, 178 So. 73 \(1937\)](#); [Minges v. City of Birmingham, 251 Ala. 65, 36 So.2d 93 \(1948\)](#).

Senate bill that would authorize video machine gambling violated constitutional prohibition against lotteries, as chance was the fundamental nature of such machines. [Opinion Of The Justices, 795 So.2d 630 \(Ala.2001\)](#).


A scheme is constitutionally prohibited as a “lottery” when consideration and a prize are present, winning is determined by chance, and neither choice nor skill can exert any effect on the outcome. [Opinion Of The Justices, 795 So.2d 630 \(Ala.2001\)](#).

Nonprofit organization's drawing it held for fundraising was a lottery which violated public policy, where cash was advertised as prize, tickets were randomly drawn so that chance determined winner, and each ticket holder was required to pay organization \$100 for a ticket. [Thomas v. Omega Men of North Alabama, Inc., 714 So.2d 982 \(Ala.Civ.App.1997\)](#), rehearing denied, certiorari denied [714 So.2d 985](#). [Lotteries](#) 3

The elements of a lottery have been defined as: (1) a prize, (2) awarded by chance, (3) for a consideration. [Opinion of the Justices, 287 Ala. 334, 251 So.2d 751 \(Ala.1971\)](#). [Lotteries](#) 3


It is not of consequence whether either the operator or the patron has figured just how much of the admission charge is paid for the chance. “Gift enterprise” in the nature of a lottery definitely covers a lottery in aid of legitimate business, through colorable gifts, but in fact prizes awarded by chance for a price. [Grimes v. State, 235 Ala.192, 178 So. 73 \(Ala.1937\)](#).

#### 4. Winning determined by chance

For purposes of Alabama's constitutional ban on lotteries, the “English Rule,” under which only a scheme that exhibits or involves “pure chance” is a lottery, has been rejected, and the “American Rule,” under which it is possible for a game or activity to be considered a lottery even if skill is involved in determining its outcome, has been adopted. [State ex rel. Tyson v. Ted's Game Enterprises, 893 So.2d 355 \(Ala.Civ.App.2002\)](#), rehearing denied, affirmed [893 So.2d 376](#). [Lotteries](#) 3

Under the American Rule followed by the state to determine whether a scheme is constitutionally prohibited as a “lottery,” where the dominant factor in a participant's failure or success is chance, the scheme is a lottery, despite the use of some degree of judgment or skill. [Opinion Of The Justices, 795 So.2d 630 \(Ala.2001\)](#).

It is for the courts to determine, on a case-by-case basis, whether skill or chance dominates in an activity and, therefore, whether the activity is constitutionally prohibited as being in the nature of a “lottery.” [Opinion Of The Justices, 795 So.2d 630 \(Ala.2001\)](#).

When result of winning is to be determined by use of contrivance of chance, in which neither choice nor skill can exert any effect, it is gambling by lot, or a constitutionally prohibited “lottery”. [Opinion of the Justices, 692 So.2d 107 \(Ala.1997\)](#). [Lotteries](#) 3

#### 5. Slot machines

The Legislature has no authority to license slot machines or to authorize the carrying on of a lottery. [Loiseau v. State, 114 Ala. 34, 22 So. 138 \(1897\)](#), modifying [Buckalew v. State, 62 Ala. 334 \(1878\)](#).


#### 6. Punchboards

A statute authorizing a tax on punchboards does not contravene this section, for it is held in [Casmus v. Lee, 236 Ala. 396, 183 So. 185 \(1938\)](#), that such a statute does not authorize the operation of punchboards. [State v. Overby, 265 Ala. 39, 89 So.2d 525 \(Ala.1956\)](#).

#### 7. Bank night

The operation of a theater bank night is supported by sufficient consideration moving to the operator thereof to authorize conviction for conducting a “lottery” by reason of the increased patronage resulting from the operation, notwithstanding that prize may go to some one who has paid nothing. [Grimes v. State, 235 Ala.192, 178 So. 73 \(1937\)](#); [Dozier v. Troy Drive-in-Theatres, Inc., 265 Ala. 93, 89 So.2d 537 \(1956\)](#).

#### 8. Redemption of bottle crowns


A practice by bottler of stamping numbers under some of bottle crowns and redeeming such crowns in cash in amount of numbers, in order to advertise its beverages, constituted “lottery” within constitutional and statutory inhibitions. [Try-Me Bottling Co. v. State, 235 Ala.207, 178 So. 231 \(Ala.1938\)](#). [Lotteries](#) 3


#### 9. Contests by soft drink company

Soft drink company's instant cash game was not a lottery, because participants were not required to purchase cards in order to play, and incidental profit or benefit to the company in their sale of soft drinks did not provide consideration to make the game a lottery. [Pepsi Cola Bottling Co. of Luverne, Inc. v. Coca-Cola Bottling Co., Andalusia, 534 So.2d 295 \(Ala.1988\)](#).

Standards for judging monthly contests by soft drink company were sufficient under the law to remove these contests from the odium of lotteries, gift enterprises or schemes in the nature of lotteries, and they did not violate this section. [Minges v. City of Birmingham, 251 Ala. 65, 36 So.2d 93 \(Ala.1948\)](#).

#### 10. Bingo

Trial court was not required to apply definition of “bingo” found in city ordinance in determining whether game was legal bingo game or illegal lottery, within meaning of criminal statutes, as city could not enact ordinance inconsistent with State Constitution, which proscribed lotteries other than bingo. [Foster v. State, 705 So.2d 534 \(Ala.Crim.App.1997\)](#), rehearing denied , certiorari quashed. [Lotteries](#) 20

Game which allowed players to choose or have computer select eight numbers to match with twenty numbers called by announcer to win grand prize was not game “commonly known as bingo” under city ordinance, but rather was illegal lottery, despite fact that each number drawn had one letter from word “bingo” attached to it; in light of state's strong public policy against lotteries, definition of “bingo” in city ordinance was not attempt to expand common, ordinary definition of that game. [Barrett v. State, 705 So.2d 529 \(Ala.Crim.App.1996\)](#), rehearing denied , certiorari quashed. [Lotteries](#) 3

“Instant bingo” does not constitute “bingo” as allowed by Ala. Const., Calhoun County § 1. [City of Piedmont v. Evans, 642 So.2d 435 \(Ala.1994\)](#).

#### 11. Pari-mutuel wagering

This section does not prohibit the legislature from authorizing horse racing in a particular county with a pari-mutuel system of wagering. [Opinion of the Justices, 373 So.2d 278 \(Ala.1979\)](#).

Pari-mutuel wagering is gambling. [Opinion of the Justices, 287 Ala. 334, 251 So.2d 751 \(Ala.1971\)](#).

The fact that in pari-mutuel betting the odds change up until the last bet is placed on a race does not mean that the amount of the winning ticket is based on chance. [Opinion of the Justices, 287 Ala. 334, 251 So.2d 751 \(Ala.1971\)](#).

The device used in the pari-mutuel system of betting is not like a slot machine, or roulette wheel, or other similar device or instrument which by its manipulation or operation itself determines the result. The device merely registers or records and displays the bets as they are made. It is a mere posting of them. [Opinion of the Justices, 287 Ala. 334, 251 So.2d 751 \(Ala.1971\)](#).

Pari-mutuel is a system of betting (as on a horse race) in which those who bet on the winner share the total stakes minus a small percent for the management. [Opinion of the Justices, 287 Ala. 334, 251 So.2d 751 \(Ala.1971\)](#).

Wagering or betting on the result of a game of skill does not convert the game into one of chance. [Opinion of the Justices, 287 Ala. 334, 251 So.2d 751 \(Ala.1971\)](#).

#### 12. --- Dog racing, pari-mutuel wagering

Bills authorizing dog racing with a pari-mutuel system of wagering do not contravene this section. [Opinion of the Justices, 287 Ala. 334, 251 So.2d 751 \(Ala.1971\)](#).

The winner of a dog race is not determined by chance. A significant degree of skill is involved. [Opinion of the Justices, 287 Ala. 334, 251 So.2d 751 \(Ala.1971\)](#).

The pari-mutuel method or system of betting in no particular determines or affects the result of the race. [Opinion of the Justices, 287 Ala. 334, 251 So.2d 751 \(Ala.1971\)](#).

#### 13. Religious, charitable, or veterans' organizations exemptions

A statute providing for the condemnation of vehicles used for transporting lottery papers and lottery paraphernalia in certain counties, and exempting vehicles used for transporting papers and paraphernalia issued by and bearing the name of a religious or charitable organization or a veterans' organization (Acts 1949, p. 842), does not authorize a lottery to be conducted by a religious, charitable or veterans' organization in violation of this section, for the statute is merely in aid of § 13-7-32, prohibiting lotteries, which section applies to all alike, everywhere in the state, and does not exempt such organizations. [Mosley v. State, 255 Ala. 130, 50 So.2d 433 \(Ala.1951\)](#).

#### 14. Sufficiency of evidence

While the state's evidence tended to show that defendant took orders for "Florida lottery tickets," there was absolutely no evidence offered by the state as to the mechanics of the Florida lottery. It was incumbent upon the State of Alabama to prove how the Florida lottery worked so the jury could reach the factual conclusion whether it was gambling activity or not. Because the state failed to prove one of the elements of the charged offense, the judgment of the trial court was reversed and a judgment of acquittal rendered in favor of the defendant. [Henderson v. State, 616 So.2d 406 \(Ala.Crim.App.1993\)](#).

**Cited** in [Nelson v. State, 255 Ala. 141, 50 So.2d 401 \(1951\)](#); [McDowell v. Columbia Pictures Corp., 281 Ala. 438, 203 So.2d 454 \(1967\)](#).

Ala. Const. Art. IV, § 65, AL CONST Art. IV, § 65

Current with amendments ratified through December 1, 2008.

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