



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN, TEXAS 78711**

**CRAWFORD C. MARTIN  
ATTORNEY GENERAL**

October 4, 1971

Honorable Tom Hanna  
Criminal District Attorney  
Jefferson County Courthouse  
Beaumont, Texas 77701

Opinion No. M-964

Re: Exemption of certain  
organizations from  
lottery laws

Dear Sir:

This is in response to your recent request for the opinion of this office concerning a possible conflict between Senate Bill 584, Acts 62nd Legislature, Regular Session, 1971 and Article III, Section 47, Texas Constitution.

Senate Bill 584 provides certain definitions, and in its pertinent part further states:

"Section 1. Article 654, Penal Code of Texas, 1925, is amended to read as follows:

' . . .

'Sec. 3 (a) This article does not apply to a sale or drawing of a prize at a fair held in this State for the benefit of a church, religious society, veteran's organization, or other nonprofit charitable organization when all of the proceeds of the fair are expended in this State for the benefit of the church, religious society, veteran's organization, or other nonprofit charitable organization.

'(b) The lottery is operated for the benefit of the organization or charitable purpose only when the entire proceeds of the lottery go to the organization or charitable purpose and no part of the proceeds go to an individual member or employee thereof.'

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"Sec. 2. The acts set out in this bill shall only apply on property owned by the operating agency."

Article III, Section 47, Texas Constitution provides as follows:

"Sec. 47. The Legislature shall pass laws prohibiting the establishment of lotteries and gift enterprises in this State, as well as the sale of tickets in lotteries, gift enterprises or other evasions involving the lottery principle, established or existing in other States."

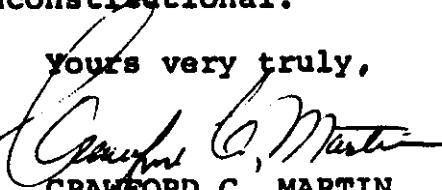
Previous attempts by the Legislature to "license" lotteries have been held unconstitutional under this Section. Barry v. State, 45 S.W. 571 (Tex.Crim. 1898). We perceive no way that the Legislature may do by exception from prosecution that which it cannot do by express authorization. See City of Wink v. Griffith Amusement Co., 129 Tex. 40 100 S.W.2d 695 (1936).

It is the opinion of this office that Senate Bill 584 is unconstitutional. Since it contains no severability clause and also since the removal of the objectionable portions of the act will leave portions not consistent with the caption (as required by Article III, Sections 35 and 36, Texas Constitution), it is our opinion that the entire bill fails, leaving Article 654, Texas Penal Code, as it existed prior to the passage of the act; and thus we do not answer the remainder of your questions. Fletcher v. State, 439 S.W.2d 656 (Tex.Sup. 1969).

S U M M A R Y

Senate Bill 584, Acts 62nd Legislature, Regular Session, 1971, concerning exemptions from lottery laws is unconstitutional.

Yours very truly,

  
CRAWFORD C. MARTIN  
Attorney General of Texas

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APPROVED:  
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