CRIMES AND OFFENSES GENERALLY: CRIMES INVOLVING MORALS AND DECENCY - GAMBLING.

Activity constitutes illegal gambling when elements of prize, chance, and consideration are present together. Although elements of prize (real estate and diamond necklace) and consideration ($100 entry fee) are present in talent contest, because element of skill (evaluation of content of essays) rather than chance is predominant factor, contest does not constitute illegal gambling, provided unallocated portion of percentage points assigned for grading essays does not involve element of chance.

The Honorable Brian J. Moran

Member, House of Delegates

September 19, 1996

You ask whether a business venture characterized as a "talent contest" is prohibited by § 18.2325(1) of the Code of Virginia.¹

You relate that an individual who is not associated with any religious, charitable, community or educational organization proposes to conduct a talent contest in which each entrant must pay a $100 fee and submit an essay entitled "Why I Should Be Awarded the Property." Prizes to be awarded will consist of a condominium and a town house (worth approximately $100,000 and $300,000, respectively), and a diamond necklace (worth approximately $15,000).² If a minimum number of entries is not received, the contest will be canceled and the entrants' fee refunded. Three charities will receive a percentage of the total proceeds from the entry fees; however, the greatest portion of the fee proceeds will benefit the individual.

Each essay will be evaluated for content and graded on a percentage point system according to
appropriateness, creativity, clarity and sincerity. Judging the essays will be students and/or faculty members of an educational institution associated with the contest. Relatives of individuals involved in promoting and administering the talent contest will be prohibited from entering. Contest entries will be accepted over a six-month period.

The contest will be advertised on the Internet, through the dissemination of a home page, as well as through other conventional media sources. All contestants will be provided, at a minimum, the fair market value of each prize, an address from which they may request a list of contest winners, an express disclaimer as to the availability of the contest in states where such contests are illegal, and other rules regarding the conduct of the contest.

It is unlawful for persons in Virginia to participate in illegal gambling. The Supreme Court of Virginia has held, and prior opinions of the Attorney General consistently conclude, that an activity constitutes illegal gambling when the elements of prize, chance and consideration are present together.

The elements of prize and consideration clearly are present in the talent contest. The prizes consist of real estate with improvements and a diamond necklace. The consideration consists of the $100 entry fee that must accompany each essay, a minimum number of which must be received or the contest will be canceled.

Prior opinions of the Attorney General have considered whether chance or skill was the predominant element in determining the winner of a particular game. The prize winner of the talent contest will be selected based on an evaluation of the content of the essay submitted by the entrant. All entries will be considered by the judges, and there will be no elimination of an essay other than for nonpayment of the entry fee. Therefore, assuming that the unallocated twenty percent of the percentage
points assigned for grading the essays does not involve the element of chance, I must conclude that the element of skill, rather than chance, is the predominant factor in the talent contest. Accordingly, I am of opinion that the talent contest does not constitute illegal gambling, prohibited by § 18.2325(1).

1Section 18.2325(1) defines "illegal gambling" as "the making, placing or receipt, of any bet or wager in this Commonwealth of money or other thing of value, made in exchange for a chance to win a prize, stake or other consideration or thing of value, dependent upon the result of any game, contest or any other event the outcome of which is uncertain or a matter of chance, whether such game, contest or event, occurs or is to occur inside or outside the limits of this Commonwealth."

2A minimum number of entrants must pay the $100 fee to enter the contest, but you do not state the number of entries that must be received before the contest may proceed. I assume that the minimum number of $100 entries required before the contest will proceed must equal the approximate value of all prizes being awarded by the individual, or $415,000, in the facts you present.

3You advise that the percentages assigned for grading the essays are 30% for creativity, 20% each for appropriateness and clarity, and 10% for sincerity. You do not advise how the remaining 20% will be allocated. Should the remaining 20% be allocated to a criterion involving the element of chance, rather than skill, the entire "talent contest" would constitute illegal gambling, unless the activity is explicitly authorized by §§ 18.2340.22 through 18.2-340.24.
See § 18.2326 (providing that any person who illegally gambles in this Commonwealth shall be guilty of Class 3 misdemeanor).


Op. Va. Att'y Gen.: 1987-1988 at 284 (coin-operated machine that contains crane with claws manipulated by player to pick up stuffed toy animal resting at bottom of machine beneath crane is not illegal "gambling device" because skill, rather than chance, primarily determines whether player is able to win prize); 1975-1976 at 207 (bass fishing contest is not illegal lottery because skill, rather than chance, primarily determines winner of contest).