You ask whether § 18.2-242 of the Code of Virginia prohibits a cigarette manufacturer’s sweepstakes promotion.

You relate that a cigarette manufacturer seeks to offer a sweepstakes marketing promotion. You also relate that no consumer purchase is necessary to participate in the promotion and that the promotion will be open only to smokers who are at least twenty-one years old. You further relate that the sweepstakes material will be available only in the cigarette package or on the counter of the retail establishment selling such cigarettes.

Section 18.2-242 provides:

(a) No retail establishment in this Commonwealth shall use any game, contest, lottery or other scheme or device, whereby a person or persons may receive gifts, prizes or gratuities as determined by chance for the purpose of promoting, furthering or advertising the sale of any product or products having both a federal and state excise tax placed upon it, and the fact that no purchase is required in order to participate in such game, contest, lottery or scheme shall not exclude such game, contest, lottery or scheme from the provisions of this section.

(b) Any person violating the provision of this section shall be guilty of a Class 3 misdemeanor.[1]

"[T]he primary objective of statutory construction is to ascertain and give effect to legislative intent."[2] Another rule of statutory construction requires that words in a statute be given their usual,
commonly understood meaning. In addition, although § 18.2-242 is a penal statute, and penal statutes generally are strictly construed, this Office has noted that such "'rule of construction "does not abrogate the well recognized canon that a statute … should be read and applied so as to accord with the purpose intended.'"

Section 18.2-242 clearly prohibits the use of sweepstakes promotions by a retail establishment to further the sale of products upon which federal and state excise taxes are placed. Thus, although sweepstakes promotions generally may be conducted in retail establishments, this statute specifically provides that such promotions may not be conducted with regard to the sale of products falling within its purview. Cigarettes have both federal and state excise taxes imposed upon them. Accordingly, cigarettes are products within the statute’s parameters.

With respect to the fact that the sweepstakes promotion is offered by the manufacturer, as opposed to the retail establishment itself, I note that the usual and commonly understood meaning of the verb "use" is "to avail oneself of something," to "utilize" or to "employ." In this instance, the retailer is availing itself or using the manufacturer’s promotion in order to further the sale of cigarettes; thus, § 18.2-242 is applicable to such promotion regardless of who is offering the promotion.

Accordingly, it is my opinion that § 18.2-242 prohibits a cigarette manufacturer’s sweepstakes promotion at a retail establishment.


5See 1972-1973 Op. Va. Att’y Gen. 258, 258 (concluding that promotion of sweepstakes by national manufacturers, for which no purchase is necessary to enter sweepstakes, does not violate state lottery laws).

