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Comptroller of the Currency  
Administrator of National Banks

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Washington, DC 20219

December 19, 2001

**Interpretive Letter #923**  
**January 2002**  
**12 USC 25AA**

Dear [                    ]:

This is in response to your letter of November 20, 2001, in which you alleged that a number of banks in the [                    ] area are violating 12 U.S.C. § 25a by advertising lotteries. You included copies of several advertisements and promotional mailings for the OCC's evaluation. I have reviewed all of the items. In addition, I have contacted the legal departments of, [ *A* ], and [ *B* ], to obtain further information concerning certain of the advertisements and events. Based on this information and review, it is my conclusion that none of the items violate 12 U.S.C. § 25a. My reasoning is explained in more detail below.

Discussion

Twelve U.S.C. § 25a prohibits national banks from participating in certain lottery-related activities. Among other things, national banks may not “announce, advertise, or publicize the existence of any lottery.” 12 U.S.C. § 25a(a)(3). You believe that the banks have violated this prohibition.

The statute defines “lottery” as follows:

The term “lottery” includes any arrangement whereby three or more persons (the “participants”) advance money or credit to another in exchange for the possibility or expectation that one or more but not all of the participants (“the winners”) will receive by reason of their advances more than the amounts they have advanced, the identity of the winners being determined by any means which includes —

- (A) a random selection;
- (B) a game, race, or contest; or
- (C) any record or tabulation of the result of one or more events in which any participant has no interest except for its bearing upon the possibility that he may become a winner.

12 U.S.C. § 25a(c)(2).

With this background in mind, I will now discuss the individual items.

[ A ] “Focus on Fashion”

The first item is a newspaper advertisement that reads in part as follows:

[ Co. ]’s  
13th Annual Charity  
Fashion Show & Luncheon

“Focus on Fashion”

...

Tickets \$35  
Grand Raffle and  
Elegant Basket Raffle

...

Sponsored by: [[ A ] logo]

...

You asked if this isn’t involvement in the sponsoring of the advertisement, citing OCC Interpretive Letter No. 900, June 19, 2000. In that letter, I concluded that a national bank could donate an item for a civic fundraising raffle and be identified in advertisements as the donor of the item, as long as the bank had no involvement with the sponsoring or display of the advertisements.

I contacted [ A ], to obtain information about this advertisement. The Bank informed me that the [ Co. ] paid for this ad, not the Bank. [ A ] is listed as a sponsor because it donated money for the event. Therefore, the fact situation here is very similar to that in Interpretive Letter No. 900, *i.e.*, the Bank is identified as a supporter of the event in an advertisement paid for by someone else. As I concluded in that letter, this type of situation does not violate 12 U.S.C. § 25a because there has been no action by the Bank to publicize the lottery.

[ A ] “Win the Lottery”

The second item is a newspaper advertisement promoting [ A ] home equity loans. The top of the ad displays the following statement:

How can the 89,545,673 people who didn’t *win the lottery* this weekend make those much-needed home improvements? Introducing our great rates on a home equity line of credit.

(Emphasis added.) In your view, this is announcing the existence of a lottery.

As a statute with criminal penalties, (see 18 U.S.C. § 1306), 12 U.S.C. § 25a should be narrowly construed. See *Federal Communications Commission v. American Broadcasting Company*, 347 U.S. 284, 296 (1954) (construing 18 U.S.C. § 1304, also involving lotteries). For that reason, the prohibition against publicizing a lottery should be interpreted to mean an actual, identifiable lottery, not one that is only hypothetical. See *United States v. Halseth*, 342 U.S. 277 (1952) (interpreting 18 U.S.C. § 1302, another lottery statute). The phrase “win the lottery” is simply a figure of speech and does not meet this standard.

[ A ] Platinum Visa Card

The third item appears to be a promotional mailing for a [ A ] credit card. The mailing includes “terms and conditions for the [ A ] platinum Visa card.” Among these terms and conditions is a transaction fee for the purchase of “betting or casino chips or similar items.” You believe that this violates the prohibition on publicizing lotteries.

As with the last item, this does not publicize an actual, identifiable lottery. Therefore, in my opinion, it does not violate 12 U.S.C. § 25a.

[ B ] [ ] Shuffle

The next item is a newspaper advertisement for the [ B ] [ ] Shuffle 8K race. Although this is not mentioned in the ad, you noted that there was a \$30 entry fee to participate in the race, and prizes of \$1500, \$1000, and \$750. You believe this violates 12 U.S.C. § 25a because it is publicizing a game, race, or contest which, in turn, is a lottery.

I contacted [ B ], which confirmed that it does sponsor this event (and other races) as charity fundraisers every year, and that the Bank did pay for this ad.

Referring back to the statutory definition of “lottery,” it is an “arrangement” in which the winner is determined by the outcome of, among other things, a “game, race, or contest.” It can be seen that the lottery and the race are two separate things: the lottery is the “arrangement,” while the race is the means of determining the winner of the lottery. Looking at it another way, under federal case law, one of the essential elements of a lottery is that the winners are selected by chance. *Federal Communications Commission v. American Broadcasting Company, supra*. As between the participants in a race, the winner is determined by skill, not chance. Therefore, the race, itself, is not a lottery. Rather, a betting pool among nonparticipants on the outcome of the race would be a lottery.

Accordingly, this advertisement does not violate 12 U.S.C. § 25a.

[ ] Bowling Party  
[ ] Pro Cup

These are newspaper advertisements in which [ B ] is listed as a sponsor of the events. You noted that these are fundraising events in which entry fees are charged and there are prizes for the winners.

It seems likely that these events are not lotteries, for the reasons discussed above. In any event, the Bank informed me that it did not pay for either of these ads. Rather, it donated money to the events and was listed as a sponsor in advertisements paid for by the promoters of the events. This brings these ads within the rule of Interpretive Letter No. 900 as discussed above, so there is no violation of 12 U.S.C. § 25a.

[ C ] Cancun Raffle

The next item is a newspaper advertisement for a charity raffle offering as a prize a trip to Cancun, Mexico. [ C ] and other companies are listed as sponsors. As [ C ] is not a national bank and is not regulated by the OCC, I will not comment on this item.

[ D ] Credit Card

The final item is a photocopy of a mailing promoting a credit card offered by [ D ]. This is similar to the [ A ] credit card mailing discussed above. It lists transaction fees for the purchase of “bets, lottery tickets, and casino gaming chips.” The discussion of the [ A ] credit card mailing applies equally to this item.

Conclusion

I have carefully reviewed the advertisements and other items that you submitted, and contacted the banks involved to obtain further information where necessary. For the reasons discussed above, I conclude that none of the items violates 12 U.S.C. § 25a. Either the banks did not pay for the advertisements, or the items do not publicize a lottery within the meaning of the statute.

I hope that this has been responsive to your concerns, and I thank you for bringing this matter to our attention.

Sincerely,

-signed-

Christopher C. Manthey  
Counsel  
Bank Activities and Structure Division