

## Court Finds “Handling Fee” May Be “Consideration” and Right to Buy Scarce Tickets May be “Prize” Under Illegal Lottery Analysis

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The 7<sup>th</sup> Circuit recently held that the NCAA’s Final Four ticket distribution practices may constitute an illegal lottery under Indiana law. A class action was filed against the NCAA, in part relating to the NCAA’s process for selling tickets to the Final Four tournament whereby each person who applied for tickets was required to pay the full face value of the tickets plus a \$6 “non-refundable handling fee” per ticket. Due to the overwhelming demand for tickets, a drawing would take place to determine who would receive the tickets. If the applicant was not selected in the drawing as eligible to receive the tickets, he or she would receive a refund of all ticket fees except for the \$6 handling fee.

The 7<sup>th</sup> Circuit found all three elements necessary to establish an illegal lottery present under Indiana law: (1) a “prize,” (2) “chance,” and (3) “consideration.” Specifically, the non-refundable “handling fee” constituted “consideration” because it bore no relation to the NCAA’s actual cost in administering the scheme and was not refunded; the scarcity of tickets which makes their market value much greater than their face value constituted a “prize;” and the fact that the events were much too small to meet ticket demand, which necessitated a drawing, constituted the “chance” element. The court distinguished a previous case which held a somewhat similar scheme to be legal, because in that case, entrants who were not selected received a full refund of the service charge.

**Tip: Schemes that are designed to make a profit based upon the element of chance could run afoul of illegal lottery laws, even if they are not traditional “games” and even if the “consideration” paid is disguised as a payment for services, such as a “handling fee.”**

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