

**LETTER OPINION
93-L-98**

March 17, 1993

Honorable Janet Wentz
State Representative
505 8th Avenue S.E.
Minot, ND 58701

Dear Representative Wentz:

Thank you for your February 26, 1993, letter asking whether a soft drink sweepstakes would violate N.D.C.C. ? 12.1-28-02.

In your letter you describe a soft drink promotion as follows:

A seller of soft drink products conducts a contest in which the purchaser of the soft drink product is eligible for a prize or prizes based upon future events or circumstances over which the purchaser of the product has no control, the event being that when the purchaser opens the can of soft drink it may or may not contain a symbol in the bottom of the can notifying the purchaser that he has won a prize. The retail price of the soft drink is not increased because of the contest.

In order to violate N.D.C.C. ? 12.1-28-02, a contest must have three facets: consideration, chance, and prize. While almost all sweepstakes include the elements of chance and prize, the majority do not require consideration. In the facts you presented, however, a purchase of a can is required to enter the contest, albeit at no increase in cost. Consequently, consideration would be present and the contest would violate state law.

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However, if the soft drink promotion or sweepstakes provides an opportunity for any person to obtain an entry form or game piece without a purchase and therefore have a chance to win without the payment of any consideration, N.D.C.C. ? 12.1-28-02 would not be violated.

Many promotions or sweepstakes similar to the one you describe have been present in the state. However, all of which this office is aware have offered an alternative way to enter the contest.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

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