



OFFICE OF ATTORNEY GENERAL
STATE OF OKLAHOMA

ATTORNEY GENERAL OPINION
2019-8

The Honorable Stephanie Bice
Oklahoma State Senate, District 22
2300 N. Lincoln Blvd., Room 232
Oklahoma City, OK 73105

September 26, 2019

Dear Senator Bice:

This office has received your request for an official Attorney General Opinion in which you ask, in effect, the following question:

Does a prize-linked savings account constitute a “lottery” under 21 O.S.Supp.2019, § 1051, and, if so, are prize-linked savings accounts prohibited by Oklahoma law?

I.
BACKGROUND

A prize-linked savings (“PLS”) account is “[a] savings account that gives an account-holder the opportunity to win a cash reward . . . to encourage people to save money.” *Prize-linked account*, BLACK’S LAW DICTIONARY (11th ed. 2019). Unlike traditional savings accounts, PLS accounts offer returns in the form of chances to earn prizes instead of, or in addition to, accrued interest, dividend income, or capital appreciation. See Melissa Schettini Kearney et al., *Making Savers Winners: An Overview of Prize-Linked Savings Products* 1 (Nat’l Bureau of Econ. Res., Working Paper No. 16433, 2010).¹ Typically, the larger the balance in a PLS account, the greater the account holder’s chances to win a prize. See Peter Trufano et al., *Consumer Demand for Prize-Linked Savings: A Preliminary Analysis*, 3 (Harvard Business School, Working Paper No. 08-061, 2008).² In general, the financial institution offering the PLS account establishes a minimum deposit amount required and sets the amounts required to receive incrementally greater chances to win. See Kearney, *Making Savers Winners*, at 1-2.

¹ Available at <https://www.nber.org/papers/w16433> (last visited September 25, 2019).

² Available at https://www.hbs.edu/faculty/Publication%20Files/08-061_17c22e32-fe06-4b4a-8b5e-e09227fc8104.pdf (last visited September 25, 2019).

Prize-linked savings accounts are not novel products; their basic function was described in 2002 as follows, as they were becoming increasingly common:

Typically, the bank automatically enrolls in a lottery those depositors who maintain a deposit of some specified size for some specified period in the designated accounts. Commonly, the depositor receives one “lottery ticket” or chance, each month for every X dollars he has on deposit for that month. The buyer pays for her lottery tickets by foregoing interest relative to an account that does not have the lottery feature. The lottery does not affect the principal of the deposit, but the interest rate that the holder receives each period is a random variable. The interest rate the holder actually receives could be very low—perhaps zero or only nominal, depending on the scheme’s structure—or it could be very high if the owner is lucky enough to win the grand prize.

Mauro F. Guillén & Adrian E. Tschoegl, *Banking on Gambling: Banks and Lottery-Linked Deposit Accounts*, 21 J. FIN. SERVICES RES. 219, 219 (2002). One of the features of a PLS account is that it is thought to appeal to—and thus incentivize saving by—persons who are not otherwise attracted to existing savings or investing products. *See* Trufano et al., *Consumer Demand for Prize-Linked Savings*, at 8.

II. DISCUSSION

You have asked whether a PLS account qualifies as a “lottery” under Oklahoma law and, if so, whether such a program is prohibited, as all lotteries are illegal unless explicitly permitted by a specific statutory exception.

A. Oklahoma Law Reflects the State’s Anti-Gambling Public Policy.

In Oklahoma, nearly all forms of gambling are illegal, including poker, roulette, craps, and other card and dice games. 21 O.S.2011, §§ 941 – 942. This office has long interpreted these broad statutory prohibitions, which are subject only to a few narrow exceptions, as demonstrating a “pervasive anti-gambling public policy of the State.” 2017 OK AG 2, ¶ 2 (quoting 2002 OK AG 25, ¶ 1, 2001 OK AG 54, ¶ 2); *see also* 1993 OK AG 1, ¶¶ 33-51. This interpretation has informed many Attorney General Opinions in which this office found various activities to be prohibited by the State’s gambling laws. *See* 2017 OK AG 2; 2005 OK AG 18; 2002 OK AG 25; 2001 OK AG 54; 1995 OK AG 6; 1993 OK AG 1. Accordingly, “we begin any analysis of the legality of gambling activity in Oklahoma with an understanding that all gambling, unless specifically permitted, is illegal.” 2017 OK AG 2, ¶ 2; 2002 OK AG 25, ¶ 1; 2001 OK AG 54, ¶ 2.

Title 21, Section 1052 of the Oklahoma Statutes declares explicitly that “[e]very lottery is unlawful, and a common public nuisance.”³ *See also State ex rel. Draper v. Lynch*, 1943 OK 215,

³ “Conducting a lottery” is also illegal under Oklahoma’s statutory prohibition on “commercial gambling.” 21 O.S.2011, § 982.

¶ 45, 137 P.2d 949, 955 (“Lotteries were deemed of sufficient importance to cause our legislature to deal with them with specific language.”). “Lottery” is defined under Oklahoma law as:

any scheme for the disposal or distribution of property by chance among persons who have paid, or promised, or agreed to pay any valuable consideration for the chance of obtaining such property, or a portion of it, or for any share of or interest in such property, upon any agreement, understanding or expectation that it is to be distributed or disposed of by a lot or chance, whether called a lottery, a raffle, or a gift enterprise, or by whatever name the same may be known.

21 O.S.Supp.2019, § 1051(A).⁴ The Oklahoma Supreme Court has distilled this definition into three necessary elements: (1) prize, (2) chance, and (3) consideration. *Draper*, 1943 OK 215, ¶ 28, 137 P.2d at 953. Where all three elements are present, the activity in question is prohibited by Title 21, Section 1052, subject to certain exceptions discussed in Section II(C) *infra*.

B. A Prize-Linked Savings Program is a Lottery under Title 21, Section 1051.

Applying the above definition to a PLS account, it is clear that the elements of prize⁵ and chance⁶ are present. The third element—valuable consideration—is defined as “money or goods of actual pecuniary value.” 21 O.S.Supp.2019, § 1051(A). In the context of a PLS account, the consideration provided by the account holder is similar to that provided by any savings account depositor—permitting the bank to use the deposited funds, subject to the terms of the deposit agreement. This short-term lending of funds to the bank has pecuniary value, as evidenced by the bank’s willingness to pay interest on more traditional deposits.⁷ Accordingly, by depositing money into a PLS account, the account holder provides consideration for the chance to win a prize, which means a PLS account meets the definition of a “lottery” generally prohibited under Title 21, Section 1052.

⁴ While your request asks whether PLS accounts qualify as lotteries *or* raffles, the statutory definition of “lottery” explicitly includes “raffles.”

⁵ Per the statutory definition of “lottery,” the “prize” offered in a lottery need only be some form of “property.” 21 O.S.Supp.2019, § 1051(A). While “property” is not defined in the statute, it is commonly understood to include money. *See* WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 1818 (3d ed. 2002) (defining “property” as “something that is or may be owned or possessed: wealth, goods”); *see also* 25 O.S.2011, § 1 (“Words used in any statute are to be understood in their ordinary sense, except when a contrary intention plainly appears[.]”).

⁶ As described above, a fundamental characteristic of a typical PLS account is that “the depositor receives one ‘lottery ticket’ or chance, each month for every X dollars he has on deposit for that month.” Guillén & Tschoegl, *Banking on Gambling*, at 219. The fact that the depositor is not at risk of losing any of the account’s principal does not mean “chance” is absent. Rather, chance in this context refers only to “something that befalls, as the result of unknown or unconsidered forces[.]” *State v. Koo*, 1982 OK CR 93, ¶ 15, 647 P.2d 889, 892 (quoting *Public Clearing House v. Coyne*, 194 U.S. 497 (1904)); *see also* 1999 OK AG 5, ¶ 7 (finding the element of chance present in “money hunts” because “the ultimate outcome . . . is unknown, unknowable, outside the control of the contestants, and as such, dependent upon chance”).

⁷ It is worth noting that on two occasions the Oklahoma Supreme Court has broadly interpreted “valuable consideration” to include a lottery participant simply incurring the time and/or cost involved in registering for the chance to win a prize, even if no “money or goods of actual pecuniary value” changed hands. *See Knox Indus. Corp. v. State ex rel. Scanland*, 1953 OK 400, 258 P.2d 910; *Draper*, 1943 OK 215, 137 P.2d 949.

C. Prize-Linked Savings Accounts Do Not Fall Within a Recognized Exception to Oklahoma’s General Prohibition of Lotteries.

Though lotteries are generally illegal in Oklahoma, there are limited exceptions that permit lotteries to be conducted by certain entities and under certain conditions. For example, organizations such as churches, schools, student groups, fire departments, and police departments may conduct lotteries to raise funds for their organization. *Id.* § 1051(A)(4). Additionally, the Oklahoma Lottery Commission is permitted to conduct lotteries pursuant to the Oklahoma Education Lottery Act, and the Oklahoma Department of Wildlife Conservation may “conduct controlled, draw, lottery or raffle hunts.” *Id.* § 1051(A)(1), (5). Having reviewed the statutory exceptions to the general prohibition of lotteries, PLS accounts do not fit within any of them.⁸

It is, therefore, the official Opinion of the Attorney General that:

A prize-linked savings account constitutes a “lottery” under 21 O.S.Supp.2019, § 1051 and is therefore prohibited by 21 O.S.2011, § 1052.



MIKE HUNTER
ATTORNEY GENERAL OF OKLAHOMA



CALEB J. SMITH
ASSISTANT ATTORNEY GENERAL



⁸ To be clear, this Opinion addresses only whether PLS accounts qualify as lotteries under the State’s gambling statutes. We have not considered and therefore do not address whether PLS accounts would be prohibited or otherwise restricted by any other state or federal statute or regulation.