

Looks like a lottery -- but isn't, **judge rules**

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The "Emergency Power Call" scratch card offers a top prize of \$50,000 -- or a free Corvette. It's part of a "Free Money Lotto" promotional campaign in North Carolina by a phone card company.

Looks like an illegal lottery, charged N.C. Alcohol Law Enforcement agents.

Not at all, replied the company. The cards provide two minutes of long-distance calling for \$1, and anyone can play the game for free if they send the company a self-addressed, stamped envelope.

And now, the company has a state Superior Court judge on its side.

After a two-day trial this month in Wake County, Judge Robert Hobgood told ALE agents to stop harassing convenience stores that sell Treasured Arts phone cards.

"Anybody could write in and get a free game card without paying a dime," Hobgood said in an interview. "That, by definition, does not constitute a lottery because there's no lottery in the world where you can get a game card for free."

The upshot is that more North Carolinians could find a way to feed their Lotto fevers without having to cross state lines. North Carolina doesn't have a lottery, though every state bordering it does since Tennessee started selling scratch-off cards Jan. 20.

And Treasured Arts plans to stoke that fever Thursday by publicizing its court victory.

"We're going to start an advertising campaign and try to get all of those stores back doing business with us, since now there's no reason to fear the ALE or state government," Dan Booker, the South Carolina company's vice president and chief executive officer, said Tuesday.

He and company President William Brown said only about 250 stores carry the cards now, down from a peak of about 2,000 several years ago. They said the company has paid out more than \$5 million in prizes, including about five \$50,000 winners.

History of the case

Treasured Arts started marketing the cards in North Carolina in 1995, after Wake County District Attorney Colon Willoughby and others across the state raised no objections. But in December 2001, Brown complained that ALE agents had visited several stores and told them they were jeopardizing their state licenses to sell beer and wine by hawking the

cards.

That led Treasured Arts and another company, American Treasures, to sue the state to leave the convenience stores alone. American Treasures markets a series of scratch-off phone cards with names such as Lucky 7's and Crazy 8's that offer cash prizes.

The two companies quickly won a temporary injunction keeping the state from pestering the stores. American Treasures' claim has yet to go to trial.

Stacey T. Carter-Coley, one of the assistant state attorneys general handling the case, said her office couldn't comment on the ruling. They were awaiting the judge's written order.

In court papers, she and ALE agents charged that the cards were an illegal lottery. The cards and displays resemble those used for the South Carolina and Virginia lotteries, they said, and buyers usually throw away losing cards without using the long-distance minutes.

Randy Hocutt, a clerk who works the late afternoon shift at Longview Grocery on Poole Road in Southeast Raleigh, has seen that happen time and again. He and others give the losing cards to a neighborhood woman who uses them to call New York City.

Brown and Booker say the contests promote the phone cards, just like McDonald's sells its Big Macs through scratch-off games that offer big prizes. The state also contested Treasured Arts' claim that anyone can play for free, because it costs 74 cents in postage to receive a scratch card. The company allows only one card per mail request.

But Treasured Arts produced scores of people who had won by mailing in free cards. Some people had mailed in dozens of them. (The company is represented by Raleigh lawyers Hugh Stevens and Amanda Martin, who also represent The News & Observer.)

Brown and Booker don't dispute that they are capitalizing on the desire to play the lottery. But just because they borrow some elements of a typical lottery does not mean they meet the legal definition of one, they argue: "A lot of people look at it and think it is a lottery, but it's not, and that's why we went to court to prove that it's legal," Booker said.

They claim players have better odds of winning than traveling to South Carolina or Florida to play those state lotteries, but Hocutt said the sales at Longview have slowed because few people were winning.

"If I sell a whole pack of cards and don't have more than five winners off it, people aren't going to buy them," he said.

Caption:

The \$1 card buys a chance to win cash or a Corvette, and two minutes of long-distance phone service.

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