

November 17, 2005

Roy Cooper
Attorney General
North Carolina Department of Justice
9001 Mail Service Center
Raleigh, NC 27699-9001

BY HAND DELIVERY

Dear Mr. Cooper:

Several concerned citizens have approached the North Carolina Institute for Constitutional Law ("NCICL") and requested that we represent them in a possible legal action to challenge the constitutionality of HB 1023, commonly known as the Lottery Act. NCICL's Board of Directors has authorized our participation in such action.

I am writing to advise you that it is our position that HB 1023 as amended by section 31.1 of SB 622 violates several provisions of the North Carolina Constitution including Article II, Section 23, which requires that any law to raise money on the credit of the State or to pledge the faith of the State directly or indirectly for the payment of any debt, or to impose any tax upon the people be read and passed on three several readings each of which shall be on three separate days and the yeas and nays on the second and third readings shall be entered on the journal of the General Assembly; and Article V, Section 7, which prohibits the drawing of money from the state treasury but in consequence of appropriations made by law.

In addition to the constitutional infirmities of the Lottery Act itself, NCICL believes that the process by which certain appointments to the Lottery Commission, specifically those appointments which were to have been made by the General Assembly, but were made by the Governor upon the recommendations of the Speaker of the House and the Senate President Pro Tempore, violate the separation of powers provision of Article 1, Section 6 of the State constitution. Accordingly, the appointments of those Commission members are invalid, and those individuals may not act as members of the Lottery Commission.

In view of the unconstitutionality of the Lottery Act and the invalidity of several appointments to the Lottery Commission, NCICL hereby demands on behalf of our clients, pursuant to *Branch v. Board of Education*, 233 N.C. 623, 625, 65 S.E.2d 124, 126 (1951), that the State of North Carolina refrain from proceeding with the establishment of a state lottery or expending funds in furtherance of the same, including, but not limited to, contracting for the employment of an executive director or other employees.

Thank you for your attention to this matter.

Sincerely,

Robert F. Orr
Executive Director and Senior Counsel

Jeanette Doran Brooks
Staff Counsel