

PROSECUTING ATTORNEY: Lotteries.

"Suit Club" whereby
weekly amount paid for
certain period with a
chance to get suit before
end of period held
violation of section
4314 R. S. Mo. 1929
against lotteries.

§ 23
August 21, 1934.



Mr. E. W. Allison,
Prosecuting Attorney, Phelps County,
Rolla, Missouri.

Dear Sir:-

We have your letter of June 26, 1934, in which is
contained a request for an opinion as follows:

"A business venture proposed in this County has
been called to my attention, and, being uncertain as to
the legality of the venture, I wish to ask an opinion
of the Attorney General on the following state of facts:

"The venture is termed a men's "Suit Club", whereby
members seek to obtain suits of clothes. The club will
consist of about one hundred members. Each member is to
pay \$1.00 per week for twenty-five weeks, at the end of
which period each will receive a suit of clothes or top
coat, made to measure, unless such member has drawn a suit
sooner, as outlined below. On each Saturday night during the
life of the club, some one member will receive a suit of
clothes for the amount he has paid in to that date, and will
then drop out, each member so receiving a suit on any Saturday
evening will be chosen by a drawing. Should a member desire
to drop out of the club before he gets a suit, the promoter
agrees to refund seventy-five percent of what such member
has paid, the other twenty-five percent to be retained by
the promoter as his expenses of operating the club. The
promoter alleges that a one-hundred member club would show
a profit of \$4.50 per suit of clothes, gross, and out of this
\$4.50 comes the expenses of collection, printing, etc. The
promoter does not maintain a regularly established place of
business as a clothing merchant, or any other kind of merchant,
any more than he is now engaged in a business of taking orders
for made to measure suits.

"Is it the opinion of the Attorney General that the
operation of a club such as outlined would be in violation
or contravention of the statutes, especially with reference
to the lottery statutes?"

E. W. Allison--#2

August 21st, 1934.

Section 4314, Revised Statutes of Missouri, 1929, provides as follows:

"Sec. 4314. ESTABLISHING LOTTERY.--PENALTY.

If any person shall make or establish, or aid or assist in making or establishing, any lottery, gift enterprise, policy or scheme of drawing in the nature of a lottery as a business or avocation in this state, or shall advertise or make public, or cause to be advertised or made public, by means of any newspaper, pamphlet, circular, or other written or printed notice thereof, printed or circulated in this state, any such lottery, gift enterprise, policy or scheme or drawing in the nature of a lottery, whether the same is being or is to be conducted, held or drawn within or without this state, he shall be deemed guilty of a felony, and, upon conviction, shall be punished by imprisonment in the penitentiary for not less than two nor more than five years, or by imprisonment in the county jail or workhouse for not less than six nor more than twelve months."

The above quoted section is the same section as section 3562, Revised Statutes of Missouri, 1919. We have two cases decided by the Supreme Court of Missouri which are directly in point on the present question. In each case, operations almost identical to those as stated in your letter were held to be in violation of the section of the 1919 statutes.

In the case of State vs. Emerson, 1 S. W. (2nd) 109, a plan whereby a furniture company sold contracts to customers on a basis of one dollar a week until fifty-five dollars had been paid, whereupon the purchaser was entitled to that value in furniture, the company reserving the right to discount one or more contracts each week by charging off deferred payments and delivering the contract holder fifty-five dollars worth of furniture without further payments, was held a lottery within the meaning of Article 14, Section 10 of the Constitution of Missouri, and Section 3562, Revised Statutes of Missouri, 1919.

In the case of State vs. Meyer Tailoring Company, 25 S. W. (2nd) 98, a company selling arbitrarily maturing certificates for suits of clothes was held to be violating the Cooperative Companies Act and lottery law. (Const. of Mo. Art 14, section 10; Revised Statutes of Mo. 1919, sections 3562 and 10237-10262).

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The language used by Justice Walker, at page 111, in the case of State vs. Emerson, above cited, is very much to the point:

"The crime having been properly charged, the proof of the existence of the elements necessary to establish it are held to be consideration, chance, and a prize. Were these elements shown to have been present in the instant case? Let the facts bear witness. The moving consideration in the making of the contract was the payment by the holder of weekly installments; the chance was that of an early selection of the holder's contract for a discount; and the prize was the furniture to be received. Further than this, the inequality between the different contract holders whereby one might secure \$55 worth of furniture for a few dollars while another would be required to pay that amount in full for the same quantity of furniture constituted a prize, within the meaning of the Constitution. The lack of knowledge of a holder, as to when his contract would be discounted constituted a chance within the contemplation of the law."

From the above, it is evident that a business venture operated as stated in your letter clearly violates our law against lotteries, (section 4314, R. S. Mo. 1929, quoted earlier in this opinion). The elements of consideration, chance and prize are the tests and are manifestly existent in the instant case.

Very truly yours,

CHARLES M. HOWELL, Jr.
Assistant Attorney-General.

CMH jr-MB

APPROVED:

Attorney-General.