

RELATING TO THE SUBJECT OF LOTTERIES AS DEFINED BY OUR
STATUTES AND CONSTITUTION:

Sec. 4314 R. L. 1929

September 12th, 1934



Hon. Frank E. Ashby
Prosecuting Attorney
Mississippi County
Charleston, Missouri

Dear Sir:

We acknowledge receipt of your letter of August
31st, 1934, in which you state and inquire as follows:

"If A. has two thousand acres of land all
in cultivation that lays well and is real
cheap at \$40 per acre even if it were with-
out any buildings of any kind. As a
matter of fact the land had a loan on it
of over sixty dollars per acre. There are
many buyers that will buy five acre tracts
at this price. There happens to be two
thousand acres of the land and there are
about 18 sets of buildings on the place.
The sets of buildings would cost from
\$3500 to eight hundred dollars each and
of course one could not afford to sell a
five acre tract for \$300 with a set of
these buildings on it unless he knew he
was going to sell the rest of the land.

Is it against the law to divide this land
into 400 five acre tracts letting the
buildings on the place be on any tract
they might. Sell 400 five acre tracts
for \$300 per five acre tract and after
all tracts are sold let each man draw for
choice of tracts. Or number each tract
and let a man draw the tract he gets.

Every one of these tracts is worth the
money and every man will get a tract. It
is just a question as to whether or not
the fact one might get a set of buildings
worth many times more than the five acre
tract itself would make this a lottery.
However it seems to me that if every man
get value there could be nothing wrong
with this transaction.

Please advise me as to whether or not a sale of this kind should be stopped and what law is violated if any."

I.

Lottery is a distribution of prizes of some value, by chance or lot.

Article XIV Section 10 of the Constitution of Missouri provides as follows:

"The General Assembly shall have no power to authorize lotteries or gift enterprises for any purpose, and shall pass laws to prohibit the sale of lottery or gift enterprise tickets, or tickets in any scheme in the nature of a lottery, in this state; and all acts or parts of acts heretofore passed by the Legislature of this state, authorizing a lottery or lotteries, and all acts amendatory thereof or supplemental thereto, are hereby avoided."

Section 4314 R.S. 1929, provides as follows:

"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."

In State v Mumford, 73 Mo. l. c. 650, the court speaking through Judge Nerton, said:

"The term lottery has no technical meaning

in the law, distinct from its popular signification, and it is defined by various lexicographers, as follows: "A distribution of prizes and blanks by chance--a game of hazard in which small sums are ventured for the chance of obtaining a larger value either in money or other articles." Worcester Dict. "A scheme for the distribution of prizes by chance." Bouvier's Dict. "A distribution of prizes by lot or chance." Webster's Dict. "A kind of game of hazard, wherein several lots of merchandise are deposited in prizes for the benefit of the fortunate." Rees' Cyclopaedia. "A sort of gaming contract by which, for a valuable consideration, one may, by favor of the lot, obtain a prize of a value superior to the amount or value of that which he risks." American Cyclopaedia. It, therefore, appears from all these authorities, that when there is a distribution of prizes of some value, by chance or lot, this constitutes lottery. Testing the scheme, which the agreed statement of facts discloses in this case, by the above definition of the word lottery, and it is clearly embraced by it. The subscription price of the Kansas City Times, when paid by the subscriber, entitled him to a copy of the paper and also to a ticket which might draw a prize (as for instance, a piano), worth a hundred fold more than the subscription price of the paper. The drawing of such a prize under the scheme was within the range of probabilities, and, doubtless, many subscriptions for the paper were made and induced solely by the consideration that the person subscribing would be entitled to a ticket which might bring to him some one of the many valuable prizes to be disposed of in the drawing. The fact that the subscription prices of the Times was not increased, does not alter the character of the scheme, inasmuch as the price paid entitled the subscriber to a ticket in the lottery as well as to a copy of the paper."

In State ex rel Home Planners v. Hughes, 299 Mo. 1. c. 533-4, the court said:

"The first question argued is whether relator's plan or scheme is a lottery or in the nature of a lottery within the meaning of Section 10

of Article XIV of the Constitution which forbids the authorization of lotteries or gift enterprises for any purpose. The term "lottery," thus used, includes every device whereby anything of value is, for a consideration, allotted by chance. (State v. Becker, 248 Mo. 1. c. 560; State v. Mumford, 73 Mo. 647; 17 M. C. L. p. 1222, sec. 10.) Consideration, chance, prize--these are the elements. That regulator's plan includes the first cannot be denied. The questions debated relate to the second and third. The fact that each certificate holder eventually might or would receive an amount equal to the aggregate of his payments can make no difference if, in addition each secured a chance for a prize."

In State v. Becker, 248 Mo. 1. c. 560, the court said:

"It is not denied that the term "lottery" is, as interpreted by the courts of other States, broad enough to include every punishable plan, scheme or device whereby anything of value is disposed of by lot or chance, and it is not contended there yet has been devised nor that there could be devised any scheme in the nature of a lottery that the term lottery is not, as thus interpreted, broad enough to cover. It is said, however, the framers of the Constitution and the statute must have had a less comprehensive meaning in mind, otherwise they are convicted of employing useless words, a conclusion not favored. It is to be observed, however, that at the time the Constitution was framed the meaning of the term "lottery" was not so well settled as now and there was even then a contention being made in our courts that there was a distinction between a "regular" lottery and other devices similar in respect to the elements which rendered them culpable, but not conducted with the same formalities. (State v. Hindman, 4 Mo. App. 1. c. 582.) Doubtless to meet such a conception the framers of the Constitution (Sec. 10 art. 14) used the phrase "scheme in the nature of a lottery." The courts of this State had not then given to the word "lottery" the broad definition (State v. Mumford, 73 Mo. 647) subsequently

approved and it seems caution rather than necessity dictated the employment of the additional words "scheme in the nature of a lottery."

In *State v. Emerson*, 1 S.W. (2d) 1. c. 111, this court said:

"The people in framing the state Constitution (section 10, art. 14) declared their disapproval of the establishing of lotteries or schemes of chance in the nature of lotteries, by inhibiting the General Assembly from giving legislative recognition to such schemes. In the discussion and interpretation of this constitutional provision we have held that a lottery includes every scheme or device whereby anything of value is for a consideration allotted by chance. *State ex rel. Hughes*, supra, 1. c. 534 (253 S.W. 229). In *State v. Becker*, supra, 1. c. 560 (154 S.W. 769), in line with our former rulings and those of courts of last resort elsewhere, a more comprehensive definition is given to the word, and a lottery or a scheme in the nature of a lottery is held to include every punishable plan, scheme, or device whereby anything of value is disposed of by lot or chance."

Therefore in view of the foregoing Constitutional and statutory provisions and what our courts have said as herein indicated, this department holds that the facts stated in your letter brings the case clearly within section 4314 (supra) and would constitute a plan, scheme, or device whereby a thing of value is disposed of by lot or chance.

Respectfully submitted,

W. W. Barnes

Assistant Attorney General

APPROVED:



(Acting)
Attorney General