

RELATING TO FACTS THAT CONSTITUTE A SCHEME OR DEVICE  
WHEREBY THINGS OF VALUE ARE FOR A CONSIDERATION ALLOTTED  
BY CHANCE CONSTITUTING LOTTERY.

10-5

September 25th, 1934



Mr. George M. Husser  
Manager Better Business Bureau Inc.  
Kansas City, Missouri

Dear Sir:

We acknowledge receipt of your letter of August 26th in which you enclose your Bulletin of August 2nd, 1934 describing a so-called game of skill, known as "tango."

We have carefully examined your bulletin furnished us, and we quote the following:

"Briefly, the game is played as follows: For ten cents a player is given a card and a supply of chips, buttons, beans or corn. On the card are five rows of squares across the card and five rows of squares down the card. In each square except the middle space, which is blank appears a number. To start the game each player places a chip on the center square. This is considered a free number. The object of the game is to fill a row of five squares with these chips before any other player fills a row. The row may be filled across the card, down the card, or in any straight line. The player who first fills a row yells "Tango" or knocks on the counter and receives the "jack pot" in the form of so-called "merchandise" cards which immediately may be converted into cash by the "bank."

"The playing procedure is to allow each player to throw a ball into either a portable or stationary box containing open spaces numbered from 1 to 75. The number of the space into which the ball drops is called out and appears on a lighted signboard above the playing table. As the numbers are called, the players whose cards contain the numbers called, cover the number with chips or buttons until a row is filled. If more than one player fills the row at

the same time the "jack pot" is divided between them.

The Fortune Skill Ball Salon, operated by Fortune, Inc., on the second floor at 2 West 39th street, is a large and lavishly furnished place with row after row of player's seats. In front of each player is a glass box containing numbered squares into which the player may toss a rubber ball to obtain a number when his turn arrives, providing some other player does not fill his row first.

At any time during the game the player may throw another ball, known as the "skill ball," into the box in an endeavor to obtain any number he desires. If the bouncing "skill ball" lands on the number desired the player may cover that number with a chip even though the number is not called in the regular procedure of the game.

The player is advised to throw this ball only when but one number is needed to complete his row. The Bureau observer noted, however, that the bouncing proclivities of the ball were such that it seldom ended up in the space at which it was aimed."

It will be seen from the description of the manner of playing the game that chance plays a very large part in selecting the numbers, and that the part skill could play is extremely small.

It appears that it is possible for one to win a prize before any one playing used what is called the "skill ball," and even if a player should use the "skill ball," and fail, he would still be dependant upon the chance that some other player would be able to settle the ball into the compartment with the number required to complete his row, that he may "tango."

I.

A game played as described in bulletin referred to herein, is a scheme or device whereby things of value is for a consideration allotted by chance, regardless of the fact that the element of skill might be present in some small degree.

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 Revised Statutes of Missouri, 1929, provides in part 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, whether the same is being or is to be conducted, held or drawn within or without this state....."

In *State v. Emerson*, 1 S.W. (2d) 1. c. 111, the Supreme Court said:

"The people inframing 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, loc. cit. 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 compre-

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hensive 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."

Section 4287 Revised Statutes of Missouri, 1929, provides in part as follows:

"Every person who shall set up or keep any table or gaming device commonly called A B C, faro bank, E O, roulette, equality, keno, slot machine, stand or device of whatever pattern, kind or make, or however worked, operated or manipulated, or any kind of gambling table or gambling device adapted, devised and designed for the purpose of playing any game of chance for money or property and shall induce, entice or permit any person to bet or play at or upon any such gaming table or gambling device, or at or upon any game played or by means of such table or gambling device, or on the side or against the keeper thereof, shall, on conviction, be adjudged guilty of a felony,....."

This department is therefore of the opinion that the facts as gathered from your bulletin bring the case within the provisions of either of sections 4314 or 4287 (Supa) and would constitute a plan, scheme or device (of lottery) whereby a thing of value is disposed of by lot or chance rather than that of skill, and the use of which is unlawful and is prohibited by either of the foregoing criminal statutes.

Yours very truly,

W. W. Barnes

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Asst. Attorney General

APPROVED:

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Attorney General