

LOTTERY - Giving away house and lot by chance to purchasers  
of other vacant lots is a lottery.

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4-3

April 2, 1935.



Honorable Elliott M. Dampf  
Prosecuting Attorney  
Cole County  
Jefferson City, Missouri

Dear Sir:

We have your request of March 30, 1935  
for an opinion, which request is as follows:

"Will you please furnish this office  
with an opinion as whether or not the  
following proposition would be in  
violation of our laws governing gambling  
and lotteries.

"A person owns thirty nine lots, all of  
which are surveyed and platted showing size  
and location so that same may be viewed  
by the purchasers, the lot being numbered  
as shown on the plat thereof. Upon one  
lot there is a residence building, which  
said lot is not to be sold, but is to be  
given to one of the purchasers owning one  
of the lots sold. The lots the purchasers  
will receive a deed to, will be determined  
by a drawing. The purchaser of each lot  
will be given a contract and warranty deed  
to one of the lots sold and the particular  
lot to be determined by drawing a number  
corresponding to the lot numbered as shown  
on plat. After the lots are drawn, each  
and every one of the purchasers will be en-  
titled to draw on the lot upon which the  
residence is situated without further cost.

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The lots are to be sold for three hundred dollars each, within a certain definite time, and the purchased money together with the contract and deed is to be held in escrow in one of our banks. If the full number of lots to be sold are not disposed of within this definite time, as may be set out in the contract, the purchaser's money is to be returned to him upon his return of the contract to the seller or his agent. It is to be set out in the contracts that a certain number of these lots are to be sold at a certain price within a certain time, and that the purchaser and holder of one or more lots under the contract will have a chance to draw the lot upon which the residence is situated, the drawing to be held publicly, and at a certain time and place."

In answer to your letter, we refer you to Section 4314, R. S. Mo. 1929, which reads 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

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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."

There are three essential elements necessary to constitute an act a felony under the above statute: (1) prize, (2) chance, (3) consideration. State v. Emerson, 1 S. W. (2d) 109.

From your letter, it is apparent that the prize is a lot with a residence building which is to be given away to the holder of the lucky numbered ticket; that the chance is shown by the fact that only one holder out of the lots to be sold will be the one to receive the lot with the residence building on it, and the consideration is purchase of a lot for \$300.00, which entitled the party to a drawing for the prize.

In this connection, we are enclosing herewith a copy of an opinion holding that the "Bank Night", as conducted by theaters, is a violation of the lottery law, that certain "gift enterprises" constitute a lottery, that the operation of various "sportsman machines", "whiffle boards", and other similar devices are forms of gambling prohibited under the above lottery statute.

It is, therefore, the opinion of this office that the purported lottery as outlined in your letter is in violation of the felony statute above cited.

Respectfully submitted,

FRANKLIN E. NEAGAN  
Assistant Attorney General

APPROVED:

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ROY McKITTRICK  
Attorney General

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