

LOTTERIES: Specifically prohibited in the State of Missouri by Section 10, Article XIV of the Constitution.

8-16

August 15, 1935



Paul C. Wolman, Chairman
Veterans of Foreign Wars of
the United States
Mercantile Trust Building
Baltimore, Maryland

Dear Sir:

This Department is in receipt of your letter of August 13, requesting an opinion as to the following state of facts:

"Will you please advise me whether the laws of your State permit the sale of lottery tickets of the sweepstake variety? If they do not would you kindly inform me as to the section of the law prohibiting their sale?"

Assuring you of my appreciation for your prompt reply, at the above address, I am"

Section 10 of Article XIV of the Constitution of the State of Missouri, provides:

"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."

In the case of State v. Becker 248 Mo. 555, the Supreme Court of this State 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 the case of State v. Emerson 318 Mo. 633, Judge Walker said:

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"The people in framing the State Constitution (Sec.10, Art. XIV) 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. v. Hughes, supra, l. c. 534.) In State v. Becker, supra, l. c. 560, 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.

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."

CONCLUSION

In view of the foregoing, it is the opinion of this Department that by reason of Section 10, Article XIV, of the Constitution of the State of Missouri, the establishing of lotteries or schemes of chance in the nature of lotteries, is specifically prohibited in this State.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

ROY McKITTRICK
Attorney General

JWH:LC