

MOVIE QUIZ CONTEST)
LOTTERY)

Movie quiz contest constitutes
a lottery.

September 28, 1938

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Honorable Elbert L. Ford
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Kennett, Missouri

Dear Sir:

We have your request for an opinion relative to the \$250,000 Movie Quiz Contest, wherein are to be awarded 5,404 prizes, ranging from \$10.00 to \$50,000 each. We also have a booklet containing the contest rules.

You request an opinion of this office as to whether or not this Movie Quiz Contest is a violation of the lottery laws of this State. Under the rules, the contestants attend the theatre and receive, without charge, one of the booklets containing a list of prizes, instructions on how to win, a set of the contest rules, and a list of the motion pictures and the question asked with reference to each picture. The contestants are required to answer one question from thirty different motion pictures, the answers to which are simple enough to be clearly answered by anyone seeing the motion picture from which the question to be answered is taken. As an example of the questions asked, we quote the following question from the booklet:

"ANSWER THIS QUESTION: The college that
Sonja Henie attends in 'My Lucky Star'
is (Check one)

() Pennsylvania () Payne
() Plymouth () Page "

Anyone who saw the above picture would readily recognize that the college involved was Plymouth.

Rule 2 provides in part as follows:

" ** The name of the motion picture and the question to be answered for that particular picture is clearly described in the booklet. The question asked belongs

only to that one specially designated motion picture. Thirty questions only must be answered to be eligible in this contest."

Rule 3 provides that the answers to the thirty questions must be accompanied by a written statement of not more than fifty words, telling the name of the picture the contestant liked best and why.

Rule 6 provides:

"Entries will be judged by the highest number of correct answers to questions regarding thirty pictures. In the event of ties, then the best fifty word statements will be selected and graded on the basis of sincerity, merit, originality and advertising value to determine the winners."

Rule 11 provides that each entry will be carefully read and considered by Radio & Publication Contests, Inc., and that the final judging and distribution of awards will be made by an honorary committee of prominent persons under the provisions of Rule 12.

Rule 13 provides that the judges' decision is final.

The question presented is whether or not the above scheme is a lottery. A lottery is any scheme or device whereby anything of value is, for a consideration, allotted by chance. State vs. Emerson, 318 Mo. 633, 1 S. W. (2d) 109, 111; State ex rel. vs. Hughes, 299 Mo. 529, 253 S. W. 329, 28 A.L.R. 1305; State vs. Becker, 248 Mo. 55, 154 S. W. 769.

The term in constitutions must be construed in the popular sense. Chancy Park Land Co. vs. Hart, 104 Ia. 592; 73 N. W. 1059; Johnson vs. State, 137 Ala. 101; 34 So. 1018. City of New Orleans vs. Collins, 27 So. 532, 538.

The word "lottery" must be construed in its popular sense with the view of remedying the mischief intended to be

prevented and to suppress all evasions for the continuance of the mischief. *People vs. McPhee*, 139 Mich. 687, 103 N. W. 174; 69 L. R. A. 505; *State vs. Mumford*, 73 Mo. 647, 650. *State vs. Wersebe*, 181 Atl. 299, 301.

The word is generic; no sooner is it defined by a court than ingenuity evolves some scheme within the mischief discussed but not quite within the letter of the definition given. *People vs. McPhee*, 139 Mich. 687; 103 N. W. 174; 69 L. R. A. 505; *State vs. Clarke*, 33 N. H. 329. This is made apparent from an examination of a large number of cases in which various methods of distributing money or goods by chance are examined and discussed.

The Missouri statutes which prohibit the operation of a lottery are Sections 4314 and 4315, R. S. Mo. 1929. While the term "consideration", as involved in lottery schemes has been given no technical meaning in Missouri, it has been considered to mean the same as used in ordinary contracts.

The Missouri definition keeps alive the spirit of Article XIV, Section 10 of the Missouri Constitution, and Section 4314 R. S. Missouri 1929, and gives to the word "lottery" its popular and non-technical meaning -- a goal which all definition-makers have sought. This definition is brief, clear, complete, comprehensive, and satisfactory in every respect. It assembles the elements of a lottery in bold relief, shows their relation to each other with no attempt to place any limited or confined meaning on one or more of the elements. It furnishes an accurate standard or yardstick for testing any lottery scheme.

A Minnesota court, in construing its lottery statute in *State vs. Moren*, 48 Minn. 555, l.c. 560, said:

"The statute is intended to reach all devices which are in the nature of lotteries, in whatever form presented, and the courts will tolerate no evasions for the continuance of the mischief."

From the *George Washington Law Review*, May 1936, page 481, we find the universal rule stated as follows:

"The rule that lottery statutes should be construed so as to prevent evasions, is fundamental, for the mind of man, inspired by cupidity and the desire for unjust enrichment over his fellow man, has invented innumerable subterfuges."

This rule is supported by the following authorities: Horner vs. United States, 147 U. S. 449, 13 S. Ct. 409, 37 L. Ed. 237 (1893); Ballock vs. State, 73 Md. 1, 8 L. R. A. 671, (1890); Ex parte Gray, 23 Ariz. 461, 204 Pac. 1029 (1922).

Our own court, in State ex rel. vs. Hughes, 253 S. W. 229, l.c. 231, commenting upon attempted evasions, said:

"If the fact that the winning number is determined before the tickets or chances are sold, though the number is not disclosed, renders the scheme unassailable as a lottery, then the 'Louisiana Lottery' could still operate under our law by the simple device of determining the winning numbers first, keeping them secret and then selling chances based upon correspondence of ticket numbers with the numbers already drawn, but kept secret from the ticket buyers; or publishing the winning numbers and selling secretly numbered tickets. None will contend this can be done. It overlooks the whole reason for the law against lotteries. It is the appeal to the gambling instinct which is condemned, and no mere juggling of the order of business can serve to evade the constitutional provision."

The test of a lottery is not how adroitly worded the scheme is, but how it works. State vs. Clarke, 33 N. H. 329, l.c. 335.

The Movie Quiz Contest, in substance, works as follows: People buy admission tickets to a theatre and are given a booklet containing the rules of the contest, and the particular question from each motion picture to be answered in at least thirty motion pictures. People attend the theatre and watch the picture for the answer to the question asked. This constitutes consideration.

Williams, Flexible Participation Lotteries, Section 57, says:

"The element of consideration has been present in numerous forms and under many different conditions. It may exist as the specific price of the right to participate in the distribution; or be merged and included in admission fees; the prices of tea; bonds; caramels; turn-overs; newspapers; merchandise; and note cases; or it may be observed in the mass as the collective contribution of the purchasers even though some of them participate in the drawing without being required to buy anything."

In this case, the price or consideration paid to participate is merged and concealed in the regular admission price to the theatre. Under these circumstances, the court will look at the scheme as a whole and the price received from the customer is a consideration for both the article sold and the chance to participate. Some of the cases supporting this rule are Meyer vs. State, 112 Ga. 20,; Glover vs. Malloska, 238 Mich. 216; 213 N. W. 107; State vs. Emerson, 318 Mo. 633; State ex rel. vs. Hughes, 299 Mo. 529; State vs. Mumford, 73 Mo. 647. A list of additional authorities will be found in Williams, Flexible Participation Lotteries, Section 204.

It therefore appears that the element of consideration is present in the Movie Quiz Contest.

The second element of a lottery is that of prize -- which is admittedly present in this Movie Quiz Contest. The first prize of \$50,000., the second prize of \$25,000., the third and fourth of \$10,000 each, and five thousand additional and smaller prizes offered, are each to be paid in cash. There is therefore a prize element involved in this contest.

We come to the third and last element involved in the lottery scheme -- the element of chance.

There are two kinds of chance which are recognized in different jurisdictions as one of the elements of lottery. Some courts follow what is known as the "pure" chance doctrine, while other jurisdictions hold to that of "dominant" chance. 17 R. C. L. 1223 says:

"Chance as one of the elements of a lottery has reference to the attempt to attain certain ends not by skill or any known or fixed rules, but by the happening of a subsequent event incapable of ascertainment or accomplishment by means of human foresight or ingenuity, and it is essential *** in order to give to the scheme the character of a lottery. In the United States *** it is not necessary that this element of chance should be 'pure' chance but may be accompanied by an element of calculation or even of certainty."

We have heretofore pointed out that under Rule 6, the winner will be determined by the "best fifty word statements", to be selected on the basis of sincerity, merit, originality and advertising value.

Webster's New International Dictionary defines these terms briefly as follows:

Sincerity: "Quality or state of being sincere; honesty of mind or intention; freedom from simulation, hypocrisy, disguise or false pretense."

Merit: "Due reward or punishment; usually, reward deserved; a mark or token of excellence; quality, state or fact of deserving well or ill; to earn by service or performance; to have a right to claim as reward; to deserve."

Originality: "State or quality of being original."

In addition to the above elements which are to guide the judges in determining what is the best fifty word statement, the "advertising value" will be considered. The contest does not state in what manner, or in what proportion these elements will be considered. There is no rule or yardstick by which the best statement can be selected.

How can a judge in New York, stranger to a contestant in Missouri, know the sincerity -- the state of mind -- of the contestant when he wrote the fifty word statement? Will the judges, in determining the "merit" of the statement, be guided wholly by the technical rules of grammar, by a clearness of expression, by euphony or something else? Likewise, the question of "originality" may depend on the familiarity of the judges with literary works. A judge with limited knowledge might not recognize "borrowed" phrases or sentences, and under such circumstances the contestant may win or lose, depending on the learning or ignorance of the judge. In the last analysis, the judges are given unlimited discretion as to the selection of the winner, and whatever decision is agreed upon by the judges, the contestants, by Rule 13, are bound thereby, because the decision of the judges "will be final."

It is apparent from Rule 6 that the determination of the best statement is left in the uncontrolled discretion of the judges. Commenting upon this phase of lotteries, we find the following statement in 45 Harvard Law Review, page 1212:

"It is somewhat surprising to find a fairly large number of decisions involving the award of prizes in the uncontrolled discretion of a judge. All of them agree that the contest is a lottery."

There is no standard or rule by which the best fifty word statement is to be selected, or judged from a definite standpoint. In Brooklyn Daily Eagle vs. Voorhies, 181 Fed. 579, l.c. 582, the court said:

"It must be held that to offer a prize for the 'best' essay might be a lottery,

if the persons are not induced to compete with some definite statement of what the word 'best' means."

In *Coles vs. Odham Press Ltd.*, 1 K. B. (1936) 416, l.c. 426, the Chief Justice said:

"There is no clue at all to the qualifications of the editor, or to the frame of mind in which he will act, or has already acted at the material time. There is no clue to the criterion, if any, by reference to which the standard has been fixed. The solution which is to be adjudged to be correct is not to be picked out of the efforts of the competitors in competition with each other. It is to be the solution that is found, on examination, to coincide most nearly with a set of words chosen beforehand by somebody not known, by a method, if any, not stated, that person being perfectly at liberty to act in an arbitrary, capricious, or even mischievous spirit. In other words, the competitors are invited to pay a certain number of pence to have the opportunity of taking blind shots at a hidden target."

Recently, the Supreme Court of the State of Missouri, in one of the best reasoned opinions to be found anywhere, in *State vs. Globe-Democrat Pub. Co.*, 110 S. W. (2d) 705, l.c. 718, in an opinion of Ellison, J., said:

"What is a matter of chance for one man may not be for another. And as Mr. Justice Holmes said in *Dillingham vs. McLaughlin*, 264 U. S. 370, 373, 44 S. Ct. 362, 363, 68 L. Ed. 742, 'what a man does not know and cannot find out is chance as to him, and is recognized as chance by the law.' Obviously, if some abstruse problem comparable to the Einstein theory

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were submitted to the general public in a prize contest on the representation that no special training or education would be required to solve it, the contention could not be made, after contestants had been induced to part with their entrance money, that the element of chance was absent because there were a few persons in the world who possessed the learning necessary to understand it."

The inclusion or the exclusion of a definition of the word "best" may determine whether a contest is one dominated by skill or chance. Brooklyn Daily Eagle vs. Voorhies, supra, Boatwright vs. State, 38 S. W. (2d) 87 (Texas). The former case failed to define the word "best", while the latter case gave it a definite meaning. The former case might be a lottery, the latter a game of skill.

It therefore appears that the winners of the Movie Quiz Contest will be determined by chance.

CONCLUSION

It is, therefore, the opinion of this office that the Movie Quiz Contest is a lottery, the conducting of which is made punishable by imprisonment in the Penitentiary for not less than two nor more than five years, or by imprisonment in the county jail for not less than six nor more than twelve months.

Respectfully submitted

FRANKLIN E. REAGAN
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