

LOTTERIES:--Money Quest Nite.

April 29, 1938

4-30



Mr. G. Derk Green
Prosecuting Attorney
Linn County
Linneus, Missouri

Dear Sir:

This acknowledges receipt of your request of April 27, 1938, for an opinion with reference to "Money Quest". From your letter it appears that persons are arbitrarily selected by a drawing and after being selected are given some sort of a prize, the size and amount of which depends upon the correctness of his answer to some question.

We are advised that hand bills are distributed in your town with reference to Money Quest Nite, in which patrons of the theater are urged to get a pot of gold, and that these circulars contain a double stub with a number on each, one of which stubs is deposited in a box in the lobby of the theater and the other is retained by the patron.

Your letter states that prizes are given varying from fifty cents to One dollar in size. We are also informed that prizes amounting to as much as Forty dollars are being given away by the Uptown Theater.

We have carefully considered this question and are unable to find any distinction between it and Bank Night recently held to be a lottery by the Supreme Court of this State.

A lottery in this State to be in violation of Section 4314 R. S. Missouri 1929, must contain three essential elements, namely, prize, chance and consideration. State vs. Emerson, 1 S.W. (2) 109; State ex rel. vs. Hughes, 299 Mo. 529; 253 S.W. 229; 28 A.L.R. 1305; State vs. Becker, 248 Mo. 555, 154 S.W. 769.

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We need give no consideration to the prize element because that is admitted in this case. The money given away to the patrons is the prize.

The arbitrary selection of a few persons from the audience constitutes the element of chance. Those selected either by pulling a number out of the box or by any other method are given a preference, and the selection of these few constitutes the element of chance. The recent case of the Supreme Court of this State, State ex rel. McKittrick vs. Globe Democrat Publishing Company, 110 S.W. (2) 705, clearly establishes the rule in this state that when the element of chance enters into a determination of the winners the contest is a lottery.

The third and last element of a lottery is consideration. From the facts in this case it appears that the winners are selected solely from theater patrons who have paid an admission to the theater. The payment of admission which is coupled with a chance or opportunity to win a prize, in the eyes of the lottery law, is also payment for the opportunity to compete in the game of chance. State vs. Danz, 250 Pac. 37; Featherstone vs. Independent Service Station Association, 10 S.W. (2) 124; Society et al. vs. Seattle, 203 Pac. 21.

CONCLUSION

It is therefore the opinion of this office that the scheme known as Money Quest Nite is a lottery in violation of Section 4314 R.S. Missouri 1929, which makes it a felony punishable by imprisonment in the penitentiary for not less than two nor more than five years, or by imprisonment in the county jail or work house for not less than six, nor more than twelve months.

Respectfully submitted,

APPROVED:

FRANKLIN E. REAGAN,
Assistant Attorney General

J. E. TAYLOR
(Acting) Attorney General

FER:MM