

LOTTERY: Distribution of chances by merchants.

September 13, 1938

Honorable Willard H. Guest
Asst. Prosecuting Attorney
St. Louis County
Clayton, Missouri



Dear Sir:

We have your request for an opinion, dated September 12, 1938, which is in part as follows:

"The various merchants listed in the newspaper give the purchasers of groceries, or whatever other merchandise the dealer sells, one of the enclosed pink cards when the purchaser buys not less than Fifty Cents (\$.50) worth of commodities. These cards are then filled in at the space on the left by the purchaser as to whether he has a radio or cooker or washer, etc., and are later deposited in a box in the lobby of the Osage Theater. Thereafter each week, a drawing is to be held inside the theater at which each purchaser must be present who desires to participate in the drawing, and of necessity, I suppose, pays the regular admission to the theater. The drawing is then conducted, not by the serial number on the ticket, but the prize is given to the person present who has the most tickets in his possession, but of course, if he is not there, the one drawing is all for that week."

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.

In State vs. Danz, 250 Pac. 37, 140 Wash. 546, the court had before it the "country store night", wherein prizes in the form of groceries and other kinds of property were awarded in the theatre. These prizes were furnished by the merchants. It was held in that case that it was a lottery.

The scheme presented by you contains all the elements of lottery. The element of chance is exemplified in the drawing, although no drawing is necessary in order to make the scheme a lottery. People vs. Hecht, 3 Pac. (2d) 399. The prize given is the merchandise awarded to the winner. The consideration is the amount paid for merchandise, wherein pink cards are given to the purchaser, and the question of purchasing a ticket to be inside the theatre also furnishes the element of consideration.

Where an enterprise distributes without charge tickets, coupons or chances of any kind, entitling the holders to participate in a distribution of prizes by lot or chance, and this is done for the purpose of inducing or stimulating pay patronage, the pay patronage thus induced constitutes a consideration and the enterprise is a lottery containing the essential elements of prize, chance and consideration, and this is true whether all or only a part of the holders become pay patrons, and even though it is possible for the recipient of such ticket, coupon or chance to meet all the conditions of participation and obtain a prize without the payment of any money therefor. This is the law in England. Willis vs. Young et al, 1 K. B. 448 (1907), 3 B. R. Cases, 976, the rule in the federal courts, Central States Theatre Corp. vs. Patz, 11 Fed. Supp. 566 (1936), General Theatres vs. Metro-Goldwyn-Mayer Dist. Corp., 9 Fed. Supp. 546 (1935), and post office department, George Washington Law Review, May 1936, pp. 482-492; the holding in several state courts, Glover et al vs. Malloska, 238 Mich. 216. State vs. Danz, 140 Wash. 546, 250 Pac. 37. Featherstone vs. Ind. Service Assn. (Tex.) 10 S. W. (2d) 124. City of Wink vs. Amusement Co. (Tex.)

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78 S. W. (2d) 1065. Com. vs. Wall (Mass.) (1936) 3 N. E. (2d) 28, and the opinion of the law writers, Thomas, Lotteries, Frauds and Obscenity in the Mails, ss. 15, 16, pp. 22-35. Thomas, Non-Mailable Matter, s. 16, p. 35. 45 Harvard Law Review, 1196, 1210. George Washington Law Review, May 1936, pp. 488, 491.

It is, therefore, the opinion of this office that the scheme as outlined in your request is a lottery, in violation of Section 4314, R. S. Mo. 1929.

Respectfully submitted

FRANKLIN E. REAGAN
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APPROVED:

J. E. TAYLOR
(Acting) Attorney General

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