

LOTTERY: The plan "Sho-Bonus" is a lottery.

SHO\*BONUS: A lottery.

February 23, 1938

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Hon. Franklin Miller  
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City of St. Louis  
Municipal Courts Building  
St. Louis, Missouri

Dear Sir:

We have your request of February 15, 1938, for an opinion with reference to the legality of the use of a scheme or plan known as "Sho-Bonus, Inc." We have carefully examined the statement attached to your letter with reference to the plan of operation. The plan proposes to distribute weekly prizes up to Five hundred dollars in money to persons submitting correct answers to a list of three questions. From your letter it appears that the elements of prize and consideration are conceded to be present in this contest, and that the sole question is whether or not the element of chance is sufficiently present in order to constitute the contest a lottery.

There appears to be no rule or yardstick by which the correct answers to the questions submitted are to be determined by the judges. The selection of the correct answers is left to the uncontrolled discretion of the donor of the prize, or a committee selected for that purpose.

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."

In Commonwealth vs. Plissner (1936), 4 N.E. (2nd) 241, the Supreme Court of Massachusetts held a grabbing machine played by the skill of the operator was a lottery. In the approved charge of the trial court we find the following, l. c. 245:

"That means that it is not necessary that a game should be a lottery because chance should predominate or that skill should predominate. As you will hear me say later, if there is chance as an effective and active cause in the game, even though skill we will say might be ninety per cent and chance the rest the game is still a lottery. \* \* \*Assume\* \* \*that by nature or by experience, or by both, a player should come to have and be able to exercise the very greatest degree of skill which the construction of that machine permits to be used, and that he actually exercises that skill to the extreme limit required in order to win, required possible in order to win\* \* \*then ask yourselves this question\* \* \*does there still remain before the player can succeed, 1st. Any opportunity for the taking effect of one or more forces over which by reason of the construction of the machine the player can have no possible control?\* \* \*2nd. A sure and certain possibility that such uncontrollable forces will take effect at each and every operation of the machine by reason of the nature and construction of the mechanism?\* \* \*3rd. A certainty that if those uncontrollable forces do take effect the player will be unable to win his prize?"

Recently the Supreme Court in *State vs. Globe Democrat Publishing Company*, 110 S.W. (2) 705, in an opinion by Ellison speaking for the entire Court, l. c. 713, said:

"Hence a contest may be a lottery even though skill, judgment, or research enter therein in some degree, if chance in a larger degree determine the result."

The mere fact that this contest calls for the correct answer to the question propounded does not relieve it of its lottery characteristics. The contest is open to all persons ten years of age or over. It therefore is an unequal contest, and would be a mere matter of chance for a ten year old child in submitting correct answers to win over the answers which may have been submitted by a highly educated person. In the *Globe Democrat* case supra, this situation was commented upon, l. c. 718, as follows:

"Obviously, if some abstruse problem comparable to the Einstein theory 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 plan "Sho-Bonus" is so obviously a lottery that we will not comment upon the many phrases therein. As typical of the plan we call attention to Rule No. 6 to be observed by the judges in a Sho-Bonus contest:

"All other qualifications being equal the judges will consider time at which card is deposited in Box of Sho-Bonus as an element; that is proximity to ten o'clock a.m., noon, three o'clock p.m. and eight o'clock p.m."

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A time element similar to this was condemned as an element of a lottery in State ex rel. Home Planners vs. Hughes, 299 Mo. 529.

CONCLUSION

It is therefore the opinion of this office that "Sho-Bonus" as outlined in your letter and the written memorandas attached thereto, constitutes a lottery in violation of Section 4314 R. S. Missouri 1929.

Respectfully submitted,

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APPROVED:

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