

CARTOON CONTEST: Lottery.

March 14, 1938

s-16  
FILED  
68

Hon. Edwin C. Orr  
Prosecuting Attorney  
Boone County  
Columbia, Missouri

Dear Sir:

We have your request of March 2, 1938, for an opinion which in part is as follows:

"I have checked up on the matter in which the Herald-Statesman cartoon contest is conducted, and find the following facts.

1. The participant in the contest must be a subscriber to the paper.
2. The prizes are a Hudson car and a couple of radios.
3. There will be ten cartoons presented, one each week for ten weeks.
4. These cartoons are published as appears from the inclosed sheet. There are no names under the cartoon. Each player is to select such a name as he thinks most appropriate for the cartoon, then the judges in the end of the contest will decide which set of ten names is the best."

From the statement in your letter it appears that a prize is being offered and that a consideration is being paid or given by the contestants. The issue then turns upon the question of chance.

There are no rules or yardstick by which the names for cartoons must be selected by the judges. Leaving the selection of such names or titles in the uncontrolled discretion of judges is "chance" within the meaning of the lottery law.

There need be no actual drawing. In *People vs. Hecht*, 3 Pac. (2nd) 399, l. c. 402, the court said:

"But it may be said that there is no element of chance because there is no drawing; that the management itself selects the beneficiary; but this factor does not purge the transaction of all element of chance. To the purchaser it is uncertain, as to him it is chance."

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."

I call your attention to the use of the word "best" in paragraph four of your request for an opinion. This is a general term, many times depending upon the individual opinion of the judge or judges. There is no standard or rule by which the best or most appropriate title 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."

Even the English "pure chance" cases condemn this unlimited range given to contest judges. In *Coles vs. Odham Press Ltd.* 1 K.B. (1936) 416, l. c. 426, the Chief Justice said:

March 14, 1938

"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."

We are unable to distinguish the present cartoon contest from that condemned as a lottery in State vs. Globe Democrat Publishing Company, 110 S. W. (2) 705.

CONCLUSION

It is therefore the opinion of this office that the contest now sponsored by the Herald-Statesman is a lottery prohibited by the criminal code of this state.

Respectfully submitted,

FRANKLIN E. REAGAN,  
Assistant Attorney General

APPROVED:

---

J. E. TAYLOR  
(Acting) Attorney General

FER:MM