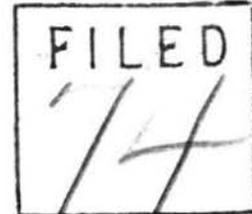


LOTTERIES: GIVE\*AWAY\*NIGHT.

June 24, 1938

6-25



Mr. Virgil L. Rathbun  
Prosecuting Attorney  
Nodaway County  
Maryville, Missouri

Dear Sir:

We have your request of June 22, 1938, for an opinion relative to "Give-Away-Night" at a local theater. This plan is described as follows:

"In short, he proposes to give away a cash prize once a week, anyone, whether a patron of his theater or not, can participate, without purchasing a ticket to the show. The drawing is held at the theater on a given night each week, but the participant does not have to be a ticket-holder to be eligible to the drawing. I enclose the letter of this theater owner, outlining his plan."

Your letter concedes that the two elements of a lottery, namely, prize and chance, are present in this scheme. The sole question turns upon the element of consideration.

The scheme as outlined in your letter is nothing more than the old Bank Night scheme recently held to be a lottery by the Supreme Court of this State, (Opinion not yet published). The mere fact that the theater intends to give away free chances and does not intend to require the

participants to purchase a ticket or pay an admission to the theater does not relieve the scheme of the lottery feature. There is still consideration present in the scheme. *George Washington Law Review* (May 1936), pp. 475, 491; *Glover et al. vs. Malloska*, 238 Mich. 216, 213 N.W. 107; *State vs. Danz*, 250 Pac. 37, 140 Wash. 546; *Society et al. vs. Seattle*, 203 Pac. 21, 118 Wash. 258; *Featherstone vs. Independent Service Station Ass'n.* (Tex) 10 S.W. (2d) 124; *State vs. Bader et al.* 24 Ohio, N.P. (N.S.) 186, Affirmed in 21 Ohio L. Rep. 293.

It is clear that those who call at a promoter's place of business, or give him their names and addresses, or submit themselves to his sales appeal, or otherwise put themselves to trouble or inconvenience, even of a slight degree, or perform some service, however small, and do the same at the suggestion, invitation or request of the promoter and in accordance with his offers, such acceptances, if made in order to qualify for participation in a distribution of prizes by chance sponsored by said promoter, constitute consideration in lottery law, except where some statute, as in *Com. vs. Wall* (Mass), 3 N.E. (2d) 28, uses the word "money". *Thomas, Lotteries, Frauds and Obscenities in the Mails*, p. 35. *Thomas, Non-Mailable Matter*, s. 16, p. 35. *George Washington Law Review*, May 1936, pp. 475, 491, n. 48. *Brooklyn Daily Eagle vs. Voorhies*, 181 Fed. 579. *Maugh vs. Porter*, 157 Va. 415, 161 S.E. 242 (1931).

It is wholly immaterial whether those participating in a drawing, walk or ride one hundred feet or one hundred miles to reach the place of drawing, because the distance traveled goes only to the amount of consideration. In construing an Illinois statute against the setting up of a lottery (in this respect similar to the Missouri statute) it was held that the performance of labor was a sufficient consideration to constitute the scheme a lottery. *Loveland vs. Bode*, 214 Ill. App. 399.

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It is not necessary that the promisor receive any benefit, or that people pay directly or purchase a ticket. *Brooklyn Daily Eagle vs. Voorhies*, 181 Fed. 579, but the question is: Did the promisee (public) suffer any detriment or inconvenience? Consideration may be either a benefit to the promisor or a detriment to the promisee. *McNulty vs. Kansas City*, 198 S. W. 185. The promise made to the public by petitioner is to award a prize of a fixed sum of money. In accepting this promise, what loss, trouble or inconvenience is sustained by the public? If there is any loss, trouble or inconvenience, there is consideration given by the public. *Mayfield vs. Eubank*, 278 S.W. 243, 246; *Mayers vs. Groves, Brothers and Co.* 22 S.W. (2d) 174, l. c. 177.

CONCLUSION

It is therefore the opinion of this office that the weekly "Give-Away-Night" is a lottery prohibited by Section 4314 R. S. Missouri 1929.

Respectfully submitted,

FRANKLIN E. REAGAN,  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
(Acting) Attorney General

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