

LOTTERIES: Shar-Sho Night is a lottery.

July 11, 1938

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Hon. H. J. Simmons
Prosecuting Attorney
Vernon County
Nevada, Missouri

Dear Sir:

We have your request for an opinion as to the operation of "Shar-Sho Night", and whether the same is in violation of the lottery laws of this State. You also enclosed with your request an application entry for Shar-Sho Night award.

For the purpose of determining whether or not a lottery is established, "consideration" as used in the statutes, is not limited in the strict sense in which that term is used when considering whether or not an enforceable contract has been entered into. Bader vs. Cincinnati, 21 Ohio L. Rep. 293, citing Bell vs. State, 5 Sneeds (Tenn.) 37, Hudelson vs. State, 94 Ind. 426. Brooklyn Daily Eagle vs. Voorhies, 181 Fed. 581, and Equitable Loan & Security Company vs. Waring, 117 Ga. 599.

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, 1. c. 177.

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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 Ass'n.* (Tex. 10 S.W. (2nd) 124. *City of Wink vs. Amusement Co.* (Tex.) 78 S.W. (2nd) 1065. *Com. vs. Wall* (Mass.) (1936) 3 N.E. (2nd) 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 Shar-Sho Night is nothing more or less than "Bank Night" under a different name and is a lottery in violation of the felony statute, Section 4314 R.S. Missouri 1929.

Respectfully submitted,

APPROVED:

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