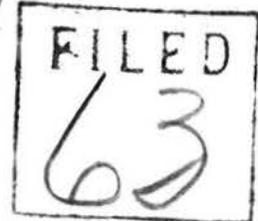


LOTTERIES: Use of photographs to select winner.

June 2, 1939

Mr. Vincent S. Moody
Prosecuting Attorney
Macon, Missouri



Dear Sir:

We have your request of May 31st for an opinion, which request is as follows:

"A local theatre has installed a camera, which takes each patron's picture as he or she enters the theatre. The roll of film is extracted each night and sent to the State of Illinois to be developed. After the film is developed in Illinois, one picture is chosen by the photographer in Illinois and this one picture is sent back to Missouri. Each Tuesday night, this picture that has been chosen in Illinois is shown on the screen here in Macon and if the person is there to identify himself, he receives Twenty-five Dollars. If the person is not there, no one receives the money and the next week it is Thirty-five Dollars."

A lottery is any scheme or device whereby anything of value is, for a consideration, allotted by chance. State v. Emerson, 318 Mo. 633, 1 S. W. (2d) 109, 111; State v. Becker, 248 Mo. 55, 154 S. W. 769.

It is therefore apparent that the payment of an admission price for attending the theatre constitutes a consideration. The prize in this case is conceded to be a Twenty-five (\$25.00) Dollar cash award.

The only remaining question is: Does this scheme possess the elements of chance? The development of the pictures in Illinois, a state different from that in which

they were taken, does not materially one way or the other affect the element of chance. What is material and is decisive in this case is that someone in Illinois arbitrarily selects a picture of the person who is to receive the prize. In *People v. Rehm*, 57 Pac. (2d) 238, contestants in California were asked to select the best and most appropriate title for cartoons in California. The judges who passed upon the best and most appropriate titles were in New York. The distance between the judges and the contestants is immaterial. The California Court held that case to be a lottery. In the recent "Famous Names" contest, put on by the St. Louis Globe Democrat, *State ex inf. Attorney General v. Globe Democrat Publishing Company*, 341 Mo. 862, 110 S. W. (2d) 705, 113 A.L.R. 1104, the Court had before it a contest in which the contestants in St. Louis and the greater St. Louis area were required to select the best or most appropriate title to cartoons. A committee in New York were to determine the best or most appropriate names for each of the cartoons, and the contestants were to be bound by the answers selected in New York. The Court held the contest to be a lottery because it involved the elements of prize, consideration and chance.

The word "lottery" must be construed in its popular sense with the view of remedying the mischief intended to be prevented and to suppress all evasions for the continuance of the mischief. *People v. McPhee*, 139 Mich. 687, 103 N. W. 174; 69 L. R. A. 505. *State v. Mumford*, 73 Mo. 647, 650. *State vs. Wersebe*, 181 Atl. 299, 301.

The word is generic; no sooner is it defined by a court than ingenuity evolves some scheme within the mischief discussed but not quite within the letter of the definition given. *People v. McPhee*, 139 Mich. 687; 103 N. W. 174; 69 L. R. A. 505. *State v. Clark*, 33 N. H. 329. This is made apparent from an examination of a large number of cases in which various methods of distributing money or goods by chance are examined and discussed.

No one in Missouri has any way in which to find out whose picture is to be selected in Illinois.

The Supreme Court of the United States in *Dillingham v. McLaughlin*, 68 L. Ed. 742, l. c. 747, said:

"What a man does not know and cannot find out is chance as to him, and is recognized as chance by the law."

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The selection of the photograph in Illinois was left in the uncontrolled discretion of a judge or judges in Illinois.

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." (Italics ours.)

CONCLUSION

It is therefore the opinion of this office that the award of prizes by the use of photographs, as herein set out, constitutes a lottery in violation of Section 3314, R. S. Mo. 1929. State v. McEwan, 120 S. W. (2d) 1098.

Respectfully submitted,

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APPROVED:

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FER:VC