

SWEEPSTAKE TICKET: Lottery.

August 29, 1939

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Honorable Maurice L. Mushlin
Associate Prosecuting Attorney
Municipal Courts Building
St. Louis, Missouri



Dear Sir:

We have your request for an opinion on "Sweepstake Ticket". It appears that prizes are awarded each month, and that the plan is to give each merchant who advertises with the operator five hundred free coupons for each \$3.50 worth of advertising done by the merchant. The merchant, in turn, gives the tickets to customers who purchase merchandise from him. The winners are determined by drawing.

The principle underlying all lottery law is that a lottery is a scheme or device wherein anything of value, is for a consideration, allotted by chance. It is universally agreed that a lottery contains three essential elements, namely, prize, chance and consideration. Brooklyn Daily Eagle v. Voorhies, 181 Fed. 579; 38 Corpus Juris, page 289; George Washington Law Review, May 1936, page 480; 45 Harvard Law Review, page 1196.

This is the rule in Missouri. State v. Emerson, 1 S. W. (2d) 109; State ex rel. v. Hughes, 299 Mo. 529, 253 S. W. 229; State v. Becker, 248 Mo. 555, 154 S. W. 769.

Under the above cases a lottery is any scheme or device whereby anything of value is, for a consideration, allotted by chance. In the present case the prizes are allotted by chance, to-wit, the drawing. It is admitted there is a prize offered. The only remaining question is whether or not there is any consideration in order to make the above scheme a lottery.

The general rule is amply stated in Thomas on Non-Mailable Matter, Section 16, page 35, as follows:

"The general rule relative to the consideration in schemes of this class, deducible from the adjudged cases and the elementary principles, may be formulated as follows: Where a promoter of a business enterprise, with the evident design of advertising his business and thereby increasing his profits, distributes prizes to some of those who call upon him or his agent, or write to him or his agent, or put themselves to trouble or inconvenience, even of a slight degree, or perform some service at the request of and for the promoter, the parties receiving the prize to be determined by lot or chance, a sufficient consideration exists to constitute the enterprise a lottery though the promoter does not require the payment of anything to him directly by those who hold chances to draw prizes."

It is not necessary that the promisor (respondent) receive any benefit, or that people pay directly or purchase a ticket. *Brooklyn Daily Eagle v. 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 v. 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 v. Eubank*, 278 S. W. 243, 246; *Mayers v. Groves, Brothers and Co.* 22 S. W. (2d) 174, 1. c. 177.

The free distribution of these tickets to the customers of the store does not change the above rule. The purchase price of the goods sold also includes the price the customer pays for a sweepstake ticket, and such purchase price is sufficient consideration in law to make the scheme a lottery. *Glover v. Malloska*, 238 Mich. 216, 213 N. W. 107.

In the *Glover Case* chances in drawings by lot were distributed indiscriminately and without charge to customers and non-customers alike. Retail oil stations distributed numbered tickets without charge to purchasers and persons asking therefor. Once a month an automobile was disposed

of by chance to the ticket holder of the same number drawn. The court held it to be a lottery. The Michigan court said:

"The scheme was clearly a lottery. People v. McPhee, 139 Mich. 687; 103 N. W. 174; 69 L. R. A. 505; 5 Ann. Cas. 835; People v. Wassmus, 214 Mich. 42; 182 N.W. 66. The often asserted, essentials of lottery, viz.: consideration, prize and chance, were all present. Malloska sold the tickets to his customers for distribution by them in the course of trade to further his pecuniary interest, and this established consideration. The fact that Malloska gave some tickets away at fairs and exhibitions and the purchasers of tickets for use in the retail trade gave them away, without pay, to their customers, and sometimes to others, did not at all save the scheme from being a lottery." (l. c. 108). (Italics ours.)

In Society et al. v. Seattle, 203 Pac. 21, 22; 118 Wash. 258, where an association by pre-arrangement with the manager of a theatre distributed numbered tickets without charge and awarded prizes by chance to the occupants of the theatre who had paid admission, and the association contended that the element of consideration was wanting because the theatre patrons paid nothing additional for the numbered tickets, the Supreme Court of Washington said:

"But while the patrons may not pay, and the respondents may not receive any direct consideration, there is an indirect consideration paid and received. The fact that prizes of more or less value are to be distributed will attract persons to the theatres who would not otherwise attend. In this manner those obtaining prizes pay consideration for them, and the theatres reap a direct financial benefit." (Italics ours.)

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CONCLUSION

It is therefore the opinion of this office that "Sweepstake Ticket" is a lottery prohibited by Section 4314, R. S. Mo. 1929.

Respectfully submitted,

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APPROVED:

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FER:VC