

LOTTERY: Scheme whereby tickets are given by merchants with each purchase and drawing held with automobile as prize constitutes lottery even though some free tickets are distributed.

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FILED 57



Honorable Edgar Mayfield
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Dear Sir;

This department is in receipt of your request for an official opinion as to whether a certain business scheme and enterprise is a lottery in violation of the laws of this state.

From the facts submitted in your letter the enterprise is to be conducted in the following manner:

Various merchants will have printed a supply of coupons upon which there is a space for the person receiving the coupons to write his or her name and address. Anyone making a purchase at the various places of business of the merchants involved will receive coupons, the number thereof depending upon the amount of the purchase. Also, coupons will be given free to any person who comes into the store and asks for the same. However, only one or two coupons are given to a person who requests them but does not make a purchase. A person buying merchandise from one of the merchants receives a larger number of coupons. The person receiving the coupon writes his or her name and address thereon and the coupon is then deposited in a box in a theater lobby. At the end of a specified period a drawing is held at the theater and the person whose name appears on the coupon drawn receives an automobile. The person does not have to be in the theater at the time the drawing is held in order to win.

Article III, Section 39 of the Constitution of Missouri, 1945, provides:

"The general assembly shall not have power:

* * * * *

"To authorize lotteries or gift enterprises for any purpose, and shall enact laws to

Honorable Edgar Mayfield

prohibit the sale of lottery or gift enterprise tickets, or tickets in any scheme in the nature of a lottery;

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Section 4704, R.S. Mo. 1939, provides that if any person shall make or establish, or aid or assist in making or establishing, any lottery, gift enterprise, policy or scheme of drawing in the nature of a lottery, he shall be deemed guilty of a felony.

It is well settled in this state that the essential elements of a lottery are prize, chance and consideration. State v. Emerson, 318 Mo. 633, 1 S.W. (2d) 109; State ex inf. McKittrick v. Globe-Democrat Pub. Co., 341 Mo. 862, 110 S.W. (2d) 705. We believe it is apparent in the scheme described above that the elements of prize and chance are present. However, the question arises whether the element of consideration is present, in view of the fact that persons may receive the coupons or chances free of charge and without necessity of purchasing any merchandise from the merchants sponsoring the enterprise.

This question was considered by our Supreme Court in the case of State v. McEwan, 343 Mo. 213, 120 S.W. (2d) 1098. In that case, which considered the legality of "bank night," the defendant contended that the scheme was not a lottery because a person could register in the lobby of the theater and did not have to be present inside the theater at the time the drawing was held in order to be eligible for the prize. At l.c. 1101 the court said:

"On the otherhand, a game does not cease to be a lottery because some, or even many, of the players are admitted to play free, so long as others continue to pay for their chances. * * *"

In disposing of this contention the court tersely said, l.c. 1100:

" * * * The so-called free number feature of the scheme is only the goat's skin upon the hands of Jacob. It is there in an attempt to fool the law."

Therefore, we believe that even though coupons are passed out free of charge to persons asking for the same, still this does not take away the inherent evil of the scheme. The persons

Honorable Edgar Mayfield

who purchased merchandise received a larger number of coupons, and as to those persons the element of consideration is present. Consequently, we believe that the enterprise in question constitutes a lottery and violates the Constitution and laws of this state.

CONCLUSION

It is therefore the opinion of this department that a scheme whereby coupons are distributed by merchants to their customers with each purchase, which coupons are placed in a box and after a specified period of time one coupon is drawn from the box and the person whose name appears upon said coupon receives an automobile, constitutes a lottery. The fact that coupons are given free to persons requesting the same from the merchants does not make the scheme any less a lottery.

Respectfully submitted,

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APPROVED:

/s/ C.B.B.

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