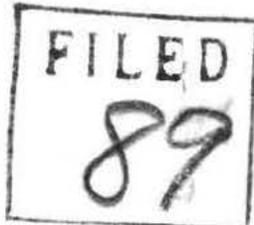


LOTTERIES:

A transaction, whereby with the sale of an admission ticket or a sale of merchandise, a coupon would be given, entitling the holder to a chance at a prize, would be a lottery and would therefore be illegal.



February 15, 1952

Honorable Albert Thomson, Attorney
Board of Police Commissioners
Kansas City 6, Missouri

2-18-52

Dear Sir:

This department is in receipt of your recent request for an official opinion. You thus state your opinion request:

"We would appreciate your office advising us whether the outlined procedure would be in violation of the statutes of the State of Missouri.

"It is proposed by various businesses that with each admission ticket or sale a coupon be given. The customer will retain a stub bearing the coupon number and the other portion of the coupon will be placed in a receptacle. At periodic intervals there will be a drawing from the receptacle and the individual whose name appears upon the coupon drawn will be entitled to a prize. It is contemplated that the party whose name appears would be entitled to the prize whether he was present at the drawing or not.

"Our question is whether this procedure will constitute an enterprise forbidden under the statutes of the State of Missouri."

It is obvious that the legality or illegality of the proposed transaction set forth by you above depends upon whether it is or is not in violation of the Missouri law prohibiting lotteries. In order, therefore, to decide whether such a proposed transaction would or would not be a lottery, we must examine its component parts in the light of the law and the interpretations of the law made by the courts in regard to lotteries.

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The Missouri law prohibiting lotteries is found in Section 563.430, RSMo 1949. This section reads:

"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 as a business or avocation in this state, or shall advertise or make public, or cause to be advertised or made public, by means of any newspaper, pamphlet, circular, or other written or printed notice thereof, printed or circulated in this state, or any such lottery, gift enterprise, policy or scheme or drawing in the nature of a lottery, whether the same is being or is to be conducted, held or drawn within or without this state, he shall be deemed guilty of a felony, and, upon conviction, shall be punished by imprisonment in the penitentiary for not less than two nor more than five years, or by imprisonment in the county jail or workhouse for not less than six nor more than twelve months."

Since its enactment, this statute has been, on numerous occasions, construed by the appellate courts. A fairly recent, and very comprehensive discussion of it is to be found in the 1937 Missouri Supreme Court decision in the case of State ex inf. McKittrick, Atty. General, v. Globe Democrat Publishing Co., 110 S.W. (2d) 705.

We shall not enter upon any extensive discussion of this case here for the reason that the fact situation in it is not similar to the fact situation in the instant case. It is, however, of value to us in that it clearly defines the three elements, all of which must be present, which together constitute a lottery. At l.c. 713, the Court, in the above case, states: "The elements of a lottery are: (1) Consideration; (2) Prize; (3) Chance."

It is clear that two of these elements, to-wit, "prize" and "chance" are present in the proposed transaction which you describe. We have therefore only to determine whether the third element, "consideration," is or is not present.

In your letter you state that the drawing, at which a prize will be given, is based upon a coupon which will be given to

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each person purchasing an admission ticket or to whom a sale of goods has been made. We assume that the price of admission or the price of the goods sold, will not be increased because a coupon, giving the holder thereof a chance at a prize, is given with the sale of an admission ticket or the sale of goods. Therefore, ostensibly the giving of such a coupon is a "free" gift for which no money is paid by the recipient. Under these conditions can it be said that the recipient of the coupon gives any "consideration" for the coupon?

In order to obtain light upon this matter, we turn to the 1938 decision of the Missouri Supreme Court, in banc, in the case of State v. McEwan, 120 S.W. (2d) 1098. At l.c. 1098 and 1099, the Court made the following statement regarding the fact situation in that case:

"In substance the information alleges that the defendant in setting up and establishing "Bank Night" furnished at the Ashland Theatre a registration book, a drawing box, and a quantity of numbered coupons or tickets, and certain advertising media for the screen and the front of the theater. The registration book contained serial numbered lines and was installed in the outer lobby of the theater for the registration of names and addresses of persons over the age of 18 years who might be interested in a drawing. The coupons bore serial numbers corresponding to the serial numbers in the registration book. As names were registered opposite the numbers in the registration book, coupons or tickets bearing identical numbers were deposited in the drawing box. All persons over the age of 18 years, including patrons, nonpatrons, and members of the public generally, were invited to do two things:

"(1) To call at the theater and register their names and addresses in the registration book at will and without charge.

"(2) To be present at the theater, either inside or outside, at 9 o'clock sharp on each Saturday night.

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"In this connection the theater offered said persons over the age of 18 years, who would comply with said conditions of registration and attendance, the following:

"(1) It would provide a prize of \$25 for each Saturday night.

"(2) It would draw one coupon or ticket from the box on the stage each Saturday night at 9 o'clock and immediately announce the number and the name thereon from the stage and at the front door of the theater.

"(3) It would award the prize at such time, if, as and when the holder of the number drawn made claim for same within 2½ minutes after said announcement.

"(4) In the event the holder of the winning number thus announced was on the outside of the theater, and heard the announcement, identified himself and made claim for the prize within 2½ minutes, he would be permitted to enter the theater, and obtain the prize without paying any admission fee.'

* * * * *

"The lone issue in this case is the sufficiency of the information. This turns upon the question of whether "Bank Night" contains all the essential elements of lottery, namely, prize, chance and consideration. The State contends that the information sufficiently charges the awarding of a cash money prize, for a consideration, by chance.'

"Respondents conceded that the elements of prize and chance were present in the scheme commonly called 'bank night' as described in the information. Respondent contends, however, that the third element, that is, consideration, was lacking."

At l.c. 1100 and 1101, the Court stated:

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"* * * However, in detecting fraud and deception justice should have the vision to discover them in their true nature no matter how well the design to deceive. The courts would be blind indeed if they could not see that the scheme described in the indictment is a deliberate plan to evade the lottery statute and at the same time attain the result which the statute has prohibited. The history of these cases conclusively shows that the entire scheme is a deliberate plan to evade the lottery statute. Courts have uniformly held that the scheme of 'bank night' is a lottery when the participants therein are limited to those purchasing tickets to the theater. Respondent concedes that to be the law. The plan, as described in the information, attempts to eliminate one of the elements of lottery, that of consideration. In the practical operation of the scheme the element has not been eliminated because it is not in fact free. The Supreme Court of Texas, in the case of City of Wink v. Griffith Amusement Co., 100 S.W. 2d 695, loc. cit. 699 (9-11), correctly analyzed the situation. The court there pointed out that those remaining on the outside did not share equally with those who paid an admission. Those who paid admission witnessed the drawing and heard first hand the announcement of the winning number. Those upon the outside did not. The court concluded: 'This admission charge is inseparable from the privileges enumerated, which were materially different from the privileges of those who remained outside of the theater holding the so-called "free" registration numbers. It is idle to say that the payment made for seeing the picture is not, in part at least, a charge for the drawing and the chance given. The things to be seen and done in the theater and the privileges above enumerated which accompanied them, are all a part of one and the same show, meaning the entire proceedings inside the theater. The fact that part of the things to be enjoyed by those who paid

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at the door were classed as "free" by the defendant in error does not change the legal effect of the transaction, or what was actually done by defendant in error, namely, for the price of admission to grant the patron not only the opportunity to see and hear the picture, but to see and hear and enjoy the habiliments of the "Bank Night", drawing, etc. detailed above. We are unable to see in what manner the giving of free registration numbers to those outside of the theater would change the legal effect of what was done inside the theater, for which a charge was made."

* * * *

"So the scheme described in the information has, in actual practice, all the elements of a lottery, and is just as harmful as if it were limited to those purchasing tickets. See Commonwealth v. Wall (Mass.) 3 N.E. 2d 28, loc. cit. 30, where the court said:

"On the other hand, 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. Glover v. Malloska, 238 Mich. 216, 219, 213 N.W. 107, 52 A.E.R. 77; State v. Eames 187 N.H. 477 183 A. 590, 592. So here the test is not whether it was possible to win without paying for admission to the theater. The test is whether that group who did pay for admission were paying in part for the chance of a prize. The jury could disregard all evidence introduced by the defendant favorable to him. They could take a realistic view of the situation. They were not obliged to believe that all the ingenious devices designed to legalize this particular game of chance were fully effective in practical operation. * * *

"A participant outside the theatre must wait in discomfort in the hope that if his name should be drawn within he would be notified and would hear the call soon enough to crowd through toward the front of the theatre within

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such time as might be allowed. The object of the defendant was to fill the theatre, not the lobby or the sidewalk."

At l.c. 1102, the Court stated:

"In 38 C.J. 292, Sec. 7, it is said: 'Whatever may be the nature of the consideration required it may be given either directly or indirectly. The benefit to the person offering the prize does not need to be directly dependent upon the furnishing of a consideration.'"

In view of the McEwan case, supra, we believe it to be clear without further discussion that in the proposed transaction described by you, the element of "consideration" would be present, and that, therefore, since the additional elements of "chance" and "prize" are also present, the transaction would constitute a lottery and would be in contravention of the Missouri lottery law set forth above.

CONCLUSION

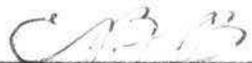
It is the opinion of this department that a transaction, whereby the sale of an admission ticket or a sale of merchandise, a coupon would be given entitling the holder to a chance at a prize, would be a lottery and would therefore be illegal.

Respectfully submitted,

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Assistant Attorney General

HPWab

APPROVED:



J. E. TAYLOR
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