

LOTTERIES:

The Puritan Dairy "Knocking Man" scheme is a lottery prohibited by the laws of the state of Missouri.



August 29, 1955

Honorable John R. Martin  
Assistant Prosecuting Attorney  
Jasper County  
Joplin, Missouri

Dear Sir:

This is in response to your request for opinion dated August 12, 1955, which reads as follows:

"This office has received a complaint against the Puritan Dairy 'Knocking Man' promotion.

"I am enclosing a copy of the advertisement which appeared in the Carthage Evening Press, and request that your office examine said advertisement and give this office an opinion as to whether or not this constitutes a lottery."

In regard to your inquiry, Article III, Section 39, of the Constitution of Missouri, 1945, should be noted:

"The general assembly shall not have power:

. . .

"(9) To authorize lotteries or gift enterprises for any purpose, and shall enact laws to prohibit the sale of lottery or gift enterprise tickets, or tickets in any scheme in the nature of a lottery; \* \* \*".

Section 563.430, RSMo 1949, implementing the Constitution, provides:

"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

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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, 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."

The essential elements of a lottery are: (1) prize; (2) consideration; and (3) chance. State ex inf. McKittrick v. Globe Democrat Publishing Company, 341 Mo. 862, 110 S.W.(2d) 705.

The promotion scheme about which you are concerned is handled in this manner: each day a Puritan Dairy "Knocking Man" calls on a certain number of homes, asking, "Why do you prefer Puritan Dairy Products?" For the best answer, he awards ten dollars (\$10) to the housewife if she has on hand any portion of Puritan Homogenized Milk in a one-half gallon container, and five dollars (\$5) if she has on hand any portion of another Puritan product or facsimile drawing of the carton. The winners must allow their names and pictures to appear in Puritan advertisements. Whether she wins or not, each participant receives a consolation prize of one quart of Puritan Homogenized Milk.

It is clear that there is a prize in this scheme of either ten dollars (\$10), five dollars (\$5), or a quart of Puritan Homogenized Milk. Consideration exists for the first two prizes because the participant must have bought a Puritan Product before qualifying. Induced by the potential prize to pay consideration for Puritan Dairy products, the housewife has thus given up both time and money to take part in this promotion campaign.

As far as the element of chance is concerned, it may be argued that only skill or ability to answer well the question, "Why do you prefer Puritan Dairy Products," is involved. Yet, to be chosen as a participant at all, or perhaps to have the fortune to be the only

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housewife with Puritan products on hand, involves an event "incapable of ascertainment or accomplishment by means of human foresight or ingenuity," U.S.V. Rich, 90 Fed. Supp. 624, at page 627, defining "chance" in a lottery. Missouri courts have gone far in holding that a scheme may be a lottery, even though some skill is involved, whenever any degree of chance is present. See State ex inf. McKittrick v. Globe Democrat Publishing Company, supra, at page 717:

"It is impossible to harmonize all the cases. But we draw the conclusion from them that where a contest is multiple or serial, and required the solution of a number of problems to win the prize, the fact that skill alone will bring contestants to a correct solution of a greater part of the problems does not make the contest any the less a lottery if chance enters into the solution of another lesser part of the problems and thereby proximately influences the final result. In other words, the rule that chance must be the dominant factor is to be taken in a qualitative or causative sense rather than in a quantitative sense. This was directly decided in Coles v. Odhams Press, Ltd., supra, when it was held the question was not to be determined on the basis of the mere proportions of skill and chance entering in the contest as a whole."

#### CONCLUSION

It is, therefore, the opinion of this office that the Puritan Dairy "Knocking Man" scheme is a lottery prohibited by the laws of the state of Missouri.

Yours very truly,

JOHN M. DALTON  
Attorney General

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