

LOTTERIES: : A plan proposed to be operated where an individual  
: operates an excursion boat, afternoons and evenings,  
: and a charge of \$1.25 per person is collected for  
: each excursionist on each trip, and to increase  
: the number of patrons, the admission charge to re-  
: main the same, there is added a bingo game on the  
: afternoon trip at which prizes would be won and  
: awarded, is a lottery.

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March 17, 1955

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Honorable Hugh Phillips  
Prosecuting Attorney  
Camden County  
Camdenton, Missouri

Dear Mr. Phillips:

Complying with your recent request this will be the opinion of this office as to whether the game of "bingo" if operated by an individual according to the plan proposed by such individual in conjunction with his excursion boat business in your county, constitutes a lottery, the scheme and plan of operating said game being submitted to you by the proposed operator as is described in your letter. Your request for the opinion of this office reads as follows:

"A man in this county operates an excursion boat with approximate capacity of a hundred persons. For the past several years, the admission for rides, both afternoon and evening, was \$1.25 per person including tax. As a business stimulant for the afternoon trips, admission to remain the same, he would like to add free bingo game with prizes totalling seven or eight dollars. As I stated, there would be no change in his old prices and no reduction for those who do not care to play the bingo game. He would continue to maintain the same entertainment and amusements he has had in the past.

"My first impression was that it came close to not being lottery since it was all free and the element of consideration was eliminated. On the

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other hand, the admission price for the excursion ride could be considered as consideration and the fact that those who did not play bingo received no refund was not a distinguishing factor.

"The man who talked to me on this is a reputable citizen and desires to be well within the law; on the other hand, if possible, he would like very much to have this added attraction. I will appreciate any comments your office can give me on this."

Section 39 of Article III of the Constitution of Missouri, 1945, prohibiting lotteries, states:

"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; ".

In compliance with such constitutional mandate the General Assembly of this State long ago enacted a statute, and there is in force and effect now, Section 563.430, RSMo 1949, prohibiting the creation and operation of a lottery, with a severe penalty for its violation. This section reads as follows:

"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

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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 Supreme Court of Missouri in State ex inf. McKittrick vs. Globe-Democrat Pub. Co., 341 Mo. 862, 110 S.W. (2d) 705, held that there must be present to constitute a lottery the three elements of "consideration"; "prize"; and "chance". The Court, 110 S.W. (2d), l.c. 713, there said:

"The elements of a lottery are: (1) Consideration; (2) prize; (3) chance.  
\* \* \*."

When these three elements combined are present in the operation of an enterprise, according to such rule of the Supreme Court, the project is a lottery.

Your request states that an admission charge of \$1.25 is collected from each excursionist making the trip for both the afternoon and evening trips; that the admission price would remain the same, but as a business stimulant for the afternoon trip a free "bingo" game would be provided with prizes totaling \$7.00 or \$8.00, presumably in cash; that there would be no deduction in the admission price for those of the excursionists who do not participate in the "bingo" game. We have here the following factual conditions, as recited in the request: First, the admission charge for each excursionist none of whom would be present for the boat ride or for the "free" "bingo" game if they did not, each of them, pay the admission price for the afternoon excursion ride. Not all of them

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perhaps would participate in the bingo game, but they would, each and all, be eligible so to do, and some of them would participate in the game and others would not. The admission price paid for the trip and the privilege of playing the game would act as the "consideration" for the participation in the bingo game for those who wanted to and would take part in the game. It is plain, therefore, that the element of "consideration" would be present in the movement leading up to and resulting in participation in the game. This view is supported by the text in 38 C.J., page 291, in speaking of what constitutes "consideration" in a lottery game. The text states:

"The consideration may be money or other thing of value. The consideration need not be great. It has been held that the rule as to consideration does not mean that a scheme will be held a lottery only where money is directly given for the right to compete, but that it is only necessary that the person entering the competition shall do something or give up some right, or that some benefit may accrue to the person conducting the scheme. Other authorities hold that the payment directly or indirectly of money or other valuable thing for a chance is necessary to constitute consideration, and schemes under which some other act was required of the competitors have been held not to involve consideration. It does not affect the validity of the consideration that it was given, not simply for the chance of a prize, but also, and possibly chiefly, in return for merchandise or other advantage to the chance holder."

A Vermont case decided by the Supreme Court of that State, pertinent and persuasive on what is necessary as a consideration in a lottery is *State vs. Wilson*, 196 Atl. 757. The Court on this question, l.c. 791, said:

"\* \* \* Where a promoter of a business enterprise, with the evident design of advertising

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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 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."

We have thus seen that in the proposed project there would exist the necessary element of "consideration" moving to the operator for providing the place, the opportunity and the means whereby the game of bingo may be played by any or all of his patrons who desire so to do by reason of the excursion charge paid to him by such patrons.

We will now ascertain if the second element necessary to constitute a lottery, the element of "prize", would be provided and exist if the proposed plan of adding the bingo game to the excursion as a means of increasing business is carried out as planned. We are not left to any uncertainty or speculation on this question by the individual who states the facts of his plan to add the game of bingo to the afternoon excursion trip. The request clearly states that the purpose and intention of the said individual is that he, the individual, proposes "as a business stimulant for the afternoon trips, admission to remain the same, he would like to add free bingo game with prizes totalling seven or eight dollars."

The person proposing to operate said bingo game on the said afternoon excursion trips states as facts that prizes for the said games will be provided and paid by the promoter to those of such excursionists on the afternoon trips who play in the bingo game and become winners.

We therefore deem it unnecessary to further cite facts or to cite and discuss authorities on the question

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of the existence of the element of "prize" in the undertaking proposed. If the plan is carried out, it is disclosed by the plan itself, and is admitted, that prizes would be won and awarded. The excursion ride and the proposition to carry on the bingo game, in connection therewith, with the money prizes as part of the game, would satisfy the terms of the statute as to the existence of the element of "prize" in the game in pronouncing it a lottery. Consideration and prize having been conclusively shown to be included in the operation of the proposed bingo game excursion enterprise as two of the three necessary elements of a lottery, we will now give our attention to the third and remaining necessary element, that of "chance", required to be present in an enterprise, as so held by the Supreme Court, to constitute a lottery.

In our research on this subject for an appropriate definition of the term "chance", as a third necessary element required to be present to constitute a lottery, we find a clear statement of the meaning and effect of the word in the context of 11 C.J. 279. The word chance is there defined as:

"Possibility; hazard, risk, or the result or issue of uncertain and unknown conditions or forces; \* \* \*."

We believe that the presence of chance in the scheme and plan described, if operated as proposed, as a necessary element to contribute to the plan being a lottery is obvious.

When the patron paid the admission charge for the trip, thereby becoming eligible to play in the bingo game the element of chance would necessarily be involved. The lack of knowledge on the part of the player whether his card would be completed earlier than those of the other players in the game so that he becomes the winner constitutes a chance, uncertainty and a hazard over which no one has any control whatever. This would meet the requirement of the statute that the element of chance would

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be present with the two other necessary elements, consideration and prize, to constitute the proposed project a lottery. This proposition is frankly said by the proposed operator to be a plan to increase the afternoon excursion trip profits. To attain that result there are included in the proposed plan the three elements, consideration, prize and chance, held by our Supreme Court, in every case that has been before the court on a like state of facts and under the principles of law applicable thereto, to be a lottery.

Considering the facts as they are recited in the request and the authorities cited and quoted on the principles of law involved, it is apparent that the scheme and plan proposed would, if carried out, constitute a lottery.

CONCLUSION.

Considering the premises it is the opinion of this office that where an individual operates an excursion boat, making trips afternoons and evenings, and for each trip an admission charge of \$1.25 per person is collected by the operator, and in order to stimulate patronage on the afternoon trip the operator, the admission to remain the same, adds the game of bingo with prizes totalling \$7.00 or \$8.00, there would be present in the operation of the enterprise, consideration, prize and chance, and the project if so operated would constitute a lottery.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. George W. Crowley.

Yours very truly,

JOHN M. DALTON  
Attorney General

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