

LOTTERY: A contest in which contestants are to complete a statement as to why they prefer the products of a particular dairy, the winner of which contest will be awarded a valuable prize, constitutes the elements of "chance," "prize," and "consideration," and is, therefore, a lottery and contrary to the laws of this state.

October 21, 1957

OPINION NO. 65

Honorable William C. Myers, Jr.
Prosecuting Attorney
Jasper County
318 Joplin Street
Joplin, Missouri



Dear Sir:

Your recent request for an official opinion reads:

"This office has received a complaint against the Adams Dairy Farm customer contest. A competing dairy contends that it is quite similar to the 'Knocking Man' scheme which was ruled to be a lottery and prohibited by the laws of the State of Missouri in your opinion of August 29, 1955.

"I am enclosing a copy of a letter received by this office from Adams Dairy Farm setting out the nature of the contest together with a copy of the newspaper advertisement appearing in the Joplin News Herald on August 26, 1957, and an advertisement announcing one of the winners as it appeared in the Springfield Daily News of August 30, 1957.

"I would appreciate your opinion on the legality of the Adams Dairy Farm Contest at your earliest convenience."

The scheme in question is set forth in the third paragraph of the letter to you from the Adams Dairy Company. This paragraph reads:

"Briefly, the plan is simply a customer contest whereby the customer is invited to submit letters in fifty words or less stating why they like Adams

Honorable William C. Myers, Jr.

Milk. Many of these letters come in written in poetry, prose, some are even decorated. They are judged by our advertising agency for the best letter, and the winning letter is used in our newspaper advertising, along with a picture of the winner. She in turn receives coupons equal to a year's supply of milk good at any grocery store. Each coupon is redeemable for one quart. The amount of coupons, I believe, represents 178 quarts of milk. This figure was based on an article in the Wall Street Journal recently, which said the average person uses 178 quarts a year."

We note you refer to our opinion of August 29, 1955, to John R. Martin, Assistant Prosecuting Attorney of Jasper County, and its applicability to the situation which you set forth.

We do not consider that this opinion, called by you the "knocking man" opinion is wholly applicable in your situation inasmuch as in that opinion, in regard to the element of "chance" we stated that this element was inherent in the scheme because it was involved in the matter of a person being called up at their home, and of their having any of the products of the Puritan Dairy on hand, both of which elements were necessary in order to participate. In the situation which you present the field is much wider inasmuch as all readers of the Joplin paper, in which the advertisement of the contest appears, are apprised of the contest and have an opportunity to compete as well as all persons into whose hands, either by chance or design, a copy of the paper comes.

We do believe, however, that an opinion rendered by this department on September 19, 1952, to Don Kennedy, Prosecuting Attorney of Vernon County, a copy of which opinion is enclosed, is applicable to your situation. A reading of the "knocking man" opinion, a copy of which is enclosed for your immediate convenience, and the aforesaid opinion to Don Kennedy, make it amply plain that in the situation which you present, two of the three necessary elements which go to constitute a lottery are present, to-wit, "prize," and "consideration." The only question which is presented is whether the third necessary element, to-wit, "chance," is also present. The reason why there could be any doubt regarding this matter is whether or not the element of skill is greater than the element of "chance" in completing the written statement as to why the person competing prefers the products of the Adams Milk Company. It might, as we said, be argued that skill would determine the winner.

Honorable William C. Myers, Jr.

We do not believe that such would be the case in the situation which you present. This matter is very fully discussed in the Kennedy opinion, and the doctrine prevailing in this respect in the United States is set forth. In that opinion we held that although some element of skill and learning was present in answering the questions which were asked of the contestants, that yet "chance" was dominant. We feel that this would be even more true in the situation which you present. The contest advertisement states that all entries will be judged "by an impartial judging agent." There is no indication as to the ability of this agency to judge the statements which will be submitted to it; no standard of excellence is set up and there is no indication that the winners would not be determined upon the basis of individual bias and caprice of the judges.

CONCLUSION

It is the opinion of this department that a contest in which contestants are to complete a statement as to why they prefer the products of a particular dairy, the winner of which contest will be awarded a valuable prize, constitutes the elements of "chance," "prize," and "consideration," and is, therefore, a lottery and contrary to the laws of this state.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Hugh P. Williamson.

Yours very truly,

John M. Dalton
Attorney General

HPW/vlw/ld