

LOTTERIES: Invitation by a newspaper to the public to submit to the newspaper predictions as to the outcome of twelve basketball games, and the score of one specific game, with the offer of a prize for the person who is most successful, contains the elements of prize, chance and consideration and is, therefore, a lottery and contrary to Missouri law.

April 14, 1960



Honorable Charles M. Cable
Prosecuting Attorney
Dunklin County
Kennett, Missouri

Dear Sir:

On February 20, 1960, you wrote to this department for an official opinion. Your opinion request reads:

"This office has been requested to obtain an opinion from your office relative to whether or not a basketball score contest which is run in the Daily Dunklin Democrat of Kennett, Missouri, is a lottery. Please find enclosed herewith a copy of a page from the Daily Dunklin Democrat which advertises the weekly basketball contest. This article lists the awards, contest rules, and gives an official entry blank. There are also various advertisements on the page. Also find enclosed two articles from the Daily Dunklin Democrat which we believe to be of interest in regard to this matter. You will note that the undersigned made a ruling that the contest was not a lottery, and he was going to leave it at that. Evidently, however, some misunderstanding occurred as to whether he was going to request the Attorney General's office to determine the legality of the contest; and the paper printed that he had made such a request. It would, therefore, appear that it is necessary that we do make this request at this time.

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"We would like to take this opportunity to thank you for the prompt attention and kind consideration that we know you will give this matter."

The tear sheet which you enclosed lists basketball games between Senath and Gideon; Kennett and Dexter; Holcomb and Wardell, all of which may be said to be relatively local. The other games listed are between Arkansas State and Quiney; Texas A. and M. vs. Arkansas; Cincinnati vs. Houston, Memphis State vs. Oklahoma City; Mississippi vs. Tulane; Missouri vs. Oklahoma A. and M.; St. Louis U. vs. Tulsa; Southern Illinois U. vs. Northern Illinois U.; Virginia vs. Navy.

In order to set forth the principles of law relating to lotteries in Missouri and the elements necessary to constitute a lottery, we enclose copies of the following opinions:

February 23, 1959	to	Thomas F. Eagleton
January 15, 1959	to	William C. Myers, Jr.
February 19, 1957	to	William C. Myers, Jr.
March 17, 1953	to	Douglas W. Green
September 19, 1952	to	Don Kennedy
February 4, 1943	to	Kelso Journey

From the above opinions you will observe that three elements must be present simultaneously in order to constitute a lottery, and that these elements are: prize, consideration and chance.

In the instant situation it is obvious that the element of "prize" exists since the prize for first, second and third place is \$10, \$7.50 and \$5, respectively.

It is equally obvious that the second element of "consideration" is also present. Inasmuch as the participant must acquire a copy of the paper, must spend a certain amount of time and effort in setting down his selections as to the winner of the twelve games, which selection supposedly would entail a good deal of work expended in a review of the past record of the teams engaged and an estimate of their probable chances against each other, after which the tear sheet upon which the estimates were made must be mailed back to the newspaper office or returned there in some manner. In the light of the opinions enclosed it is obvious without further belaboring this point that the element of "consideration" is present.

We have then to consider whether the element of "chance" is also present. From the opinions enclosed, and particularly from the opinion to Tom Eagleton, we note that the law of Missouri on

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this point is that there may be present in a contest some element of skill and yet, if the element of chance is greater or is dominant and the element of skill is subordinate, it will be held that the element of "chance" is present.

In the instant situation the successful contestant is the one who makes the closest correct score in forecasting the winners of twelve basketball games, and, in the event of a tie, the contestant who makes the closest estimate of the score. As we pointed out above, three of these games are local and semi-local. The other nine games are played by schools, most of which are remote from Dunklin County. Some of these contesting teams are Southern Illinois University and Northern Illinois University, Cincinnati and Houston, Arkansas State and Quincy, Memphis State and Oklahoma City. In view of these facts can it be said that the element of skill will be dominant on the part of the successful contestant? We cannot believe that it is. It is a matter of common knowledge that so-called sports experts, umpires, referees and particularly sports writers, who give all of their time and attention to sporting events and who freely and continually attempt to forecast the outcome of particular games, are very frequently in error. These people are experts in the field and yet it is common knowledge that their percentage of successful forecasts is but little, if any, greater than their errors. Certainly the great majority of contestants in the instant situation would not be experts but would simply be persons interested in the game but whose knowledge of it was but little more than superficial. We might concede the presence of the element of skill in the selections to a greater degree if the outcome of only one game were involved but in the instant contest the successful contestant must be the one who more nearly picks the winners in twelve games. The outcome of all of these games would depend, to some extent at least, upon injuries to players, health conditions of players, and many other factors even more intangible. In view of this, while we may concede that the element of skill would be present in some small degree, yet we believe that the element of "chance" is dominant. Since all of the elements necessary to constitute a lottery are present we believe that the instant operation is a lottery.

CONCLUSION.

It is the opinion of this department that the invitation by a newspaper to the public to submit to the newspaper predictions as to the outcome of twelve basketball games, and the score of one specific game, with the offer of a prize for the person who

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is most successful, contains the elements of prize, chance and consideration and is, therefore, a lottery and contrary to Missouri law.

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

Yours very truly,

JOHN M. DALTON
Attorney General

HFW:lwmc

Enclosures