

LOTTERIES:  
CHAIN LETTERS:

A chain letter scheme whereby a person purchases a letter for ten dollars and can possibly receive a profit of \$320 if the chain is not broken is a lottery under Section 563.430, RSMo Supp. 1965.

OPINION NO. 188

July 28, 1966

Honorable Daniel V. O'Brien  
Prosecuting Attorney  
St. Louis County  
Clayton, Missouri



Dear Mr. O'Brien:

This is in answer to your request for an opinion of this office as to whether or not a chain letter is a lottery in Missouri.

The chain letter in question reads in part as follows:

- "1. You buy this letter for ten dollars then take the five dollar check which is attached to the letter and mail it to the number-one man on the list, the one to whom the check was made out. After doing this, you cross the number-one man off the list, move everyone's name up one position, and place your name in the sixth position.
- "2. Now take this copy and make two more just like it. Make sure you don't leave out any of the steps. You now have two copies of this letter with your name in sixth position. Take the original letter and destroy it.
- "3. Take the two copies of the letter you have made and attach to each a five dollar check or money order, made out to the person at the top of your new list. Now sell the letters you have made up for ten dollars each thus breaking even. The quicker the letters are sold, the quicker your name progresses to the top of the list.
- "4. The two people to whom you sell the letter will each sell two copies of the letter with your name in the fifth position.

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There will then be four people in possession of a letter on which your name has been moved to fourth place. Each of these four owners will sell two letters with your name in fourth position, and there will thus be eight new owners who have moved your name to third position, thus making sixteen owners of a letter who have moved your name to second position. These sixteen people each sell two letters with your name in second place, thus making 32 owners of a letter with your name moved to first place. These 32 owners will each sell two letters each of which bears a five dollar check to your 64 checks of five dollars each will be mailed to you and your name is crossed off the list. This will give you a profit of 320 dollars. This letter is void without an attached check."

Section 563.430, RSMo Supp. 1965, 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 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, provided, however, that this section shall apply only where there is consideration in the form of money, or its equivalent, paid to or received by the person awarding the prize."

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The court en Banc in State ex inf. McKittrick v. Globe-Democrat Pub. Co., 341 Mo. 862, 110 S.W.2d 705, 713, said that "a lottery includes every scheme or device whereby anything of value is for a consideration allotted by chance", citing State v. Emerson, 318 Mo. 633, 1 S.W.2d 109, 111. The court also said, l.c. S.W.2d 713, that the elements of a lottery are prize, consideration and chance. All three must be present to constitute a lottery.

C.J.S., Lotteries, Section 2(d), says, concerning prize, that:

"In the absence of statute, anything of value offered as an inducement to participate in a scheme of chance is a prize."

There is no doubt that the element of prize is present as the chain letter states that if a person buys the letter he can hope to receive a profit of \$320 if the chain is kept intact.

As to the element of consideration, a person must first pay ten dollars just to buy the chain letter. Then after making two copies of the letter and adding his name to the list, he must attach a check or money order for five dollars to each of the copies. If this person is unable to sell these copies, the chain is broken, and his ten dollars is lost. If the copies are sold, a total of twenty dollars has been expended, but, of course, the twenty dollar outlay will have been recovered. Regardless of whether a person can or actually does recover his initial outlay, the fact remains that it cost ten dollars to enter the chain for the possibility of recouping a substantial profit. Therefore, it is our opinion that the element of consideration is present.

The leading Missouri case on the element of chance is State ex inf. McKittrick v. Globe-Democrat Pub. Co., supra. The court said, l.c. S.W.2d 713:

"\* \* \*Hence a contest may be a lottery even though skill, judgment, or research enter therein to some degree, if chance in a larger degree determine the result.\* \* \*"

And, the court said, l.c. S.W.2d 717:

"\* \* \*In other words, the rule that chance must be the dominant factor is to be taken

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in a qualitative or causative sense  
rather than in a quantitative sense.\* \* \*"

We have been unable to find any Missouri cases directly on chain letters. However, similar schemes have been considered in other jurisdictions.

In Kent v. City of Chicago, 301 Ill.App. 312, 22 N.E.2d 799, an endless chain scheme was held to be a lottery. The court said, l.c. N.E.2d 802:

"\* \* \*It is apparent that the real consideration upon which the customers were persuaded to invest was that by putting in \$3 they had a chance to obtain \$768; that the business was apparently conducted in an honest way is, of course, beside the point. In essence the plan is one by which through payment of \$3 for worthless pieces of paper, there is an opportunity to win \$768.\* \* \*"

On the element of chance, the court said that since the prize which one could hope to receive depended upon the actions of others in not breaking the chain, "over whom he had no more control than he has over 'the countless laughter of the sea,'" chance was present in the legal sense.

In Public Clearing House v. Coyne, 194 U.S. 497, 24 S.Ct. 789, 48 L.Ed. 1092, another endless scheme was held to be a lottery. On the element of chance, the court said, l.c. U.S. 515:

"It is true, as urged by the counsel for complainant, that in investing money in any enterprise the investor takes the chance of small profits, or even of failure, as well as the hope of large profits; but such enterprises contemplate the personal exertions of the investor, or of his partners, agents or employes, while in the present case his profits depend principally upon the exertions of others, over whom he has no control and with whom he has no connection. It is in this sense the amount realized is determinable by chance."

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In *New v. Tribond Sales Corporation*, 19 Fed.2d 671, the court held that an endless chain scheme for the sale of hosiery was a lottery and said, l.c. 674:

"It is apparent, we think, from what we have said, that whether a 'contract' holder will get his hosiery for an investment of \$1, \$5, \$8, or \$10, depends upon contingencies largely beyond his control. First, there is the requirement that the three 'respective purchasers' to whom he sells the three coupons will in turn remit \$3 each to the corporation for three other 'contracts.' These coupon purchasers may, upon inquiry, ascertain that others are trying to sell coupons, and they may, for this or some other reason satisfactory to them, conclude to forfeit the \$1 paid for the coupon and abandon the scheme. Obviously this is a matter beyond the control of the original 'receipt holder,' and, as to him, a matter of chance. Another circumstance is that those who embark upon the scheme at its inception have a better chance to earn a prize than those who take it up later. Although this element of chance is not as pronounced as that in the first instance, it may be present."

See also *Niccoli v. McClelland*, 21 Cal. App. 2d Supp. 759, 65 P.2d 853, where a chain letter scheme was held to be a lottery.

In the scheme under consideration the ultimate gain received by the person purchasing the chain letter is determined not by his own skill but on factors over which he has no control. To him it is a matter of chance that he will receive a profit of \$320 or any amount of profit.

Therefore, it is our opinion that the chain letter scheme you inquire about is a lottery under Section 563.430, RSMo Supp. 1965.

#### CONCLUSION

It is the opinion of this office that a chain letter scheme whereby a person purchases a letter for ten dollars and can possibly receive a profit of \$320 if the chain is not broken is a lottery under Section 563.430, RSMo Supp. 1965.

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The foregoing opinion, which I hereby approve, was prepared by my assistant, Walter W. Nowotny, Jr.

Yours very truly

A handwritten signature in cursive script, appearing to read "Norman H. Anderson".

NORMAN H. ANDERSON  
Attorney General