

LOTTERIES:

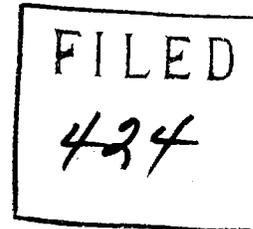
A contest that requires the entrant to go to a store selling the contest sponsor's product or to buy a magazine in order to obtain an entry blank, and in which prizes are awarded based on a drawing from the submitted entry blanks, does constitute a lottery within the meaning of Article III, Section 39, Missouri Constitution, and therefore, is prohibited in Missouri.

A contest that requires the entrants to submit a photograph taken by the entrant, and in which prizes are given, but in which the winners are selected on clearly defined elements of skill, is not a lottery within the meaning of the above cited constitutional provisions, and therefore, is not prohibited in Missouri.

October 30, 1969

OPINION NO. 424

Honorable Jack J. Schramm  
State Representative  
37th District  
7529 Gannon Avenue  
University City, Missouri 63130



Dear Representative Schramm:

This is in response to your request for an opinion on whether or not two contest schemes are illegal in the State of Missouri. One contest calls for the participant to obtain an entry blank from a magazine or from a store selling the contest sponsor's clothes. The entrant is then to complete in fifteen words or less the phrase "I never press X Clothes because . . .". The winner of the contest would be selected in a drawing.

The other contest involved the entrant submitting a photograph depicting his "Special Kind of Day". The entrants would be judged on the basis of the interest of the activity shown, composition and basic principals of design and arrangement, and harmony of color or contrast of black and white prints.

While the laws of Missouri do not define the term "lottery", both statute and constitutional provisions prohibit it. Missouri Constitution, Article III, Section 39, sub-section 9, Section

Honorable Jack J. Schramm

563.430, RSMo Supp. 1967. However, the term has received a judicial gloss from the Missouri courts, and has been the subject of opinions of this office. Generally, a lottery is a device whereby a person is offered a chance to receive great gain in exchange for some consideration. The Supreme Court of Missouri said in *State ex inf. McKittrick v. Globe Democrat Publishing Company*, 341 Mo. 862, 110 S.W.2d 705 (Mo. 1937), that a lottery is three elements: consideration, prize, and chance. In view of the constitutional status in Missouri's prohibition of lotteries, these elements should be applied broadly to fulfill the apparent purpose of the prohibition. This office has recently issued a policy statement on this matter. I have enclosed that policy statement for your consideration. Generally, it is the view of this office that consideration within the meaning of the prohibition in the constitution means any "legal consideration", and not just valuable consideration.

In the complete the phrase contest, the elements of chance and prize are clearly present in that the winner will be selected by a drawing and will receive certain rewards for winning. The element of legal consideration is present from the fact that the entrant must either buy a magazine or go to a store, to the entrant's legal detriment, in order to obtain an entry blank.

However, in the Globe Democrat case, supra, the Supreme Court set forth certain standards by which the element of chance could be removed from the contest. These standards included judging the winner on elements of skill. While the photograph contest does require legal consideration on the part of the entrant (the taking and development of a photograph), and prizes are awarded, the entrants will be judged on elements of skill specifically set forth. By determining the contest winners on elements of skill, the element of chance is then removed from the contest.

#### CONCLUSION

Therefore, it is the conclusion of this office, that a contest that requires the entrant to go to a store selling the contest sponsor's product or to buy a magazine in order to obtain an entry blank, and in which prizes are awarded based on a drawing from the submitted entry blanks, does constitute a lottery within the meaning of Article III, Section 39, Missouri Constitution, and therefore, is prohibited in Missouri.

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The above opinion, in which I concur, was prepared for me by my assistant, Thomas L. Patten.

Very truly yours,

A handwritten signature in cursive script that reads "John C. Danforth". The signature is written in dark ink and is centered below the typed name.

JOHN C. DANFORTH  
Attorney General

Enclosures:

Op.No. 18, 10-21-57, Collet  
May 2, 1969, Statement