

REAL ESTATE BROKER:  
REAL ESTATE COMMISSION:  
LICENSES:  
CRIMINAL LAW:

The offering of free radios or free dinners by a licensed real estate broker in order to induce the public to attend a meeting at which said broker solicits or offers for sale

real property in a development within or outside the State of Missouri constitutes soliciting or offering to sell real property by offering prizes for the purpose of influencing a purchaser or prospective purchaser of real property is in violation of Section 339.100(11), RSMo 1969.

OPINION NO. 326

September 28, 1970

Mr. Robert T. Leonard, Chairman  
Missouri Real Estate Commission  
1707 College Street  
Springfield, Missouri 65806



Dear Mr. Leonard:

This official opinion is issued in response to your request concerning the following questions:

"The Missouri Real Estate Commission requests an opinion from the Attorney General's Office as to whether or not the offering of a free radio or the holding of free dinners, by a licensed real estate broker, in order to induce people to come into their offices or to attend their dinners, for the purpose of viewing or listening to land presentations with the possible result of the individual who received the free radio or the free dinner, purchasing land in a development within or outside the State of Missouri is a violation of Section 339.100(11), RSMo 1969."

Section 339.100(11), RSMo 1969, provides that:

"The commission may upon its own motion, and shall upon written complaint filed by

Mr. Robert T. Leonard

any person, investigate the business transactions of any real estate broker or real estate salesman and shall have the power to suspend or revoke any license obtained by false or fraudulent representation or if the licensee is performing or attempting to perform any of the following acts or is deemed to be guilty of:

\* \* \*

"(11) Soliciting, selling, or offering for sale real property by offering free lots, or conducting lotteries, or contests, or offering prizes for the purpose of influencing a purchaser or prospective purchaser of real property."

Section 339.100(11) prescribes the solicitation, selling, or offering for sale of real property in three distinct circumstances; namely, by offering free lots, by conducting lotteries, or contests, or by offering prizes for the purpose of influencing a purchaser or prospective purchaser of real property. The plan referred to in your question obviously does not constitute a violation of Section 339.100(11) by the first means, offering free lots, nor does it constitute a lottery or contest for the reason that the element of chance is not involved. State ex inf. McKittrick v. Globe-Democrat Pub. Co., 341 Mo. 862, 110 S.W.2d 705 (1937).

However, the factual situation presented in your question would constitute a violation of Section 339.100(11) by the third means, offering of prizes, if the offering of free dinners and free radios constitutes the offering of a "prize". The issue presented therefore is the meaning of the word "prize" as used in the context of Section 339.100(11).

A prize is an essential element of a lottery, State ex inf. McKittrick v. Globe-Democrat Pub. Co., supra. Thus, the various lottery cases provide one definition of the word prize.

The court in Equitable, Loan & Security Co. v. Waring, 44 S.E. 320, 326 (Ga. 1903), stated that:

". . . As used in connection with anti-lottery laws, the word 'prize' comprehends anything of value gained (or, correspondingly, lost) by the operation of chance, or any inequality in amount

Mr. Robert T. Leonard

or value in a scheme of payment of money  
or other thing of value as a result of  
the use of chance. The gain need not  
be large to constitute a prize. . . ."  
(Emphasis added)

In Great Atlantic & Pac. Tea Co. v. Cook, 15 Ohio Misc. 181,  
240 N.E.2d 114, 118 (1968), the following definition of "prize" was  
given:

". . . prize is some advantage or inequality  
in amount or value, accruing to some, but  
not all, of the participants in the game  
or contest. No lottery exists if every  
contestant receives something of value of  
precisely the same nature. . . Ordinarily,  
no element of chance exists if there is  
equality of distribution. Chance is a  
condition precedent to the existence of a  
prize. . . ." (Emphasis added)

As the emphasized words indicate, the above definitions relate to  
the context of a lottery or contest. As can be seen, when used in  
this context the word "prize" denotes the value that may be won by  
the operation of chance. Inasmuch as prize and chance are both es-  
sential elements of a lottery or contest, it is natural that chance  
weigh heavily in the lottery definition of prize. However, when  
not used in the context of a lottery the word "prize" has a broader  
and more general meaning, devoid of any connotation of chance.

For example, the Missouri Supreme Court defined prize in  
Milgram Food Stores, Inc. v. Ketchum, 384 S.W.2d 510, cert. denied,  
382 U.S. 801, 86 S.Ct. 10, 15 L.Ed.2d 55, to mean a thing of value  
offered free of charge as a reward or inducement for certain action.  
That case concerned the application of a regulation issued by the  
State Supervisor of Liquor Control which prescribed that no adver-  
tising of intoxicating liquor shall contain "any statement offering  
any coupon, premium, prize or rebate as an inducement to purchase in-  
toxicating liquor". In that case, a retail liquor licensee had  
advertised the offer of a free Santa Claus bottle cover with the  
purchase of certain bottles of liquor. The State Supervisor of  
Liquor Control concluded that the advertisement offered a prize  
to induce the purchase of intoxicating liquor and suspended the  
retail liquor licensee's license. The Supreme Court of Missouri  
held that as the advertisement represented that the purchaser  
would get an additional article free with his purchase, it con-  
veyed the meaning of offering a prize. Thus the court construed  
the word prize to denote a thing of value given free of charge as  
an inducement to buy certain merchandise.

Mr. Robert T. Leonard

In response to the contention by the licensee that the regulation was invalid because the term "prize" was not defined within the regulation, the court stated that the word prize is well understood, citing Webster's New International Dictionary, Third Edition, wherein prize is defined as follows:

"1. something offered or striven for in competition or in contests of chance: as  
a: an honor or reward striven for in a competitive contest: something offered to be competed for or as an inducement to or a reward of effort. . . b: something that may be won by chance (as in a lottery); also: a novelty or other premium given with merchandise as an inducement to buy 2a: something worth striving for: a valuable possession held or in prospect. . . b: something exceptionally good or desirable of its kind. . ."

The word prize therefore has more than one meaning; one, a specialized and limited meaning as defined in lottery cases, the other, a more general and broader meaning as defined in Milgram. It is basic to statutory construction that when a word is used which has more than one meaning, the Legislature will be deemed to have intended to use the word in its more general and broader sense unless some imperative reason can be found for according the word its more limited and specialized meaning. 82 C.J.S. Statutes § 329.

Section 339.100(11) prohibits soliciting or offering to sell real property by either conducting lotteries or contests, or by offering prizes for the purpose of influencing a purchaser or prospective purchaser of real property. When prize is read in its limited sense the last two above clauses of Section 339.100(11) prescribe essentially the same thing. Thus, not only is there no imperative reason to read prize in its limited sense, but it is in the interest of avoiding an unnecessary redundancy to accord the word prize as it is used in Section 339.100(11) its more general and broader meaning.

Thus, we believe that the Legislature intended to use the word prize in Section 339.100(11) to mean a thing of value offered free of charge as an inducement to purchase real property. Thus defined, it is plain that the offering of free radios and free dinners constitutes the offering of a prize.

#### CONCLUSION

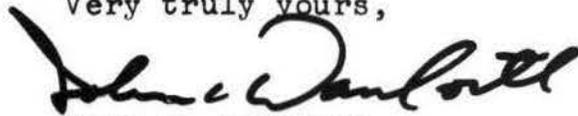
Thus it is the opinion of this office that the offering of

Mr. Robert T. Leonard

free radios or free dinners by a licensed real estate broker in order to induce the public to attend a meeting at which said broker solicits or offers for sale real property in a development within or outside the State of Missouri constitutes soliciting or offering to sell real property by offering prizes for the purpose of influencing a purchaser or prospective purchaser of real property is in violation of Section 339.100(11), RSMo 1969.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Harvey M. Tettlebaum.

Very truly yours,

A handwritten signature in black ink, appearing to read "John C. Danforth". The signature is written in a cursive style with a large initial "J" and "D".

JOHN C. DANFORTH  
Attorney General