LOTTERY: "Pay Nights" and similar schemes of awarding money in envelopes handed to customers of theaters.

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Hon. G. R. Chamberlin
Prosecuting Attorney
Cass County
Harrisonville, Missouri

Dear Sir:

We have your request for an opinion which is as follows:

> "The local picture shows have a scheme which they are, as I understand, contemplating to inaugurate as follows: a system of trade inducement by placing in envelopes cash ranging from one cent to one dollar, and the envelopes then to be placed in order and each person who buys a ticket to get an envelope, that is, the first fellow who buys a ticket gets the first envelope, the second envelope, and so on.
>
> It is claimed for that scheme that it is in the order of trade checks, that is, where a person buys merchandise he is given a trade check good for so much in cash, or credit on the bill."

The word "lottery" must be construed in its popular sense with the view of remedying the mischief intended to be prevented and to suppress all evasions for the continuance of the mischief. People vs. McPhee, 139 Mich. 687, 103 N.W. 174; 69 L.R.A. 505. State vs. Mumford, 73 Mo. 647, 650, State vs. Wersebe, 181 Atl. 299, 301.

The word is generic; no sooner is it defined by a court than ingenuity evolves some scheme within the mischief discussed but not quite within the letter of the definition given. People vs. McPhee, 139 Mich. 687; 103 N.W. 174; 69 L.R.A. 505. State vs. Clark, 33 N.H. 329. This is made apparent from an examination of a large number of cases in which various methods of distributing money or goods by chance are examined and discussed.

In Missouri a lottery is any scheme or device whereby anything of value is, for a consideration, allotted by chance. State vs. Emerson, 318 Mo. 633, 1 S.W. (2d) 109, 111; State ex rel. vs. Hughes, 299 Mo. 529, 253 S.W. 329, 28 A.L.R. 1305; State vs. Becker, 248 Mo. 55, 154 S.W. 769.

It is apparent from your request that the system outlined in your letter is the awarding of a prize for a consideration. The prize is the amount of money contained in an envelope handed to the customer. The consideration is the amount paid by the customer for the admission ticket to the theater. The only remaining element to be discussed is whether the prize is awarded by chance. There is no drawing in this plan. This does not relieve the scheme of its lottery feature.

There need be no actual drawing. In People vs. Hecht, 3 Pac. (2nd) 399, l. c. 402, the court said:

> "But it may be said that there is no element of chance because there is no drawing; that the management itself selects the beneficiary; but this factor does not purge the transaction of all element of chance. To the purchaser it is uncertain, as to him it is chance."

"Chance" as defined by Webster is a possibility or probability of an event happening. In the present case it is purely a matter of chance as to whether the theater patron receives one cent or one dollar in money. The element of time at which he buys his ticket and enters the theater, when compared with the order in which the envelopes containing the dollars are placed in the stack determined whether he gets one cent or one dollar. This time element is chance within the lottery law. State ex rel. vs. Hughes, 299 Mo. 529.

This office has previously advised theaters and prosecuting attorneys with reference to the operation of this scheme, in which the position has been taken that such is a lottery.

CONCLUSION

It is therefore the opinion of this office that the scheme as outlined in your letter, sometimes known as "Pay Nights" and sometimes by other names, is a lottery in violation of the cri inal code of this state; that its operation is unlawful as being in violation of Section 4314 R. S. Missouri 1929.

Respectfully submitted,

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APPROVED:

J. E. TAYLOR
(Acting) Attorney General

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