

LOTTERIES:

Prizes and theater schemes in connection  
therewith.

June 15, 1942

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Honorable George N. Davis  
Prosecuting Attorney  
Macon County  
Macon, Missouri



Dear Sir:

This is in reply to yours of recent date wherein you submit a scheme proposed by the theater for the operation of a drawing and ask whether or not this scheme would be in violation of the criminal statutes.

Section 4704 R. S. Mo., 1939, provides 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 make 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."

In referring to this section, our Supreme Court in the case of State v. Emerson, 1 S.W. (2d) 109, 111, stated as follows:

"The crime denounced is statutory. In passing upon a charge based upon that part of this statute which denounces the aiding and assisting of the establishment of a lottery or a scheme in the nature of a lottery, we have held it sufficient to employ the language in which the offense is defined. \* \* \* \* \*.

"The people inframing the state Constitution (section 10, art 14) declared their disapproval of the establishing of lotteries or schemes of chance in the nature of lotteries, by inhibiting the General Assembly from giving legislative recognition to such schemes. In the discussion and interpretation of this constitutional provision we have held that a lottery includes every scheme or device whereby anything of value is for a consideration allotted by chance. State ex rel. Hughes, supra, loc. cit. 534 (253 S.W. 229). In State v. Becker, supra, loc. cit. 560 (154 S.W. 769), in line with our former rulings and those of courts of last resort elsewhere, a more comprehensive definition is given to the word, and a lottery or a scheme in the nature of a lottery is held to include every punishable plan, scheme, or device whereby anything of value is disposed of by lot or chance."

The elements of the offense under this statute are: consideration, chance and prize. In examining the proposal which has been submitted to you, we find that the consideration is; the person attending the theater obtains a ticket - the chance is that such person may draw one of the lucky numbers, the prize which is given away at the drawing being either

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five dollars, ten dollars or fifteen dollars. The fact that the person who draws the lucky number and obtains the money is required to work for the theater is merely a subterfuge.

CONCLUSION

We are therefore of the opinion that the proposed plan would be in violation of the foregoing statute.

Respectfully submitted

TYRE W. BURTON  
Assistant Attorney General

APPROVED:

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ROY MCKITTRICK  
Attorney General

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