

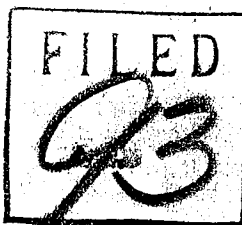
LOTTERIES:

"AUTOMOBILE GAME" IS A
LOTTERY:

"Automobile Game" consisting of numbered rectangular track over which small automobile is made to run is game of chance rather than of skill. For payment in advance of cash fee, one is permitted to operate device. Device is operated when the player first selects number, then propels automobile so that it hits bumpers at each end of track. Only when automobile stops on previously selected number is player awarded a prize. Said operation involves consideration, chance and prize, and is a lottery within the meaning of Missouri lottery statutes, particularly Section 563.430 RSMo 1949, declaring the making or establishing of a lottery a crime.

June 7, 1954

Hon. Stanley Wallach
Prosecuting Attorney
St. Louis County
Clayton, Missouri



Dear Sir:

This department is in receipt of your recent request for a legal opinion which reads, in part, as follows:

"Mr. George F. Dusker of 37 Sappington Acres Drive, St. Louis (23) Missouri, called at this office accompanied by Rev. O'Connell of the Seven Holy Founders Church in Affton, Missouri, and presented to me your letter to Mr. Dusker dated April 28, 1954, in reference to your legal opinion on whether 'Darts' and 'Hoopla' are games of chance.

"In addition they submitted to me the attached memorandum of the contest they propose to conduct at their Church picnic on Saturday, May 29, 1954, and they have requested that I ask your office to render a further opinion as to whether the contest as set forth in said memorandum constitutes a violation of the gambling laws of this State."

The pertinent parts of the memorandum attached to the opinion request also read as follows:

"* * * The concession stands, which we propose to operate are: Country Store, Fancy Work, Ham and Bacon, Esquire and Sports. At these booths merchandise prizes will be given to the person who displays the most skill at

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hitting the target with a dart or at propelling a small auto so that it will stop on the number he has previously selected.

"* * * In the auto game the contestant must select his number and then push the car on a track so that it hits both bumpers, located at the ends of the track and then have it stop on the number he has selected. When this is done, the contestant is awarded a basket of groceries, or a pair of pillow cases or some other prize. * * *"

Neither your letter nor the attached memorandum indicate whether a certain amount of money is required to be paid in advance to the attendant in charge of the automobile game by one desiring to play said game. However, from the statement of facts, it appears that said automobile game is to be one of the main attractions of the proposed picnic, and also since the proceeds from the concessions at the picnic are to be used for specified purposes, we assume that a certain sum of money must be paid in advance by all the persons who play said game.

The inquiry, in effect, is whether or not the game referred to in your letter and attached memorandum is a lottery, and in violation of the gambling laws of this State.

Before the operation of any device or game can be classified as a lottery, within the contemplation of the statutes governing lotteries, it is generally considered that three necessary elements must co-exist at the time such device or game is operated, namely, consideration, chance and prize. A detailed discussion of these elements, and whether or not in the instances referred to, the devices were lotteries within the meaning of the Missouri statutes is given in an official opinion of this department rendered to the Hon. Douglas W. Green, Prosecuting Attorney of Greene County, Missouri, on March 17, 1953. Said opinion is supported by some Supreme Court decisions which define and elaborate upon the subject of lotteries. The ruling of said opinion is in point, and is fully applicable to the present inquiry, therefore we enclose a copy of same for your consideration.

When we re-examine the description and manner of playing the game as given in the opinion request and memorandum, it is apparent that the operation of said game involves a consideration. Such

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consideration is the cash price paid in advance by the contestant for the privilege of playing said game.

It is obvious that chance plays a large part in the selection of the numbers and in causing the automobile to stop upon the numbers selected, and that the part played by skill is very small. No matter how skillful a player may be, if for some reason the automobile did not stop upon the number selected, according to the rules, he could not be awarded the prize, for only those who are lucky can win the prize, hence it appears that chance, rather than skill, is a determining factor in winning such prize. The memorandum, in reference to the conclusion of the game, that is, when a successful player causes the automobile to stop upon the number selected, specifically states: "When this is done, the contestant is awarded a basket of groceries or a pair of pillow cases or some other prize." Here we see that a prize is one of the elements in the playing of the game.

In view of the foregoing, it is our thought that the playing of the automobile game described in the opinion request and memorandum involves three elements necessary to constitute a lottery, namely, consideration, chance and prize; consequently, said game is a lottery within the meaning of Missouri lottery statutes, particularly Section 563.430 RSMo 1949, declaring the making or establishing of a lottery to be a crime.

CONCLUSION

It is the opinion of this department that a device called "Automobile Game," and consisting of a numbered rectangular track over which a small automobile is made to run is a game of chance rather than one of skill. That in consideration of the payment of a certain cash fee or price, paid in advance, one is permitted to operate or play said device or game. That such device is operated when the player first selects a number on the track and then propels the automobile over the track in such a manner that the automobile hits the bumpers at each end of said track. That it is only when the automobile stops upon the number previously selected is the operator awarded a prize. That the operation of said device involves the elements of consideration, chance, and prize, and is a lottery within the meaning of Missouri lottery statutes, particularly Section 563.430 RSMo 1949, which declares the making or establishing of a lottery to be a criminal offense.

Hon. Stanley Wallach

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Paul N. Chitwood.

Very truly yours,

JOHN M. DALTON
Attorney General

PNC:am
Enc: Opn. Douglas W. Green
3-17-53