

LOTTERIES: Doctor Quizzer is a lottery.

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Hon. Claude T. Wood
Prosecuting Attorney
Pulaski County
Waynesville, Missouri

Dear Sir:

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

"A local theater proposes a gift enterprise in connection with his show, known as "Dr. Quizzer", which said enterprise as I understand it, is about as follows:

The manager of the theater will advertise that \$40.00 or some other stated amount of money will be given away to some patron of the theater on a certain night. During the evening's program, the manager will propound a group of questions to his patrons, similar to "MAN-ON-THE-STREET" radio programs. He will award 50¢ or one dollar to the person who first responds with a correct answer to each question. He will proceed in this manner until about Ten dollars has been given away. When this has been done, the manager then propounds his "CAPITAL QUESTION" (one of unusual difficulty). If any person present gives the correct answer to the "Capital Question" he is awarded the grand prize of \$30.00 or some such stated amount. If no one present answers the capital question, the grand prize is held until the next "Dr. Quizzer" program and is pyramided for each successive "Dr. Quizzer" program until some one present at such a program answers the Capital Question. No enrollment is required. No increase in price of admission. In order to participate, an admission ticket must be purchased and the party must be inside the theater.

We note that the participants must buy a ticket and must be inside the theater. This constitutes consideration.

We note from your request that prizes ranging from fifty cents to thirty dollars in cash are given away. This constitutes the prize.

The third and final requirement for a lottery is the element of chance. It is apparent that the sponsors of "Dr. Quizzer" have attempted to eliminate any element of chance and reduce it to a game of skill.

We call your attention to the pronouncement of the Supreme Court in State vs. Globe Democrat Publishing Company, 110 S.W. (2) 705, wherein Judge Ellison speaking for the entire court, l. c. 713, said:

"Hence a contest may be a lottery even though skill, judgment or research enter thereinto in some degree, if chance in a larger degree determines the result."

The Doctor Quizzer contest turns upon what is called the "correct answer". This does not relieve it of the element of chance. The contest is open to all persons, varying from the child, the uneducated, to the mature individual and the highly educated individual. To propound a question, the answer to which is worth thirty dollars in cash, directly injects the element of chance into the result. It is therefore an unequal contest, and it would be a mere matter of chance for a small child to guess the correct answer. In the Globe Democrat case *supra*, this exact situation was commented upon as follows, l. c. 718:

"Obviously, if some abstruse problem comparable to the Einstein theory were submitted to the general public in a prize contest on the representation that no special training or education would be required to solve it, the contention could not be made, after contestants had been induced to part with their entrance money, that the element of chance was absent because there were a few persons in the world who possessed the learning necessary to understand it."

There is no yardstick by which the correct answers to many debatable questions can be definitely ascertained. The selection of the correct answer is therefore left to the uncontrolled discretion of some person or persons. This phase of lotteries is briefly summed up in 45 Harvard Law Review, page 1212, as follows:

"It is somewhat surprising to find a fairly large number of decisions involving the award of prizes in the uncontrolled discretion of a judge. All of them agree that the contest is a lottery."

CONCLUSION

It is therefore the opinion of this office that the contest known as "Doctor Quizzer" is a lottery in violation of the criminal code of this state.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

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