

LOTTERIES: Merchandising scheme with prize award by lot and quiz question is a lottery.

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Honorable Samuel E. Semple
Prosecuting Attorney
Moberly, Missouri

Dear Mr. Semple:

This department is in receipt of your request for an official opinion which reads as follows:

"I would like to ask your opinion on another give away scheme at a theater here in Moberly. Certain merchants in the town are sponsoring the give away at the theater and will give out tickets with merchandise purchased. These tickets are placed in a box in the theater from which are drawn tickets, and the holder of the ticket is called to the stage and asked a quiz question. If the answer is correct that person is given a prize such a radio or other merchandise.

"Would your office consider such a scheme a lottery?"

Section 39, Article III of the Constitution of Missouri, 1945, provides, in part, as follows:

"The General Assembly shall not have power:

"(9) To authorize lotteries or gift enterprises for any purpose, and shall enact laws to prohibit the sale of lottery or gift enterprise tickets, or tickets in any scheme in the nature of a lottery; "

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 made 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."

A lottery in this state consists of three elements: prize; consideration and chance. State vs. Emerson, 318 Mo. 633, 1 S.W. (2d) 109; State ex inf. McKittrick vs. Globe Democrat Pub. Co., 341 Mo. 862, 110 S.W. (2d) 705.

The fact that the person is given a radio, or other merchandise, constitutes the element of prize.

It is the rule in this state, and in other jurisdictions, that a ticket or chance given with each purchase of merchandise constitutes consideration within the meaning of the lottery law. State vs. Emerson, 318 Mo. 633, 1 S.W. (2d) 109; Featherstone vs. Independent Service Station Association (Tex. Civ. App.) 10 S.W. (2d) 124; Retail Section of Chamber of Commerce vs. Kieck, 128 Neb. 13, 257 N.W. 493; People vs. Bloom, 227 N.Y. 225 (reversed on other grounds) 248 N.Y. 582, 162 N.E. 533; Market Plumbing and Heating Supply Co. vs. Spangenberg, 112 N.J.L. 46, 169 A. 660. Furthermore, it appears from your request that a person to be eligible to receive the prize must be in attendance at the theater, and the purchase of an admission ticket to the theater under such circumstances has been held to constitute consideration. State vs. McEwan, 343 Mo. 213, 120 S.W. (2d) 1098, In order for the person to win a prize his ticket must have been selected from a box which contains all the tickets.

This is obviously a selection by chance. The fact that, in order to win the prize a quiz question must be answered correctly, does not, in any way, carry away the inherent evil in the scheme. The answering of the question is merely an incidental element as compared to the selection of a ticket from the box which contains the names of all the ticket holders. As Judge Ellison said in the case of State ex inf. McKittrick vs. Globe Democrat Pub. Co., 341 Mo. 862, 110 S.W. (2d) 705, 1.c. 717:

"* * * But we draw the conclusion from them that where a contest is multiple or serial, and requires the solution of a number of problems to win the prize, the fact that skill alone will bring contestants to a correct solution of a greater part of the problems does not make the contest any the less a lottery if chance enters into the solution of another lesser part of the problems and thereby proximately influences the final result. * * * ."

In view of what has been said, it will be seen that the three elements: prize; consideration and chance, are present in the scheme described in your request, and that such scheme constitutes a lottery, in violation of the Constitution and laws of this State.

CONCLUSION.

It is, therefore, the opinion of this department that a scheme whereby the merchants of a town give away tickets for merchandise purchased from the merchants, which tickets are placed in a box in the theater from which are drawn tickets, and the holder is called to the stage and asked a quiz question, which question if answered correctly entitles the person to a prize, is a scheme in the nature of a lottery, and is illegal in Missouri.

Respectfully submitted,

APPROVED:

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