

Scheme whereby coupons are distributed by merchants with purchase, said coupons varying in prize value proportionally to the amount of purchase and drawing held with prizes awarded constitutes a lottery. Distribution of some free coupons without purchases does not make scheme any the less a lottery.

July 30, 1951.

Mr. David E. Harrison, Superintendent
Missouri State Highway Patrol,
Jefferson City, Missouri.

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Dear Mr. Harrison:

This will acknowledge receipt of your letter to this office reading as follows:

"Attached is a copy of a handbill which has been circulated in California, Missouri. Our trooper in that area has requested your office examine it and inform us whether or not, in your opinion, it is a lottery."

The handbill referred to announcing "Appreciation Day" sponsored by the Retail Merchants Association of California, Missouri, contains the explanation that an enterprise will be conducted substantially in the following manner:

Various merchants under the sponsorship of the Retail Merchants Association are to distribute coupons upon which there is space for the person receiving said coupon to write his or her name and address. Anyone making a purchase at the various places of business of the merchants involved will be offered coupons. The coupon offered when a purchase is made in one of the participating firms will have punched thereon a "percentage" which will bear a direct relation to the amount of the total transaction. The value of the coupon varies with the "percentage" punched thereon, according to the handbill. Also, some coupons may be obtained free but, of course, these given without a purchase being made will not have a "percentage" figure punched. The person receiving the coupon writes his or her name thereon and the coupon may then be deposited in a box kept on premises of each participating merchant. Each week coupons are to be collected and placed in a "community container" from which a coupon is drawn. If the person whose name appears thereon (or the spouse of such person) is present that person is a winner. "If the person whose name is called first is not present, another and another will be drawn until somebody wins." (Quoted from handbill.)

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Because of the similarity of this enterprise to one described in an opinion rendered to the Honorable Edgar Mayfield under date of August 9, 1950, by this office, I am enclosing a copy of this opinion holding such an enterprise constitutes a lottery. The discussion therein is applicable to the enterprise described in the handbill enclosed with your letter, and since it is a clear discussion of the elements constituting a lottery there is no need for a detailed repetition of the same material here.

It is well settled in this state that the essential elements of a lottery are prize, chance and consideration. State v. Emerson, 319 Mo. 633, 1 S.W. (2d) 109; State ex inf. McKittrick v. Globe Democrat Publishing Co. 341 Mo. 862, 110 S.W. (2d) 705. We believe it is apparent in the scheme described above that the elements of prize and chance are present. However, the question arises whether the element of consideration is present, in view of the fact that the persons may receive coupons free of charge and without the necessity of purchasing any merchandise from the merchants participating in the enterprise.

The value of a coupon, however, bears a direct relation to the "percentage" punched thereon in the awarding of prizes. The scheme for varying the value of coupons by the size of a purchase made from a participating merchant is merely a variation of a plan for awarding a number of coupons to be based on the amount of the purchase. The purpose being to enhance the chances for winnings in either scheme in proportion to purchases made from participating merchants.

In this connection we are reminded of a remark by the Court in Valhalla Hotel and Company vs. Carmona, 44 Phillipine 233, 1.c. 242:

"While ingenuity is continually at work to evolve some scheme which is within the mischief but not quite within the letter of the law - we propose to go beyond the shell to the substance and to condemn the same."

In the opinion enclosed you will find this citation from our Supreme Court in the case of State v. McEwan, 343 Mo. 213, 120 S.W (2d) 1098 at 1.c. 1101:

"On the other hand, a game does not cease to be a lottery because some, or even many, of the players are admitted to play free, so long as others continue to pay for their chances. * * *"

The consideration for the chances of winning is the purchase of merchandise from the participating merchants, and even though some

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coupons are given without the necessity of purchase, the value of the chances bear a direct relationship to the amount of a purchase. The thinly veiled free coupons feature of the scheme does not take away the consideration upon which the value of the chances are placed.

We believe the enterprise in question constitutes lottery, having embodied therein the elements of chance, consideration and prize and its operation violates the laws of this state.

CONCLUSION.

It is the opinion of this department that a scheme whereby coupons are distributed by merchants to their customers with each purchase, which coupons are punched with a "percentage" fixed by the amount of a purchase, said coupons to be placed in a container and at specified periods one coupon is to be drawn from the container, and the person whose name appears upon said coupon is awarded a prize, constitutes a lottery. The fact that coupons may be obtained free from the participating merchants as well as through purchases which enhance the value of the chances does not make the scheme any less a lottery.

Respectfully submitted,

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APPROVED:



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