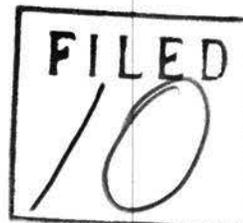


LOTTERIES: Dividend card plan used by merchants giving prizes in varying amounts after \$10.00 worth of purchases are made, constitute a lottery and violates regulations of Liquor Department.

LIQUOR :

June 29, 1940

Honorable Wallace I. Bowers  
Chief Clerk  
Department of Liquor Control  
Jefferson City, Missouri



Dear Sir:

We have received your letter of June 25th, which reads as follows:

"We would appreciate being advised as to whether or not dividend cards, per the enclosed sample, would constitute a violation of the provisions of Sub-section D, Regulation 8 of the Supervisor's Regulations.

As we understand it, the customer is given a card, which when completely punched will represent \$10.00 in purchases. The customer will then take the card to the store where the tab covering the free amount to be given in cash or merchandise will be pulled. This amount may be from twenty cents to ten dollars.

In other words, would sales promotional schemes of this nature represent the winning or losing of money, trade checks, prizes, merchandise, or any other consideration. Would the hidden amount in this respect create gambling as used in this particular Regulation."

June 29, 1940

The sample dividend card you enclosed contains a number of 5¢ punches, 10¢ punches, 15¢ punches and 25¢ punches, all of which total the amount of \$10.00. The front side of this card also contains this language:

" Keep this Lucky Clover Card

WE PAY YOU DIVIDEND ON MONEY YOU SPEND

\* NO BLANKS \*

See Other Side of Card for Dividend you Receive"

The front side of the card also contains a closed panel, which is to be opened after \$10.00 worth of purchases have been made by the customer and the card is completely punched out. On both sides of the panel is a picture of a four leaf clover. The back side of the card then explains what occurs after the card has been punched out in this language:

"NO BLANKS - Dividends up to \$10.00

A Dividend on money you spend is given you in consideration of your efforts to advertise us to your friends. When this card is fully punched, bring it to us intact. We will open the Panel. You will receive a DIVIDEND printed therein of either 20¢, 25¢, 50¢, \$1.00, \$2.50, \$5.00 or \$10.00 ABSOLUTELY FREE. SHOULD YOU OPEN PANEL, CARD BECOMES VOID."

It will be observed that after the card has been fully punched out showing \$10.00 in punches, the card is then to be taken to the merchant for the purpose of having the panel opened. The holder of the card then is entitled to receive a dividend "printed therein of either 20¢, 25¢, 50¢, \$1.00, \$2.50, \$5.00 or \$10.00 ABSOLUTELY FREE." The holder of the card in every case will receive at least 20¢, but has a chance of receiving as high as \$10.00. The opened panel on the card you sent us shows that 20¢ would be paid on this particular card.

The question is whether this scheme is a lottery. We believe that it is. The law relating to lotteries is thus set out by the Supreme Court of Missouri in the case of *State ex inf. McKittrick vs. Globe Democrat Publishing Company* 110 S. W. (2nd) 705, l.c. 712, as follows:

"Section 10, article 14 of the State Constitution provides: 'The General Assembly shall have no power to authorize lotteries or gift enterprises for any purpose, and shall pass laws to prohibit the sale of lottery or gift enterprise tickets, or tickets in any scheme in the nature of a lottery, in this State.'

Section 4314, R. S. Mo. 1929 (Mo. St. Ann. Sec. 4314, p. 3002), provides: '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.'

It will be noted both the Constitution and statute prohibit any scheme in the nature of a lottery; and it has been several times held that within their meaning and intent a lottery includes every scheme or device whereby anything of value is for a consideration allotted by chance. *State v. Emerson*, 318 Mo. 633, 639, 1 S. W. 2d 109, 111. The word has no technical meaning in our law. Lotteries are judicially denounced as especially vicious, in comparison

June 29, 1940

with other forms of gambling, because by their very nature they are public and pestilentially infect the whole community. They prey upon the credulity of the unwary and widely arouse and appeal to the gambling instinct. State v. Schwemler, 154 Or. 533, 60 P. 2d, 938; State ex rel. Home Planners Depository v. Hughes, 299 Mo. 529, 537, 253 S. W. 229, 231, 28 A.L.R. 1305, 1310; State v. Becker, 248 Mo. 555, 562, 154 S. W. 769, 771.

The elements of a lottery are: (1) Consideration; (2) prize; (3) chance."

It will be noted that a lottery is any scheme or device wherein anything of value is for a consideration allotted by a chance. Here the customers purchase commodities sold by the merchant handing out the dividend card. This, undoubtedly, is a consideration. The prize will be at least 20¢ and it may consist of larger amounts up to \$10.00. The varying amounts a person may receive are governed by chance. Chance has it whether the figure under the sealed panel is 20¢, \$5.00 or \$10.00 or any of the other amounts mentioned on the card. No one can tell in advance what prize he is to receive. The chance involved is the same as if numbers were drawn out of a hat upon which were written the prize the contestant would receive.

We are enclosing a copy of an opinion dated November 1, 1938, which was addressed to the Honorable Walter G. Stillwell, Prosecuting Attorney of Marion County, Missouri. In that opinion it appeared that an oil company was distributing coupon books, which were presented by the purchasers of gas and oil and stamps representing the amount of each purchase were then placed on the book. When the book was filled, a seal on the book was removed and the purchaser was then entitled to receive certain prizes according to the directions on the seal. The prize in any event was four quarts of oil and it could consist of five gallons of gas; grease job; oil changed; one gallon Phil-A-Penn Oil; 50¢ in cash; \$1.00 in cash; \$2.00 in cash; \$5.00 in cash or \$10.00 in cash. It is apparent that the scheme involved in the oil company case is the same in principle as the plan you inquire about. In both cases, the holder of the card

June 29, 1940

which has either been filled with stamps or punched out is entitled to some kind of prize, and if he is fortunate it might be quite valuable. Chance determines the value of the prize he will receive.

We held in the enclosed opinion that the oil company scheme was a lottery and, in our opinion and on the same reasoning, we believe the plan you outline is likewise a lottery and is therefore prohibited by law.

You inquire also whether this plan, if used by an operator of a tavern, would constitute a violation of the provisions of Subsection D of Regulation 8 of the Supervisor's Regulations. This subsection reads as follows:

"No retail permittee shall allow upon his licensed premises, any gambling of any kind or character whatsoever in which the one who plays stands to win or lose money, trade checks, prizes, merchandise, or any other consideration whatsoever. The presence of any gambling device upon any licensed premises shall create a presumption of a violation of this rule."

We have concluded that the plan is a lottery and that one who participates stands to win a prize. Consequently, any retail permittee, licensed by your department, who makes use of this plan, violates the regulation.

#### CONCLUSION

We conclude, therefore, that dividend cards of the type you describe, which are handed out by merchants and which contain a sealed panel showing the amount of prize a person will receive after making \$10.00 worth of purchases, the amount of the prize being advertised as varying between 20¢ and \$10.00, the exact amount of which will not be known

Hon. Wallace I. Bowers -6-

June 29, 1940

by the contestant until after \$10.00 worth of purchases have been made, are in fact a lottery.

Furthermore, the use of any such device by a tavern owner or retail liquor permittee is in direct violation of Subsection D of Regulation 8 of the Supervisor's Regulations.

Respectfully submitted,

J. F. ALLEBACH  
Assistant Attorney General

APPROVED:

COVELL R. HEWITT  
(Acting) Attorney General

JFA:RT