

LOTTERY: Scheme whereby right to call a relative in armed service is awarded to theater patron is a lottery.

July 21, 1943



Mr. Kelso Journey,
Prosecuting Attorney
Henry County
Clinton, Missouri

Dear Sir:

This will acknowledge receipt of your letter of July 17, 1943, as follows:

"Will you please give me your opinion upon the following question:

"Volunteers submit the names of members of the armed forces from Henry County to a local theater, which names are placed together in a box. Upon one particular night, in addition to the running of a regular picture, the following takes place in the theater: A small boy or girl draws a name out of the box. If the father, mother, sister, brother or husband or wife of the person whose name is drawn is present in the theater, they can make a long-distance telephone call to the person named, if the latter is in the United States. If connections by telephone can be made, the person present in the theater will talk from the stage of the theater. If, however, the member of the armed forces is outside the United States the qualified person in the theater may send a cablegram. The expense of the communication is borne by the theater. An admission is charged for any person entering the theater. Do these facts in your opinion constitute a lottery under the laws of this State?"

Mr. Kelso Journey

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July 21, 1943.

In State v. McEwan, Mo. Sup., 120 S. W. (2d) 1098, 1099, it is said that in order for such a scheme as that outlined in your letter to constitute a lottery under Section 4704, R. S. Missouri, 1929, the elements of "prize, chance and consideration" must be present.

"Prize" is present here, in that the person selected is awarded the privilege of making a telephone call or of sending a cablegram at the expense of the theater.

"Chance" is present, in that the determination of who is to be awarded said privilege rests upon whether the name of his or her relative is drawn from a box which contains a large number of names.

"Consideration" is also present, since the right to participate is limited to those "present in the theater" for which they pay an admission charge. Such admission charge is held, in the McEwan case, to be in part for the right to participate in the drawing for a prize. The court stated (l. c. 1100): "It is idle to say that the payment made for seeing the picture is not, in part at least, a charge for the drawing and the chance given."

CONCLUSION

It is therefore our opinion that the facts outlined in your letter present a "scheme or drawing in the nature of a lottery" and is prohibited under Section 4704, R. S. Missouri, 1939.

Respectfully submitted,

LAWRENCE L. BRADLEY
Assistant Attorney General

APPROVED:

ROY MCKITTRICK
Attorney General

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