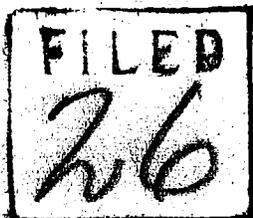


LOTTERIES: The contest known as "Tangle Towns" is not a lottery.

February 23, 1959



Honorable Thomas F. Eagleton  
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Municipal Courts Building  
St. Louis, Missouri

Dear Sir:

Your recent request for an official opinion reads:

"In the Sunday, January 11, 1959 issue of the St. Louis Post-Dispatch there appeared an announcement of a contest entitled U.S. Tangle Towns. This contest is to be run on a daily basis for at least sixty-six days with the winners being announced at the end of said period. In the event of a tie, a series of tie-breaking puzzles will be published.

"The purpose of this letter is to request your official opinion as to whether U.S. Tangle Towns constitutes a lottery as prohibited by Sec. 563.430, RSMo 1949.

"Copies of the January 11th and 12th puzzles and the contest rules are enclosed for your consideration."

The operation involved in "Tangle Towns" is not complicated.

In an issue of the promoting paper, in this instance the St. Louis Post-Dispatch, there appears a square within which there appears, in the upper left hand corner, an outline of the state in which the town, whose name is sought, is located. The remainder of the square is taken up with letters of varying size, fitted together and in varying and unusual positions. These letters spell the name of a town which is located within the state whose outline appears in the upper left hand corner of the square. Below the square containing the letters and the outline map is a clue. In the January 12, 1959 issue of the St. Louis Post-Dispatch, this clue reads:

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"This place is situated on a river. Even before the arrival of the railroads in the 1870's, cotton and hides were shipped in quantity. Oil-well machinery is manufactured here. The city has become known as a style center."

Below this is a dotted line upon which the participant is to write in the name of the city. Below this line is a place for the name and address of the participant. Below these lines there is a list of cities, one of which is the city referred to in the square. In the January 12 issue, there are twelve cities listed.

Sixty-six of these puzzles will be published. The contestant is not to send in the puzzles as they appear from week to week, but is to wait and send in all sixty-six at one time.

The entrants in this particular contest are limited to individuals residing in Missouri, Arkansas and Illinois (excluding Cook County.)

The rules, as set forth in the January 12 issue of the St. Louis Post-Dispatch, state that when the contest has run through its first phase of the sixty-six puzzles, that if it is found that there are entrants who have tied, that is who have successfully solved the puzzles, that what is called a "Tie-breaker" contest will be held for those persons who have successfully solved all of the sixty-six puzzles.

This "Tie-breaker" contest differs considerably from the type of contest which preceded it. The "Tie-breaker" works in the following manner: We are informed by the contest editor of the St. Louis Post-Dispatch that the "Tie-breaker" contest this year will follow the same pattern that it had followed in preceding years. As being representative of that procedure, we received on February 7, 1959, from Mr. Don Smith, a copy of the Times-Picayune, New Orleans, Louisiana, dated Wednesday, April 2, 1958. In that issue, the names of 590 towns and cities are set forth. In parallel rows, there are also set forth the following number of letters:

A-23	F-6	K-6	P-7	U-7
B-8	G-8	L-15	Q-2	V-4
C-11	H-8	M-10	R-18	W-5
D-10	I-14	N-17	S-14	X-2
E-22	J-3	O-18	T-13	Y-5
				Z-3

The contestant then is to make from the above number of letters submitted as many of the place names as are submitted as possible. One of the ideas, of course, is to use all or as nearly all as possible of the letters which are submitted. However, the matter is more complicated than that and we quote from the rules as set forth:

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"8 POINTS should be credited for each place name spelled from the puzzle letters and listed on the blank provided.

"10 POINTS should be credited each time an 'O' and an 'N' appear together in a selected place name in that order, 'ON.'

"13 POINTS should be credited each time an 'A' and an 'R' appear together in a selected place name in that order, 'AR.'

"14 POINTS should be credited each time an 'I' and an 'N' appear together in a selected place name in that order, 'IN.'

"17 POINTS should be credited each time an 'E' and an 'L' appear together in a selected place name in that order, 'EL.'

"19 POINTS should be credited each time an 'O' and an 'R' appear together in a selected place name in that order, 'OR.'

"66 POINTS additional should be credited if all puzzle letters in the Official Tie-Breaking Puzzle are used. (This credit is in addition to all other credits listed.)

"7 POINTS should be DEDUCTED for each letter in the Tie-Breaking Puzzle not used in the place names selected."

A total of \$30,250 is offered in prizes. The first prize is \$15,000, the second \$5,000, the third \$2,000, and so on down the scale.

Upon the basis of the above fact situation, we shall attempt to determine whether the operation here involved falls within the prohibition of Section 563.430, RSMo 1949, which section prohibits the setting up and operation of a lottery and/or a gift enterprise.

In the 1937 case of State v. Globe-Democrat Publishing Co., 110 S.W.2d 705, the Missouri Supreme Court en banc set forth of what elements a lottery consisted, an opinion which has been followed by all Missouri appellate court opinions rendered subsequently. At l.c. 713 of the Globe-Democrat opinion, supra, (2, 3), the Court stated:

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

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In order for an operation to constitute a lottery, all of the above elements must be present simultaneously. We wish now to examine the "Tangle Towns" contest to try to determine whether these three elements are present in it. Let us first see if the element of "consideration" is present.

The element of "consideration" has been the subject of attention in Missouri appellate courts and in previous opinions rendered by this department. An exact definition of this element is somewhat difficult but in general it may be stated that when an individual does an act which constitutes "consideration," as used in the Missouri lottery law, he has done something which he would not otherwise do and, in so doing, has conferred a benefit upon the party in behalf of whom and at whose suggestion the act was done. This department has held, for example, that when, in response to a promotion plan by a store, an individual walks into that store, signs his name on a perforated card, tears the card in two, deposits one half in a receptacle, puts the other half in his pocket and walks out of the store, that his act constitutes "consideration," as that term is used in the Missouri lottery law (Attorney General's opinion to Douglas W. Green, Prosecuting Attorney of Greene County of March 17, 1953.) In view of our finding, directly based as we believe upon Missouri appellate court opinions, that the act detailed above constitutes "consideration," then it would appear obvious that the acts necessary to be performed here would constitute this element. The contestant must in some way obtain sixty-six copies of the St. Louis Post-Dispatch. The contest rules, 4(b), state:

"It is not necessary to be a subscriber to the St. Louis Post-Dispatch or to buy copies of the newspaper to compete. You may, if you prefer, make copies of the puzzles by hand from issues borrowed from a friend or found elsewhere. \* \* \*"

Actually, it is to be doubted that a single one of the thousands of persons who will undoubtedly participate in this contest will borrow a copy of the paper from a friend and laboriously copy the puzzle. A great many will doubtless buy a copy of the paper containing the puzzle for the specific purpose of obtaining the puzzle. They must then do the very considerable amount of work entailed in solving the puzzle or the puzzles and, at the conclusion of the contest, must either personally take their entries to the St. Louis Post-Dispatch or mail them in. Without further belaboring this point, it is perfectly obvious that, as the element of "consideration" has been construed by us and by Missouri appellate courts, that the operation of participating in this contest does beyond question constitute consideration." We, therefore, have present our first element.

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It is obvious without discussion that the second element of "prize" is also present. As we noted above \$30,250 in cash will be given away.

We have now to consider whether the third element of "chance" is present and we again revert to the Globe-Democrat Publishing Co. case, supra. At l.c. 713, the Missouri Supreme Court stated:

"The elements of a lottery are: (1) Consideration; (2) prize; (3) chance. It is conceded that the first two of these were present in the 'Famous Names' contest, here involved, the sole question being whether the third element--chance--was there. In England and Canada where the 'pure chance doctrine' prevails a game or contest is not a lottery even though the entrants pay a consideration for the chance to win a prize, unless the result depends entirely upon chance. In the United States the rule was the same until about 1904; but it is now generally held that chance need be only the dominant factor. 38 C.J. §5, p. 291; 17 R.C.L. §10, p. 1223; Waite v. Press Publishing Ass'n, 155 F. 58, 85 C.C.A. 576, 11 L.R.A. (N.S.) 609, 12 Ann. Cas. 319. Hence a contest may be a lottery even though skill, judgment, or research enter thereinto in some degree, if chance in a larger degree determine the result. Whether the chance factor is dominant or subordinate is often a troublesome question."

At l.c. 717, the Court stated:

"It is impossible to harmonize all the cases. 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 other words, the rule that chance must be the dominant factor is to be taken in a qualitative or causative sense rather than in a quantitative

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sense. This was directly decided in *Coles v. Odhams Press, Ltd.*, supra, when it was held the question was not to be determined on the basis of the mere proportions of skill and chance entering in the contest as a whole."

At l.c. 717, et seq., the Court further stated:

"The respondent's theory is that the interpretation of rebus puzzles is a science; and that, since they can be solved by the application of these scientific principles, the element of chance is absent. Some of the decisions lend support to that view, such as *Hudelson v. State*, supra, *Stevens v. Times-Star Co.*, supra, and *Waite v. Press Publishing Ass'n*, supra. All of these cases conceded an expert might more nearly than a nonexpert approach a solution of the problems they were considering, and then swept away that concession by saying that nevertheless there remained unfathomable elements in the problems which nobody could solve. This might be taken to mean that, if contest problems can be solved at all, chance is eliminated. And the 'adverto-share' checker game cases seem to partake of that theory, though there is possibly an allowable distinction there.

"But such is not the true general rule. As was said in *People ex rel. Ellison v. Lavin*, supra, if a contest were solely between experts, possibly elements affecting the result which no one could foresee might be held dependent upon judgment; but not so when the contest is unrestricted. What is a matter of chance for one man may not be for another. And as Mr. Justice Holmes said in *Dillingham v. McLaughlin*, 264 U.S. 370, 373, 44 S.Ct. 362, 363, 68 L.Ed. 742, 'what a man does not know and cannot find out is chance as to him, and is recognized as chance by the law.' 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

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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.

"Now, as regards the cartoons to be labeled in the 'Famous Names' contest. Without further discussion it is evident that an element of chance inhered in some of them--of guessing what titles had been selected by the creators. They had in mind a title for each cartoon before it was drawn, but they also introduced foreign elements in the later ones to make them more confusing or subtle. There were no fixed rules by which these cartoons could be solved by the rank and file of contestants. The respondent's witness Mr. Gregory Hartwick, who was an expert and had been drawing puzzles for 15 years, worked 2 days before he solved cartoon No. 80. Thirty-three out of the thirty-six contestants who made only one error were eliminated by this one cartoon, and twenty-five of these gave the same wrong answer. Mr. Hartwick said it was pure opinion with him that the designated title for Cartoon No. 79, Adolph Hitler, was better than Chancellor Dollfuss. The fact that out of more than 45,000 contestants only 2 gave correct answers to the entire 84 cartoons proves their solution was not a matter of skill and judgment, and that chance did have a proximate effect on the final result. And the circumstance that the two winners, Mr. Kraus and Mrs. Hicks, were not experts does not establish the contrary; indeed, it indicates the contest in its final analysis was controlled by chance. We think it was a lottery."

We believe that the above sets forth the principles of law which are determinative with respect to this element of "chance." It will be noted that the rule laid down above is that although there may be present in a contest some element of skill, yet that if chance is the dominant element, that the holding will be that "chance," as used in the lottery law, is present. We believe that we may, therefore, justifiably assume that the rule would also be that even though some element of "chance" was present in an operation that it would not be held to be "chance" if that element was

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subordinate and if skill was dominant. In the light of this principle, and of the other principles laid down in the Globe-Democrat Publishing Co. case, supra, we do not believe that it can be said that the element of "chance" is present in the "Tangle Towns" operation nor do we concede that it is present at all in that operation, although, as we stated above, it could be in a subordinate degree if skill were dominant, in which instance the operation would not be considered to contain the element of "chance." We reach this conclusion for the following reasons.

We will first consider that portion of the contest which consists of the 66 puzzles. In regard to this, we note that there is only one correct answer to any one of these puzzles. In the specific puzzle referred to by us above, one of the names of the twelve towns submitted and only one is correct and this obviously is "Dallas." Thus, there is in this portion of the contest a very clear distinction between an answer which is correct and one which is not.

In the second place, it would seem apparent that a person who was possessed of a greater knowledge of history than other persons would have a decided advantage in view of the nature of the clues which are affixed to each puzzle. We think this is evident from the nature of the clue given above.

In the third place, it would seem to us that probably the most determinative element in a successful solution to these puzzles would be careful study and hard work together with the qualities of intelligence and general knowledge. So far as we can see, there is, as we stated, very little, if any, of the elements of "chance" present. The contestant either gets the correct name or he does not and to simply guess at the name out of the names submitted would give the contestant a very small percentage opportunity of getting the right answer. For these persons, we do not believe the element of "chance" as it is used in the lottery law of Missouri is present in any but a purely negligible degree in this first phase of the Tangle Towns contest.

We also believe that what we have said about this first phase is even more true with respect to the second or "Tie-breaker" operation. In it, of course, what we have said with respect to there being only one right solution does not apply, but for the rest it seems to us that the qualities which would win would be a keen intelligence and the expenditure of an immense amount of time and work. It is inconceivable to us that anyone could say that using the number of letters which are submitted in making out the list of towns and particularly in using those letters in the relationships to each other which are set forth in the "Rules for

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Scoring" could be a matter of "chance." As we stated above, it would seem that the qualities which would succeed in this phase of the contest would be intelligence, knowledge and careful work. It would seem to us that the element of "chance" would be even less in this phase of the contest than in the first phase and that even in the first phase that element is very slight and certainly cannot be said to be anywhere near "dominant."

Since one of the necessary three elements to constitute lottery is not present, we do not believe that the Tangle Towns contest is a lottery.

CONCLUSION

It is the opinion of this department that the contests known as "Tangle Towns" is not a lottery.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Hugh P. Williamson.

Yours very truly,

John M. Dalton  
Attorney General

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