

MILK RIVER CREAMERY

Chinook and Havre, Montana."

It appears from this slip that whether or not a purchaser receives a dollar bill depends upon whether or not he receives that particular package of butter which contains a dollar bill, in other words, it is a question of chance. In my opinion this constitutes a lottery as defined by Section 11149, R. C. M., 1921. It contains all the elements of a lottery which are: (1) the disposition of a prize, (2) upon a contingency determined by chance, (3) to a person who has paid a valuable consideration for the chance of winning a prize.

In volume 15, opinion No. 65, Opinions of the Attorney General, it was held that the giving away with the purchase of a theater ticket of a numbered ticket on an automobile is a lottery. We see no difference in principle between that case and this. See the authorities therein cited. See, also: 17 R. C. L. 1208 et seq.; 1230. 16 Cal. Juris. p. 713 et seq. Matter of Rogers, 160 Cal. 764, 118 Pac. 242; Society Theater v. City of Seattle, 118 Wash. 258, 203 Pac. 21; Davenport v. City of Ottawa, 54 Kans. 711; 39 Pac. 708; 45 A. S. R. 303. Horner v. United States, 147 U. S. 449. State v. Lipkin, 169 N. C. 265, 271; 84 S. E. 340. It was said in 17 R.C.L. 1211, "But an examination of many cases on the subject will show that it is very difficult, if not impossible, for the most ingenious and subtle mind to devise any scheme or plan, short of gratuitous distribution of property, which has not been held by the courts of this country to be in violation of lottery or gaming laws in force in the various states of the union; and the court will inquire not into the name, but into the game, however skillfully disguised, in order to ascertain if it is prohibited, or if it has the element of chance."

Opinion No. 386

Lottery—Prizes Enclosed in Merchandise

HELD: Giving a one dollar bill to such persons as may find one in the package of butter purchased is a lottery and is illegal.

November 14, 1933

You have asked for my opinion on the question whether it is legal for a creamery to follow the practice of giving away a dollar bill to some of the purchasers of a pound of butter. In each package the following notice appears:

"TO THE LADY WHO BUYS THE BUTTER

Every now and then, if you are lucky, you may find a crisp new one dollar bill inside your pound of LIBERTY BUTTER. This is our method of building additional interest among the housewives in our product. This offer to continue for an indefinite date.

There are many examples of lottery where, on the face of the transaction, it appears to be a gratuitous distribution of property or money. They have frequently been held merely devices to evade the law. (17 R. C. L. 1222, note 7) (See People v. Cardas, (Cal.) 28 Pac. (2d) 99, for distinction.)