

Opinion No. 65**Lotteries—Theaters.**

HELD: The elements of lottery are a consideration, a prize and a chance. A ticket which provides "this ticket is good for a chance on a 1933 Model Sedan at a drawing at the Fox and Babcock theatre * * * winner must hold adult ticket * * * purchased March 22" shows on its face that it is a lottery.

February 4, 1933.

You have requested the opinion of this office as to the following scheme constituting a lottery.

"One or more theaters offers to give away an automobile free on a drawing to be held at some future date. Various merchants participating in the same give to a purchaser a coupon for every 50c purchase of goods. There is nothing paid for the coupon itself but it is required, according to the coupon and advertising, that the winner must be present at the drawing in the theater or in the crowd outside of the theater."

You have inclosed a ticket which provides "this ticket good for a chance on a 1933 Model Graham Sedan given away 9 P. M., Wednesday, March 22 at drawing at Fox and Babcock theater, winner must hold adult ticket for either theater purchased March 22."

It is contended that there is no valuable consideration paid for the chance and therefore no violation of the statute defining lotteries. Section 11149,

R. C. M. 1921, defines a lottery as a scheme for a disposal of property by chance among persons who have paid valuable consideration for the chance of obtaining such property upon any agreement, understanding or expectation that it is to be distributed or disposed of by lot or chance, whether called a lottery, raffle or gift enterprise or by whatever name the same may be known.

The elements of the crime as defined by our statute are a consideration, a prize and a chance.

"Entertainments frequently called prize concerts at which each holder of an admission ticket is entitled to a chance to win a prize are similar in nature to gift enterprises and therefore are lotteries." (38 C. J. 298, and cases cited in note 22.)

"It does not affect the validity of the consideration that it was given, not simply for the chance of a prize, but also, and possibly chiefly, in return for merchandise or other advantage to the chance holder." (25 Cyc. 1636 (c) and cases under note 21).

"Offers of prizes to purchasers of goods, the prize to be distributed by chance among the purchasers, constitute lottery whether the goods purchased or the chance to obtain a prize is a consideration to the person to enter into the transaction. And of similar nature is the distribution of prizes of chance among purchasers of concert tickets." (25 Cyc. 1637, note 28 (C).)

In a recent Washington case, reported in the 203 Pac. 21, a theater was enjoined from distributing property to its patrons by lot or chance. On the question of the scheme constituting a lottery the court said:

"The elements of a lottery are: First, a consideration; second, a prize; and third, a chance. It needs no argument to show that the second and third elements appear in the business conducted by respondent. But it is argued that the element of consideration does not appear because the patrons of the theaters pay no additional consideration for entrance thereto, and pay nothing whatever for the tickets which may entitle them to prizes.

But while the patrons may not pay, and the respondents may not receive any direct consideration, there is an indirect consideration paid and received. The fact that prizes of more or less value are to be distributed will attract persons to the theaters who would not otherwise attend. In this manner those obtaining prizes pay consideration for them, and the theaters reap a direct financial benefit. The mere fact that respondents are not permitted to advertise their drawings cannot remove the sting because the scheme will advertise itself. But aside from this line of argument, it is perfectly plain to us that the business of respondents, carried on as it is, comes directly within the inhibition of the ordinance, because respondents are directly connected with a business where 'property is sold or disposed of by chance.'" (Society Theater v. City of Seattle, 203 P. 21.)

The ticket in this case shows on its face that it is a lottery, that is "the ticket is good for a chance on a 1933 model sedan at a drawing at the Fox and Babcock theatre * * * winner must hold adult ticket * * * purchased March 22." It is therefore my opinion that the scheme constitutes a lottery and is in violation of our section 11149.