

of lottery under Section 11149, Revised Codes of Montana, 1935.

April 21, 1939.

Mr. John M. Lexcen
County Attorney
Sidney, Montana

Dear Sir:

You have requested an opinion upon the following set of facts:

"One of the merchants in this town has started a suit club along the following lines: A person joins the suit club and pays into the club \$1.00 per week, for a period of thirty weeks. Once a week for the thirty weeks, a drawing is made, and the member whose number is drawn receives a suit of the value of \$30.00, or merchandise in the equivalent of \$30.00, as he may select. If he is the lucky person on the first drawing, \$1.00 is all he pays into the club, and he receives for that \$1.00 a suit or merchandise of the value of \$30.00; and so on up until the thirty weeks are completed.

"A member may withdraw at any time within the thirty weeks, and at that time receives merchandise of any kind to the value of the money deposited, or his money back, if he so wishes.

"At the end of the thirty weeks, all those members whose numbers have not been drawn throughout the period of thirty weeks can then select a suit or merchandise of the value of \$30.00."

The question is whether or not this is a lottery.

A lottery is defined by Section 11149, Revised Codes of Montana, 1935, as:

"Any scheme for the disposal or distribution of property by chance, among persons who have paid or promised to pay any valuable consideration for the chance of obtaining such property or a portion of it, or for any share or interest in 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."

Opinion No. 54.

Lotteries—Suit Clubs—Gambling.

HELD: 1. "Suit Clubs, under the facts given come within the definition

The three essential ingredients of a lottery under this statute are: Consideration, distribution of property, and chance (17 R. C. L. 1222). Plainly all three elements are present in the situation you have described. The element of chance is present whenever there is any uncertainty as to the amount of the return and a scheme is no less a distribution of property by chance because the purchaser is guaranteed full value for his money if there is a chance that some purchasers receive a greater return than others. (7 Encyclopedia of U. S. Sp. Ct. Reports 1701; 38 C. J. 290, Sec. 4.)

Like schemes have been tried in other states and have been held illegal under statutes similar to Section 11149. A well reasoned case on an almost identical situation is *People v. McPhee*, 103 N. W. 174, annotated in 5 Ann. Cas. 835. Other excellent discussions are found in *State v. Moren*, 51 N. W. 618; *Grant v. State*, 112 S. W. 1068. See also *State v. Perry*, 70 S. E. 387; *De Florin v. State*, 49 S. E. 699; *La France v. Cullen*, 163 N. W. 101; *People v. Wassmus*, 182 N. W. 66; *State v. Welford*, 185 N. W. 1017.

On principle and on authority the scheme described constitutes a lottery and is prohibited by Section 11150, Revised Codes of Montana, 1935.