

No. 141

**THEATERS—LOTTERY—BANK NIGHT—GAMBLING—
PRIZES—AWARDS BY CHANCE**

Held: The legal requisites necessary to charge the offense of operating a lottery under the provisions of Section 11149, Revised Codes of Montana, 1935, are the offering of a prize, the awarding of the prize by chance, and the giving of a consideration for an opportunity to win the prize.

June 13, 1941.

Mr. Cedor B. Aronow
County Attorney
County of Toole
Shelby, Montana

Dear Mr. Aronow:

You have submitted for our consideration the following facts concerning the operations of the theater at Sunburst as to lottery:

"He operates what he calls a Quiz Night on Friday nights wherein he puts a \$10 prize in the sack for a reward. He has registration, and from the list of names that he has in the box, he draws one which entitles a person to draw a question from a hat. There are three types of questions, geography, natural history and another classification which I don't recall. The person drawing may take his choice out of which group he wishes to pick his question. After he draws his question out of the hat, it is read to him and then if he answers correctly, he wins the \$10 prize. If he does not, the prize is doubled for the following Friday night. Mr. Painter states that he listens to the radio I. Q. program and picks his questions from those programs. Typical examples are: Q. What three states border on the Mississippi River? etc."

The facts hereinabove stated contain all the elements of bank night mentioned by our Supreme Court in *State v. Fox Missoula Corporation*, 110 Mont. 441, 101 Pac. (2nd) 1065, and, as you say, it has the additional fact that the purchase of a ticket, and the attendance of the show Friday night gives the purchaser an opportunity to have his or her name drawn from the box and the opportunity to answer a question which answer, if correct, entitles said purchaser to win a \$10.00 prize or whatever prize may be up for the night.

Bank night has been held illegal in Alabama, Connecticut, Florida, Georgia, Illinois, Kansas, Louisiana, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, Oregon, Texas, Washington, and Virginia. New York should also be included in the list by reason of the *Randforce Amusement Corporation case*, 162 Misc. 491, 293 N. Y. Supp. 745.

Under the provisions of Section 11149, Revised Codes of Montana, 1935, lottery is defined as follows:

"A lottery is 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."

The three requisites of a lottery, i. e., **the offer of a prize, its award by chance and the giving of consideration for an opportunity to win the prize**, can easily be discerned by a perusal of the contents of your query. The facts which you have given—as stated above—bring your problem directly in line with *State v. Hahn*, 105 Mont. 270, 72 Pac. (2nd) 459, and *State v. Fox Missoula Corporation*, supra. The former case gives an analysis of the requisites of a lottery, as in this paragraph described, and the latter case comments upon and presents a liberal discussion of the question of consideration. We should also like to bring to your attention our Opinion No. 57, and are therefore enclosing a copy herewith. This opinion presents features which are somewhat similar to those presented here.

Therefore, it is my opinion the legal requisites necessary to charge the offense of operating a lottery under the provisions of Section 11149, Revised Codes of Montana, 1935, are the offering of a prize, the awarding the prize by chance, and the giving of a consideration for an opportunity to win the prize. All three requisites are embraced within the facts stated in your query. We, therefore, hold the project in operation at the theaters at Sunburst is a lottery.

Sincerely yours,

JOHN W. BONNER
Attorney General