

No. 57

LOTTERY—GAMBLING—THEATRES

Held: Playing of the game known as "BINGO" (commonly called "KEENO" or "SCREENO," etc.) for a prize or gift at theatres during certain nights of the week constitutes a lottery or gambling under the laws of Montana.

March 24, 1941.

Mr. Roland V. Colgrove
County Attorney
Musselshell County
Roundup, Montana

Dear Mr. Colgrove:

You have requested my opinion as to whether the game known as "BINGO" (commonly called "KEENO," "SCREENO," etc.), played for a prize or gift at theatres during certain nights of the week, constitutes a lottery or gambling under the laws of Montana.

The facts under which the game is played are as follows:

Each patron of the theatre is given a card containing 29 numbers. A person in the audience pushes an electric button which turns a number selector. If the first five numbers called appear either horizontally, vertically or diagonally in a straight line on the player's card, he is given the grand award of \$100.00. If there is no winner of the grand award, the numbers called the next Saturday night are increased by one. A similar increase is made each Saturday night until the grand award is won. Should there be a winner of the grand award, the usher takes up the player's card.

Each Saturday night nine cash prizes are awarded as follows:

One \$5.00 prize; one \$3.00 prize; one \$2.00 prize, and five \$1.00 prizes. When the next and each succeeding person bingos he is permitted to draw a placard with the amount of the prize printed on the back.

The same program is run on the screen Friday night as Saturday night, the night "Bingo" is played. It also appears that the attendance on Saturday night is larger than that of Friday night.

Under the provisions of Section 11149, Revised Codes of Montana, 1935, a 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."

In *State vs. Hahn*, 105 Mont. 270, 72 Pac. (2d) 459, our Court set out the three requisites of a lottery as **the offer of a prize, its award by chance and the giving of consideration for an opportunity to win the prize.**

As to the first two requisites of a lottery (**the offer of a prize and its award by chance**) there can be no dispute here. As to the third requisite, one might contend there was no consideration paid for participation in the play, and hence it was not a lottery.

In *State vs. Fox Missoula Theatre Corporation*, 110 Mont. 441, 447, 101 Pac. (2nd) 1065, our Supreme Court answered the question of consideration in the following language:

"Where does the money come from for the gift? From the treasury of the theatre. Where does the money come from for the treasury of the theatre? From the customers who purchase tickets. Therefore the price paid for the ticket, in part, though disguised, later reappears as the gift. It enters the box office as Dr. Jekyll, and steps out as Mr. Hyde."

Quoting further from *State vs. Fox Missoula Theatre Corporation*, supra, our Supreme Court further said:

"In describing a lottery our statute, supra, in conclusion uses these words: 'Whether called a lottery, raffle, or gift enterprise, or by whatever name the same may be known.' Apparently the Legislature foresaw clever plans to evade the plain meaning of the law and confuse or befuddle the courts. As was done by this Court in *State v. Hahn*, supra, we must here look to the substance as well as the form.

"The scheme is admittedly arranged for the purpose of attracting money to the theatre, by offering a prize to a chance winner, even though the prize might occasionally be drawn by one who has purchased no ticket. It is in effect a spawning ground for more unrestrained forms of gambling, appealing to juveniles as well as adults. That the scheme is artful and difficult of judicial capture is evidenced by the fact that sixteen jurisdictions have classified it as a lottery, and about nine have allowed it to depart with judicial blessing. Injunction lies to abate a nuisance such as we have here. (*State ex rel. Stewart v. District Court*, 77 Mont. 361, 251 Pac. 137, 49 A. L. R. 627.) Despite its attractive makeup, we believe the scheme must take its place in the limbo of lotteries."

The Fox Theatre case is so nearly in point with the proposition here that nothing further need be said other than to accept the ruling laid down by our Supreme Court.

Therefore, it is my opinion the playing of the game known as "BINGO," (commonly called "KEENO" or "SCREENO") for a prize or gift at theatres during certain nights of the week constitutes a lottery or gambling under the laws of Montana.

Sincerely yours,

JOHN W. BONNER
Attorney General