

Opinion No. 63.**Lottery—Gambling—Counties
War Bonds.**

Held: A scheme whereby tickets are sold to purchasers who guess as to the date of a future event, and the purchaser whose guess as to the time is closest to the happening of the event, receives war bonds as a prize, constitutes a lottery.

August 31, 1945.

Mr. W. M. Black
County Attorney
Toole County
Shelby, Montana

Dear Mr. Black:

You advise me that an organization in your county proposes to sell tickets which will give the purchaser an opportunity to win war bonds as a prize. In your letter you state:

The scheme or plan proposed appears to be based upon the purchaser of a ticket or tickets making a statement as to a certain event to happen on a certain date in the future. The person whose guess is the closest wins the award.

Our State Constitution provides in Section 2 of Article XIX as follows:

"The legislative assembly shall have no power to authorize lotteries, or gift enterprises for any purpose, and shall pass laws to prohibit the sale of lottery or gift enterprise tickets in this state."

Section 11149, Revised Codes of Montana, 1935, defines a lottery in the following language:

"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 v. Hahn*, 105 Mont. 270, 72 Pac. (2d) 459, our court considered the elements which make a lottery, and said:

"They are generally considered to be three: The offering of a prize; the awarding of the prize by chance; and the giving of consideration for an opportunity to win the prize."

The facts submitted come within the above quoted definition of a lottery as the prize consists of war bonds, the ticket is purchased for cash and a guess is made as to the happening of a future event which furnishes the element of chance.

Section 11149.1, Revised Codes of Montana, 1935, provides exceptions for agricultural fairs and rodeo associations, but you inform me there is no fair or rodeo in conjunction with the proposed plan which would eliminate the application of this section.

Therefore, it is my opinion that a scheme whereby tickets are sold to purchasers who guess as to the date of a future event, and the purchaser whose guess as to the time is closest to the happening of the event receives war bonds as a prize, constitutes a lottery.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General