

Opinion No. 49-5263

December 8, 1949

BY: JOE L. MARTINEZ, Attorney General

TO: John B. Wright District Attorney Eighth Judicial District Raton, New Mexico

{*109} I am in receipt of your letter of December 6, 1949, which, in effect, requests an opinion on the legality of the theater bank night as it is operated in several places in the state. We proceed under the following facts:

A theater establishes in a bank an account known as "bank night account", the initial deposit being a certain sum to be disposed of as hereinafter disclosed.

A system of registration is provided, a register being kept in the lobby of the theater wherein are lines for the registration of those desiring to register, with an identification number opposite the name of the registrant. Admission tickets to the theater sell for a certain price, and moving pictures are regularly shown therein. All purchases of admission tickets may register, although purchase of a ticket is not a prerequisite to registration. A person must be in the audience when his or her number is called as winner. Otherwise an additional sum is added to the price for the next bank night.

Under the above set of facts and prior to said Theater Bank Night Act of 1949, the bank night was {*110} determined as a lottery. State v. Jones, 44 N.M. 623. Under said bank night act of 1949, bank night operated in the above set of facts was made an exception to the State of New Mexico lottery laws set forth in Sections 41-2213 and 44-2217 of the 1941 Compilation.

But the schemes as used in several cities and counties brings forth these additional facts in the operation of theater bank night:

(1) Various merchants offer prizes to be added to the cash prize award.

(2) The following chance stub is given as part of bank night: "One chance with each, a certain sum in cash purchase or paid on account from the following merchants: (list of certain number of merchants). Deposit this stub on or before 3:00 p. m. each afternoon prior to drawing at one of the above sponsoring firms, or at the so and so theaters before 8:00 p. m."

It appears that the additional facts make bank night a lottery which is not within the exception clause of said Chapter 133 of the Laws of 1949, which reads:

"The provision of the five preceding sections shall not apply to bona fide motion picture theaters which are, and for more than one year have been, engaged in business at the same location in the State of New Mexico, and which shall offer prizes of cash or

merchandise for advertising purposes in connection with such business or for the purpose of stimulating business, * * *."

It is therefore construed that the above act intended that it is for advertising purposes in connection with such business, meaning that theater's business and "for the purpose of stimulating business", meaning that theater's business.

We can't say that the legislature had intended it to advertise and stimulate the business of other merchants for then it would not have been necessary to provide for "bona fide motion picture theaters which are, and for more than one year have been, engaged in business at the same location in the State of New Mexico * * *", but to provide for "any bona fide business which is, and for more than one year has been, engaged in business, etc. * * *."

The act may be discriminatory in favor of motion picture theaters, but that was the intention of the Legislature.

Trusting that the foregoing sufficiently answers your inquiry, I am