

Opinion No. 54-5979

June 23, 1954

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. C. N. Morris Assistant District Attorney Carlsbad, New Mexico

{*437} Receipt is acknowledged of your letter dated June 17 in which you enclose copy of a letter which you wrote to Mr. Charlie Montgomery, President, Carlsbad Potashers, Montgomery Agency, Carlsbad, New Mexico, which is an opinion based on the facts stated in said letter, namely, whether or not the Carlsbad Potashers could give away prizes at home games as a means of stimulating attendance at such home games. However, you request an official opinion from this office.

First, I call your attention to Section 41-2213, Section 41-2214, Section 41-2215 and Section 41-2216, N.M.S.A., 1941 Comp. These statutes deal with what constitutes lotteries in the State of New Mexico.

The Supreme Court of New Mexico held in the case of **State v. Jones**, 44 N.M. 623, 107 P. 2d 324, that the elements of consideration, prize and chance must be present to constitute a lottery.

Under the facts stated to you by Mr. Charlie Montgomery, President of the Potashers of Carlsbad, New Mexico, if Mr. Montgomery, or the persons who manage the ball team, give away prizes at home games as a means of stimulating attendance at such home games, the three elements which are necessary to constitute a lottery are all present, namely, prize, chance and consideration.

I believe that if you will read the case of **State v. Jones** you will satisfy yourself that the facts of your problem, as stated in your letter, would constitute a lottery in our State.

Trusting that this fully answers your inquiry, I remain

By: Hilario Rubio

Assist. Attorney General