

**Opinion No. 55-6323**

November 21, 1955

**BY:** RICHARD H. ROBINSON, Attorney General

**TO:** Mr. Patrick F. Hanagan, District Attorney, Fifth Judicial District, Roswell, New Mexico

You have requested our opinion on whether the following constitutes a lottery in this State:

A merchant selling sewing machines has distributed to purchasers of each machine an entry blank to what is termed the "\_\_\_ Cash Refund Sweepstakes." Entry into the "Sweepstakes" is made by completing, in twenty-five words or less, the sentence: "I'm Glad I Bought a \_\_\_ Sewing Machine Because \_\_\_." The contest winner is determined by judges on the basis of what, in their judgment, is considered the best statement of reasons for the purchase.

Our Supreme Court has determined that in order that a scheme constitute a lottery the elements of prize, consideration, and chance be present. *State v. Jones*, 44 N.M. 623.

From the information which you have presented, it is difficult for us to find the element of chance within this scheme. The winner is not selected by chance but rather upon the skill and judgment which he exercises in composing his essay and the judges' appraisal of that effort, if, in fact, that is the method employed to choose the winner. See *State v. Lindsay*, A. 2d 201, *D'Orio v. Storup Candy Co.* 266 P. 1037.

Should you find that, in fact, the method of selecting the winner is not as stated but by a method wherein chance is the predominant factor, then, of course, the three elements of a lottery would be present.

I trust the above answers your inquiry satisfactorily.

By: Santiago E. Campos

Assistant Attorney General