

## Opinion No. 56-6347

January 9, 1956

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

**TO:** Mr. C. C. Chase, Jr., District Attorney, County Court House, Las Cruces, New Mexico

You have asked this office to render an opinion regarding whether or not the following scheme is a lottery within the meaning of our statutes and under our court decisions. We quote from your letter the situation which raises the question.

"A resident of this community has approached me for my opinion on what might come under the lottery laws. His plan is to assign numbers to each of the rooms of his motel, there being some sixteen rooms, and as the rooms are filled at the course of the evening, he will conduct a drawing and the person who is occupying the room number corresponding with the number drawn from the hat will receive his room rent free for that night. There is no additional charge for the rooms whatsoever and in the event that the number is drawn from the hat which corresponds to a vacant room, then no one benefits from the drawing. His question is whether or not this would be termed a lottery."

Chance, prize and consideration are the elements of a lottery. *State v. Jones*, 44 N.M. 623, 107 P. 2d 324. We find each of these elements present in the scheme which you have outlined. Chance and prize readily appear. Regarding consideration, we conclude from the following that this element is also present in the scheme.

". . . We are quite satisfied that the showing of 'consideration' is adequate measured by the **usual tests applicable in the law of contracts** . . ." (Emphasis supplied). *State v. Jones*, supra.

Tested by this standard, consideration is readily seen. The participant pays for the room subject to the payment being returned, or he promises to pay if he does not win. Either of these, promise to pay or payment, is, when tested by the law of contracts, sufficient as consideration.

Enclosed you will find copy of Attorney General's Opinion No. 6168 which dealt with a situation very similar to the one which you present here. This office ruled there that the scheme was a lottery. That opinion contains a somewhat more detailed discussion of the problem and may be useful to you.

It is our opinion, therefore, that the scheme which you have outlined to us constitutes a lottery under our State laws and is, therefore, illegal.

I trust the above answers your inquiry satisfactorily.

By Santiago E. Campos

Assistant Attorney General