

## Opinion No. 56-6516

September 6, 1956

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

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

You have related the following situation: An organization, denominating itself an advertising company, secures by contract the promise of merchants to render various services to distributees of the company's coupons. In consideration for this promise the company agrees to advertise the merchant's products and services. After the contract is entered into the company solicits the public and offers it coupon books for the sum of \$ 2.98. The value of the services which may be secured under these coupons is in the neighborhood of \$ 50.00.

You ask whether or not this scheme is a lottery within the meaning of Section 40-22-13, N.M.S.A., 1953 Compilation.

As defined by our Supreme Court, a lottery within the meaning of the above statute is a

"game of hazard in which small sums of money are ventured for the chance of obtaining a larger value, in money or other articles."

And to test the scheme the presence of three elements are looked for, namely, (1) consideration, (2) prize, and (3) chance. State vs. Jones, 44 N.M. 623. The absence of any one of these puts the scheme outside the category of prohibited lotteries.

In the situation which you present we need concern ourselves with only one of these elements, namely, chance. We find that this element is absent. We reason thus: The advertising company in its contract with the merchants has secured an asset. This has been secured in return for the company's promise to advertise the merchant's services and business. The company thus possessed of this asset offers it to the public at a definite price. Each person who purchases gets exactly the same services or the right to secure the same services as every other purchaser. He pays to the company a definite price for the coupon book. He knows exactly what he is purchasing. It is a definite ascertainable asset which is not subject to change. Hazard or chance do not at any time determine what the purchaser will receive for the consideration which he has paid. **Quid pro quo** is established at the moment of purchase.

It is indicated that in order to promote the sale of coupon books the impression is created that purchasers are prize winners who may have been selected by chance. Irrespective of the ethics involved in the sale of these books the scheme, as we see it, does not legally contain within it the element of chance such as to bring it within the prohibition of our lottery statute.

I trust the above answers your inquiry.

By: Santiago E. Campos

Assistant Attorney General