

## Opinion No. 65-196

October 14, 1965

**BY:** OPINION OF BOSTON E. WITT, Attorney General James V. Noble, Assistant Attorney General

**TO:** Mr. Finlay MacGillivray, Manager, New Mexico State Fair, P.O. Box 8546, Albuquerque, New Mexico

### QUESTION

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1. May the New Mexico State Fair Commission stage an income-producing activity in the spring of the year?
2. May the New Mexico State Fair Commission sell admission tickets to a retail food chain at a reduced price?
3. May the New Mexico State Fair Commission hold a drawing of numbered admission tickets and give merchandise to the holder of the corresponding ticket stub?

#### CONCLUSIONS

1. No.
2. Yes, but see analysis.
3. Yes.

### OPINION

#### {\*318} ANALYSIS

The general powers and duties {\*319} of the New Mexico State Fair Commission are set forth in Section 45-20-4, N.M.S.A., 1953 Compilation (P.S.). This section allows the holding of an annual state fair. The purpose of this is stated to be the "advancing of agricultural, horticultural and stock raising, mining, mechanical and industrial pursuits of the state." Exhibits shall be conducted for such purposes. Additionally, the Commission has "the power to charge entrance fees, admissions and lease stalls, stand and restaurant sites, give prizes and premiums, **arrange entertainment**, and do all things which by said commission may be considered proper **for the conduct of said fair**, not otherwise prohibited by law." (Emphasis supplied.)

It can be seen that there is no express power or authority granted for the staging of fund-raising, promotional activities apart from the fair. Any such power or authority would have to be implied from the authority above enumerated to "arrange entertainment". However, in the same sentence is the declared purpose that the same must be "considered proper for the conduct of said fair". It is apparent that the staging of entertainment is restricted to the purpose of conducting the fair or in connection with the fair and not for the purpose of raising money although this may be of indirect benefit.

The meaning of words used in a general sense when considered standing alone, is restricted when followed by an enumeration or designation of subjects, objects, things or classes of the same general character or kind, to the exclusion of all others. **Sandack v. Tamme**, 182 F.2d 759. **Commercial Insurance Co. of Newark, N. J. v. Watson**, 261 F.2d 143. Here the incidental benefit that might result would be too remote to come within the statutory powers and authority of the Commission under the above principle of statutory construction. Additionally, applying the well-known rule of statutory construction of *expressio unius est exclusio alterius* (the expression of one thing is the exclusion of another), the enumeration of the powers and authority of the Commission would exclude the implied power to hold promotional fund-raising activities not connected with the fair. The above principle has a firm place in the law of this state. **In Re Attorney General**, 2 N.M. 49.

The Commission does not have the power or authority to stage fund-raising promotional activities unconnected with and at different times from the conducting of the fair although the raising of money at such activity might be or incidental benefit to the purpose of conducting the fair.

You ask next about the sale of admission tickets to a retail organization, such as a food chain, at reduced prices. As previously pointed out in this opinion the Commission is specifically authorized to charge admission. The amount of such charge, so long as reasonable, is a matter in the discretion of the Commission. Keeping in mind the stated purpose of the fair, the establishment of different prices for admission is also within the discretion of the Commission so long as such rate classifications are not arbitrary and unreasonable. The selling of admission to a retail chain outlet in large numbers would reasonably have the result of stimulating attendance at the fair and that of accomplishing the purposes of the fair. The wholesale purchase of tickets bears a reasonable relationship to the reduction in price over that of the individual admission charged at the fair. The Commission is able to sell admission tickets to such a retail chain at reduced prices.

It is pointed out, however, that the express purpose of conducting the fair is to "advance agricultural, horticultural and stock raising, mining, mechanical and industrial pursuits of the state." The largest attendance consonant with accomplishing those purposes is desirable. **The Commission could not, {320} therefore, restrict the sale of such tickets to the distribution through or by such retail chain but must also have admission tickets available for sale to the public at the gate or other designated place or places. Such tickets so made available must bear a reasonable**

**relationship to those to be distributed by the retail chain and to the total desirable attendance.**

You next ask whether the Commission may give away merchandise on the basis of numbered stubs on admission tickets. A drawing or other scheme for determining the recipient of such merchandise is implied in the question.

The Commission is specifically authorized to "give prizes and premiums . . . and do all things which by said commission may be considered proper for the conduct of said fair, not otherwise prohibited by law.

Our lottery statute was amended in 1965. Prior to amendment it provided that "consideration" as used in the statute was anything which was of financial advantage to the promoter or a disadvantage to the participant. (Section 40A-19-2, N.M.S.A., 1953 Compilation.) As amended "consideration" is defined as being "anything of pecuniary value required to be paid to the promoter in order to participate in such enterprise." (Section 40A-19-1, N.M.S.A., 1953 Compilation (P.S.))

Under the facts as set forth, those individuals who had purchased admission to the state fair would be entitled to participate in the drawing or other scheme whereby they might become the recipient of a prize of merchandise. No consideration is paid by the person for the privilege of participating in the opportunity to receive the gift. The three elements of (1) prize, (2) chance and (3) consideration must all be present before it is considered that a lottery is being conducted. **State v. Jones**, 44 N.M. 623, 107 P.2d 234. The consideration as now defined by statute is something of pecuniary value required to be paid to the promoter in order to participate in the enterprise. It is apparent from the language of the amendment to our lottery section that the legislature intended to liberalize or broaden the definition of activities that were not prohibited by law. The definition of consideration as previously construed under the earlier laws is no longer applicable and it appears that the additional element of pecuniary consideration for the sole purpose of engaging in the gambling enterprise must now be present before the above type of enterprise would be prohibited by law. Such being the case an essential element is lacking.

Since the Commission is specifically authorized to give prizes and since there is no consideration, as defined in our present statute, paid for the purpose of participating in the winning of the prize, the Commission does have statutory authority to award prizes to the holder of a designated ticket stub acquired when the holder has paid his entrance fee to the fair and so long as there is no payment of any pecuniary consideration in order to participate in such enterprise as distinguished from the payment for admission.