

## Opinion No. 13-1103

September 10, 1913

**BY:** FRANK W. CLANCY, Attorney General

**TO:** Mr. T. H. Casey, Elephant Butte, New Mexico.

### LOTTERIES.

Selling of chances in a suit of clothes, drawing numbers from a hat, the first one drawn winning the suit, constitutes a lottery.

### OPINION

{\*277} I have today received your letter of yesterday, in which you ask me whether the conduct of what is termed "suit clubs" constitutes an offense against the statute prohibiting lotteries. As explained by you, twenty-five chances are sold and, when that number of chances have been sold, a drawing takes place, twenty-five numbers being put in a hat, the first one drawn winning the suit. I have no hesitation in saying that this constitutes a lottery within the meaning of the law, which you will find in Sections 1327 to 1332 of the Compiled Laws of 1897. It is undoubtedly true that this legislation was intended to suppress the sale of lottery tickets for such lotteries as that of Louisiana, which had become quite common throughout New Mexico, and which was considered demoralizing and detrimental to the public welfare; but in its terms it included everything which can be known as a lottery, with some exceptions stated in Section 1332, and the very statement of those exceptions shows that the legislature must have intended to stop all lotteries.

There have been numerous attempts to define a lottery by the courts, but I have seen no definition which would not include such a scheme as the one you describe. Perhaps the best definition is that it embraces all schemes for the distribution of prizes by chance, such as policy playing, gift exhibitions, prize concerts, raffles at fairs and other like methods.

At the same time, bearing in mind the evil at which the legislation was aimed, it must be said that continuously, since the act was passed in 1889, there have been raffles, which are essentially lotteries, carried on in almost every town in the state without any interference from the authorities. Scarcely a week passes in any of our larger towns that there are not raffles of articles of property, for which chances are sold, and the winning party determined by lot. No attention has been paid to these infractions of the law, because public sentiment would not favor the enforcement of the statute against small schemes of this kind and, without the support of public sentiment, it is generally recognized that prosecutions under statutes of this class would be ineffectual.