

## Opinion No. 35-961

March 25, 1935

**BY:** FRANK H. PATTON, Attorney General

**TO:** Mr. Fred J. Voorhees, District Attorney, Raton, New Mexico.

{\*57} Your letter of March 22, 1935, regarding lotteries has been referred to me for answer. The facts stated by you are as follows:

Certain dealers in merchandise {\*58} have obtained what is known as a Club, each individual pays his initial entrance fee of Three Dollars and pays Two Dollars per week until he has paid the sum of Thirty Five Dollars, at the end of which time he obtains a suit of clothes tailored to his measure. During the interval each week there is a drawing, one man obtains a suit for the amount he has paid into the Club, that is the first week for three dollars, second week, five dollars, etc.

I have read Section 1778 at page 2075, Wharton's Criminal Law (12th Ed) as suggested and I think there is little doubt that the plan above outlined constitutes a lottery. In Wharton's Criminal Law, supra, it is stated:

"If a price arrangement be made by which A, B, C and D agree upon the lot as the mode of settling a disputed title, this is not a lottery in the general sense. **If they adopt a plan by which all who choose may buy tickets in a pre-arranged scheme, this is a lottery in the penal sense'.**"

In the case of State of Lipkin, 169 N.C. 265, L.R.A. 1915 F, 1018, 84 S.E. 340, Ann. Cos. 1917 D, 137, a scheme was devised whereby a contract was entered into with various persons, providing that they should pay weekly the sum of 25c until they had paid \$ 17.50 at which time they would receive a piece of furniture to be selected by them from a list submitted, but if prior to having paid the full amount they should be chosen by the company as "an advertising medium" they should receive such furniture without making any further payments. This scheme was held by the court to constitute a lottery. There is no substantial difference between that case and the present one.

In the case of Grant vs. State, 54 Tex. Crim. Rep. 403, 112 S.W. 1068, 21 L.R.A. (N.S.) 876, the facts are identical with the facts stated in your letter. That is, a suit club was organized, the members of which were to pay the price of a suit of clothes in weekly installments, a suit being made up each week for that member of the club whose name was selected, by lot drawn under the supervision of the members. The plan was held to constitute a lottery.

See also State vs. Danz (Wash.) 250 P. 37, 48 A.L.R. 1109, note at 48 A.L.R. 1115, State vs. Emerson, -- Mo. -- 1 S.W. (2d) 109, note at 57 A.L.R. 424.

In view of the authorities above cited, it is my opinion that the plan outlined in your letter constitutes a lottery.

By QUINCY D. ADAMS,

Asst. Atty. General