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PERSON PAYING CONSIDERATION TO FISH IN A PRIVATE POND AND RECEIVES A CASH PRIZE FOR CATCHING A CERTAIN FISH—THE SAME CONSTITUTES A LOTTERY—SUCH PERSON IS IN VIOLATION OF SECTION 2915.06, R.C. SECTION 6, ARTICLE XV, OHIO CONSTITUTION—§§2915.10 AND 2915.12, R.C. §2915.06, R.C.

SYLLABUS:

A scheme whereby persons pay a consideration to fish in a private pond and the person who catches a certain fish receives a cash prize, is a lottery and is in violation of Section 6 of Article 15, Ohio Constitution, and Sections 2915.10 and 2915.12, Revised Code, and persons participating in such a scheme are in violation of Section 2915.06, Revised Code.

Columbus, Ohio, July 12, 1961

Hon. Dennis J. Callahan, Prosecuting Attorney  
Lawrence County, Ironton, Ohio

Dear Sir :

Your request for my opinion reads :

“I have been requested to obtain an Opinion as to whether or not it is a lottery to tag a fish in a privately owned, stocked, lake, and then pay cash prizes to the persons catching the fish, if they have paid for a ticket which is stamped with a certain number, and the tag attached to the fish bears a similar number.

“I am enclosing a duplication of the type of ticket used, and would appreciate your advising me as to whether or not this is a form of gambling in violation of the statutes or laws of the State of Ohio.”

35 Ohio Jurisprudence 2d, 61, Lotteries, Section 2, page 62, defines lotteries :

“Generally speaking, a lottery is a scheme for the distribution of prizes by lot or chance, and the elements of a lottery are consideration, chance, and a prize. \* \* \*”

A similar definition setting out consideration, chance and a prize may be found in *Westerhaus v. Cincinnati*, 165 Ohio St., 327, page 335.

Taking the first factor, consideration, we find that each fisherman must pay twenty-five cents to participate in the jackpot. Thus, the element of consideration is present.

The second element of a lottery, chance, also appears to be present. Certainly fishing requires skill, and the expert fisherman will catch more fish than the amateur, but the amateur does catch fish. In a stocked pond with some fish tagged, it is pure chance whether one manages to catch a fish tagged with a number corresponding to that which he is holding. The odds might be decreased for the expert fisherman but as is said in 35 Ohio Jurisprudence 2d, 61, Lotteries, Section 3, at page 65 :

“Chance, as one of the elements of a lottery, has reference to the attempt to attain certain ends, not by skill or any known or fixed rules, but by the happening of a subsequent event, incapable of ascertainment or accomplishment by means of human

foresight or ingenuity, or upon the subsequent ascertainment of facts unknown at the time of giving the consideration. But it should not be concluded from this that if any element of certainty or skill enters into the scheme, it therefore relieves it of its character as a lottery or scheme of chance. This element of chance is not at all incompatible with the presence of an element of calculation, or even certainty. \* \* \*

The cash prize to the winner of the contest is obviously a prize within the definition of a lottery and constitutes the third and final element necessary for a lottery.

Section 6 of Article 15, Ohio Constitution, reads :

“Lotteries, and the sale of lottery tickets, for any purpose whatever, shall forever be prohibited in this state.”

Section 2915.10, Revised Code, reads :

“No person, for his own profit, shall vend, sell, barter, or dispose of a ticket, order, or device for or representing a number of shares or an interest in a lottery or scheme of chance, by whatever name, style, or title denominated or known, located in or to be drawn, paid, or carried on within or without this state.

“Whoever violates this section shall be fined not more than five hundred dollars or imprisoned not more than ninety days, or both.”

Section 2915.12, Revised Code, reads :

“No person, for his own profit, shall establish, open, set on foot, carry on, promote, make, draw, or act as ‘backer’ or ‘vendor’ for or on account of a lottery or scheme of chance, by whatever name known, located in or to be drawn, paid, or carried on within or without this state, or by any of such means, sell or expose for sale anything of value.

“Whoever violates this section shall be fined not less than fifty nor more than five hundred dollars and imprisoned not less than ten days nor more than six months.”

The scheme to which you refer is clearly in violation of the above constitutional and statutory provisions.

Further, the persons involved in the scheme would appear to be in violation of Section 2915.06, Revised Code, reading :

“No person shall play a game for money or other thing of value or make a wager for money or other thing of value.

“Whoever violates this section shall be fined not more than one hundred dollars or imprisoned not less than ten days nor more than six months, or both.”

Accordingly, it is my opinion and you are advised that a scheme whereby persons pay a consideration to fish in a private pond and the person who catches a certain fish receives a cash prize, is a lottery and is in violation of Section 6 of Article 15, Ohio Constitution, and Sections 2915.10 and 2915.12, Revised Code, and persons participating in such a scheme are in violation of Section 2915.06, Revised Code.

Respectfully,  
MARK McELROY  
Attorney General