

3105.

APPROVAL, BONDS OF LAFAYETTE VILLAGE SCHOOL DISTRICT,
ALLEN COUNTY, OHIO—\$5,300.00.

COLUMBUS, OHIO, March 31, 1931.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

3106.

APPROVAL, BONDS OF SUGAR CREEK RURAL SCHOOL DISTRICT,
ALLEN COUNTY, OHIO—\$2,000.00.

COLUMBUS, OHIO, March 31, 1931.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

3107.

APPROVAL, BONDS OF BREWSTER VILLAGE SCHOOL DISTRICT, STARK
COUNTY, OHIO—\$2,900.00.

COLUMBUS, OHIO, April 1, 1931.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

3108.

APPROVAL, BONDS OF BREWSTER VILLAGE SCHOOL DISTRICT, STARK
COUNTY, OHIO—\$9,000.00.

COLUMBUS, OHIO, April 1, 1931.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

3109.

SUIT CLUB—WITHIN CRIMINAL STATUTES PROHIBITING LOTTERIES
AND SCHEMES OF CHANCE.

SYLLABUS:

Where members of a "suit club", upon payment by each of one dollar per week, are given numbered cards and, after having so paid \$38.50 are each entitled to a suit of clothes, and the rules of said club provide that once each week the numbers representing the cards held by the members are placed together and one card is drawn therefrom and the member holding the card containing the number corresponding to the number drawn is given an

additional suit of clothes, such club is an organization within the condemnation of the statutes of Ohio against lotteries and schemes of chance and is an unlawful enterprise.

COLUMBUS, OHIO, April 1, 1931.

HON. EVERETT F. FOLGER, *Prosecuting Attorney, Marietta, Ohio.*

DEAR SIR:—This will acknowledge the receipt of your recent communication, which reads as follows:

“I would like to have an opinion on sections 13063 and 13064, General Code. If your department has written an opinion on these sections, will you kindly refer me to it?

The statement of facts which I have at this time is as follows:

A party organized what is known as a suit club on the following plan: The members are given a card on which they pay one dollar each week and these cards are numbered. When they have paid twenty-five dollars they then add to it thirteen dollars and fifty cents and get a suit of clothes, but during this time once each week the numbers representing the cards which the members hold are placed together and one card is drawn and the man holding the card corresponding with the one drawn is given an additional suit of clothes.

It looks to me like this is a violation of the statute and I would like to have some light on it.”

The statutes to which you refer are:

Section 13063: “Whoever vends, sells, bargains or disposes of a ticket, order or device for or representing a number of shares or an interest in a lottery, ‘policy’ or scheme of chance, by whatever name, style or title denominated or known, whether located or to be drawn, paid or carried on within or without this state, shall be fined not more than five hundred dollars or imprisoned not more than six months, or both.”

Section 13064: “Whoever establishes, opens, sets on foot, carries on, promotes, makes, draws or acts as ‘backer’ or ‘vender’ for or on account of or is in any way concerned in a lottery ‘policy’, or scheme of chance, by whatever name, style, or title denominated or known, whether located or to be drawn, paid or carried on within or without this state, or by any of such means, sells or exposes for sale anything of value, shall be fined not less than fifty dollars nor more than five hundred dollars, and imprisoned not less than ten days nor more than ninety days.”

The above sections were enacted substantially as they now are in the year 1873. They have received judicial interpretation by the various courts of Ohio, one of the cases being the historic case of *Stevens vs. Cincinnati Times Star*, 72 O. S., 112.

In the case of *Fisher vs. State*, 14 App., 355, the essential elements to constitute a violation of the lottery statutes are stated in the first headnote, as follows:

“To constitute a lottery under Section 13064, General Code, three elements must be present. There must be consideration given, there must be a prize, and the winning of the prize must be determined by chance.”

As applied to the facts stated in your communication, I believe the only element about which there would be any question is the one as to “consideration.” Manifestly, the offering and giving of a free suit of clothes is a “prize.” Then the general scheme of bunching the cards of the members once each week and drawing therefrom one

card, the owner of which is entitled to an additional suit of clothes, supplies the element of "chance."

Assuming that it is necessary to have the existence of consideration to constitute a violation of the statute, the law announced on the facts in the case of *William Bader, et al., vs. City of Cincinnati*, 21 O. L. R., p. 293, affirming the opinion of Judge Eyrich of the municipal court of Cincinnati, applied to the facts in your letter, would stamp the transaction as a lottery. The facts in the Cincinnati case, supra, disclose that a restaurant keeper was convicted of carrying on and promoting a lottery and scheme of chance by distributing tickets bearing certain numbers corresponding to duplicate tickets retained by the patrons, from which was drawn by chance a certain number, the possessor of which received a Saxon automobile. It appeared from the evidence that various tickets were distributed to the customers of the restaurant at the time of payment for meals. No extra charge was made for the ticket and the purpose of the distribution of the tickets was to increase the business of the restaurant, and the testimony was that the business had increased. Apparently the only bothersome feature of the case was as to the element of consideration. On behalf of the accused it was claimed that the automobile given away was given without any consideration being paid by any one, and, therefore, the holder of the tickets having paid nothing could lose nothing, and that the scheme for that reason was not a lottery.

If the contention in this respect is legally well taken, then it is clear that in the facts you present there is no consideration for the extra suit of clothes given away, and if consideration, in a technical legal sense, is necessary to constitute a violation of the statutes, there is no violation. However, on this subject Judges Matthews and Roettinger, in the Bader case, supra, among other things say the following:

"The cases cited by the court below, to-wit, *Bell vs. State*, 5 Sneeds (Tenn.) 37; *Hudelson vs. State*, 94 Ind. 426; *Brooklyn Daily Eagle v. Voorheis*, 181 Fed. 581; *Equitable Loan & Security Co. vs. Waring*, 117 Ga. 599, fully sustain the position taken by him, that for the purpose of determining whether or not a lottery was conducted, 'consideration,' as used in the statutes construed in these cases, is not taken in the strict sense in which that term is used when considering whether or not an enforceable contract has been entered into.

It is true that cases can be found in which the court emphasizes the necessity of 'consideration' and in applying the principle perhaps in instances reached a different conclusion from that reached in the cases relied upon by the trial court for its guidance in deciding this case. It will be found in many instances, however, that the language used by the courts was not essential to the decision, and in most instances it will be found that the cases were decided upon the peculiar wording of the local statute."

I find that one of my predecessors interpreted the law applicable to Section 13063, General Code, in an opinion found in Annual Reports of the Attorney General for 1913, Vol. 2, p. 1247, the syllabus of which is as follows:

"A lottery is defined as a distribution of prizes—something valuable—by chance or lot. And under adjudicated cases, section 13063, General Code, prohibiting lottery schemes, business organizations may not give away tickets for each cash sale of a definite value, entitling the possessor to certain chances on prizes to be decided by lot."

The above opinion reviewed many of the cases and text books on the subject and reaches the conclusion that any scheme or device, wherein pecuniary gain or consideration is paid, and where one may by favor of the lot obtain a prize or value superior to the amount or value of that which he risked, the distribution of such prize being de-

terminated by lot or chance according to some scheme held out to the public, constitutes a lottery and violates the statutes.

In the Bader case (24 N. P. (n. s.) 191) the Municipal Court met the contention of "no consideration" in the following language:

"Many and varied are the schemes by which the circumvention of the lottery law is attempted and that in the instant case is one of the many. The defendants knew what a lottery was, for their very method in endeavoring to have this one lack the essential element of 'consideration' while retaining those of 'prize' and 'chance', proves the exacting care with which they examined the law and its requirements. * * * * *

Stripped of all the disguises and fictions that surround it, this scheme conducted by the defendant William Bader develops to be a well planned lottery, often called a 'gift enterprise.' The claim that the tickets are given away free was a mere 'smoke screen' to conceal the real character of the undertaking. The tickets are not free in the sense of being given without consideration. To obtain them in the ordinary course a person was compelled to purchase a meal. A very few were compelled to walk seventy-six feet through the restaurant to get them.

The real injury to the people of the state of Ohio in the operation of such lotteries is the incitement offered to arouse the gambling spirit. Persons believed they were going to get 'something' for 'nothing'. This is the evil in all schemes of chance, no matter under what novel or devious methods they are conducted.

The cupidity of people is aroused and they all rush to obtain a chance on an article worth perhaps more than a thousand times that which they venture."

In specific answer to your question, I am of the opinion that the facts set forth in your inquiry constitute a lottery or scheme of chance and violate the sections you mention.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3110.

DISAPPROVAL, LEASE FOR RIGHT TO USE FOR COTTAGE SITE AND LANDING PURPOSES, LAND ON WESTERLY EMBANKMENT OF LORAMIE RESERVOIR—HENRY GOLL AND COMPANY.

COLUMBUS, OHIO, April 1, 1931.

HON. I. S. GUTHERY, *Director of Agriculture, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge the receipt of your recent communication submitting for my examination and approval a certain lease in triplicate executed by the state of Ohio by and through the conservation council of the division of conservation in your department, by which instrument there is leased and demised to Henry Goll and Company of New Bremen, Ohio, the right to use and occupy for cottage site and landing purposes, for a term of fifteen years, the inner slope and water front and the outer slope and state land in the rear thereof, on the westerly embankment of the Loramie Reservoir that is included in Lot No. 17, north of the waste-weir of said reservoir, and