

OPINION NO. 1045

Syllabus:

The elements of price, chance and prize are present in a plan whereby a person contracts to provide the entertainment for a night fair program in return for the proceeds of all ticket sales for such program and also contracts to provide a miniature Thunderbird Car to be awarded to the holder of a winning ticket with the winner to be selected only from the holders of tickets to the grandstand for the night fair program and such plan is a lottery device, game of chance or gambling prohibited by Section 1711.09, Revised Code.

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To: James W. Freeman, Coshocton County Pros. Atty., Coshocton, Ohio
By: William B. Saxbe, Attorney General, May 14, 1964

Your request for my opinion reads:

"The Coshocton County Fair Board has requested that this office obtain a ruling as to the legality of giving a car as a door prize at the fairgrounds during the 1964 night fair program. I am enclosing herewith a photocopy of the request this office received.

"In view of the matters set forth in this letter, I would appreciate it if you would furnish me with your opinion at your earliest convenience."

You have supplied me with a copy of a letter from the Coshocton County Agricultural Society. The first two paragraphs are as follows:

"The Coshocton County Fair Board, is interested in having a Thrill Show for their 1964 night fair program. The Rotroff Auto Thrill Spectacular, that they have a contract with would like to give a miniature Thunderbird Car as a door prize after the show. There will be a ticket with a number issued to those who are in the grandstand.

"There is no advance in the admission price to the grandstand, it is the same as in previous years, 75¢ for general admission, \$1.00 for reserved seats and \$1.25 for box seats. Mr. Rotroff, is to receive all the grandstand receipts and to purchase the car."

Section 1711.09, Revised Code, reads:

"County agricultural societies shall not permit any dealing in spirituous, vinous, or

malt liquors, or allow or tolerate immoral shows, lottery devices, games of chance, or gambling of any kind, including pool selling and paddle wheels, anywhere on the fairgrounds; and shall permit no person to operate any side show, amusement, game, or device, or offer for sale any novelty by auction or solicitation, on such fairground who has not first obtained from the director of agriculture such license as is provided by section 1711.11 of the Revised Code."

Under the plan which is being considered for the Coshocton County Fair, tickets to be used in selecting the winner of the door prize would be distributed only in return for payment of the price of admission to the grandstand. Payment of the price would entitle the purchaser to a ticket admitting him to the grandstand and a chance to win the miniature Thunderbird offered as a door prize. In return for the receipts from all tickets purchased, the seller would provide the entertainment for the night fair program and the door prize to be awarded to the holder of the winning ticket.

In my opinion the elements of price, chance and prize are all present in this proposed plan and this would be a lottery device, game of chance or gambling within the meaning of Section 1711.09, Revised Code. The case of Westerhous vs. City of Cincinnati, 165 Ohio St., 327, seems particularly applicable to the plan you have described; paragraphs 5, 6, 7 and 8 of the syllabus read:

"5. In general, the elements of gambling are payment of a price for a chance to gain a prize.

"6. Where the operator of a pinball machine puts a nickel into the machine to operate it, he thereby pays the price which is necessary in order to have the operation of such a machine constitute gambling.

"7. The right, to replay a nickel pinball machine, if a sufficient score is attained, by merely pushing a button and without using another nickel, may represent the prize which is necessary in order to have the operation of such a machine constitute gambling.

"8. In order to have a lottery, the determination as to who gets a prize or how much of a prize he gets must be dependent at least predominately upon the element of chance."

Certain recent rulings of the Attorney General also appear to me to be pertinent to this discussion. The syllabus of Opinion No. 313, Opinions of the Attorney General for 1959, page 171, reads:

"A contest promoted by a vendor of soft drinks in bottles whereby all bottles sold

are closed with caps within which various letters of the alphabet are concealed, which letters when assembled in particular combinations entitle one to a prize supplied by such vendor, is a lottery, and the promotion of such scheme is a violation of Section 2915.10, Revised Code."

In Opinion No. 2358, Opinions of the Attorney General for 1961, page 357, the syllabus reads:

"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."

In Troy Amusement Co. vs. Attenweiler, 64 Ohio App., 105, this statement was made, at page 121:

"The element of advertisement and increased patronage is sufficient consideration flowing to the operator to bring the transaction within the condemnation of promoting and advertising a scheme of chance."

The plan proposed for the Coshocton County Fair is quite different from the one considered in Opinion No. 2291, Opinions of the Attorney General for 1958, page 384, in which I held:

"Section 1711.09, Revised Code, does not require or authorize a county or independent agricultural society to prohibit an exhibitor from offering a reward to the holder of a ticket ascertained by chance, where such ticket is given without any consideration or charge to each and every person who comes to the exhibitor's booth and accepts the ticket."

Under the facts there presented, no payment or purchase of any kind was required in order to secure a ticket; no price was paid to the distributor of the tickets. Every person who had been admitted to the grounds could secure a ticket simply by going to the exhibitor's booth.

In Opinion No. 3502, Opinions of the Attorney General for 1962, issued December 21, 1962, my predecessor in office ruled that the element of consideration was not present in a plan under which cards used in selecting the winner were distributed free of charge to the homes of residents and at a supermarket, where it was not necessary to pass through the checkout counter to obtain the cards.

It is, therefore, my opinion and you are advised that the elements of price, chance and prize are present in a plan whereby a person contracts to provide the entertainment

for a night fair program in return for the proceeds of all ticket sales for such program and also contracts to provide a miniature Thunderbird Car to be awarded to the holder of a winning ticket with the winner to be selected only from the holders of tickets to the grandstand for the night fair program and such plan is a lottery device, game of chance or gambling prohibited by Section 1711.09, Revised Code.