

2291

AGRICULTURAL SOCIETY, COUNTY OR INDEPENDENT—
FAIRS: EXHIBITORS MAY NOT BE PROHIBITED FROM
OFFERING REWARDS—GAMES OF CHANCE—GAMBLING—
§1711.09 R.C.

SYLLABUS:

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.

Columbus, Ohio, June 27, 1958

Hon. James R. Hay, Director
Department of Agriculture, Columbus, Ohio

Dear Sir:

I have before me your communication requesting my opinion, and reading as follows:

"In the performance of our duties in regard to county and independent agricultural societies we have had numerous requests from these societies regarding their authority to conduct or permit 'giveaways' on their fairgrounds during their fair. To be more specific the normal request will be somewhat as follows:

"A local merchant would like to give away a pony at our coming fair. He proposes to give tickets to any and all persons who pass his stand on the fairgrounds which they may fill out and drop the stub in a container. At the close of the fair, a drawing will be held and the holder of the ticket having the same number as the stub drawn shall be given the pony. Can our society legally permit this?

"When we receive requests such as this, we have answered by quoting section 1711.09 of the Revised Code and stating that this would be a 'game of chance'. Our conclusion that such would constitute a 'game of chance' is based on Informal Opinion No. 177 issued March 5, 1947, and various other Attorney General Opinions.

"I respectfully request that you review this problem and advise me whether the factual situation outlined above would constitute a 'game of chance' within the meaning of section 1711.09 of the Revised Code."

Section 1711.09, Revised Code, to which you refer, reads as follows:

"County agricultural societies shall not permit any dealing in spirituous, vinous, or malt liquors, or allow or tolerate immoral show, lottery devices, games of chance, or gambling of any kind, including pool selling and paddle wheels, anywhere on the fair-ground."

At the outset you may note that the things which the statute undertakes to prevent being allowed on the fairgrounds are such as manifestly tend to a demoralization and corruption of the people who attend the fairs. It is evident that each of the inhibited practices or devices are either pro-

hibited by the criminal laws or are, by common consent, a menace to public morals. Among these deleterious institutions is listed "games of chance".

Now it must be perfectly clear to anyone that there are many games of chance which have no element of a criminal character and are not detrimental to public morals, for instance, many games which are played by children and adults as well. Many of us grew up on parcheesi and a great variety of dice games which are plainly games of chance, which can be made the medium for gambling, but have no necessary implication as such.

While the authorities differ somewhat, card games are pretty generally recognized as games of chance, as well as many other games in which skill plays a part, but chance or luck is regarded as having a predominate influence. Many of them take on the characteristics of gambling, which is prohibited by the criminal laws of the state, both as to the player, and the proprietor of a place where gambling is permitted or gambling facilities are provided. Section 2915.06, Revised Code, reads as follows:

"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."

Even betting on an election is made a misdemeanor by Section 2915.08, Revised Code, and Section 2915.09, Revised Code, provides a penalty for keeping a room or building in which are kept apparatus, books or other devices for recording wagers or selling pools upon the result of a trial or contest of skill, speed or power of endurance of man or beast.

Section 2915.13, Revised Code, provides a penalty for selling numbers. Section 2915.12, Revised Code, makes the operation of a lottery or game of chance by whatever name known, a misdemeanor.

Other statutes might be cited which are aimed at the prevention of gambling in every phase.

But notwithstanding the fact that these statutes do not expressly introduce the element of *money contributed by the player* as essential, we find in practically every case touching on the subject either the expression or the assumption that gambling in any of its phases involves the risking by the player of a certain sum of money in the hope of obtaining, by the lucky turn of a wheel, or some other chance event, a large return for a small

investment. Thus, in the case of *Akron v. Stojanovic*, 24 N.P., 479, we find the following statement in the headnotes:

“Whenever the element of chance is embodied in a device or machine, making it possible for a player to receive something for nothing, it comes within the provisions of an ordinance prohibiting the exhibiting of a gambling machine or device for gain; and the gambling feature is not eliminated by a provision whereby players receive some consideration *for their money*.” (Emphasis added)

In the course of the opinion, the court in answering its own question, “what is a ‘gambling device’?”, said:

“‘It has been judicially defined as an invention used to determine the question as to who wins and who loses, that risk their money on a contest or chance of any kind * * *.’”

In the case of *Bader v. Cincinnati*, 21 Ohio Law Reports, 293, the court had before it a case where a proprietor of a restaurant distributed tickets to his patrons, entitling them to a chance to draw an automobile, and the headnote of the decision reads as follows:

“Under the State and Municipal laws prohibiting lotteries, consideration, in the strict contractual sense, is not an essential element of the offense.”

This might seem to indicate that the court did not regard the payment of a consideration by the patron as essential, but a reading of the decision indicates that there was some element of investment by the lucky person in that he, along with other customers, had paid for the meals and presumably had thereby supplied the funds which enabled the proprietor to buy the automobile.

In the case of *Stevens v. Cincinnati Times Star*, 72 Ohio St., 112, it appears that the defendant published a notice in its newspaper to the effect that anyone contributing 50 cents would receive a subscription valued at 24 cents and the remainder 26 cents would give him the privilege of making a guess on the total vote for a state officer about to be chosen and if his guess was closest he would win a prize. It was held that this scheme was within the condemnation of the statute against lotteries and games of chance. The court went into an elaborate discussion of the meaning of the word “lottery” and adopted the following from a New York case:

“Where a pecuniary consideration is paid, and it is determined by lottery or chance, according to some scheme held out to

the public what and how much he who pays the money is to have for it, that is a lottery.”

A comparatively recent case which throws light on the subject is *Westerhouse v. Cincinnati*, 165 Ohio St., 327, wherein the court had before it the matter of a pinball machine which, upon the deposit of a nickel, may give out one or many tokens entitling the player to play the machine again without any additional deposit, the court held that such a machine was a gambling machine. The syllabus reads in part as follows:

“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.”

In the case which you present, the proposition is for an exhibitor to give, without any contribution either of service, money or skill on the part of the recipient, a ticket entitling him to a chance of winning a pony. This is certainly not a game of chance in the sense in which we regard a roulette wheel or a wheel of fortune or the many other devices which tempt a susceptible public to put in a small sum of money and repeat the process over and over in the hope of winning a large stake, a prize which would be extremely tempting to the patrons of a fair, and particularly the younger element, and would contribute to an intensification of the gambling spirit which is innate in most people.

Here in the instance you propose the person who is handed a ticket giving him a chance on the pony, has no temptation to be inveigled into a repetition, and in my opinion the plan has none of the elements of a game of chance such as is intended to be prohibited by the statute.

As an illustration of a lottery which is regarded by the law as innocent, we may call attention to the election statutes which in case of a tie between candidates, authorize the election to be determined by casting lots.

In determining the intent of the legislature in the enactment of the statute referred to in your letter, we may apply the well established principle of *noscitur a sociis* (associated words). This principle as applied to the construction of statutes, is stated as follows by *Crawford on Statutory Construction*, Section 190:

“In order to ascertain the meaning of any word or phrase that is ambiguous or susceptible to more than one meaning, the court may properly resort to the other words with which the ambiguous word is associated in the statute. Accordingly, if several words are connected by a copulative conjunction, a presumption arises that they are of the same class, unless, of course, a contrary intention is indicated. On the other hand, the maxim, ‘noscitur a sociis’, is not to be applied where the meaning of a word or phrase is clear and unambiguous. * * *”

As I have already indicated, the use of the words “games of chance” in connection with all of the other devices and practices which would be deleterious to public morals, would lead to the irresistible conclusion that the legislature was not intending to classify an innocent advertising device with these demoralizing practices.

In addition to what has been said, it appears to me that the device in question is not in any true sense a *game*. The recipient of the ticket from exhibitor does not involve any act on his part except to receive the ticket handed to him by the exhibitor and presumably to place his name on the stub.

Therefore, in specific answer to your question, it is my opinion that 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.

Respectfully.

WILLIAM SAXBE

Attorney General