

FILE

Subject

*Procedure Games
Shuffling Letters*

Copy to _____



STATE OF KANSAS

Office of the Attorney General

State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

VERN MILLER
Attorney General

August 22, 1974

Opinion No. 74- 288

Mr. Jack N. Williams
Assistant District Attorney
Director, Consumer Protection Division
Office of the District Attorney
18th Judicial District
Sedgwick County Courthouse
Wichita, Kansas 67203

Dear Mr. Williams:

In your opinion request of August 7, 1974, you inquire regarding the legality of a "Keno" game promotion to be sponsored by radio station KFDI in Wichita, Kansas. You describe "Keno" as a game of chance similar to bingo wherein the participants select ten numbers and mark them on a "Keno card" which contains the numbers 1 through 80, arranged in eight rows of ten numbers per row. The game operators then randomly select 20 numbers from the board, using a random selection device similar to those used in selecting numbers in a bingo game. The numbers selected are indicated on the master board and each participant can then review his own game card to determine whether or not any of the numbers which he chose were selected by the game operators. A participant wins if he has selected on his card five or more numbers on the game master board, and the amount of his winnings increases with additional numbers selected.

You indicate that radio station KFDI is considering the use of this same system by distributing game cards in duplicate to participants throughout the communities within its broadcast range. These cards will be issued without charge, and will be made readily available to any persons in the community who desire to obtain same. Each participant would mark identical numbers on both cards and return one to the radio station or some other selected collection point by a given date.

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You advised further that each card will bear a unique serial number for identification and handling. At a predetermined date and time, the radio station will receive a call from a casino in Las Vegas, Nevada, and as the next Keno game is played in that casino, which would be designated as the station's "game of the week," the numbers selected during the actual game in Las Vegas would be transmitted to the radio station in Wichita. These numbers would be recorded at the station and compared with the entries submitted to determine the winners. Apparently the numbers would be announced over the air, and those participants with winning numbers, who contact the radio station within a specified time, would win the prizes. These prizes, you explained, would range from a free holiday in Las Vegas with meals and lodging in one of the hotels, to a holiday with air fare for two included, and a grand prize, possibly of a new automobile. The prizes would be furnished by the hotel or casino in Las Vegas, by participating advertisers or by the radio station itself.

As you well know, our state's Constitution prohibits "lotteries" in Kansas. Our statutes define a lottery as:

". . . an enterprise wherein for a consideration the participants are given an opportunity to win a prize, the award of which is determined by chance." K.S.A. 1973 Supp. 21-4302(2).

Our statutes, in defining "consideration," specifically exempt the following:

"Mere registration without purchase of goods or services; personal attendance at places or events, without payment of admission price or fee; listening to or watching radio and television programs; answering the telephone or making a telephone call and acts of like nature are not consideration." K.S.A. 1973 Supp. 21-4302(3).

A recent pronouncement by the Kansas Supreme Court on the specific subject of these types of promotions may be found in State, ex rel., v. Highwood Service, Inc., 205 Kan. 821, 473 P.2d 97. This case considered the legality of a promotion proposed by television station KTSB in Topeka, Kansas. In that promotion, the television station would broadcast certain information prior to making a telephone call based on a random selection of Topeka and area telephone numbers. If the phone call was answered, the "participant" was asked to relate the

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information which had previously been broadcast. If he was able to do so correctly, he would win a prize. The state, relying on the statutory definition of a "lottery" and the prior authority of State v. Fox Kansas Theatre Co., 144 Kan. 687, 62 P.2d 929, contended that the scheme required an overt act of participation on the part of the "contestants" and sought to have the promotion enjoined. The Shawnee County District Court entered judgment in favor of the defendant, ruling that the proposed promotion did not constitute a lottery. In affirming the District Court ruling, our Supreme Court cited with approval the language of the court below:

"The question then to the Court is whether any financial gain that would or could be derived by the defendant by having a greater viewing audience is the 'valuable consideration,' or by inducing the participant to view a certain television station, consideration, as the third element in a lottery, has been fulfilled.

"No doubt some financial benefit would inure to the defendant by having a larger viewing audience but is this the consideration contemplated by the statute? This Court thinks not.

"Without going into a lengthy discourse on the history of lotterys, a gratuitous distribution of money by lot or chance is not within the purview of our lottery statute where no valuable consideration is derived or exacted from the participant receiving a chance to win a prize." Highwood, supra, at p. 823.

It would appear that the "Keno" promotion proposed by radio station KFDI would not constitute a lottery under present Kansas law. In view of the statutory exemptions to the definition of "consideration" and the ruling in the Highwood case, supra, it clearly appears that the essential element of consideration is lacking in the subject promotion.

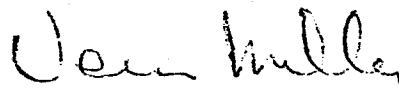
You express some concern that federal statutes or rules and regulations of the Federal Communications Commission may come into play with regard to this promotion. Of course, we are not in a position to render an official opinion regarding the interpretation and applicability of any such federal laws or regulations. We do note, however, that the federal statutes

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prohibiting the transmission of wagering information, and prescribing penalties therefor, would not appear to come into play in connection with the subject promotion. 18 U.S.C.A. §1084.

We have also conferred with Mr. James Hawkins, a Kansas City representative of the F.C.C., and he has advised us that federal authorities are guided by the same definition of a "lottery" as our state employs. I reviewed the subject promotion with Mr. Hawkins, and he indicated that the F.C.C. would not consider the promotion to constitute a "lottery," the broadcast of which would be prohibited. Mr. Hawkins also indicated that the use of the actual Keno game in Las Vegas to select the winners has no substantial effect on the propriety of the promotion.

Very truly yours,



VERN MILLER
Attorney General

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