



STATE OF KANSAS

Office of the Attorney General

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CURT T. SCHNEIDER
Attorney General

March 19, 1975

Opinion No. 75-123

Mr. Salvatore A. Scimeca, Jr.
Geary County Attorney
Geary County Courthouse
Junction City, Kansas 66441

Dear Mr. Scimeca:

You have inquired as to the legality of a department store handing out free tickets to customers in the store, and then conducting a drawing in which one or more of these tickets is selected at random, with a prize awarded to the holder of the ticket so drawn.

It is our opinion that this promotion would probably not constitute a lottery under the laws of this state. The three elements which must be present in any lottery are prize, chance, and consideration. Obviously, prize and chance are present. The answer to this question, therefore, turns on the issue of "consideration". K.S.A. 21-4302 (d) (3) defines consideration. The second paragraph of that section states that

"mere registration without purchase of goods or services; personal attendance at places or events, without payment of an 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."

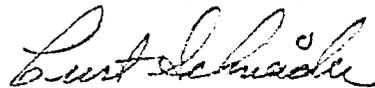
However, the Kansas Supreme Court has held in the case of State, ex rel. Beck v. Fox Kansas Theater Company, 144 Kan. 687, 62 P.2d 929, that consideration was present if the promotion resulted in a financial gain to the promoter of the event. If it may be proved that the store benefited financially from the promotion, you will have proved the existence of a lottery. However, the problems involved in such a proof are obvious.

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Absent any financial benefit, the promotion does not constitute a lottery.

We hope this has answered your question, and that if you have any further questions arising from this matter, please do not hesitate to contact us.

Yours very truly,

A handwritten signature in cursive script, appearing to read "Curt Schneider".

CURT T. SCHNEIDER
Attorney General

CTS:GFW:kj