



OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN
ATTORNEY GENERALHon. Jack Borden, County Attorney
Parker County
Weatherford, Texas

Dear Sir:

Opinion No. 0-1329
Re: Does a plan whereby a theatre buys the fingerprint of a citizen of the community as outlined by a copy of the proposed method of operation violate any provision of the Constitution or laws of Texas?

Your request for an opinion on the above stated question has been received by this department.

The plan whereby a theatre buys the fingerprint of a citizen of the community and the method of operation is substantially as follows:

"The theatre places a table in the front lobby near the sidewalk, there the autograph cards are kept together with a pad of special fingerprint ink where the public can sign the card, with their address, and make their fingerprints on the place provided for it. The card then goes in a file with other cards already signed and fingerprinted. The people signing these cards are not required to buy an admission ticket nor attend the theatre in order to sign and fingerprint..

"On a designated night set aside each week by the theatre for FINGERPRINT NIGHT, the file with all the signed and fingerprinted cards are taken to the stage of the theatre where someone is selected from the audience or in case of some one being familiar with fingerprints being appointed to make a selection of one fingerprint he thinks is the best or has some particular characteristic he favors. The fingerprint being on the back side of the card and the name on the front side shows that this selection is made from the fingerprint only and not the individual name. This card is then handed to a second person on the stage who turns the card over and calls the name of the autograph appearing thereon. If this person whose name is called comes for-

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ward to the stage within three minutes from the time the name is called and identifies his autograph and fingerprint, they are then paid the weekly amount posted by the theatre for the purchase of the fingerprint and they are requested to sign a card giving the theatre the right to purchase this fingerprint and use it for their files only except in the case where it may be necessary to use for identification caused by some accident or otherwise. If this person whose name was called is not there, within the designated time, to identify his autograph, fingerprint and sign the card to permit the theatre to make the purchase as stated, this weekly amount set aside by the theatre to purchase the fingerprint is carried forward to the next week and then at that time it is added to the regular weekly amount set aside for each week and so on until a purchase is actually made of a fingerprint.

"The theatre has the right to hold all fingerprints given in their files at the theatre except as stated above in case of accidents, and the right to use those purchased for educational purposes only.

"Children under 14 years of age do not participate.

"Each person who sells the right to use their fingerprint under this method shall sign the card giving the theatre the right to purchase same and place it in the files with the others purchased and a purchase cannot be made if this card is not signed at the proper time."

Article 654 of the Penal Code reads as follows:

"If any person shall establish a lottery or dispose of any estate, real or personal, by lottery, he shall be fined not less than one hundred nor more than one thousand dollars; or if any person shall sell, offer for sale or keep for sale any ticket or part ticket in any lottery, he shall be fined not less than ten nor more than fifty dollars."

We quote from Tex. Jur., Vol. 28, p. 409, as follows:

"The term lottery has no technical signification in the law, and since our statute does not provide a definition, its meaning must be determined from popular usage. According to that test a lottery is a scheme for the distribution of prizes by lot or chance among those who have paid or agreed to pay a consideration for the right to participate therein, or the distribution itself. . . ."

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See the cases of --

State vs. Randle, 41 Texas 292;
 Featherstone vs. Independent Service Station
 Association of Texas, 10 S.W. (2d) 124;
 Fulbright vs. State, 38 S.W. (2d) 87.

In the case of Featherstone vs. Independent Service Station Association, supra, the court defined a lottery as follows:

"A lottery for all practical purposes may be defined as any scheme for the distribution of prizes, by lot or chance, where one on paying money or giving other thing of value to another obtains a token which entitled him to receive a larger or smaller value or nothing, as some formula or chance may determine."

The Federal Circuit Court of Appeals in the case of Peek v. United States, 61 F. (2d) 973, has given the following definition of a lottery:

"A scheme for the distribution of prizes or things of value by lot or chance among persons who have paid or agreed to pay a valuable consideration for the chance to obtain a prize. And again, a scheme by which a result is reached by some action or means taken, in which result man's choice or design enable him to know or determine . . . until the same has been accomplished."

The case Boatwright vs. State, 38 S.W. (2d) 87, defines a lottery as:

"Any scheme for distribution of prizes by chance."

The case of Griffith Amusement Co. vs. Morgan, 98 S.W. (2d) 844, holds the elements essential to constitute a lottery are a prize in money or other thing of value, its distribution by chance in payment, either directly or indirectly, of a valuable consideration for the chance to win the prize.

The case of State vs. Randle, supra, holds that any scheme for the distribution of prizes by chance is lottery and it matters not by what name such a scheme may be known. It comes within the prohibition of Article 654 of the Penal Code.

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In the case of City of Wink vs. Griffith Amusement Co.,
100 SW (2d) 695, the court said that the necessary elements of
are:

"Offering of a prize, award or prize by chance,
and giving of consideration for opportunities to win
prize."

The above mentioned requirement that the winner appear
and claim the prize within three (3) minutes from the time his
name is announced at the theatre, undoubtedly operates as a tre-
mondous pressure on any one desiring to participate to pay the
price of admission. That is undoubtedly the purpose, and it is
equally obvious that the award is made out of funds accumulated
from paid admissions. In short, the plan is a violation of Arti-
cle 654 of the Penal Code.

In view of the foregoing authorities you are respectfully
advised that it is the opinion of this department that the above
mentioned scheme or plan whereby a theatre buys the fingerprints
of a citizen of the community as above outlined is a violation of
Article 654 of the Penal Code.

Trusting that we have satisfactorily answered your
inquiry, we remain

Yours very truly

ATTORNEY GENERAL OF TEXAS

By /s/ Ardell Williams
Assistant

Ardell Williams

AW:OB

APPROVED SEPTEMBER 7, 1939

Gerald Thayer
ATTORNEY GENERAL OF TEXAS

Approved: Opinion Committee
by BWB, Chairman