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Recommended Citation

DePaul College of Law, *Lotteries - Grocery Store Promotional Scheme Held a Lottery*, 5 DePaul L. Rev. 308 (1956)

Available at: <https://via.library.depaul.edu/law-review/vol5/iss2/12>

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use of the word fire was meant to include all fires regardless of their origin.¹⁸

This appears to be the sounder view in that the prudent lessor should contemplate fires and provide for loss occasioned by them even though caused by the tenant's negligence.

LOTTERIES—GROCERY STORE PROMOTIONAL SCHEME HELD A LOTTERY

Declaratory judgment was sought by a corporation to determine whether its proposed method to stimulate business was a lottery within the meaning of the New Jersey Lottery Act¹ which provides that any person who "gives, barter, sells, or otherwise disposes of, or offers to give . . . a ticket in a lottery, is guilty of a misdemeanor." The Act contains no definition of the term "lottery." Plaintiff contracted with a chain of super marts to operate its scheme, whereby the contestants filled out coupons on calendars mailed to them free of charge, whether customers or not, to be placed in a receptacle in the named store after which a drawing was held to determine the winner. Said scheme was determined to be a lottery by the Supreme Court of New Jersey, the court deciding that consideration did exist, both in a detriment to the contestant and a benefit to the store proprietor. The court went on to say that even if consideration were not present, the scheme would still be a lottery within the New Jersey Lottery Act, since the Act was broad enough to cover even that situation. *Lucky Calendar Company v. Cohen*, 19 N.J. 399, 117 A.2d 487 (1955).

The term "lottery" has been defined as a distribution of prizes and blanks by chance, a game of hazard in which small sums are ventured for the chance of obtaining a larger value, either in money or in other articles² or, a scheme for the distribution of prizes by lot or chance.³ Regardless of the definition a particular court sees fit to use, all are in accord that a lottery consists of these three elements: prize, chance, and consideration.⁴ Most of the statutes in the various states prohibiting lotteries fail to de-

¹⁸ *Ibid.*

¹ N.J.S. 2A: 121-1 et seq., N.J.S.A.

² *Long v. State*, 74 Md. 565, 22 Atl. 4 (1891); *Cross v. People*, 18 Colo. 321, 32 Pac. 821 (1893); *Wilkinson v. Gill*, 74 N.Y. 63 (1878).

³ *Horne v. United States*, 147 U.S. 449 (1893); *Yellow-Stone Kit v. State*, 88 Ala. 196, 7 So. 338 (1890); *Meyer v. State*, 112 Ga. 20, 37 S.E. 96 (1900); *People v. Monroe*, 349 Ill. 270, 182 N.E. 439 (1932).

⁴ *Little River Theater Corp. v. State*, 135 Fla. 854, 185 So. 855 (1939); *State v. Hunding* 220 Iowa 1369, 264 N.W. 608 (1936); *People v. Wassmus*, 214 Mich. 42, 182 N.W. 66 (1921); *National Thrift Assn. v. Crews*, 116 Ore. 352, 241 Pac. 72 (1924).

fine lottery, reasoning that "no sooner is a lottery defined and the definition applied to a given set of facts, than ingenuity is at work to evolve some scheme of evasion which is within the mischief but not quite within the letter of the definition."⁵ Courts will not, as a rule, look to the motive behind a lottery, since if the plan or scheme comes within the prohibitory force of the legislation, it is illegal. Thus, even lotteries conducted for charitable purposes have been held illegal.⁶ Since charity is no justification, the intent to promote business will certainly not be justified if within the evil the various lottery acts are seeking to prevent.

In the past, the courts have had little difficulty in determining whether the elements, "chance"⁷ and "prize,"⁸ were present in the scheme before them. The greatest controversy by far has been in ascertaining whether the third element, consideration, has been paid by the contestant. The cases which present extensive conflict in ascertaining the payment of consideration have been those in which the plan in question was not an organized scheme of chance for the payment of a money consideration, but rather, a promotion intended to stimulate business. The courts are in accord that consideration is necessary within the strict meaning of a lottery, but they are in disagreement as to the type of consideration which will suffice to fall within their particular statute. The cases divide themselves into those requiring a pecuniary consideration to fulfill the lottery element,⁹ and those merely requiring that the "price" paid by the contestant fulfill the contract requirements of consideration.¹⁰

The case of *Cross v. People*¹¹ exemplifies the typical "pecuniary consideration" view. In that case, there was a gratuitous distribution of business cards to all calling or writing for them, each card entitling the possessor to the chance of winning a piano. The court, in holding that the scheme was not a lottery, emphasized that the contestant had not been

⁵ *State v. Lipkin*, 169 N.C. 265, 84 S.E. 340 (1915).

⁶ In *Negley v. Devlin*, 12 Abb. Pr. N.S. 210 (N.Y. 1872), a lottery for funds to benefit a Foundling Asylum was held illegal.

⁷ *State v. Lipkin*, 169 N.C. 265, 84 S.E. 340 (1915); *Russell v. Equitable Loan & Security Company*, 129 Ga. 154, 58 S.E. 881, 885-6 (1907); 34 Am. Jur., Lotteries § 6.

⁸ *State v. Hahn*, 105 Mt. 270 72 P. 2d 459 (1937); 34 Am. Jur., Lotteries § 5.

⁹ *Cross v. People*, 18 Colo. 321, 32 Pac. 821 (1893); *F. C. C. v. American Broadcasting Co.*, 347 U.S. 284 (1954); *State v. Hundling*, 220 Iowa 1369, 264 N.W. 608 (1936); *People v. Cardas*, 137 Cal. App. 788, 28 P. 2d 99 (1933); *Yellow-Stone Kit v. State*, 88 Ala. 196, 7 So. 338 (1890); *Griffith Amusement Co. v. Morgan*, 98 S.W. 2d 844 Tex. (1936); *State v. Horn*, 16 N.J.M. 319, 1 A. 2d 51 (1938).

¹⁰ *Furst v. A & G Amusement Company*, 128 N.J.L. 311, 25A 2d 892 (1942); *State v. Blumer*, 236 Wis. 129, 294 N.W. 491 (1940); *Brooklyn Daily Eagle v. Voorhies*, 181 F. 579 (1910); *Maughs v. Porter*, 157 Va. 415, 161 S.E. 242 (1931); *Affiliated Enterprises Inc. v. Waller*, 1 Ter. 28, 5A 2d 257 (1939); *Dorman v. Publix-Saenger-Sparks Theaters Inc.*, 135 Fla. 284, 184 So. 886 (1938).

¹¹ 18 Colo. 321, 32 Pac. 821 (1893).

induced to hazard *money* with the hope of obtaining something of a larger value, which they felt is the evil which lottery statutes seek to prevent. It was also felt by the court that any increase in the promoter's business was a benefit too remote to constitute a consideration for the chance.

*Maughs v Porter*¹² appears to be the principal case relied on by the "contract consideration" jurisdictions. Therein, chances were given on an automobile to all persons who attended an auction whether they bid upon anything auctioned or not. The court felt that even though admissions were not charged, attendance at the auction was the consideration bargained for by the auctioneer. Since there was a legal detriment to those attending and a legal benefit to the auctioneer, this was enough consideration to support a lottery. The decision then quoted an illustration from Williston's *Contracts*:

If a benevolent man says to a tramp,—'if you go around the corner to a clothing shop there you may purchase an overcoat on my credit,' no reasonable person would understand that the short walk was requested as the consideration for the promise, but that in the event of the tramp going to the shop the promisor would make him a gift.¹³

Williston proposed that a guide post in distinguishing between a condition precedent to a gift and a bargained-for consideration is whether there is any benefit by the occurrence of the act to the promisor. This guide post seems to strengthen the "contract consideration" holdings in business stimulation cases since there is always a benefit to the business operator, viz., the expected increase of business. *Affiliated Enterprises Inc. v. Waller*¹⁴ followed the contract consideration theory, holding that if a statute did no more than ban lotteries, the requirement of registration and attendance in the lobby or outside of a movie theater to be eligible for a prize without the necessity of a money consideration is a lottery since:

... It is entirely clear that the Legislature meant to ban all schemes and devices of a gambling nature, whether the consideration be money or price actually paid in the conventional sense, or a more technical form of consideration consisting of an act done by the promisee at the request of the promisor, in circumstances evidencing a reasonable expectancy of profit accruing to the promisor as a result of the act.¹⁵

The court expressly rejected the "pecuniary consideration" concept.

It should not be inferred that this split of authority is based upon a different terminology used in the statutes of the various states. It is based on a different conception of what consideration is needed for a lottery.

¹² 157 Va. 415, 161 S.E. 242 (1931).

¹³ 1 Williston on Contracts (Rev. Ed.) § 112 at p. 380.

¹⁴ 1 Ter. 28, 5A 2d 257 (1939).

¹⁵ *Ibid.*, at p. 262.

The phrase, "pay a consideration" is used in the statutes of two different states. It resulted in conflicting decisions. *State v. Wilson*¹⁶ required merely a contract consideration, i.e., legal benefit or detriment. *Albert Lea Amusement Corporation v. Hanson*¹⁷ construed this same terminology as referring to a pecuniary outlay.

It appears that the New Jersey courts have not been consistent as to which type of consideration is needed for a lottery. As late as 1938, *State v. Horn*¹⁸ construed the same statute as that construed in the instant case. The Court of Special Sessions of New Jersey, Essex County, followed expressly *State v. Hundling*,¹⁹ a case which held that a pecuniary consideration was necessary to support a lottery. Four years later, in *Furst v. A & G Amusement Company*,²⁰ the Court of Errors and Appeals of New Jersey, construing the same lottery statute, emphasized the need of a consideration but stated that this need not be of a pecuniary nature as long as there is either a benefit to the promisor or a detriment to the promisee. The court made no mention of the *Horn* case. Thus, in ruling that a contract consideration was sufficient to support a lottery, the court made a determination which continues to be advocated thirteen years later in the instant case.

It should be noted that the court in *Furst v. A & G Amusement Company*²¹ as *dictum*, stated that if the distribution of prizes were a pure gift they could agree that the proceeding did not constitute a lottery in the sense intended by the statute. They apparently did not consider that the statute in question also made it a misdemeanor for any person to "give . . . or offer to give . . . a ticket in a lottery."²² The Court in the instant case did consider this statutory language, stating: "The words quoted from the statute clearly negative any notion of the necessity of consideration as an ingredient of a lottery."²³ Thus, the Supreme court of the State has settled the conflict between the *Horn* and *Furst* cases by deciding that a contract consideration would fulfill the statutory requirement. The court then proceeded to give effect to the word "give" in the statute by holding that no consideration was necessary to constitute a lottery.

This is not a novel conception of a lottery. As early as 1922, the Supreme Court of Washington²⁴ construed an ordinance prohibiting "property to be sold or disposed of by chance," as requiring that no con-

¹⁶ 109 Vt. 349, 169 Atl. 757 (1938).

¹⁷ 231 Minn. 401, 43 N.W. 2d 249 (1950).

¹⁸ 16 N.J.M. 319, 1A 2d 51 (1938).

¹⁹ 220 Iowa 1369, 264 N.W. 608 (1936).

²⁰ 128 N.J.L. 311, 25A 2d 892 (1942). ²¹ *Ibid*.

²² Cited *supra* note 1.

²³ *Lucky Calendar Co. v. Cohen*, 19 N.J. 399, 117 A. 2d 487, 494 (1955).

²⁴ *Society Theater v. City of Seattle*, 118 Wash. 258, 203 Pac. 21 (1922).

sideration need be necessary for a lottery to exist; the Court thus holding the ordinance broader than that of the ordinary lottery statute. In a recent Connecticut case²⁵ a statute was construed which subjected to fine or imprisonment, "[a]ny person who shall set up any lottery to raise and collect money or for the sale of any property or shall by any kind of hazard, sell or dispose of any kind of property. . . ."²⁶ It was determined that the Act prohibited not merely lotteries in the strict sense of the term, but certainly also covered enterprises in the general nature of a lottery wherein chance was the predominant element, even though those who participated directly risk no money or property of their own. The factual situation in this case closely paralleled that of the instant case. Persons could register at food stores without making a purchase, for a drawing at which merchandise would be given away to those whose names were drawn, whether the winner was present or not. The court, in holding this a lottery, stressed that the element being prohibited by the statute was the arousing of the desire to gain something for nothing which was present in that particular scheme.

It becomes evident that such statutes are being construed as prohibiting not only lotteries in the narrow sense of the word, but also schemes in the nature of a lottery. By the use of a broad construction, the courts have been able to strike down schemes which apparently require no consideration, but nonetheless are patent evasions of the spirit, if not the letter of the statutes. Where such a view is taken, the conflict over what is meant by consideration as used in the statute is relegated to the position of a moot question—no longer of any importance in deciding the cases.

MUNICIPAL CORPORATIONS—INJURY RESULTING FROM MOB ACTION HELD ACTIONABLE UNDER MOB VIOLENCE ACT

Plaintiff, a Negro motorist, suffered personal injuries at the hands of a group of persons congregated to protest the intrusion of Negro families into their community. Recovery is sought under the provisions of "An Act to Suppress Mob Violence."¹ Plaintiff, who was not one of the new residents, was driving in the vicinity and was accosted by the crowd and injuries resulted. Defendant's motion for a directed verdict was sustained by the trial court. The Appellate Court, determining that there was substantial evidence upon which to submit the case to the jury, reversed and

²⁵ *Herald Publishing Co. v. Bill*, 142 Conn. 53, 111 A. 2d 4 (1955).

²⁶ Conn. Gen. St. § 8667 (1949).

¹ Ill. Rev. Stat. (1955) c. 38, § 512-517.