



STATE OF FLORIDA
OFFICE OF THE
ATTORNEY GENERAL
TALLAHASSEE

RICHARD W. ERVIN
ATTORNEY GENERAL

June 19, 1957

057-170

Honorable Anthony J. Grezik
Justice of the Peace
400 Broadway
Daytona Beach, Florida

Dear Judge Grezik:

This will acknowledge your inquiry of June 5th with respect to the following question:

A motel owner of 20 units advertises that each day a lucky occupant will get his accommodations free; for instance, if ten units are rented on a certain day, one of those units will be free for the time of the check-in, be it one, two, three days or a week. The occupants pay the regular rate for the accommodations when they check in and late in the evening each day the owner of the motel conducts a drawing of the units rented that day to determine the winner for that day. Does this constitute a violation of Section 849.09, Florida Statutes?

In answering your question, I am assuming that the motel owner advertises the proposition outlined above in a manner sufficient to constitute notice, and that the patron is aware of such offer upon registering at the motel.

It is well settled law that there are three elements to a lottery, viz., (1) a prize, (2) an award by chance, and (3) a consideration.

In the transaction outlined in the above stated question, it is clear that the second element, to-wit: an award by chance, is present.

It might be argued that the first element, a prize, would be guided by the manner in which the motel owner charges his patrons for his accommodations. In other words, if a patron is compelled to pay in advance for his accommodations and should, upon the drawing of the units, be announced the winner for the night, and consequently be reimbursed by the motel owner his lodging fee, the element of prize would thereby become satisfied. This being true on the basis of the fact that once the customer's money passed to the motel owner, said money immediately became the property of the motel owner, and when returned thereafter to the patron, as the result of a certain drawing, in which the patron exercised no particular skill, it would therefore take upon itself the undisputed cloak of an award or prize. On the other hand, if patrons should be allowed to pay upon leaving the motel, and should choose to do so, and should thereafter fall heir to free lodging as a result of the drawing, it is equally clear that there would be no tangible passing of property in the form of an award or prize. There would, however, be a definite enhancement to the patron in either one of two respects; first, he has received free lodging for which he would normally expect to pay. Second, his lawful debt to the motel owner has been cancelled, thereby awarding the patron relief from the obligation incurred.

Many cases have held that while a scheme or transaction cannot constitute a lottery unless it involves the offering of a prize, it is not essential that the prize, if a money one, be a specific amount, or that the prize be money or have a fixed market value. (Commonwealth vs. Wright, 50 Am. D. 306; State v. Hahn, 72 P. 2d 459; People v. Psallis, 12 N.Y.S. 2d 796; 38 C.J. p. 292, note 63.) Thus, the first two elements appear to be satisfied.

Going to the element of consideration, same may be present within the contemplation of the lottery statutes, without direct payment for the right to participate. It was so held in Little River Theatre Corporation v. State ex rel. Hodge, 185 So. 855. In that case, the Supreme Court of Florida held theatre bank night was a lottery even though it was not necessary for a person to buy a theatre ticket or pay for anything in order to participate in the drawings or prizes. The Court held that the element of

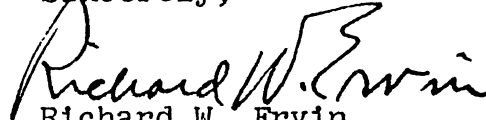
consideration, which must be present to constitute a lottery, was present because the scheme advertised the theatre, increased the attendance, and materially enhanced the receipts.

It is apparent that the transaction about which you inquired will advertise the motel, this being more particularly true due to your statement that the owner advertises his offer. Such advertisement will evidently make the said motel more attractive to prospective guests, act as an inducement for people to patronize the motel, and thereby increase the receipts of same. If this were not so why would the motel owner be willing to give away money already earned, or in the alternative, give free lodging to certain patrons rather than accept money from them which is rightfully his.

Therefore, I think that the transaction under discussion is governed by the above mentioned theatre bank night case; that a consideration is present, consisting of the advertisement of the motel involved, which advertisement would be for the apparent purpose of increasing the patronage of same, necessarily resulting in additional profits for the owner thereof; and that such transaction constitutes a lottery and violates the gambling laws.

With kindest personal regards, I remain

Sincerely,



Richard W. Ervin
Attorney General

Prepared by:



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RWE/OMH/pr