

OPINION
48-171

June 14, 1948 (OPINION)

LOTTERY DEFINED

RE: Elements Present

This will acknowledge receipt of your letter dated June 14, 1948, relative to the North Dakota Conservation Show to be held in Bismarck during September of this year. In your letter you state:

In order to properly advertise this Conservation Show, the merchants of Bismarck are giving away, absolutely free, a five room house fully furnished. This house will be on display in Bismarck from July 1st through September 19th and it will not be necessary to purchase a ticket, nor will the merchants sell any tickets in order to win this house. The plan we have for disposing of the tickets, will be to drop these from an airplane and people will find the tickets and deposit them in a barrel beside the house and the final drawing will take place at the close of the show and that person must be 21 years of age and present in order to win the house."

The question presented is whether or not this plan would be in violation of our state lottery laws. A review of the authorities and of previous opinions from this office clearly indicates that your plan will not be in violation of such statutes.

Webster has defined the word "lottery" as a scheme for the distribution of prizes by lot or chance. It is a scheme in which a small sum is ventured for the chance of obtaining a larger value either in money or in other articles. As appears from the definition the three essential elements of a lottery are: (1) A consideration; (2) a prize, and (3) a chance. It is to be noted that the courts have held that in order to constitute any game, scheme or plan a lottery the three elements herein mentioned must be present and if one is lacking, such as in your plan, the plan would not be a lottery.

It appears from your letter that no payment of any kind, either in money or in goods, will be required from the public as a consideration on the chance to win the house. Hence, your plan satisfies the requirements of the law.

NELS G. JOHNSON

Attorney General