

**OPINION
57-83**

January 7, 1957

CRIMES - GAMBLING - What Constitutes

I have your letter of January 2, 1957, with reference to certain advertising and the broadcasting thereof. You have outlined in your letter the nature of this advertising and you ask whether or not in our opinion, the method of the contemplated sale would constitute gambling.

I note that at three different times this company advertised a certain sales promotion stunt over television. The purchaser picks out a watch or other item of jewelry which he desires to purchase. The price is affixed and there has been no mark-up in price. The purchaser knows that he will be entitled to a discount of at least 20 percent off the price, the exact amount of the discount to be determined by a slip in a balloon which he punctures.

There are three elements involved in a gambling device or enterprise and all three elements must be present at any given time and place. The first is the element of chance; second, the element of consideration; and third, the element of reward.

It seems to me that all three are present in this proposition to which you make reference and which is being broadcast and televised. It is true that they pay down a certain fixed amount, the price of the article, but on the other hand they stand a chance of getting a substantial discount by puncturing the balloon. They pay not only for the article purchased but also for the possibility of being rewarded if they chance to get the right number. Of course, as you say, they know that at the outset they will at least get a 20 percent discount, but they have a chance of getting a 100 percent discount. This undoubtedly is their thinking when they make the purchase.

Therefore, it is the opinion of this office that this is a gambling enterprise and is contrary to the statutes of the state of North Dakota. We will respectfully ask that you do all you can to discourage this, and we are writing to the state's attorneys of Stutsman and Ward Counties asking them to do the same.