

Opinion No. 53-5870

December 15, 1953

BY: RICHARD H. ROBINSON, Attorney General

TO: Honorable Paul Tackett District Attorney Second Judicial District Albuquerque, New Mexico

{*299} On December 9 you addressed an inquiry to this office concerning whether or not a builder may conduct a contest and award an automobile as the prize to the winner of that contest under the following circumstances:

The contest is open to the first fifty persons who purchase a home constructed by the builder, and the prize awarded on the basis of an essay, house plan, landscaping plan, or some other bona fide contest of planning or skill. The question is whether or not this is in violation of § 14-2201 et seq., 1941 Comp.

The Supreme Court held in the case of **State v. Jones**, 44 N.M. 623, 107 P 2.d. 324, that the elements of consideration, prize and chance must be present to constitute a lottery. Under the facts of this case, the house, under F.H.A. regulation, cannot be sold for less than the sale price offered. Nothing of value is paid for the opportunity to engage in the contract. The cost of the house, whether the person enters the contest or not, would be the same.

The Utah Court had a similar question before it in the case of **D'Orio v. Startup Candy Company**, 256 P. 1037, where it was held that with the purchase of a candy bar, a person could be given a puzzle to solve and thereby gain a prize and it was not a lottery. We believe that this case is much more nearly a lottery under our statute than the case at hand.

Therefore, it is the opinion of this office that under the facts presented, a bona fide contest would not be considered a lottery and a prize given as the result of such a contest would not be a violation of the lottery laws of this State.

We sincerely hope that this answers your inquiry.

By: Fred M. Standley

Assist. Attorney General