

Opinion No. 60-77

April 20, 1960

BY: OPINION of HILTON A. DICKSON, JR., Attorney General

TO: Mr. W. R. Kegel District Attorney First Judicial District Santa Fe, New Mexico

QUESTION

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Is the attached "profit sharing card" a lottery and prohibited under our statutes?

CONCLUSION

Yes.

OPINION

{*437} ANALYSIS

This type of punch card scheme was presented to this office previously and found to be a lottery in Opinion of the Attorney General No. 60-5, dated January 15, 1960. The only manner in which the present scheme differs from the one then presented is that now the store contemplates giving each customer a list of questions and answers which he is asked to study and learn. When the seal is broken on the card, the store personnel ask one of these questions and supposedly if the customer fails to answer the question he does not receive the prize.

As was pointed out in the above cited opinion, there are three elements of a lottery (1) chance, (2) prize, (3) consideration. There can be little argument that the last two elements are clearly present in the contemplated scheme. The question turns on whether the element of chance has been removed and the element of skill included by the list of questions and answers. We are clearly of the opinion they are not. As we view the question, the addition of the questions and answers to the scheme **{*438}** is a sham to attempt a circumvention of the lottery statute. The fact that the questions and answers are given to the customer prior to the questioning and the type of questions involved -- e.g., who is the Vice-President of the United States -- leads us to this conclusion.

We are, therefore, of the opinion that the punch card scheme as now proposed is still prohibited by Section 40-22-13, N.M.S.A., 1953 Comp.

By: Boston E. Witt

Assistant Attorney General