

## Opinion No. 71-109

October 1, 1971

**BY:** OPINION OF DAVID L. NORVELL, Attorney General

**TO:** Mr. Alexander F. Sceresse District Attorney Second Judicial District Bernalillo County Courthouse Albuquerque, N.M.

### QUESTIONS

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May a Savings and Loan Association give every person who deposits a certain amount in a savings account a chance to win a four-day all-expense-paid trip at a drawing without violating the New Mexico gambling laws, Section 40A-19-1, N.M.S.A., 1953 Comp.?

#### CONCLUSION

Yes.

### OPINION

#### {\*164} ANALYSIS

Your question indicates that a Savings and Loan Association is going to give every person who deposits one hundred (\$ 100) dollars in a savings account a chance to win an all-expense paid trip on the basis of a future drawing. The depositor will receive the same interest as any other depositor and will not pay anything additional to win the trip.

Section 40A-19-1, N.M.S.A., 1953 Comp. was amended in 1965 by Chapter 37, Section 1 of the Laws of 1965. Under the old section "consideration" meant "anything which is a financial advantage to the promoter or a disadvantage to any participant . . ." The new section defines "consideration" as "anything of pecuniary value required to be paid to the promoter in order to participate in such enterprise . . ." As stated in Attorney General Opinion No. 65-196 dated October 14, 1965, the amendment to the lottery statute was intended to broaden the exclusions for certain types of operations which were not basically an attempt to hazard a sum for the hope of winning a larger sum. Ostensibly, the pecuniary value must be paid, over and above the payment for a legal activity, before the giving of a benefit at a legal activity is to be considered an illegal lottery. If one paid the normal going rate for the activity and a prize or prizes are given in conjunction with those legal activities, one has not paid the promoting entity anything of a pecuniary value in order to participate in the chance at a prize. See **State ex rel. Stafford v. Fox Great Falls Theater Corp.**, 114 Mont. 52, 132 P.2d 689 (1942);

**Dumas V. Todd**, 93 Ga. Atl. 540, 92 S.E.2d 265 (1956); **State v. Bussiere**, 154 A.2d 702 (Me. 1959).

The question in this case is whether or not the Savings and Loan Association is requiring something more than that which is normally paid in for a savings account in order to compete for the trip. In determining whether or not they are so doing, one must look to the substance of the scheme as well as the form. The substance of paying something of pecuniary value in order to participate in the enterprise is that the small sum is hazarded in the hope of winning a larger sum. **City of Roswell v. Jones**, 41 N.M. 258, 67 P.2d 286 (1937) (though overturned by **State v. Jones**, 44 N.M. 623, 107 P. 2d 324 (1940), this case is controlling as far as its discussion of state control of lotteries is concerned).

Obviously, no additional payment is being made by those depositing one hundred (\$ 100) dollars in the savings account to win the trip. Nothing of a pecuniary value is being paid to the promoter in order to participate in such enterprise. The usual interest rate is being paid and identical services are being performed. Nothing is being hazarded to win the prize.

By: Jay F. Rosenthal

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