

Opinion No. 33-599

May 13, 1933

BY: E. K. NEUMANN, Attorney General

TO: Mr. J. H. Toulouse, Co-operative Thrift, Inc., Albuquerque, New Mexico.

{*50} Your letter of May 10th enclosing advertising matter descriptive of "Co-operative Thrift Plan" of issuing "savings stamps," has been received.

You also describe your plan in said letter, and desire an expression of opinion as to whether your operations are within the provisions of House Bill 190, which is the act regulating furnishing of bonuses or premiums on sales of merchandise and requiring licenses under certain conditions for the furnishing of trading stamps.

Section 1 of said act reads as follows:

"Section 1. Every person, firm or corporation who shall furnish to any other person, firm or corporation to use within the state in, with, or about the sale of any goods, wares or merchandise, or the rendering of any service; any stamps, coupons, tickets, certificates or cards, commonly called "trading stamps" or "profit sharing stamps"; or other similar device; which shall entitle the person receiving the same to receive or **procure other goods, wares or merchandise, or other thing of value then uncertain, undetermined or unknown**, in the nature of, or by the way of, gratuities or premiums upon the production or surrender of some number, amount or face value of said stamps, coupons, tickets, certificates, cards or other similar device, so applied and furnished to them with or in connection with, such sales or services; shall, before furnishing, selling or using the same, obtain a license from the County Clerk of each county wherein such furnishing or selling, or using shall take place, and an additional license for every additional store or place of business in that county owned or conducted by such person, firm or corporation using the same; or in which such use shall take place.

PROVIDED: That this Act shall not apply to using or furnishing coupons, tickets, certificates, cards or similar devices contained in, or attached to, the original package of said goods, wares or merchandise by the {*51} manufacturer, jobber, distributor, or packer thereof, and directly redeemable by the manufacturer, jobber, distributor, packer or retailer of such goods, wares, or merchandise; and PROVIDED FURTHER: That this Act shall apply to rebates or discounts given or allowed directly by any person, firm or corporation to their own patrons, or customers, or employees."

Under the above provision the "trading stamp" must be one which entitles the person receiving it to procure a gratuity or premium of then uncertain, undetermined or unknown value.

It is noted that under your plan the stamps have a determined, certain and known value, and that same are redeemable by a certain bank in cash and at such full face value.

We believe, therefore, that your plan is outside the scope of the Act and that no license is required of you thereunder.

By: FRANK H. PATTON,

Asst. Attorney General