OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable Robert F. Peden, Jr.
County Attorney
Matagorda County
Bay City, Texas

Dear Sir:

Opinion No. O-1200
Re: Is the Aces Quiz Night of Franklin Theatre a lottery?

Your request for an opinion upon the above stated question has been received by this Department.

We quote from the newspaper article you sent us as follows:

"Something new and entirely different in the way of good, clean fun and entertainment is in store for theatre-goers, and will be inaugurated on Thursday night, August 3, when the Franklin Theatre introduces the 'Aces Up' Quiz Night. Quiz Nights will be held on Thursday nights of each week, thereafter. Fourteen Bay City merchants have indicated that they will co-operate in the program and each will hand out certificates, which will be exchanged at Thursday Matinees or at the Thursday night performances, for Quiz Coupons. A certificate good for a Quiz Coupon also will be presented at the box office with each theatre ticket. . .

"If any phase of the Aces Up Quiz Night program is not clear, customers are invited to ask the above merchants or Franklin Theatre employes to explain the points that are not understood.

"On Quiz Nights, a number of cash awards and merchandise awards will be presented. The Quiz questions will provide any amount of entertainment for the audience. . . . Manager of

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the Franklin, has been designated to act as master-of-ceremonies on the Quiz Nights, playing the role of Professor Ace.

"Aces Quiz Coupons, presented to customers without charge in exchange for certificates which they receive from participating merchants and from the Franklin box office, are perforated at the top, making it easy to tear them open. When the flap is turned down, a Quiz question and five facsimiles of playing cards will be seen. Customers are cautioned to look closely at the center card, which will indicate if the holder is entitled to a cash award. If you do not have a cash question, look for a valuable merchandise award. If you do not have either, do not throw away your Quiz Coupons, as they are the means of securing 3 pairs of beautiful Vanette hose. In a folder, which will be presented at the Franklin, will be found 52 spaces. Simply clip out the cards from the Quiz Coupons for pasting in the folder, and when the 52 spaces have been correctly filled in, bring it to the Franklin at any time and receive your hose.

"Professor Ace will require patrons holding Coupons indicating awards to correctly answer questions in order to receive their awards. The Quiz angle is to provide fun and entertainment, solely. Later a program will probably be worked out whereby town people will be invited to send in questions. Watch the Herald next week for further details regarding Aces Up Quiz Night."

On July 31, 1939, in accordance with your request we sent you copies of opinions Nos. O-428 and O-967 of this Department.

Section 47, Article 3 of the State Constitution of Texas, reads as follows:

"The Legislature shall pass laws prohibiting the establishment of lotteries and gift enterprises in this State, as well as the sale of tickets in lotteries, gift enterprises or other evasions involving the lottery principle, established or existing in other states."

Article 654 of the Penal Code of Texas reads as follows:

> "If any person shall establish a lottery or dispose of any estate, real or personal, by lottery, he shall be fined not less than one hundred nor more than one thousand dollars; or if any person shall sell, offer for sale or keep for sale any ticket or part ticket in any lottery, he shall be fined not less than ten nor more than fifty dollars."

The case of Webb & Rowley, et al v. State, 127 S. W. (2d) 221, cited by you in your brief holds that the operation of "Buck" night in theater, whereby three tickets bearing registrants' names were drawn and placed on three negro boys who engaged in eating or drinking contest, and personswhose name was written on winner's ticket was given prize if present or if he had bought tickets during the day, was based on sufficient consideration to be a "lottery".

The case of Smith v. State, 127 S. W. (2d), page 297, cited by you in your brief holds that where accused received a fee from merchants and dealers who paid him a license fee and joined "Noah's Ark" organization, under which dealers were authorized to issue cards upon which stamps were affixed by contestants for the purpose of entering contest in which sums of money were paid to holder of lucky card, payment of license fee was consideration moving indirectly from contestants and directly to accused which consideration, with elements of chance and awarding of prizes, made contest a "lottery" within prohibition of statute.

The case of Featherstone v. Independent Service Station Association, 10 S. W. (2d) 124, cited by you in your brief, defines a lottery as follows:

> "A lottery for all practical purposes may be defined as any scheme for the distribution of prizes, by lot or chance, where one on paying money or giving other things of value to another obtains a token which entitles him to receive a larger or smaller value or nothing, as some formula or chance may determine."

You are respectfully advised that it is the opinion of this Department that under the authorities cited above, the "Aces Quiz Night" scheme or plan, is a "Lottery" and in violation of Article 654, Penal Code of Texas.

Trusting that this satisfactorily answers your inquiry, we are

Very truly yours

ATTORNEY GENERAL OF TEXAS

By Wm. J. Fanning

Wm. J. Fanning
Assistant

WJF:LM

APPROVED
OPINION
COMMITTEE
BY RWF
CHAIRMAN

APPROVED AUG 12, 1939

Gerald C. Mann

ATTORNEY GENERAL OF TEXAS