



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**JOHN BEN SHEPPERD
ATTORNEY GENERAL**

June 8, 1953

Hon. Darwin L. Wilder
County Attorney
Denton County
Denton, Texas

Opinion No. S-49

Re: Legality under Article
654 V.P.C. of the giving
of a valuable prize by
means of a drawing for
which anyone is eligible
to register in the donor's
store at no cost, partici-
pants not being required
to be present at drawing.

Dear Mr. Wilder:

You have requested our opinion as to the legality under Article 654 of Vernon's Penal Code of a plan described by you as follows:

"Facts: The local Safeway Stores advertise that they would give away, free, at a drawing, a 'Nelly-Belle' jeep. This was a promotion scheme to increase the sale of Post cereals. Safeway sells Post Cereals and as a result of the advertising of the give away drawing, their sales were increased thereby. To be eligible for the drawing, patrons of the store was requested to enter building and register. There was nothing to buy - anyone could register. The winner did not have to be present at drawing to win."

This office considered a similar plan not to be in violation of such Article in Opinion No. V-167, dated April 28, 1947, a copy of which is attached hereto. That opinion was approved on page 4 of Opinion No. V-1564, dated December 23, 1952, a copy of which also is attached hereto.

The Court of Criminal Appeals has recently held that another similar plan does not violate such article. In Brice v. State, 242 S.W.2d 433, 435 (Tex. Crim. 1951), the Court said:

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"Under the authorities mentioned, we must conclude that in the absence of any character of favoritism shown to customers, the lottery statute, Art. 654, P.C., is not violated under a plan whereby a merchant awards a prize or prizes by chance to a registrant, without requiring any registrant to be a customer or to purchase merchandise or to do other than register without charge at the store, though the donor may receive a benefit from the drawing in the way of advertising."

It is the opinion of this office that the plan submitted by you, as outlined above, does not violate Article 654 V.P.C.

SUMMARY

The giving of a valuable prize by means of a drawing for which anyone is eligible to register in the donor's store at no cost, no favoritism being shown, and participants not being required to be present at the drawing, does not constitute a lottery in violation of Article 654 V.P.C.

APPROVED:

V. F. Taylor
State Affairs Division

Willis E. Gresham
Reviewer

Burnell Waldrep
Reviewer

Robert S. Trotti
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JA/rt
Encls.

Yours very truly,

JOHN BEN SHEPPERD
Attorney General

By *John Atchison*
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