



# THE ATTORNEY GENERAL OF TEXAS

Gerald C. Mann

~~JOSEPH H. SHEPPERD~~  
ATTORNEY GENERAL

AUSTIN 11, TEXAS

Hon. Gean B. Turner  
District Attorney  
Johnson County  
Cleburne, Texas

Opinion No. 0-2843  
Re: Whether or not advertising scheme  
("Appreciation Day") of merchants of  
Cleburne constitutes a lotter.

Dear Sir:

This will acknowledge receipt of your letter of October 22, 1940, requesting the opinion of this department as to whether or not the following scheme constitutes a lottery in violation of Article 654 of the Penal Code:

"The merchants of Cleburne want official ruling regarding a trades day plan called 'Appreciation Day'. The plan operates by merchants who pay to a common fund called Appreciation Day. These merchants give coupons called 'Treasure Chest' coupons, which coupons contain markings from 5 to 50%. After purchases are made in these participating firms the customer is given a coupon which is punched from any denomination from the 5 to 50%. The custom to be generally followed that a customer who purchases from 25¢ to 99¢ in a participating store is given a 5% punched coupon; a purchase of \$1.00 to \$1.99, a 10% coupon; a purchase of \$2.00 to \$2.99, a 20% coupon; a \$3.00 to \$3.99, a 30% coupon; a \$4.00 to \$4.99, a 40% coupon, and a purchase of \$5.00 to \$10.00, a 50% coupon.

"The customer then signs his or her name and address on the back of the coupon, drops it in a box. On 'Drawing' day the tickets or coupons are placed in a general container from which is drawn a winning ticket. The persons whose name is drawn is awarded the 5, 10, 20, 30, 40 and 50% of the trades day fund money depending on the percentage of the coupon which is drawn.

"A wife may answer for her husband and a husband may answer for his wife.

"If neither of these people are present, another ticket or coupon is drawn until someone is actually awarded some part of the 'Appreciation Day Money'.

"Though it is the general practice that tickets or coupons be given after each purchase or payment on account, a

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person may request a 'free' coupon of the merchant if he does not have a coupon to participate in the drawing.

"The purpose of the plan is to create interest in the home community by the merchants giving away of such prizes. Customers who are loyal to Cleburne are given these coupons after they have traded with local participating merchants. No consideration of value is placed on these tickets.

"A folder explaining the plan, together with a sample of ticket, is included herein for examination. The merchants would appreciate an immediate ruling on the legality of this Appreciation Day plan."

This department has on numerous occasions passed on the question of whether or not various mercantile advertising schemes constitute a lottery, and without exception has so branded them when the elements of chance, prize and consideration have been found to be present.

We are enclosing copies of three opinions previously rendered by this department (0-1174, 0-2286, 0-2563) which we believe to be directly in point.

For the reasons set forth in Opinions Nos. 0-1174, 0-2286 and 0-2563, and under the authorities there cited, it is our opinion and you are respectfully advised that the mercantile advertising scheme described in your letter, "Appreciation Day", constitutes a lottery as is condemned by Article 654 of the Penal Code of Texas.

Very truly yours,

ATTORNEY GENERAL OF TEXAS

By /s/ Jas. D. Smullen  
Jas. D. Smullen, Assistant

APPROVED OCT 28, 1940  
/s/ Gerald C. Mann  
ATTORNEY GENERAL OF TEXAS

APPROVED: OPINION COMMITTEE  
BY: BWB, CHAIRMAN

JDS:db:wb

Enclosures