

the statute "is not open to construction or interpretation. . . . Such a statute is clear in its meaning and no one need look beyond the literal dictates of the words and phrases used for the true intent and purpose in its creation." *Watt v. Mayor & Council of Borough of Franklin, supra*, 21 N.J. at 277.

Very truly yours,

DAVID D. FURMAN
Attorney General

DECEMBER 12, 1961

HONORABLE CLYDE C. JEFFERSON
Prosecutor, Hunterdon County
Court House
Flemington, New Jersey

MEMORANDUM OPINION—P-34

DEAR PROSECUTOR:

You have asked for a further clarification of the recent supplement to the Lottery Law (Chapter 39, L. 1961; N.J.S. 2A:121-1 *et seq.*). Formal Opinion 1961—No. 17 rules that box top contests and contests open to patrons of a theater or store are not exempted from the lottery law by the 1961 enactment but that contests open to all members of the public through general distribution of entry blanks may be legal under circumstances specified in the formal opinion.

As you realize, the State Constitution prohibits gambling unless approved by a majority of the voters at a referendum. The construction of Chapter 39, L. 1961 must be such as to render it constitutional if possible, in accordance with a settled principle of statutory construction. The conclusion of Formal Opinion 1961—No. 17, therefore, is that Chapter 39, L. 1961 exempts from the lottery law only giveaway contests without consideration or actual inconvenience. Such giveaway contests constituted statutory offenses and not common law gambling offenses. See *Lucky Calendar v. Cohen*, 19 N.J. 399, 412 (1955).

The particular facts you inquire about are the following. A contest is open to all members of the public through a general distribution of entry blanks. The contestant need not be present at the drawing to win but he must deposit his entry in a "jackpot box" which is in the store.

It is obvious that the requirement of depositing an entry blank in the store constitutes an actual inconvenience to the contestant. Although unnecessary for this opinion, such requirement may in addition be construed to constitute consideration in view of the benefit derived by the merchant from attendance at his store. Extra trade is foreseeable when a participant is brought to the store and exposed there to the display of merchandise and notices of bargains and other advertising appeals. Cf. *Lucky Calendar v. Cohen, supra*, at p. 416; cases cited in Formal Opinion 1961, No. 17.

I advise you, therefore, that the contest described in your opinion request is illegal as a violation of the Lottery Law, N.J.S. 2A:121-1 *et seq.*

Very truly yours,

DAVID D. FURMAN
Attorney General