

CALTEX (PHILIPPINES) INC., PETITIONER AND APPELLEE, VS. ENRICO PALOMAR, IN HIS CAPACITY AS THE POSTMASTER GENERAL, RESPONDENT AND APPELLANT.

G.R. No. 19650. September 29, 1966

Ponente: RUIZ CASTRO, J.

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RUIZ CASTRO, J.:

In the year 1960 the Caltex (Philippines) Inc. (hereinafter referred to as Caltex) conceived and laid the ground-work for a promotional scheme calculated to drum up patronage for its oil products. Denominated "Caltex Hooded Pump Contest", it calls for participants therein to estimate the actual number of liters a hooded gas pump at each Caltex station will dispense during a specified period. Employees of the Caltex (Philippines) Inc., its dealers and its advertising agency, and their immediate families excepted, participation is to be open indiscriminately to all "motor vehicle owners and/or licensed drivers". For the privilege to participate, no fee or consideration is required to be paid, no purchase of Caltex products required to be made. Entry forms are to be made available upon request at each Caltex station where a sealed can will be provided for the deposit of accomplished entry stubs.

A three-staged winner selection system is envisioned. At the station level, called "Dealer Contest", the contestant whose estimate is closest to the actual number of liters dispensed by the hooded pump thereat is to be awarded the first prize; the next closest, the second; and the next, the third. Prizes at this level consist of a 3-burner kerosene stove for first; a thermos bottle and a Ray-O-Vac hunter lantern for second; and an Everready Magnet-lite flashlight with batteries and a screwdriver set for third. The first-prize winner in each station will then be qualified to join in the "Regional Contest" in seven different regions. The winning stubs of the qualified contestants in each region will be deposited in a sealed can from which the first-prize, second-prize and third-prize winners of that region will be drawn. The regional first-prize winners will be entitled to make a three-day all-expenses-paid round trip to Manila, accompanied by their respective Caltex dealers, in order to take part in the "National Contest". The regional second-prize and third-prize winners will receive cash prizes of P500 and P300, respectively. At the national level, the stubs of the seven regional first-prize winners will be placed inside a sealed can from which the drawing for the final first-prize, second-prize and third-prize winners will be made. Cash prizes in store for winners at this final stage are: P3,000 for first; P2,000 for second; P1,500 for third; and P650 as consolation prize for each of the remaining four participants.

Foreseeing the extensive use of the mails not only as amongst the media for publicizing the contest but also for the transmission of communications relative thereto, representations were made by Caltex with the postal authorities for the contest to be cleared in advance for mailing, having in view sections 1954(a), 1982 and 1983 of the Revised Administrative Code, the pertinent provisions of which read as follows:

"SECTION 1954. Absolutely non-mailable matter. - No matter belonging to any of the following classes, whether sealed as first-class matter or not, shall be imported into the Philippines through the mails, or be deposited in or carried by the mails of the Philippines, or be delivered to its addressee by any officer or

employee of the Bureau of Posts;

(a) Written or printed matter in any form advertising, describing, or in any manner pertaining to, or conveying or purporting to convey any information concerning any lottery, gift enterprise, or similar scheme depending in whole or in part upon lot or chance, or any scheme, device, or enterprise for obtaining any money or property of any kind by means of false or fraudulent pretenses, representations, or promises."

"SECTION 1982. Fraud orders. - Upon satisfactory evidence that any person or company is engaged in conducting any lottery, gift enterprise, or scheme for the distribution of money, or of any real or personal property by lot, chance, or drawing of any kind, or that any person or company is conducting any scheme, device, or enterprise for obtaining money or property of any kind through the mails by means of false or fraudulent pretenses, representations, or promises, the Director of Posts may instruct any postmaster or other officer or employee of the Bureau to return to the person, depositing same in the mails, with the word 'fraudulent' plainly written or stamped upon the outside cover thereof, any mail matter of whatever class mailed by or addressed to such person or company or the representative or agent of such person or company."

"SECTION 1983. Deprivation of use of money order system and telegraphic transfer service. - The Director of Posts may, upon evidence satisfactory to him that any person or company is engaged in conducting any lottery, gift enterprise, or scheme for the distribution of money, or of any real or personal property by lot, chance, or drawing of any kind, or that any person or company is conducting any scheme, device, or enterprise for obtaining money or property of any kind through the mails by means of false or fraudulent pretenses, representations, or promise, forbid the issue or payment by any postmaster of any postal money order or telegraphic transfer to said person or company or to the agent of any such person or company, whether such agent is acting as an individual or as a firm, bank, corporation, or association of any kind, and may provide by regulation for the return to the remitters of the sums named in money orders or telegraphic transfers drawn in favor of such person or company or its agent."

The overtures were later formalized in a letter to the Postmaster General, dated October 31, 1960, in which the Caltex, thru counsel, enclosed a copy of the contest rules and endeavored to justify its position that the contest does not violate the anti-lottery provisions of the Postal Law. Unimpressed, the then Acting Postmaster General opined that the scheme falls within the purview of the provisions aforesaid and declined to grant the requested clearance. In its counsel's letter of December 7, 1960, Caltex sought a reconsideration of the foregoing stand, stressing that there being involved no consideration on the part of any contestant, the contest was not, under controlling authorities, condemnable as a lottery. Relying, however, on an opinion rendered by the Secretary of Justice on an unrelated case seven years before (Opinion 217, Series of 1953), the Postmaster General maintained his view that the contest involves consideration, or that, if it does not, it is nevertheless a "gift enterprise" which is equally banned by the Postal Law, and in his letter of December 10, 1960 not only denied the use of the mails for purposes of the proposed contest but as well threatened that if the contest was conducted, "a fraud order will have to be issued against it (Caltex) and all its representatives".

Caltex thereupon invoked judicial intervention by filing the present petition for declaratory relief against Postmaster General Enrico Palomar, praying "that judgment be rendered declaring its 'Caltex Hooded Pump Contest' not to be violative of the Postal Law, and ordering respondent to allow petitioner the use of the mails to bring the contest to the attention of the public". After issues were joined and upon the respective memoranda of the parties, the trial court rendered judgment as follows:

"In view of the foregoing considerations, the Court holds that the proposed 'Caltex Hooded Pump Contest' announced to be conducted by the petitioner under the rules marked as Annex B of the petition do not violate the Postal Law and the respondent has no right to bar the public distribution of said rules by the mails."

The respondent appealed.

The parties are now before us, arrayed against each other upon two basic issues: first, whether the petition states a sufficient cause of action for declaratory relief; and, second, whether the proposed "Caltex Hooded Pump Contest" violates the Postal Law. We shall take these up in seriatim.

1. By express mandate of section 1 of Rule 66 of the old Rules of Court, which was the applicable legal basis for the remedy at the time it was invoked, declaratory relief is available to any person "whose rights are affected by a statute * * * to determine any question of construction or validity arising under the * * * statute and for a declaration of his rights or duties thereunder" (now section 1, Rule 64, Revised Rules of Court). In amplification, this Court, conformably to established jurisprudence on the matter, laid down certain conditions sine qua non therefor, to wit: (1) there must be a justiciable controversy; (2) the controversy must be between persons whose interests are adverse; (3) the party seeking declaratory relief must have a legal interest in the controversy; and (4) the issue involved must be ripe for judicial determination (*Tolentino vs. The Board of Accountancy, et al.*, G.R. No. L-3062, September 28, 1951; *Delumen, et al. vs. Republic of the Philippines*, 50 O.G., No. 2, pp. 578, 578-579; *Edades vs. Edades, et al.*, G.R. No. L-8964, July 31, 1956). The gravamen of the appellant's stand being that the petition herein states no sufficient cause of action for declaratory relief, our duty is to assay the factual bases thereof upon the foregoing crucible.

As we look in retrospect at the incidents that generated the present controversy, a number of significant points stand out in bold relief. The appellee (Caltex) as a business enterprise of some consequence, concededly has the unquestioned right to exploit every legitimate means, and to avail of all appropriate media to advertise and stimulate increased patronage for its products, in contrast, the appellant, as the authority charged with the enforcement of the Postal Law, admittedly has the power and the duty to suppress transgressions thereof - particularly thru the issuance of fraud orders, under sections 1982 and 1983 of the Revised Administrative Code, against legally non-mailable schemes. Obviously pursuing its right aforesaid, the appellee laid out plans for the sales promotion scheme hereinbefore detailed. To forestall possible difficulties in the dissemination of information thereon thru the mails, amongst other media, it was found expedient to request the appellant for an advance clearance therefor. However, likewise by virtue of his jurisdiction in the premises and construing the pertinent provisions of the Postal Law, the appellant saw a violation thereof in the proposed scheme and accordingly declined the request. A point of difference as to the correct construction to be given to the applicable statute was thus reached. Communications in which the parties expounded on their respective theories were exchanged. The confidence with which the appellee insisted upon its position was matched only by the obstinacy with which the appellant stood his ground. And this impasse was climaxed by the appellant's open warning to the appellee that if the proposed contest was "conducted, a fraud order will have to be issued against it and all its representatives".

Against this backdrop, the stage was indeed set for the remedy prayed for. The appellee's insistent assertion of its claim to the use of the mails for its proposed contest, and the challenge thereto and consequent denial by the appellant of the privilege demanded, undoubtedly spawned a live controversy. The justiciability of the dispute cannot be gainsaid. There is an active antagonistic assertion of a legal right on one side and a denial thereof on the other, concerning a real - not a mere theoretical - question or issue. The contenders are as real as their interests are substantial. To the appellee, the uncertainty occasioned by the divergence of views on the issue of construction hampers or disturbs its freedom to enhance its business. To the appellant, the suppression of the appellee's proposed contest believed to transgress a law he has sworn to uphold and enforce is an unavoidable duty. With the appellee's bent to hold the contest and the appellant's threat to issue a fraud order therefor if carried out, the contenders are confronted by the ominous shadow of an imminent and inevitable litigation unless their differences are settled and stabilized by a tranquilizing declaration (*Pablo y Sen, et al. vs. Republic of the Philippines*, G.R. No. L-6868, April 30, 1955). And, contrary to the insinuation of the appellant, the time is long past when it can

rightly be said that merely the appellee's "desires are thwarted by its own doubts, or by the fears of others" - which admittedly does not confer a cause of action. Doubt, if any there was, has ripened into a justiciable controversy when, as in the case at bar, it was translated into a positive claim of right which is actually contested (III Moran, Comments on the Rules of Court, 1963 ed., pp. 132-133, citing: Woodward vs. Fox West Coast Theaters, 36 Ariz., 251, 284 Pac. 350).

We cannot hospitably entertain the appellant's pretense that there is here no question of construction because the said appellant "simply applied the clear provisions of the law to a given set of facts as embodied in the rules of the contest", hence, there is no room for declaratory relief. The infirmity of this pose lies in the fact that it proceeds from the assumption that, in the circumstances here presented, the construction of the legal provisions can be divorced from the matter of their application to the appellee's contest. This is not feasible. Construction, verily, is the art or process of discovering and expounding the meaning and intention of the authors of the law with respect to its application to a given case, where that intention is rendered doubtful, amongst others, by reason of the fact that the given case is not explicitly provided for in the law (Black, Interpretation of Laws, p. 1). This is precisely the case here. Whether or not the scheme proposed by the appellee is within the coverage of the prohibitive provisions of the Postal Law inescapably requires an inquiry into the intended meaning of the words used therein. To our mind, this is as much a question of construction or interpretation as any other.

Nor is it accurate to say, as the appellant intimates, that a pronouncement on the matter at hand can amount to nothing more than an advisory opinion the handing down of which is anathema to a declaratory relief action. Of course, no breach of the Postal Law has as yet been committed. Yet, the disagreement over the construction thereof is no longer nebulous or contingent. It has taken a fixed and final shape, presenting clearly defined legal issues susceptible of immediate resolution. With the battle lines drawn, in a manner of speaking, the propriety - nay, the necessity - of setting the dispute at rest before it accumulates the asperity, distemper, animosity, passion and violence of a full-blown battle which looms ahead (III Moran, Comments on the Rules of Court, 1963 ed., p. 132 and cases cited), cannot but be conceded. Paraphrasing the language to Zeitlin vs. Arnebergh, 59 Cal., 2d., 901, 31 Cal. Rptr., 800, 383 P. 2d., 152, cited in 22 Am. Jur., 2d., p. 869, to deny declaratory relief to the appellee in the situation into which it has been cast, would be to force it to choose between undesirable alternatives. If it cannot obtain a final and definitive pronouncement as to whether the anti-lottery provisions of the Postal Law apply to its proposed contest, it would be faced with these choices: If it launches the contest and uses the mails for purposes thereof, it not only incurs the risk, but is also actually threatened with the certain imposition, of a fraud order with its concomitant stigma which may attach even if the appellee will eventually be vindicated; if it abandons the contest, it becomes a self-appointed censor, or permits the appellant to put into effect a virtual fiat of previous censorship which is constitutionally unwarranted. As we weigh these considerations in one equation and in the spirit of liberality with which the Rules of Court are to be interpreted in order to promote their object (section 1, Rule 1, Revised Rules of Court) - which, in the instant case, is to settle, and afford relief from uncertainty and insecurity with respect to, rights and duties under a law - we cannot see in the present case any imposition upon our jurisdiction or any futility or prematurity in our intervention.

The appellant, we apprehend, underrates the force and binding effect of the ruling we hand down in this case if he believes that it will not have the final and pacifying function that a declaratory judgment is calculated to subserve. At the very least, the appellant will be bound. But more than this, he obviously overlooks that in this jurisdiction, "Judicial decisions applying or interpreting the law * * * shall form a part of the legal system" (article 8, Civil Code of the Philippines). In effect, judicial decisions assume the same authority as the statute itself and, until authoritatively abandoned, necessarily become, to the extent that they are applicable, the criteria which must control the actuations not only of those called upon to abide thereby but also of those in duty bound to enforce obedience thereto. Accordingly, we entertain no misgivings that our resolution of this case will terminate the

controversy at hand.

It is not amiss to point out at this juncture that the conclusion we have herein just reached is not without precedent. In *Liberty Calendar Co. vs. Cohen*, 19 N.J., 399, 117 A. 2d., 487, where a corporation engaged in promotional advertising was advised by the county prosecutor that its proposed sales promotion plan had the characteristics of a lottery, and that if such sales promotion were conducted, the corporation would be subject to criminal prosecution, it was held that the corporation was entitled to maintain a declaratory relief action against the county prosecutor to determine the legality of its sales promotion plan. In *pari materia*, see also: *Bunis vs. Conway*, 17 App. Div. 2d., 207, 234 N.Y.S. 2d., 435; *Zeitlin vs. Arnebergh*, *supra*.; *Thrillo, Inc. vs. Scott*, 15 N.J. Super. 124, 82 A. 2d., 903.

In fine, we hold that the appellee has made out a case for declaratory relief.

2. The Postal Law, chapter 52 of the Revised Administrative Code, using almost identical terminology in sections 1954(a), 1982 and 1983 thereof, *supra*, condemns as absolutely non-mailable, and empowers the Postmaster General to issue fraud orders against, or otherwise deny the use of the facilities of the postal service to, any information concerning "any lottery, gift enterprise, or scheme for the distribution of money, or of any real or personal property by lot, chance, or drawing of any kind". Upon these words hinges the resolution of the second issue posed in this appeal.

Happily this is not an altogether untrodden judicial path. As early as in 1922, in *"El Debate", Inc. vs. Topacio*, 44 Phil., 278, 283-284, which significantly dwelt on the power of the postal authorities under the above-mentioned provisions of the Postal Law, this Court declared that -

"* * * while countless definitions of lottery have been attempted, the authoritative one for this jurisdiction is that of the United States Supreme Court, in analogous cases having to do with the power of the United States Postmaster General, viz.: The term 'lottery' extends to all schemes for the distribution of prizes by chance, such as policy playing, gift exhibitions, prize concerts, raffles at fairs, etc., and various forms of gambling. The three essential elements of a lottery are: First, consideration; second, prize; and third, chance. (*Horner vs. United States* [1892], 147 U.S. 449; *Public Clearing House vs. Coyne* [1903], 194 U.S., 497; *U.S. vs. Filart and Singson* [1915], 30 Phil., 80; *U.S. vs. Olsen and Marker* [1917], 36 Phil., 395; *U.S. vs. Baguio* [1919], 39 Phil., 962; *Valhalla Hotel Construction Company vs. Carmona*, p. 233, *ante*.)"

Unanimity there is in all quarters, and we agree, that the elements of prize and chance are too obvious in the disputed scheme to be the subject of contention. Consequently, as the appellant himself concedes, the field of inquiry is narrowed down to the existence of the element of consideration therein. Respecting this matter, our task is considerably lightened inasmuch as in the same case just cited, this Court has laid down a definitive yardstick in the following terms -

"In respect to the last element of consideration, the law does not condemn the gratuitous distribution of property by chance, if no consideration is derived directly or indirectly from the party receiving the chance, but does condemn as criminal schemes in which a valuable consideration of some kind is paid directly or indirectly for the chance to draw a prize."

Reverting to the rules of the proposed contest, we are struck by the clarity of the language in which the invitation to participate therein is couched. Thus -

"No puzzles, no rhymes? You don't need wrappers, labels or boxtops? You don't have to buy anything? Simply estimate the actual number of liters the Caltex gas pump with the hood at your favorite Caltex dealer will dispense from ___ to ___, and win valuable prizes x x x."

Nowhere in the said rules is any requirement that any fee be paid, any merchandise be bought, any service be

rendered, or any value whatsoever be given for the privilege to participate. A prospective contestant has but to go to a Caltex station, request for the entry form which is available on demand, and accomplish and submit the same for the drawing of the winner. Viewed from all angles or turned inside out, the contest fails to exhibit any discernible consideration which would brand it as a lottery. Indeed, even as we heed the stern injunction, "look beyond the fair exterior, to the substance, in order to unmask the real element and pernicious tendencies which the law is seeking to prevent" ("El Debate", Inc. vs. Topacio, supra, p. 291), we find none. In our appraisal, the scheme does not only appear to be, but actually is, a gratuitous distribution of property by chance.

There is no point to the appellant's insistence that non-Caltex customers who may buy Caltex products simply to win a prize would actually be indirectly paying a consideration for the privilege to join the contest. Perhaps this would be tenable if the purchase of any Caltex product or the use of any Caltex service were a pre-requisite to participation. But it is not. A contestant, it hardly needs reiterating, does not have to buy anything or to give anything of value.

Off-tangent, too, is the suggestion that the scheme, being admittedly for sales promotion, would naturally benefit the sponsor in the way of increased patronage by those who will be encouraged to prefer Caltex products "if only to get the chance to draw a prize by securing entry blanks". The required element of consideration does not consist of the benefit derived by the proponent of the contest. The true test, as laid down in *People vs. Cardas*, 28 P. 2d., 99, 137 Cal. App. (Supp.) 788, is whether the participant pays a valuable consideration for the chance, and not whether those conducting the enterprise receive something of value in return for the distribution of the prize. Perspective properly oriented, the standpoint of the contestant is all that matters, not that of the sponsor. The following, culled from *Corpus Juris Secundum*, should set the matter at rest:

"The fact that the holder of the drawing expects thereby to receive, or in fact does receive, some benefit in the way of patronage or otherwise, as a result of the drawing, does not supply the element of consideration. - *Griffith Amusement Co. v. Morgan*, Tex. Civ. App., 98 S.W. 2d., 844." (54 C.J.S., p. 849).

Thus enlightened, we join the trial court in declaring that the "Caltex Hooded Pump Contest" proposed by the appellee is not a lottery that may be administratively and adversely dealt with under the Postal Law.

But it may be asked: Is it not at least a "gift enterprise, or scheme for the distribution of money, or of any real or personal property by lot, chance, or drawing of any kind", which is equally proscribed? Incidentally, while the appellant's brief appears to have concentrated on the issue of consideration, this aspect of the case cannot be avoided if the remedy here invoked is to achieve its tranquilizing effect as an instrument of both curative and preventive justice. Recalling that the appellant's action was predicated, amongst other bases, upon Opinion 217, Series 1953, of the Secretary of Justice, which opined in effect that a scheme, though not a lottery for want of consideration, may nevertheless be a gift enterprise in which that element is not essential, the determination of whether or not the proposed contest - wanting in consideration as we have found it to be, is a prohibited gift enterprise, cannot be passed over sub silencio.

While an all-embracing concept of the term "gift enterprise" is yet to be spelled out in explicit words, there appears to be a consensus among lexicographers and standard authorities that the term is commonly applied to a sporting artifice under which goods are sold for their market value but by way of inducement each purchaser is given a chance to win a prize (54 C.J.S., 850; 34 Am. Jur., 654; Black, Law Dictionary, 4th ed., p. 817; Ballantine, Law Dictionary with Pronunciations, 2nd ed., p. 55; Retail Section of Chamber of Commerce of *Plattsouth vs. Kieck*, 257 N.W., 493, 128 Neb. 13; *Barker vs. State*, 193 S.E., 605, 56 Ga. App., 705; *Bell vs. State*, 37 Tenn. 507, 509, 5 Sneed, 507, 509). As thus conceived, the term clearly cannot embrace the scheme at bar. As already noted, there is no sale of anything to which the chance offered is attached as an inducement to the purchaser. The contest is open to all qualified contestants irrespective of whether or not they buy the appellee's

products.

Going a step farther, however, and assuming that the appellee's contest can be encompassed within the broadest sweep that the term "gift enterprise" is capable of being extended, we think that the appellant's pose will gain no added comfort. As stated in the opinion relied upon, rulings there are indeed holding that a gift enterprise involving an award by chance, even in default of the element of consideration necessary to constitute a lottery, is prohibited (E.g.: *Crimes vs. State*, 235 Ala. 192, 178 So. 73; *Russell vs. Equitable Loan & Sec. Co.*, 129 Ga., 154, 58 S.E., 88; *State ex. rel. Stafford vs. Fox-Great Falls Theater Corporation*, 132 P. 2d., 689, 694, 698, 114 Mont. 52). But this is only one side of the coin. Equally impressive authorities declare that, like a lottery, a gift enterprise comes within the prohibitive statutes only if it exhibits the tripartite elements of prize, chance and consideration (E.g.: *Bills vs. People*, 157 P. 2d., 139, 142, 113 Colo., 326; *D'Orio vs. Jacobs*, 275 P. 563, 565, 151 Wash., 297; *People vs. Psallis*, 12 N.Y.S., 2d., 796; *City and County of Denver vs. Frueauff*, 88 P., 389, 394, 39 Colo. 20, 7 L.R.A., N.S., 1131, 12 Ann. Cas., 521; 54 C.J.S., 851, citing: *Barker vs. State*, 193 S.E., 605, 607, 56 Ga. App., 705; 18 Words and Phrases, perm. ed., pp. 590-594). The apparent conflict of opinions is explained by the fact that the specific statutory provisions relied upon are not identical. In some cases, as pointed out in 54 C.J.S., 851, the terms "lottery" and "gift enterprise" are used interchangeably (*Bills vs. People*, supra); in others, the necessity for the element of consideration or chance has been specifically eliminated by statute (54 C.J.S., 351-352, citing *Barker vs. State*, supra; *State ex rel. Stafford vs. Fox-Great Falls Theater Corporation*, supra). The lesson that we derive from this state of the pertinent jurisprudence is, therefore, that every case must be resolved upon the particular phraseology of the applicable statutory provision.

Taking this cue, we note that in the Postal Law, the term in question is used in association with the word "lottery". With the meaning of lottery settled, and consonant to the well-known principle of legal hermeneutics *noscitur a sociis* - which Opinion 217 aforesaid also relied upon although only in so far as the element of chance is concerned - it is only logical that the term under construction should be accorded no other meaning than that which is consistent with the nature of the word associated therewith. Hence, if lottery is prohibited only if it involves a consideration, so also must the term "gift enterprise" be so construed. Significantly, there is not in the law the slightest indicium of any intent to eliminate that element of consideration from the "gift enterprise" therein included.

This conclusion firms up in the light of the mischief sought to be remedied by the law, resort to the determination thereof being an accepted extrinsic aid in statutory construction. Mail fraud orders, it is axiomatic, are designed to prevent the use of the mails as a medium for disseminating printed matters which on grounds of public policy are declared non-mailable. As applied to lotteries, gift enterprises and similar schemes, justification lies in the recognized necessity to suppress their tendency to inflame the gambling spirit and to corrupt public morals (*Com. vs. Lund*, 15 A. 2d., 839, 143 Pa. Super. 208). Since in gambling it is inherent that something of value be hazarded for a chance to gain a larger amount, it follows ineluctably that where no consideration is paid by the contestant to participate, the reason behind the law can hardly be said to obtain. If, as it has been held -

"Gratuitous distribution of property by lot or chance does not constitute 'lottery', if it is not resorted to as a device to evade the law and no consideration is derived, directly or indirectly, from the party receiving the chance, gambling spirit not being cultivated or stimulated thereby. *City of Roswell vs. Jones*, 67 P. 2d., 286, 41 N.M., 258." (25 Words and Phrases, perm. ed., p. 695, underscoring supplied),

we find no obstacle in saying the same respecting a gift enterprise. In the end, we are persuaded to hold that, under the prohibitive provisions of the Postal Law which we have heretofore examined, gift enterprises and similar schemes therein contemplated are condemnable only if, like lotteries, they involve the element of consideration. Finding none in the contest here in question, we rule that the appellee may not be denied the use of

the mails for purposes thereof.

Recapitulating, we hold that the petition herein states a sufficient cause of action for declaratory relief, and that the "Caltex Hooded Pump Contest" as described in the rules submitted by the appellee does not transgress the provisions of the Postal Law.

ACCORDINGLY, the judgment appealed from is affirmed. No costs.

Concepcion, C.J., Reyes, J.B.L., Barrera, Dizon, Regala, Makalintal, Bengzon, J.P., Zaldivar, and Sanchez, JJ., concur.

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