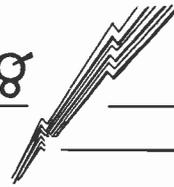


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Justice Dept. Clears Pot o' Gold Program

Also Gives Clean Bill of Health to Local Texas Series In Advising FCC Prosecution Would Be Inadvisable

THE FCC's crusade against prize contest programs as possible violations of the lottery statutes fizzled April 12 when the Department of Justice gave the NBC-Red *Pot o' Gold* program what amounted to a clean bill of health by declining to prosecute.

In a terse letter to FCC Chairman James Lawrence Fly, O. John Rogge, Assistant Attorney General in charge of the Criminal Division, advised after a thorough examination that both the *Pot o' Gold* and a "Mead's Bakery" program broadcast locally in Texas should not be prosecuted as possible violations of the lottery statutes. Whereas the *Pot o' Gold* program has held the headlines, the Mead's Bakery program was regarded as the more significant of the two, since it involved prize contest elements which appeared more flagrant than those in the *Pot o' Gold*.

In view of the Department's refusal to prosecute, it is expected that five other program citations, referred by the FCC March 29 [BROADCASTING, April 1] likewise will be returned without action. This cannot be stated with a certainty, however, since there is always the possibility of singling out some factor that might turn the legal tide.

The Department's Letter

Assistant Attorney General Rogge advised the FCC in a letter dated April 10 as follows:

"Reference is made to our letter of Feb. 21, 1940, acknowledging receipt of yours of Feb. 19, 1940, transmitting for such action as the Department may deem appropriate certain information concerning the broadcasting of the "Pot o' Gold" and "Mead's Bakery" programs, both of which are alleged to be in violation of Section 316 of the Communications Act of 1934.

"After a thorough examination of the material submitted and a careful consideration of the facts presented, the Department has concluded that prosecutive action under Section 316 of the Communications Act of 1934 in these two matters should not be instituted."

Neither Chairman Fly nor other members of the Commission commented on the action. Nevertheless, it is understood that several members of the Commission (Fly, Walker, Thompson and Payne) look askance upon prize contest programs. Because of the summary nature of the Department's ruling,

however, it is thought the FCC will be disposed to let the cases drop entirely.

To Change Format

Even before the Department's ruling became known, Lewis-Howe Co., St. Louis (Tums) and Stack-Goble Adv. Agency disclosed that the structure of the program will be entirely changed as of April 30. It was said the new program form is entirely acceptable to NBC, and therefore it was presumed it will not meet with disfavor from the majority of the stations carrying it. John Butler, vice-president of Stack-Goble, advised BROADCASTING April 12 that the format of the new program is still being discussed with the client. It was indicated the name *Pot o' Gold* will be retained, that the \$1,000 weekly prize will be kept and that the telephone technique also will be continued but probably with variations. The Horace Heidt orchestra also will be retained.

Mead's Bakery Case

The fact that the Department handled the Mead's Bakery program, over KBST, Big Spring, Tex., in the same fashion as the *Pot o' Gold*, despite the variation in prize technique, indicated such a conclusion with respect to the other program citations. The bread program involved the *Fine Bread Mystery Woman* who called at houses in the community to buy a loaf or part of a loaf of Mead's bread for \$5. The mystery woman's movements were described in the program. Housewives not having the loaf did not receive the prize. This technique differed from the *Pot o' Gold* in that it was thought there was more chance of "consideration" being involved, since the recipient of the award had to purchase a loaf of bread.

In the case of the *Pot o' Gold*, with its \$1,000 award or \$100 absentee prize, the winner is not required to purchase anything or

even listen to the program. The award is forthcoming if the particular telephone selected is answered, which entitles the telephone subscriber to the big prize. If the phone is unanswered, the telephone subscriber still gets \$100.

On April 2 NBC Vice-President William S. Hedges sent to all Red Network stations a notice that the agency planned to change the structure of the *Pot o' Gold* program effective April 30. It was indicated the sponsor proposed to break the news in an announcement over the air—probably on the April 23 program if it could be arranged by that date.

Carefully Considered

The interpretation placed on the Department's action was that it had given detailed consideration to the *Pot o' Gold* feature, particularly since there had been reaction not only at the FCC but in Congress, because of agitation of motion picture exhibitors, ministerial groups and others. While the FCC referred the Tums program along with the bakery program to the Department Feb. 8, the material was not physically transmitted until late that month. The whole matter was assigned to a senior attorney in the Criminal Division who devoted his major attention to it for more than a month. In the absence of Attorney General Jackson, Assistant Attorney General Rogge transmitted to FCC Chairman Fly on April 11 the Department's response along with the entire files in the case.

The new citations, referred to the Department March 29, were assigned to the Department's Administrative Division for study. Stations involved were WGN, Chicago, on *Mu\$ic*; WIP, Philadelphia, on *Songo*; WFIL, Philadelphia, on *Especially for You*; WISE, Asheville, on *Sears' Grab Bag*; KRLD, Dallas, on *Dixie Treasure Chest*.

Despite the hands-off attitude of the Department, with the implied opinion that litigation is not warranted to test the programs under the lottery statute, FCC Chairman Fly repeatedly has made it clear that he did not consider programs employing the prize offer technique as in the public interest. He expressed himself to one group of broadcasters as viewing them in effect as placing radio in the position of "buying" its audience. A number of stations for that reason have dropped the *Pot o' Gold* program

while others have rejected proffers of similar programs, whether network or spot, on the ground that while they may be entirely legal, they were not worth the risk.

In effect, it is thought the Department's action gives the green light on this program. Nevertheless, many broadcasters have adopted the attitude that such programs do not constitute good radio and that a preponderance of such prize offers might result in competition among advertisers to make them the rule rather than the exception. Such a trend, it has been stated, would do radio no good and would deteriorate commercial programming.

Immediately following the FCC's citation of the prize award program on WFIL, Roger W. Clipp, general manager, stated that the giving away of radio sets by WFIL is not a lottery, since nothing is paid by the recipient to enter the contest. Radio sets are given as a free gift to anyone who happens to respond to a telephone call while listening to the program, he said. While WFIL was advised by attorneys in Philadelphia and Washington that the program was not a lottery, he said that in view of the question raised by the Commission the station was suspending the program until further notice.

Sponsor May Expand

M. H. Aylesworth, former NBC president, retained by Stack-Goble as counsel in connection with the Government action if and when it became necessary to proceed, expressed satisfaction over the Department's action. He declared he could not see anything objectionable in the program, but inasmuch as its propriety had been questioned, it was decided to alter the format somewhat. He expressed belief that the changed structure of the program would satisfy the most fastidious and the most fearful.

In the light of the Department's action, it is entirely possible that the sponsor will seek to capitalize on the publicity by expanding its radio activities. It has been considering a similar series on MBS, and there have been conversations with MBS executives. It is understood MBS was reluctant to clear time until an adjudication from Washington was procured.

Whether stations which dropped the *Pot o' Gold* program on NBC because of the litigation now will carry it, remained problematical. Among the stations which dropped the feature were WWJ, Detroit, WFBR, Baltimore, and WDAF, Kansas City.