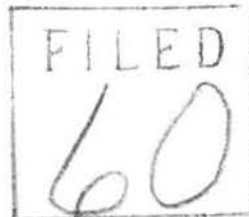


GAMBLING - "Whiffle Boards"

10-5

October 3, 1934



Honorable J. B. McGuffin
Prosecuting Attorney
Lawrence County
Mt. Vernon, Missouri

Dear Sir:

We received your request of September 25, 1934 for an opinion as to whether or not "Whiffle Boards" are gambling devices. Your letter, describing such boards, is as follows:

"I assume that you know what these last devices are. They are operated by placing a nickle in receptacle, and pushing a lever. Then a marble is shot out, and if it lands fortunately, a payoff is due, which may be a dollar (or more or less); if it lands unfortunately then they claim you have merely paid a nickle for the privilege of playing the machine. I believe that is about the way it is operated.

"They claim that the operation of this last named machine is a matter of science or skill, and not a gambling device."

From your letter, it is apparent that this machine is a device, designed for gambling, and comes within the statute, Section 4287 R. S. Mo. 1929, defining criminal offenses as follows:

#2 - Honorable J. B. McGuffin

"Every person who shall set up or keep any table or gaming device * stand or device of whatever pattern, kind or make, or however worked, operated or manipulated, or any kind of gambling table or gambling device adapted, devised and designed for the purpose of playing any game of chance for money or property * * shall, on conviction, be adjudged guilty of a felony, * * "

The essential elements of a lottery are consideration, chance and prize. - State v. Emerson, 1 S. W. (2d) 109 (1927). The Whiffle Boards contain all these elements, and for convenience are set out as follows:

- (1) Prize - The payoff of one dollar more or less.
- (2) Chance - Depending upon the marble coming to rest in some particular niche or hole. If it lands in one hole you win; if it lands in others, you lose.
- (3) Consideration - The placing of a nickle in the machine and pushing of a lever.

It is, therefore, the opinion of this office that "Whiffle Boards" are gambling devices prohibited by the laws of the State of Missouri.

Yours very truly,

FRANKLIN E. REAGAN
Assistant Attorney General

APPROVED:

ROY McKITTRICK
Attorney General

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