

SLOT MACHINES - Proper method of procedure;  
SEARCH AND SEIZURE of gambling devices.

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August 20, 1935

8-21



Honorable G. Logan Marr  
Prosecuting Attorney  
Morgan County  
Versailles, Missouri

Dear Sir:

We have your request of August 12, 1935 for an opinion, which is as follows:

"Since I have been prosecuting attorney and Austin S. Ball has been sheriff, there has been a strict ban on slot machines in Morgan County, Mo. Hon. Barney Reed is now prosecuting attorney of Camden County. He has declared and enforced a ban on slot machines in Camden County. The operators of slot machines in Camden County have been slipping across the line into Morgan County and putting these machines up in the restaurants and resorts along the lake in Morgan County.

"It has been the practice of the sheriff and I to seize any slot machine in any public place in display, and destroy the machine without any further legal action. That seems to be the swiftest way to combat these gambling devices. If there is any money in the machine, the same is used to pay the officer for his trip and the mileage. Since this method is so effective, I am asking your office if there is any legal consequences in this method?"

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We find that the operation of a slot machine is made a felony by Section 4237, R. S. Mo. 1929.

The procedure for the suppression of gambling devices may be briefly summarized as follows:

- (1) Upon a complaint being made, as provided for in Section 3783, R. S. Mo. 1929, a search warrant may be issued for the seizure of any gaming table or gambling device prohibited by law.

The enclosed complaint for search warrant meets the requirement of the statute.

- (2) The search warrant shall describe the place and articles to be seized. Section 3784, R. S. Mo. 1929. It shall be directed to the sheriff or any constable, and may be served in the daytime or nighttime. Sections 3770, 3771, R. S. Mo. 1929.

A form of search warrant which may be issued by a justice of the peace is also attached hereto.

- (3) If the officer executing the search warrant seizes any slot machine or other gambling device, the same shall be taken before the justice of the peace who issued the search warrant. It shall be the duty of the justice, under Section 3785, R. S. Mo. 1929, to set a date for hearing not less than five days nor more than twenty days after such seizure for the purpose of

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determining whether the property seized under the search warrant is a gambling device. Written notice of the date and place of such hearing shall be given by posting a copy of such notice in a conspicuous place upon the premises upon which such property is seized, and by delivering a copy of such notice to any person claiming an interest in such property whose name may be known to the person making the complaint or to the officer issuing or serving such warrant. Section 3785, R. S. Mo. 1929.

- (4) At the hearing, if the justice determines that such property is a gambling device and is not needed as evidence in the trial of a criminal case, he shall enter an order finding that such device is a gambling device and order the same to be publicly destroyed. Sections 3786, 3787, R. S. Mo. 1929.
- (5) In the event a gambling device is ordered destroyed which contains coin of the realm, the same should be removed before destruction of the gambling device, and applied upon the payment of the costs of the search and seizure and a hearing before the justice, and the balance, if any, should be paid into the school fund under the provisions of Section 9712 as money forwarded to such fund. Money taken from prisoners has always been applicable to the fines and payments of costs. Section 3773, R. S. Mo. 1929.

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It is, therefore, the opinion of this office that the above and foregoing method of procedure against slot machines is the proper procedure for their seizure and destruction.

Yours very truly,

FRANKLIN E. REAGAN  
Assistant Attorney General

APPROVED:

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ROY McKITTRICK  
Attorney General

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