

GAMBLING - Tit-Tat-Toe Gum Vending Machines are
Gambling Devices

April 27, 1936

4-28



Mr. E. McQuerry
City Attorney
Mound City, Missouri

My Dear Sir:

We have your request of April 24, 1936 for an opinion relative to one Tit-Tat-Toe gum vending machine. Your request, in part, is as follows:

"That is, is the keeping and operating of Tit-Tat-Toe gum vending machines a violation of said section. In case you are not familiar with these machines, they are operated by placing a penny in a slot and pushing down a short lever. The rebound of this lever will kick out a round piece of gum and at the same time whirl three rollers or discs which are covered with red crosses and circle, certain combinations of which will indicate that the player either will or will not get additional 'points', which said points run from ten to 100 and may be and is used to purchase additional gum or other goods -- usually candy or beer, cigarettes or cigars.

"The point is, the player will always get a piece of gum that regularly sells for a penny. In your opinion is this 'Keeping Gaming Devices' as prohibited by above section?"

Mr. E. McQuerry

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August 27, 1936

Section 4287, Revised Statutes Missouri 1929, defining certain criminal offenses, and particularly including the offense of setting up or keeping any table or gambling device, is broad enough to include the Tit-Tat-Toe machine outlined in your letter.

Section 4314, Revised Statutes Missouri 1929, makes it a criminal offense to set up or establish any lottery. The three essential elements of a lottery are; (1) prize, (2) consideration, and (3) chance. State v. Emmerson 1 S. W. (2d) 109. The lottery statute has been held to apply to 'suit' clubs. State v. Meyer Tailoring Company 25 S. W. (2d) 98, and, in other opinions of this office, we have held that it applied to 'bank night,' 'the rocket machine,' 'the sportsman machine,' 'ball machines,' 'whiffle boards' and 'weekly drawings,' all of which have the three essential elements of lottery, as outlined by you in the Tit-Tat-Toe gum vending machines.

It is, therefore, the opinion of this office that the Tit-Tat-Toe gum vending machine, as described in your letter, is a gambling device prohibited by Section 4287, and a lottery within the provisions of Section 4314, Revised Statutes Missouri 1929.

Respectfully submitted,

FRANKLIN E. REAGAN
Assistant Attorney General

APPROVED:

JOHN W. HOFFMAN, Jr.
(Acting) Attorney General

FER:LC