

LOTTERIES- "ANNIE-OAKLEY" MACHINES.

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July 13, 1937

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Mr. Edward V. Long  
Prosecuting Attorney  
Pike County  
Bowling Green, Missouri

Dear Sir:

We have your request of July 1, 1937, which is in words and figures as follows:

"Please give me a ruling as to whether or not a machine operated as follows is a violation of the gambling laws of this State. You will find enclosed herewith a cut of this particular machine. There is a square card with the letter S on each corner placed in the back of this machine and you are entitled to three shots with a rifle for ten cents. If you are able with the three shots to shoot one of the letter S completely out of the card you win a jack-pot which is paid in cash. The machine itself does not pay off but the operator pays if you will win.

Please give me a ruling as to whether or not a pin ball machine that is so construed that when the player scores a certain

number of points that the machine automatically trips itself so that he is permitted to play an additional free game or games. There is no pay off either by the machine or by the operator but the machine is so mechanically constructed that it can be played for the additional games."

Section 4287, R. S. Missouri, 1929, provides in part as follows:

"Every person who shall set up or keep any table or gaming device commonly called A B C, faro bank, E O, roulette, equality, keno, slot machine, 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 and shall induce, entice or permit any person to bet or play at or upon any such gaming table or gambling device, or at or upon any game played or by means of such table or gambling device or on the side or against the keeper thereof, shall, on conviction, be adjudged guilty of a felony,"

The "Annie-Oakley" machine as described in your letter together with circular attached thereto, contains all the gambling elements of a lottery scheme, namely; prize, consideration and chance. State v. Emerson, 1 S.W. (2d) 109.

An effort has been made to dress up this machine so as to make it a game of skill through the method of requiring the operator to shoot the targets. Efforts have previously been made to camouflage lotteries by dressing them up as games of skill. Such games of skill as the throwing of a ball, *People v. Badgaty*, 36 Pacific (2d) 634, and a dart game, *State v. Schwelner*, 60 Pacific (2d) 938, have been held to be lotteries and not games of skill.

In *Commonwealth v. Plissner* (1936), 4 N. E. (2d) 241, the Supreme Court of Massachusetts held a grabbing machine played by the skill of the operator was a lottery. In the approved charge of the trial court we find the following, l.c. 245:

"That means that it is not necessary that a game should be a lottery because chance should predominate or that skill should predominate. As you will hear me say later, if there is a chance as an effective and active cause in the game, even though skill we will say might be ninety per cent and chance the rest the game is still a lottery. \* \* \* Assume \* \* \* that by nature or by experience, or by both, a player should come to have and be able to exercise the very greatest degree of skill which the construction of that machine permits to be used, and that he actually exercises that skill to the extreme limit required in order to win, required possible in order to win \* \* \* then ask yourselves this question \* \* \* does there still remain before the player can succeed, 1st. An opportunity for the taking effect of one or more forces over which by reason of the construction of the machine the player can have no possible control? \* \* \* 2nd. A sure and certain possibility that such uncontrollable forces will take effect at each and every operation of the machine by reason of the nature and construction of the mechanism? \* \* \* 3rd. A cer-

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tainty that if those uncontrollable forces do take effect the player will be unable to win his prize?"

This office has previously written opinion with reference to similar so-called devices such as "Rocket"; "Sportsman", "Whiffle Boards", "Ball Machines", "Tit-Tat-Toe Machines", "Suit Clubs", "Weekly Drawings", "Win-O", "Pay-Off", "Hollywood" and similar schemes, holding them all to be violations of state lottery law of Section 4314, R. S. Missouri, 1929.

It is, therefore, the opinion of this Department that the machine described in your letter and known as the "Annie-Oakley" machine, is in violation of the gambling and lottery laws of this state.

Respectfully submitted,

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APPROVED:

J. E. TAYLOR (Acting)  
Attorney General

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