

VENDING MACHINES:--May be a lottery or slot machine depending upon the value of the tokens given as prizes.

November 12, 1937

11-15



Hon. Walter G. Stillwell
Prosecuting Attorney
Marion County
Hannibal, Missouri

Dear Sir:

We have your request of October 21, 1937, for an opinion as to the legality of a mint vending machine for the sale of "Huck Finn Mints", wherein mints may be purchased from the machine by inserting a nickel, and in connection therewith sometimes the player will receive a number of metal tokens of the same size and thickness as a nickel. These tokens may not be used for the purchase of mints and are not to be redeemed in cash merchandise. The number of tokens received depends upon a combination of three symbols in the machine (similar to the operation of a slot machine).

Ordinarily a machine such as the one described here would be a slot machine within the prohibition of Section 4287 R. S. Missouri 1929, but your letter indicates that the machine is not designed for the purpose of playing games of chance for money or property, and that the metal tokens given if used for prizes are worthless.

In order for this machine to constitute a lottery in violation of Section 4314 R. S. Missouri 1929, it is necessary to find the element of chance, a consideration, and the awarding of a prize.

The word "lottery" is not a term of the common law and its definition in constitutional provisions and in statutes is that of common usage. State vs. Lipkin, 169 N.C. 265; 84 S.E. 340; Nat'l. Thrift Ass'n. vs. Crews, 116 Ore. 352; State ex rel. vs. Kansas Merc. Ass'n. 45 Kan. 351; 25 Pac. 984; 11 L.R.A. 430; People vs. Welch, 269 Mich. 449; 257 N.W. 859; State ex rel. vs. Lee, 238 Mo. 679; 233 S.W. 20, 29, 17 R.C.L. 1209.

The term in constitutions must be construed in the popular sense. Chaney Park Land Co. vs. Hart, 104 Ia. 592; 73 N.W. 1059. Johnson vs. State, 137 Ala. 101; 34 So. 1018. City of New Orleans, vs. Collins, 27 So. 532, 538.

The word "lottery" must be construed in its popular sense with the view of remedying the mischief intended to be prevented and to suppress all evasions for the continuance of the mischief. People vs. McPhee, 139 Mich. 687, 103 N.W. 174; 69 L.R.A. 505. State vs. Mumford, 73 Mo. 647, 650. State vs. Wersebe, 181 Atl. 299, 301.

The word is generic; no sooner is it defined by a court than ingenuity evolves some scheme within the mischief discussed but not quite within the letter of the definition given. People vs. McPhee, 139 Mich. 687; 103 N.W. 174; 69 L.R.A. 505. State vs. Clark, 33 N.H. 329. This is made apparent from an examination of a large number of cases in which various methods of distributing money or goods by chance are examined and discussed.

This office is of the opinion that if the metal tokens which are distributed by this mint vending machine by chance are worthless, and that any number of them have no value whatsoever, then the machine is not a gambling device within the meaning of the above sections. If the tokens are of some value, then these machines are gambling devices prohibited by both of the above statutes. As to whether or not the vending machine is a gambling device, the decisive question is one of fact as to whether or not the tokens have any value. This is a question we cannot decide because this office is without authority to decide questions of fact. 6 Corpus Juris, Section 16, page 811.

Respectfully submitted,

APPROVED:

FRANKLIN E. REAGAN,
Assistant Attorney General

J. E. TAYLOR
(Acting) Attorney General

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