

CRIMINAL LAW:
GAMBLING:

Pinball machine which pays off in free games only is not a gambling device.

April 14, 1950

4/17/50

Honorable Edwin F. Brady
Prosecuting Attorney
Benton County
Warsaw, Missouri



Dear Sir:

This is in answer to your letter of recent date requesting an official opinion of this department, reading as follows:

"It is requested that you give me your opinion in answer to the following question:

"Is a pinball machine in which the player must insert a coin to play and which pays off in free games in the event certain scores are attained a gambling device under the laws of this state?

"In connection with this problem I have already read your opinion of September 15, 1949, to Mr. Ronald J. Fuller, Prosecuting Attorney of Phelps County, and the case of State v. Jack and Jill Pinball Machine, 224 S.W. 2d 854.

"In your opinion to Mr. Fuller you did not rule directly on the free game question. After reading the Jack and Jill case I am anxious to have your opinion on this matter."

The opinion to Mr. Ronald J. Fuller, Prosecuting Attorney of Phelps County, under date of September 15, 1949, held as follows:

"In the premises, it is the opinion of the department that a one-ball pinball machine, commonly known as the Horse Race

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Game, is a device or game, the operation of which with successful or winning results is dependent upon chance. If in playing the game the player has the chance to receive something of more value than the amount invested to play it, the game is one characterized as a gambling device used for gaming under Section 4678, R. S. Mo. 1939."

In the case of State v. One "Jack and Jill" Pinball Machine, 224 S.W. 2d 854, the Springfield Court of Appeals held that a pinball machine which paid off only in free games was not a gambling device in a proceeding to have a pinball machine condemned and destroyed. The court said, l.c. 855:

"The sole question before us is: In the operation of this machine, does the fact that the player may play a free game or games upon the attainment of a certain score make it a gambling device under our statutes and subject it to confiscation?"

The court said with regard to Section 4678, upon which the opinion to Mr. Ronald J. Fuller was based, l.c. 856:

"Section 4678 of the Revised Statutes of Missouri 1939, Mo. R.S.A., provides: 'Every person who shall permit any gambling table, bank or device to be set up or used for the purpose of gaming in any house, building, shed, booth, shelter, lot or other premises to him belonging or by him occupied, or of which he hath at the time the possession or control, shall, on conviction, be adjudged guilty of a misdemeanor and punished by imprisonment in the county jail or workhouse for not more than one year nor less than thirty days, or by fine not exceeding five hundred dollars or less than fifty dollars.'

"This statute does not define a gambling device but makes it a crime to permit one to be set up or used in a house, etc."

The court further said, l.c. 860:

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"Gambling, as judicially defined, has three necessary elements, (1) consideration or risk, (2) chance and (3) reward or prize. But the legislature has required the third element, when referable to a gambling device, to be 'money or property.' Does the player get property for his nickel? We think not. It is argued that he gets amusement. The vacuous mind that may momentarily be brightened by finding entertainment and amusement in watching a metal ball meander aimlessly over the surface of an inclined table and finally score by dropping from sight into an aperture therein, would be equally entertained by watching a certain species of scarabaeoid beetle aimlessly roll his putrid ball across the ground and into a hole where eventually it becomes sustenance for itself and young. Would not the entertainment and amusement in each instance be the same though five cents is paid to pull the plunger in the one and in the latter, the propulsion is by the beetle and its accomplishments are not emblazoned upon an electrically lighted scoreboard. The privilege of watching either would certainly not be property, under Section 4675, and we shall not dignify either by holding it to be 'a "thing" of value.'

Therefore, it is our view that a pinball machine which pays off only in free games is not a gambling device in this state.

Conclusion

It is the opinion of this department that a pinball machine which pays off only in free games is not a gambling device in this state.

Respectfully submitted,

Approved:

C. B. BURNS, JR.
Assistant Attorney General

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Attorney General
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