

GAMBLING DEVICES: A pinball machine which pays off only in free
PINBALL MACHINES: games is not a gambling device. No law which
MINORS: prohibits the playing of pinball machines by
minors in Missouri.



January 24, 1957

Honorable George Q. Dawes
Prosecuting Attorney
Iron County
Ironton, Missouri

Dear Mr. Dawes:

This office is in receipt of your request for an opinion which reads in part as follows:

"I have been asked by Ogie Selinger, our sheriff, to obtain an opinion from you relative to pinball machines. It seems that some of the minors in this county play the pinball machines and the local minister I referred to is complaining about it.

"I would, therefore, appreciate an opinion from your office as to the legality of pinball machines that offer free games only as a reward for securing a certain number thereon. My opinion is that they are not illegal to have one in a place of business.

"Secondly, I would appreciate your opinion on whether or not minors playing such pinball machines and proprietors permitting them to play are violating the law. From what I could find I feel that this is not illegal either. However, in view of Section 318.090 restricting minors in the playing of gaming devices, I would like your opinion."

In regard to your first question, it is believed that the attached opinion to Honorable Edwin F. Brady, dated April 14, 1950,

Honorable George Q. Dawes

and the attached opinion to Ronald J. Fuller, dated September 15, 1949, completely answers the question as to free games being a prize in the three elements of lottery, consideration, chance and prize. The application of Section 318.090, RSMo 1949, has been considered in regard to the playing of pinball machines by minors. It is thought best for the purpose of this opinion to quote that section which is as follows:

"Every licensed keeper of any table mentioned in Section 318.010 who shall suffer any person under the age of twenty-one years to play on such table kept by him without the permission of the father, master or guardian of such minor first granted, shall forfeit and pay a fine of fifty dollars for every such offense, one-half of which shall be for the informer, to be recovered by a civil action."

It is necessary to quote Section 318.010, now amended as A. L. 1953, page 662, to which the above section may be deemed to refer. Said section reads:

"The county court shall have power to license the keepers of billiard tables and all similar tables upon which balls or cues are used. At each term, the clerk of said court shall prepare and deliver to the collector of their county, as many blank licenses for the keepers of such tables herein mentioned as the respective courts shall direct which shall be signed by the clerk and attested by the seal of the court."

The words expressly struck in the amending law from the former section were, "pigeonhole tables, jenny lind tables, and all other tables kept and used for gaming." The words added in lieu thereof are "and all similar tables." It is not believed that under either the old or the new sections the description is sufficient to include machines such as are referred to as "pinball machines" although balls are used in both such games and they may be equally said to be kept and used for gaming. It cannot be claimed, however, that there is any similarity between a cue and a pin. In prosecution for crime one of the cardinal rules is that stated in State v. Dougherty, 216 S.W. 2d. 467, l.c. 471, 358 Mo. 734:

"Criminal statutes are to be construed strictly; liberally in favor of the defendant, and strictly against the state, both as to the charge and the proof. No one is to be made subject to such

Honorable George Q. Dawes

statutes by implication.' State v. Bartley,
304 Mo. 58, 263 S.W. 95, 96; State v. Taylor,
345 Mo. 325, 133 S.W. 2d. 336, 341.* * * *"

In light of the above it is thought that Section 318.090,
supra, cannot be deemed to provide a penalty or prohibit the use
of pinball machines by persons under the age of 21 years. No
legislative action in regard to such prohibition has been found.

CONCLUSION

Therefore, it is the opinion of this office that a pinball
machine which pays off only in free games is not a gambling device.

It is the further opinion of this office that no law exists
which prohibits the playing of pinball machines by minors in
Missouri.

The foregoing opinion, which I hereby approve, was prepared
by my assistant, Mr. James W. Faris.

Yours very truly,

John M. Dalton
Attorney General

Enc. (2)

JWF:mw