UNCLAIMED MONEY. Who has right to money seized with gambling device when no claim is made therefor?

October 23, 1934.

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Hon. Herbert M. Braden,
Prosecuting Attorney Livingston County,
Chillicothe, Missouri.

Dear Sir:

A request for an opinion has been received from you under date of September 20th, such request being in the following terms:

> "I am writing for an opinion as to what should be done with the money taken out of devices, such as slot machines, which are seized under Section 3783 Mo. R. S. 1929 and destroyed under Section 3787 Mo. R. S. 1929, where no claim is made by any person to the ownership of said slot machines and where no criminal prosecutions are instituted."

I

WHO OWNED MONEY WHEN SEIZED?

Before discussing the practical problem of what should be done with this money, it is important to trace the ownership of it. The most usual type of slot machine is constructed in the manner of a strong box, access to which is by a key controlled by the owner. Such machine has within it a mechanical device which displays one or more dials consisting of series of numbers or symbols and when a coin, usually a five-cent piece or a twenty-five-cent piece, is inserted in the slot machine, which insertion allows a lever to be released which sets the machinery in motion, the dials move, and after rotating so as to show the various numbers or symbols on them they come to rest with only one number or symbol showing on each dial, and if this number or symbol or combination of the same is designated on the machine as a winning number or symbol or combination, the number of coins to which it entitles the player are released and ejected from the machine.

When a player inserts a coin into the machine it is his intention permanently to part with the possession of it. Even if he should succeed in securing as the result of that particular play the

maximum return of coins, he would not receive back the particular coin with which he has played because such coin would be the last coin in the machine to be paid out, and if the machine is working properly it will only ultimately pay out a certain proportion of the total coins put in, which fact would presumably be known to the player. His intention at the time of playing is important because upon it will depend the ownership after play of the coin which he has inserted. To pass title to a coin it is necessary to deliver it with the intention of passing title from ones self and it seems not open to doubt that the man who inserts his coin in the slot machine and pulls the lever does deliver it into the possession of the person owning the machine and makes such delivery with the intention of permanently conveying away both title and possession. Consequently at the time these machines and the money therein were seized the persons who had put their coins into the machines no longer had title to them and are not now the owners. Of course, under the Missouri statutes one who has lost money gambling is entitled to bring an action for its recovery, (R.S.Missouri, 1929, Section 3005), but by Section 3013 the statute of limitations for such an action is only three months. Assuming that it would be possible for a person who has played these machines within the last three months to sustain the burden of proof as to the number of coins which he played, it would seem that the possibility of such a suit being successfully maintained would be sufficiently remote so that it might be disregarded. The statutes which have just been cited show clearly that title to money lost in a gambling transaction does pass to the winner and there would seem no doubt that the title to these coins in these slot machines did pass at the time of pay to the owner of the machines (or the persons entitled to the same under contract with the owner).

One difficulty might exist as to the acquisition of title by the owner of the machine in that an acceptance of delivery and title and some sort of an intent to take possession is usually necessary on the part of the person acquiring possession or title, and presumably the owner of this machine would not know at any given time how many coins had been inserted in the machine and consequently it might be argued that he could not intend to take possession of something of the existence of which he was not aware. However, under the law of this State the possession of and intent to possess the container in which something else has been deposited carries with it a sufficient intent to possess that which is deposited in it. See Foster v. Fidelity Safe Deposit Company, 162 Mo. App. 165, 145 S. W. 139 (1912), affirmed 264 Mo. 89, 174 S. W. 376 (1915).

The statute under which these slot machines and money were seized provides that they shall be returned to the owner if they are not objectionable per se (R. S. Missouri, 1929, Section 3787). Consequently, under the facts as set out in your letter, the owner of this money, who is the owner of the slot machine or his assignee, would have a present right (as soon as it was decided that this money was not to be used in a criminal proceeding as evidence and the judge had so ordered under Section 3787) to claim such money and have it de-

livered over to him.

II

WHAT IS NOW TO BE DONE WITH THIS MONEY?

As we understand the facts as set out in your letter, the owner of the slot machines has definitely by his acts indicated that he has given up any idea of ever claiming any of this money, and we assume that such acts are such that a jury or a court would regard them as indicating a definite intention to give up any claim to this money. As was pointed out above, there is no doubt that the slot machine owner owns the money and could claim it. The question that remains is what the County officials are to do with it now that the owner has abandoned it.

R. S. Missouri, 1929, Chapter 126 (Sections 14227-14237) relates to the disposition of lost and unclaimed property. Section 14227 defines the scope of the chapter and provides as follows:

> "If any person finds any money, goods, right in action, or other personal property, or valuable thing whatever, of the value of ten dollars or more, the owner of which is unknown, he shall, within ten days, make an affidavit before some justice of the county, stating when and where he found the same, that the owner is unknown to him, and that he has not secreted, withheld or disposed of any part thereof."

The use of the underlined word "finds" eliminates the present facts from the scope of such chapter because it is impossible to have a finder of something which has not been lost.

> "Property in the possession of another cannot be found, in the sense of the law of lost property, for the reason that it is not lost. Even if discovered in possession of the thief who stole it, the discoverer has not found it, for the reason that being in the thief's possession, it is not lost. If, therefore, the money in controversy was in the possession of defendant when discovered by plaintiff, plaintiff could not have found it, as that word is understood in the law of lost property." (Foster v. Safe Deposit Co., 162 Mo. App. 165, 167, 145 S. W. 139 (1912), affirmed 264 Mo. 89, 174 S. W. 376 (1915).)

At the time of the seizure of these slot machines and money the possession and title to the money was in the owner of the machines.

Chapter III of R. S. Missouri, 1929, Article I, relates to escheats to the State, but an examination of such article will show that the facts under consideration do not fall within that article and consequently there is no escheat.

In the case of Foster v. Safe Deposit Co., supra, the Court was attempting to analyze the possible methods by which one could divest himself of title to his own property (aside from conveyances to particular persons). The Court said:

> "Property may be separated from the owner by being abandoned, or lost, or mislaid. In the first instance, it goes back into a state of nature, or, as is most commonly expressed, it returns to the common mass and belongs to the first finder, occupier or taker. In the second instance, to be lost, it must have been unintentionally or involuntarily parted with, in which case it is also an object which may be found and the finder is entitled to the possession against every one but the true owner. But, if it is intentionally put down, it is not lost in a legal sense, though the owner may not remember where he left it, and cannot find it. For 'the loss of goods, in legal and common intendment, depends upon something more than the knowledge or ignorance, the memory or want of memory, of the owner at any given moment.'"

In the case under consideration it is apparent that there has been no sale, assignment or conveyance to any particular person, nor has there been any loss of the property or mislaying of the property in a legal sense. The only other remaining way of divesting ones self of title to property is in the opinion just quoted, that of abandonment, and it would seem that the facts furnished by you would warrant an inference of legal abandonment.

It is perfectly possible to abandon possession and title to something which might involve one in liability if title were retained. Thus in the case of State Banking Co. v. Hinton, 172 S. E. 42 (Ga. 1933), bank stock which by statute imposed liability to a 100% assessment was held susceptible of abandonment by the legatees thereof. The Court said:

> "The plaintiff also seems to entertain the idea that some one must of necessity own the stock. That theory is not sound. Property of any kind, valuable or otherwise, may be disowned. 1 C. J. 12, Sec. 20. More especially may one disown or refuse to accept things once of value, but now worthless. A worthless check, a promissory note, can be cast away or destroyed by its owner. It is not property because it is worthless, and no one is required to own it."

Where property has been abandoned for any reason the first person to take possession of it with intent permanently to appropriate it to his own use becomes the owner thereof because as was pointed out above in the quotation from Foster v. Fidelity Safe Deposit Company, when property is abandoned its ownership and possession return to something akin to a state of nature. In the case of Crosson v. Lion Oil & Refining Co., 275 S. W. 899 (Ark. 1925), the ownership of oil, a portion of which was abandoned by the owner of the well as it came out of the well, was involved, and the Court is adjudicating the rights of the claimants thereto said:

> "Property is said to be abandoned when it is thrown away or its possession voluntarily forsaken by the owner, in which case it will become the property of the first occupant. * * * Hence it will be seen that * * * when the oil operators in the California case abandoned the waste oil by voluntarily letting it flow into the creek without any intention of reclaiming it, the first owner proprietor would have the right to acquire it."

See also Duvall v. White, 42 Cal. App. 305, 189 Pac. 324 (1920); Humphreys Oil Co. v. Liles, 262 S. W. 1058 (Tex. 1924), affirmed 277 S. W. 100 (1925).

From the above principles it is deduced that when the owner abandoned this property the possession of the Sheriff ripened into title which the Sheriff held, of course, only in a representative capacity on behalf of the County.

One more word must be added. We have assumed in the foregoing that the acts of the owner have been sufficient to constitute a complete abandonment, in which event the title of the County is now complete and the money could be directly turned into the general revenue fund of the County. However, if this assumption is incorrect and the only basis for the inference of abandonment is the fact that no claim has been made by the owner, as was pointed out above, the owner can make such claim until the statute of limitations against such claim would expire (and this would presumably be three years under R. S. Missouri, 1929, Section 863), so if no definite acts constituting abandonment have transpired the money should be held by the Sheriff or officer now having custody of it until such three year period from the date of the decision that such money is no longer necessary as evidence elapses.

In conclusion it is our opinion that this money should now be turned into the general revenue fund of the County and that no further claim therefor can be made if there has been a definite abandon-

ment, but that if such abandonment has only consisted to date of a failure to make claim for such money, the true owner, who is the owner of the slot machines or his assignee, could make claim for it and it should be delivered to him if such claim is made within three years, and that if no such claim is made within three years at that time it should be turned into the general revenue fund of the County as having been abandoned.

Very truly yours,

EDWARD H. MILLER
Assistant Attorney-General

APPROVED:

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Attorney-General