

SHERIFFS AND CONSTABLES:

Sheriffs and Constables, within the jurisdiction of his (the Constable's) justice, may summarily seize gambling devices.

July 17, 1943



Hon. C. B. Burns
Prosecuting Attorney
Linn County, Missouri
Brookfield, Missouri

Dear Mr. Burns:

Your opinion request of July 16, 1943, has been assigned to the writer for answer. Therein you ask:

"If a sheriff of the county or a policeman of the city observe gambling devices, may they take charge of same without any other proceedings or anything being filed in any court?"

"Is it the duty of a sheriff of the county and a policeman of the city to take charge of a gambling device when observed in a county or city?"

Your question deals with no specific article that maybe used for gambling, for example cards, roulette, A B C tables or so on. For complete regulations on gambling and articles used therefor see Missouri Statutes for 1939, general index Gaming and Gambling, page 4784, Vol. III.

The cities of various classes are authorized to suppress or regulate gambling, see index of Missouri Statutes, 1939. Cities of the third class have the power to suppress gambling under Section 6950, Missouri Revised Statutes 1939. Cities of the fourth class have the power to regulate gambling under Sections 7169 and 7196, Mo. R. S., 1939.

As to whether or not a sheriff or policeman may take (seize) charge of gambling devices "without any proceedings or anything being filed", the case of State vs. Frankenhoff, 125 S. W. (2d) 816, is applicable.

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Therein the Court said:

"* * * Constables have the same powers as sheriffs within the jurisdiction of the justice. Huhn v. Lang, 122 Mo. 600, 27 S. W. 345. As to powers of sheriffs, see Section 11516, R. S. Missouri 1929, Mo. St. Ann. Sec. 11516, page 7435.

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"* * * we have held that a search warrant is not in every case necessary to authorize a search for and seizure of illegal property such as gambling devices. State vs. Pigg, 312 Mo. 212, 278 S. W. 1030; State vs. Askew, 331 Mo. 684, 56 S. W. 2d 52; State ex rel. vs. Joynt, 341 Mo. 788, 110 S. W. 2d 737, 739; that only 'unreasonable' searches are prohibited by our constitution, and that gambling devices, incapable of lawful use, are not protected by law and may be summarily seized and destroyed.* * *"

CONCLUSION

Sheriffs and Constables, within the jurisdiction of his (the Constable's) justice, may summarily seize gambling devices.

Respectfully submitted,

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APPROVED BY:

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