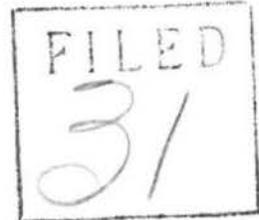


GAMBLING: Section 4287 R. S. Mo. 1929 and other gambling laws apply to private clubs.

PRIVATE  
CLUBS : Applicable to criminal law.

December 29, 1937

12-31



Mr. J. Overton Fry  
City Attorney  
Mercantile Bank Building  
Louisiana, Missouri

Dear Sir:

We have your request of December 23, 1937, for an opinion, as follows:

"In Re: Application of Sec. 4287 of  
Rev. Stat. 1929.

I am writing your office relative to the application of the above statute in a situation where slot machines and similar devices are operated in a private club.

Would you kindly advise me whether or not it is the opinion of your office that the operation of these devices are unlawful, where such a club is composed of private members paying dues. Such a club is not open to the public, but members are selected. The operation of these machines is for the purpose of enhancing the treasury of the organization, and are only played by club members."

Section 4287 R. S. Missouri 1929, makes it a felony for every person found guilty of keeping gaming devices, including slot machines. To begin with, I assume that your "private club" is a corporation. Does this "the cloak of a soulless person", exempt the corporation, its officers, or members from the operation of the criminal law? An officer of the corporation is liable criminally

for any criminal act of the corporation of which he has knowledge of its commission prior to the commission thereof. 14a C.J. 244; State vs. Viviano, 206 S.W. 235, l. c. 236. The proper method to get service on the corporation charged with the violation of some criminal act is to serve a copy of the information or indictment on the proper officer of the corporation. 14a C.J. 878; State vs. White, 96 Mo. App. 34, 7 R.C.L. 771, 778.

Officers of a private club which assist in the sale of intoxicating liquors in violation of state law are liable to prosecution. State vs. Zehnder, 168 S.W. 661, 182 Mo. App. 161.

The charter of every corporation in this state is a contract with the State to the effect that the corporation will not engage in any act which is either unlawful or immoral. State ex rel. vs. Jackey Club, 200 Mo. 51; State ex inf. vs. Standard Oil Company, 218 Mo. 350. There are many cases which have condemned the attempt of private clubs to circumvent the application of the criminal law to its members, and the criminal law has been applied to the acts committed in private clubs in violation of public law. Some of these cases are: County vs. Commercial Club, 20 Idaho 421; Conococheaque Club vs. Maryland, 116 Maryland 317; Beauvoir Club vs. State, 148 Ala. 643; Army and Navy Club vs. District of Columbia, 8 D.C. App. 544; Ky. Club vs. Louisville, 92 Ky. 309; State vs. Boston Club, 45 L.R.A. 485; United States vs. Alexis Club, 98 Fed. 725.

In most of the above cases private social clubs attempted to engage in the sale of intoxicating liquor in violation of law, and based their defense upon the feeble link that such sales were limited to members. Neither the corporation itself, nor its members, obtain any advantage of the criminal law by the process of organizing and joining. Membership in the club does not clothe the individual with any authority to commit murder, rape or arson, and it certainly does not extend to him any right to operate a slot machine in violation of the felony statute. Slot machines are gambling devices per se; they were adapted, devised and designed for the exclusive purpose of gambling and could not be used for any other purpose.

CONCLUSION

It is therefore the opinion of this office that Section 4287 R. S. Missouri 1929 is applicable to any person or corporation, and membership in a private club does not carry with it any license to violate the criminal law. The above statute prohibiting the operation of slot machines applies to slot machines whenever and wherever found.

Respectfully submitted,

FRANKLIN E. REAGAN,  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
(Acting) Attorney General

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