

DISPOSITION OF GAMBLING MONEY: When in possession of highway
patrol, said money may be retained
HIGHWAY PATROL: for evidence, but must be returned
after the criminal proceedings.

October 18, 1946

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93

Honorable Hugh H. Waggoner, Superintendent
Missouri State Highway Patrol
Jefferson City, Missouri

Dear Sir:

We hereby acknowledge receipt of your letter of recent date requesting an opinion from this department which reads in part as follows:

"a. A group of officers observed a dice game through a window in which money was being used by the participants for approximately one-half hour period. During this time, each of the participants who was arrested was observed either taking money into his hand or paying out money from his hand as he handled the dice in the game. Such expressions as 'Shoot 20' and 'I didn't make it' were heard. This gambling was taking place upon an especially constructed table. When the officers concerned broke through the window and entered the place, the participants were observed putting the money and dice in their pockets. The officers seized this money and dice from the pockets into which they had observed the participants placing the same, and held said money and dice as evidence.

"b. Assuming that the seizure of the money and dice as evidence was legal search and seizure, and the participants were formally charged under a criminal proceedings, and furthermore that they claim said money as their personal property and requests its return to them, the following opinions are requested.

"(1) Whether or not such money confiscated as evidence, may, after the disposition of the criminal proceedings against participants who claim said money, be properly turned over to either the School fund or the General Revenue Fund of the County of Venue.

"(2) Whether such money seized as evidence comes under the provisions of the 'Fourth paragraph of Section 4173, R. S. Mo. 1939' or any other paragraph of said section."

As we interpret the factual situation in your communication, we assume that this money was confiscated for evidence as a result of a legal search and seizure, and that after criminal proceedings, the owners requested that said money be returned to them. You specifically asked if this money comes under Section 4173 R. S. Mo. 1939, which provides in part as follows:

"Upon complaint being made, on oath, in writing, to any officer authorized to issue process for the apprehension of offenders, that any of the property or articles hereinafter named are kept within the county of such officer, if he shall be satisfied that there is reasonable ground for such complaint, shall issue a warrant to the sheriff or any constable of the county, directing him to search for and seize any of the following property or articles:

"First--Any gaming table or gambling device prohibited by law."

The rest of this section deals with the seizure of illegal publications, illegal drugs and raw materials to be used in the manufacture of illegal material described in said section. It is noted that property described in this section is property that is inherently illegal in its nature. It does not include property seized for evidence which is merely being used in an illegal transaction. Therefore, it seems clear to us that money confiscated in a gambling game would not be subject to the provisions of this section.

After a careful search of the statutes of this state, we find no provision for the forfeiture of money to a county merely because it was seized as evidence in a gambling game. The general rule is to return property to the owner when seized for evidence. We quote from 47 Am. Jur., paragraph 49, page 530:

"It is generally the practice, where property comes into the possession of a court in aid of a criminal prosecution, to restore it to its rightful owner when it is no longer needed, if there is no dispute as to its ownership.* * *"

Hon. Hugh H. Waggoner

(3)

An analogous situation was presented in the case of State vs. Gambling Equipment, 40 P. (2d) 746, wherein the Supreme Court of Arizona stated at l. c. 747:

"* * * After Grayson pleaded guilty to maintaining or keeping a gambling house, or, in other words, when the property was no longer needed as evidence, what disposition should be made of it? Property taken under a search warrant is in custodia legis. Often, and we think it is generally the practice, where property has come into a court or magistrate's possession in aid of a criminal prosecution, it is restored to its rightful owner when no longer needed, if there is no dispute as to its ownership.* * *

It can readily be seen from the above quotations that if property is seized and is not intended for illegal use, then it should be returned to the rightful owner.

CONCLUSION

Therefore, it is the opinion of this department that money confiscated at a gambling game to be used as evidence should be returned to the owner after criminal proceedings.

Respectfully submitted,

FERMINA WILSON
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

FW:VLM